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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. #AMS–CN–21–0057]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2020 Amendments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations, decreasing the value assigned to imported cotton for the purposes of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This amendment is required each year to ensure that assessments collected on imported cotton and the cotton content of imported products will be the same as those paid on domestically produced cotton. In addition, AMS is updating the Harmonized Tariff Schedule (HTS) statistical reporting numbers that were amended since the last assessment adjustment in 2020.

DATES: This direct rule is effective October 25, 2021, without further action or notice, unless significant adverse comment is received by September 27, 2021. If significant adverse comment is received, AMS will publish a timely withdrawal of the amendment in the **Federal Register**.

ADDRESSES: Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. Comments may be submitted anonymously.

Comments, identified by AMS–CN–21–0057, may be submitted electronically through the *Federal eRulemaking Portal at http://www.regulations.gov*. Please follow the instructions for submitting comments. In addition, comments may be submitted by *mail or hand delivery* to Cotton Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. Comments should be submitted in triplicate. All comments received will be made available for public inspection at Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. A copy of this document may be found at: *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *CottonRP@usda.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Amendments to the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act) were enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 Stat. 3909, November 28, 1990). These amendments contained two provisions that authorized changes in funding procedures for the Cotton Research and Promotion Program. These provisions provided for: (1) The assessment of imported cotton and cotton products; and (2) termination of refunds to cotton producers. (Prior to the 1990 amendments to the Act, producers could request assessment refunds.)

As amended, the Cotton Research and Promotion Order (7 CFR part 1205) (Order) was approved by producers and importers voting in a referendum held July 17–26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This direct final rule amends the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)) that is used to determine the Cotton Research and Promotion assessment on imported cotton and cotton products. The total value of assessment levied on cotton imports is the sum of two parts. The first part of the assessment is based on the weight of cotton imported—levied at a rate of $1 per bale of cotton, which is equivalent to 500 pounds, or $1 per 226.8 kilograms of cotton. The second part of the import assessment (referred to as the supplemental assessment) is based on the value of imported cotton lint or the cotton contained in imported cotton products—levied at a rate of five-tenths of one percent of the value of domestically produced cotton.

Section 1205.510(b)(2) of the Cotton Research and Promotion Rules and Regulations provides for assigning the calendar-year weighted-average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products is the same. The source for the average price statistic is *Agricultural Prices,* a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted-average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products will yield an assessment that is the same as assessments paid on domestically produced cotton.

The current value of imported cotton as published in 2020 in the **Federal Register** (85 FR 62545) for the purpose of calculating assessments on imported cotton is $0.011562 per kilogram. Using the average weighted price received by U.S. farmers for Upland cotton for the calendar year 2020, this direct final rule amends the new value of imported cotton to $0.011136 per kilogram to reflect the price received by U.S. farmers for Upland cotton during 2020.

An example of the complete assessment formula and how the figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar per Bale Assessment Converted to Kilograms

A 500-pound bale equals 226.8 kg. (500 × 0.453597).

$1 per bale assessment equals $0.002000 per pound or 0.2000 cents per pound (1/500) or $0.004409 per kg or 0.4409 cents per kg. (1/226.8).

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 2020 calendar-year weighted-average price received by producers for Upland cotton is $0.61 per pound or $1.345 per kg. (0.61 × 2.2046).

Five tenths of one percent of the average price equals $0.006727 per kg. (1.345 × 0.005).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.006727 per kg., which equals $0.011136 per kg.

The current assessment on imported cotton is $0.011562 per kilogram of imported cotton. The revised assessment in this direct final rule is $0.011136, a decrease of $0.000426 per kilogram. This reflects the decrease in the average weighted price of Upland cotton received by U.S. farmers during the period January through December 2020.

The Import Assessment Table in section 1205.510(b)(3) of the Order indicates the total assessment rate ($ per kilogram) due for each Harmonized Tariff Schedule (HTS) number that is subject to assessment. This table must be revised each year to reflect changes in supplemental assessment rates and any changes to the HTS numbers. In this direct final rule, AMS is amending the Import Assessment Table.

AMS believes that these amendments are necessary to ensure that assessments collected on imported cotton and the cotton content of imported products are the same as those paid on domestically produced cotton. Accordingly, changes reflected in this rule should be adopted and implemented as soon as possible since it is required by regulation.

As described in this **Federal Register** document, the amendment to the value used to determine the Cotton Research and Promotion Program importer assessment will be updated to reflect the assessment already paid by U.S. farmers. For the reasons mentioned above, AMS finds that publishing a proposed rule and seeking public comment is unnecessary because the change is required annually by regulation in 7 CFR 1205.510.

Also, this direct-final rulemaking furthers objectives of Executive Order 13563, which requires that the regulatory process ''promote predictability and reduce uncertainty'' and ''identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends.''

AMS has used the direct rule rulemaking process since 2013 and has not received any adverse comments; however, if AMS does receives significant adverse comments during the comment period, it will publish, in a timely manner, a document in the **Federal Register** withdrawing this direct final rule. AMS will then address public comments in a subsequent proposed rule and final rule based on the proposed rule.

B. Rulemaking Analyses

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs''' (February 2, 2017).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the Secretary's ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines, in 13 CFR 121.201, small agricultural producers as those having annual receipts of no more than $1,000,000 and small ''Other Farm Product Raw Material Merchant Wholesalers'' (cotton merchants/importers) as having no more than 100 employees. The Cotton Board estimates approximately 40,000 importers are subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. According to the United States Census Bureau's ''2016 Survey of SUSB Annual Data Tables by Establishment Industry,'' most importers are considered small entities as defined by the Small Business Administration (13 CFR 121.201). This rule would only affect importers of cotton and cotton-containing products and would decrease assessments paid by importers under the Cotton Research and Promotion Order. The current assessment on imported cotton is $0.011562 per kilogram of imported cotton. The amended assessment would be $0.011136, which was calculated based on the 12-month weighted

average of price received by U.S. cotton farmers. Section 1205.510 of the Order, ''Levy of assessments'', provides ''The rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States.'' In addition, section 1205.510 provides that the 12-month weighted average of prices received by U.S. farmers will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton.

Under the Cotton Research and Promotion Program, assessments are used by the Cotton Board to finance research and promotion programs designed to increase consumer demand for Upland cotton in the United States and international markets. In 2020, producer assessments totaled $42.3 million and importer assessments totaled $36.1 million. According to the Cotton Board, should the volume of cotton products imported into the U.S. remain at the same level in 2021, one could expect a decrease of assessments by approximately $1,329,275.

Imported organic cotton and products may be exempt from assessment if eligible under section 1205.519 of the Order.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093, National Research, Promotion, and Consumer Information Programs. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

A 30-day comment period is provided to comment on changes to the Cotton Board Rules and Regulations provided herein. This period is deemed appropriate because an amendment is required to adjust assessments collected on imported cotton and the cotton content of imported products to be the same as those paid on domestically produced cotton.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, AMS amends 7 CFR part 1205 as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118; 7 U.S.C. 7401.

■ 2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted-average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.1136 cents per kilogram.

(3) * * *

IMPORT ASSESSMENT TABLE

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5007106010 ..	0.2713	0.3021197
5007106020 ..	0.2713	0.3021197
5007906010 ..	0.2713	0.3021197
5007906020 ..	0.2713	0.3021197
5112904000 ..	0.1085	0.1208256
5112905000 ..	0.1085	0.1208256
5112909010 ..	0.1085	0.1208256
5112909090 ..	0.1085	0.1208256
5201000500 ..	1	1.1136000
5201001200 ..	1	1.1136000
5201001400 ..	1	1.1136000
5201001800 ..	1	1.1136000
5201002200 ..	1	1.1136000
5201002400 ..	1	1.1136000
5201002800 ..	1	1.1136000
5201003400 ..	1	1.1136000
5201003800 ..	1	1.1136000
5204110000 ..	1.0526	1.1721754
5204190000 ..	0.6316	0.7033498
5204200000 ..	1.0526	1.1721754
5205111000 ..	1	1.1136000
5205112000 ..	1	1.1136000
5205121000 ..	1	1.1136000
5205122000 ..	1	1.1136000
5205131000 ..	1	1.1136000
5205132000 ..	1	1.1136000
5205141000 ..	1	1.1136000
5205142000 ..	1	1.1136000
5205151000 ..	1	1.1136000
5205152000 ..	1	1.1136000
5205210020 ..	1.044	1.1625984
5205210090 ..	1.044	1.1625984
5205220020 ..	1.044	1.1625984
5205220090 ..	1.044	1.1625984
5205230020 ..	1.044	1.1625984
5205230090 ..	1.044	1.1625984
5205240020 ..	1.044	1.1625984
5205240090 ..	1.044	1.1625984
5205260020 ..	1.044	1.1625984
5205260090 ..	1.044	1.1625984

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5205270020 ..	1.044	1.1625984
5205270090 ..	1.044	1.1625984
5205280020 ..	1.044	1.1625984
5205280090 ..	1.044	1.1625984
5205310000 ..	1	1.1136000
5205320000 ..	1	1.1136000
5205330000 ..	1	1.1136000
5205340000 ..	1	1.1136000
5205350000 ..	1	1.1136000
5205410020 ..	1.044	1.1625984
5205410090 ..	1.044	1.1625984
5205420021 ..	1.044	1.1625984
5205420029 ..	1.044	1.1625984
5205420090 ..	1.044	1.1625984
5205430021 ..	1.044	1.1625984
5205430029 ..	1.044	1.1625984
5205430090 ..	1.044	1.1625984
5205440021 ..	1.044	1.1625984
5205440029 ..	1.044	1.1625984
5205440090 ..	1.044	1.1625984
5205460021 ..	1.044	1.1625984
5205460029 ..	1.044	1.1625984
5205460090 ..	1.044	1.1625984
5205470021 ..	1.044	1.1625984
5205470029 ..	1.044	1.1625984
5205470090 ..	1.044	1.1625984
5205480020 ..	1.044	1.1625984
5205480090 ..	1.044	1.1625984
5206110000 ..	0.7368	0.8205005
5206120000 ..	0.7368	0.8205005
5206130000 ..	0.7368	0.8205005
5206140000 ..	0.7368	0.8205005
5206150000 ..	0.7368	0.8205005
5206210000 ..	0.7692	0.8565811
5206220000 ..	0.7692	0.8565811
5206230000 ..	0.7692	0.8565811
5206240000 ..	0.7692	0.8565811
5206250000 ..	0.7692	0.8565811
5206310000 ..	0.7368	0.8205005
5206320000 ..	0.7368	0.8205005
5206330000 ..	0.7368	0.8205005
5206340000 ..	0.7368	0.8205005
5206350000 ..	0.7368	0.8205005
5206410000 ..	0.7692	0.8565811
5206420000 ..	0.7692	0.8565811
5206430000 ..	0.7692	0.8565811
5206440000 ..	0.7692	0.8565811
5206450000 ..	0.7692	0.8565811
5207100000 ..	0.9474	1.0550246
5207900000 ..	0.6316	0.7033498
5208112020 ..	1.0852	1.2084787
5208112040 ..	1.0852	1.2084787
5208112090 ..	1.0852	1.2084787
5208114020 ..	1.0852	1.2084787
5208114040 ..	1.0852	1.2084787
5208114060 ..	1.0852	1.2084787
5208114090 ..	1.0852	1.2084787
5208116000 ..	1.0852	1.2084787
5208118020 ..	1.0852	1.2084787
5208118090 ..	1.0852	1.2084787
5208124020 ..	1.0852	1.2084787
5208124040 ..	1.0852	1.2084787
5208124090 ..	1.0852	1.2084787
5208126020 ..	1.0852	1.2084787
5208126040 ..	1.0852	1.2084787
5208126060 ..	1.0852	1.2084787
5208126090 ..	1.0852	1.2084787
5208128020 ..	1.0852	1.2084787
5208128090 ..	1.0852	1.2084787

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5208130000 ..	1.0852	1.2084787
5208192020 ..	1.0852	1.2084787
5208192090 ..	1.0852	1.2084787
5208194020 ..	1.0852	1.2084787
5208194090 ..	1.0852	1.2084787
5208196020 ..	1.0852	1.2084787
5208196090 ..	1.0852	1.2084787
5208198020 ..	1.0852	1.2084787
5208198090 ..	1.0852	1.2084787
5208212020 ..	1.0852	1.2084787
5208212040 ..	1.0852	1.2084787
5208212090 ..	1.0852	1.2084787
5208214020 ..	1.0852	1.2084787
5208214040 ..	1.0852	1.2084787
5208214060 ..	1.0852	1.2084787
5208214090 ..	1.0852	1.2084787
5208216020 ..	1.0852	1.2084787
5208216090 ..	1.0852	1.2084787
5208224020 ..	1.0852	1.2084787
5208224040 ..	1.0852	1.2084787
5208224090 ..	1.0852	1.2084787
5208226020 ..	1.0852	1.2084787
5208226040 ..	1.0852	1.2084787
5208226060 ..	1.0852	1.2084787
5208226090 ..	1.0852	1.2084787
5208228020 ..	1.0852	1.2084787
5208228090 ..	1.0852	1.2084787
5208230000 ..	1.0852	1.2084787
5208292020 ..	1.0852	1.2084787
5208292090 ..	1.0852	1.2084787
5208294020 ..	1.0852	1.2084787
5208294090 ..	1.0852	1.2084787
5208296020 ..	1.0852	1.2084787
5208296090 ..	1.0852	1.2084787
5208298020 ..	1.0852	1.2084787
5208298090 ..	1.0852	1.2084787
5208312000 ..	1.0852	1.2084787
5208314020 ..	1.0852	1.2084787
5208314040 ..	1.0852	1.2084787
5208314090 ..	1.0852	1.2084787
5208316020 ..	1.0852	1.2084787
5208316040 ..	1.0852	1.2084787
5208316060 ..	1.0852	1.2084787
5208316090 ..	1.0852	1.2084787
5208318020 ..	1.0852	1.2084787
5208318090 ..	1.0852	1.2084787
5208321000 ..	1.0852	1.2084787
5208323020 ..	1.0852	1.2084787
5208323040 ..	1.0852	1.2084787
5208323090 ..	1.0852	1.2084787
5208324020 ..	1.0852	1.2084787
5208324040 ..	1.0852	1.2084787
5208324060 ..	1.0852	1.2084787
5208324090 ..	1.0852	1.2084787
5208325020 ..	1.0852	1.2084787
5208325090 ..	1.0852	1.2084787
5208330000 ..	1.0852	1.2084787
5208392020 ..	1.0852	1.2084787
5208392090 ..	1.0852	1.2084787
5208394020 ..	1.0852	1.2084787
5208394090 ..	1.0852	1.2084787
5208396020 ..	1.0852	1.2084787
5208396090 ..	1.0852	1.2084787
5208398020 ..	1.0852	1.2084787
5208398090 ..	1.0852	1.2084787
5208412000 ..	1.0852	1.2084787
5208414000 ..	1.0852	1.2084787
5208416000 ..	1.0852	1.2084787
5208418000 ..	1.0852	1.2084787

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5208421000 ..	1.0852	1.2084787
5208423000 ..	1.0852	1.2084787
5208424000 ..	1.0852	1.2084787
5208425000 ..	1.0852	1.2084787
5208430000 ..	1.0852	1.2084787
5208492000 ..	1.0852	1.2084787
5208494010 ..	1.0852	1.2084787
5208494020 ..	1.0852	1.2084787
5208494090 ..	1.0852	1.2084787
5208496010 ..	1.0852	1.2084787
5208496020 ..	1.0852	1.2084787
5208496030 ..	1.0852	1.2084787
5208496090 ..	1.0852	1.2084787
5208498020 ..	1.0852	1.2084787
5208498090 ..	1.0852	1.2084787
5208512000 ..	1.0852	1.2084787
5208514020 ..	1.0852	1.2084787
5208514040 ..	1.0852	1.2084787
5208514090 ..	1.0852	1.2084787
5208516020 ..	1.0852	1.2084787
5208516040 ..	1.0852	1.2084787
5208516060 ..	1.0852	1.2084787
5208516090 ..	1.0852	1.2084787
5208518020 ..	1.0852	1.2084787
5208518090 ..	1.0852	1.2084787
5208521000 ..	1.0852	1.2084787
5208523020 ..	1.0852	1.2084787
5208523035 ..	1.0852	1.2084787
5208523045 ..	1.0852	1.2084787
5208523090 ..	1.0852	1.2084787
5208524020 ..	1.0852	1.2084787
5208524035 ..	1.0852	1.2084787
5208524045 ..	1.0852	1.2084787
5208524055 ..	1.0852	1.2084787
5208524065 ..	1.0852	1.2084787
5208524090 ..	1.0852	1.2084787
5208525020 ..	1.0852	1.2084787
5208525090 ..	1.0852	1.2084787
5208591000 ..	1.0852	1.2084787
5208592015 ..	1.0852	1.2084787
5208592025 ..	1.0852	1.2084787
5208592085 ..	1.0852	1.2084787
5208592095 ..	1.0852	1.2084787
5208594020 ..	1.0852	1.2084787
5208594090 ..	1.0852	1.2084787
5208596020 ..	1.0852	1.2084787
5208596090 ..	1.0852	1.2084787
5208598020 ..	1.0852	1.2084787
5208598090 ..	1.0852	1.2084787
5209110020 ..	1.0309	1.1480102
5209110025 ..	1.0309	1.1480102
5209110035 ..	1.0309	1.1480102
5209110050 ..	1.0309	1.1480102
5209110090 ..	1.0309	1.1480102
5209120020 ..	1.0309	1.1480102
5209120040 ..	1.0309	1.1480102
5209190020 ..	1.0309	1.1480102
5209190040 ..	1.0309	1.1480102
5209190060 ..	1.0309	1.1480102
5209190090 ..	1.0309	1.1480102
5209210020 ..	1.0309	1.1480102
5209210025 ..	1.0309	1.1480102
5209210035 ..	1.0309	1.1480102
5209210050 ..	1.0309	1.1480102
5209210090 ..	1.0309	1.1480102
5209220020 ..	1.0309	1.1480102
5209220040 ..	1.0309	1.1480102
5209290020 ..	1.0309	1.1480102
5209290040 ..	1.0309	1.1480102

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5209290060 ..	1.0309	1.1480102
5209290090 ..	1.0309	1.1480102
5209313000 ..	1.0309	1.1480102
5209316020 ..	1.0309	1.1480102
5209316025 ..	1.0309	1.1480102
5209316035 ..	1.0309	1.1480102
5209316050 ..	1.0309	1.1480102
5209316090 ..	1.0309	1.1480102
5209320020 ..	1.0309	1.1480102
5209320040 ..	1.0309	1.1480102
5209390020 ..	1.0309	1.1480102
5209390040 ..	1.0309	1.1480102
5209390060 ..	1.0309	1.1480102
5209390080 ..	1.0309	1.1480102
5209390090 ..	1.0309	1.1480102
5209413000 ..	1.0309	1.1480102
5209416020 ..	1.0309	1.1480102
5209416040 ..	1.0309	1.1480102
5209420020 ..	0.9767	1.0876531
5209420040 ..	0.9767	1.0876531
5209420060 ..	0.9767	1.0876531
5209420080 ..	0.9767	1.0876531
5209430030 ..	1.0309	1.1480102
5209430050 ..	1.0309	1.1480102
5209490020 ..	1.0309	1.1480102
5209490040 ..	1.0309	1.1480102
5209490090 ..	1.0309	1.1480102
5209513000 ..	1.0309	1.1480102
5209516015 ..	1.0852	1.2084787
5209516025 ..	1.0852	1.2084787
5209516032 ..	1.0852	1.2084787
5209516035 ..	1.0852	1.2084787
5209516050 ..	1.0852	1.2084787
5209516090 ..	1.0852	1.2084787
5209520020 ..	1.0852	1.2084787
5209520040 ..	1.0852	1.2084787
5209590015 ..	1.0852	1.2084787
5209590025 ..	1.0852	1.2084787
5209590040 ..	1.0852	1.2084787
5209590060 ..	1.0852	1.2084787
5209590090 ..	1.0852	1.2084787
5210114020 ..	0.6511	0.7250650
5210114040 ..	0.6511	0.7250650
5210114090 ..	0.6511	0.7250650
5210116020 ..	0.6511	0.7250650
5210116040 ..	0.6511	0.7250650
5210116060 ..	0.6511	0.7250650
5210116090 ..	0.6511	0.7250650
5210118020 ..	0.6511	0.7250650
5210118090 ..	0.6511	0.7250650
5210191000 ..	0.6511	0.7250650
5210192020 ..	0.6511	0.7250650
5210192090 ..	0.6511	0.7250650
5210194020 ..	0.6511	0.7250650
5210194090 ..	0.6511	0.7250650
5210196020 ..	0.6511	0.7250650
5210196090 ..	0.6511	0.7250650
5210198020 ..	0.6511	0.7250650
5210198090 ..	0.6511	0.7250650
5210214020 ..	0.6511	0.7250650
5210214040 ..	0.6511	0.7250650
5210214090 ..	0.6511	0.7250650
5210216020 ..	0.6511	0.7250650
5210216040 ..	0.6511	0.7250650
5210216060 ..	0.6511	0.7250650
5210216090 ..	0.6511	0.7250650
5210218020 ..	0.6511	0.7250650
5210218090 ..	0.6511	0.7250650
5210291000 ..	0.6511	0.7250650

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5210292020 ..	0.6511	0.7250650
5210292090 ..	0.6511	0.7250650
5210294020 ..	0.6511	0.7250650
5210294090 ..	0.6511	0.7250650
5210296020 ..	0.6511	0.7250650
5210296090 ..	0.6511	0.7250650
5210298020 ..	0.6511	0.7250650
5210298090 ..	0.6511	0.7250650
5210314020 ..	0.6511	0.7250650
5210314040 ..	0.6511	0.7250650
5210314090 ..	0.6511	0.7250650
5210316020 ..	0.6511	0.7250650
5210316040 ..	0.6511	0.7250650
5210316060 ..	0.6511	0.7250650
5210316090 ..	0.6511	0.7250650
5210318020 ..	0.6511	0.7250650
5210318090 ..	0.6511	0.7250650
5210320000 ..	0.6511	0.7250650
5210392020 ..	0.6511	0.7250650
5210392090 ..	0.6511	0.7250650
5210394020 ..	0.6511	0.7250650
5210394090 ..	0.6511	0.7250650
5210396020 ..	0.6511	0.7250650
5210396090 ..	0.6511	0.7250650
5210398020 ..	0.6511	0.7250650
5210398090 ..	0.6511	0.7250650
5210414000 ..	0.6511	0.7250650
5210416000 ..	0.6511	0.7250650
5210418000 ..	0.6511	0.7250650
5210491000 ..	0.6511	0.7250650
5210492000 ..	0.6511	0.7250650
5210494010 ..	0.6511	0.7250650
5210494020 ..	0.6511	0.7250650
5210494090 ..	0.6511	0.7250650
5210496010 ..	0.6511	0.7250650
5210496020 ..	0.6511	0.7250650
5210496090 ..	0.6511	0.7250650
5210498020 ..	0.6511	0.7250650
5210498090 ..	0.6511	0.7250650
5210514020 ..	0.6511	0.7250650
5210514040 ..	0.6511	0.7250650
5210514090 ..	0.6511	0.7250650
5210516020 ..	0.6511	0.7250650
5210516040 ..	0.6511	0.7250650
5210516060 ..	0.6511	0.7250650
5210516090 ..	0.6511	0.7250650
5210518020 ..	0.6511	0.7250650
5210518090 ..	0.6511	0.7250650
5210591000 ..	0.6511	0.7250650
5210592020 ..	0.6511	0.7250650
5210592090 ..	0.6511	0.7250650
5210594020 ..	0.6511	0.7250650
5210594090 ..	0.6511	0.7250650
5210596020 ..	0.6511	0.7250650
5210596090 ..	0.6511	0.7250650
5210598020 ..	0.6511	0.7250650
5210598090 ..	0.6511	0.7250650
5211110020 ..	0.6511	0.7250650
5211110025 ..	0.6511	0.7250650
5211110035 ..	0.6511	0.7250650
5211110050 ..	0.6511	0.7250650
5211110090 ..	0.6511	0.7250650
5211120020 ..	0.6511	0.7250650
5211120040 ..	0.6511	0.7250650
5211190020 ..	0.6511	0.7250650
5211190040 ..	0.6511	0.7250650
5211190060 ..	0.6511	0.7250650
5211190090 ..	0.6511	0.7250650
5211202120 ..	0.6511	0.7250650

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5211202125 ..	0.6511	0.7250650
5211202135 ..	0.6511	0.7250650
5211202150 ..	0.6511	0.7250650
5211202190 ..	0.6511	0.7250650
5211202220 ..	0.6511	0.7250650
5211202240 ..	0.6511	0.7250650
5211202920 ..	0.6511	0.7250650
5211202940 ..	0.6511	0.7250650
5211202960 ..	0.6511	0.7250650
5211202990 ..	0.6511	0.7250650
5211310020 ..	0.6511	0.7250650
5211310025 ..	0.6511	0.7250650
5211310035 ..	0.6511	0.7250650
5211310050 ..	0.6511	0.7250650
5211310090 ..	0.6511	0.7250650
5211320020 ..	0.6511	0.7250650
5211320040 ..	0.6511	0.7250650
5211390020 ..	0.6511	0.7250650
5211390040 ..	0.6511	0.7250650
5211390060 ..	0.6511	0.7250650
5211390090 ..	0.6511	0.7250650
5211410020 ..	0.6511	0.7250650
5211410040 ..	0.6511	0.7250650
5211420020 ..	0.7054	0.7855334
5211420040 ..	0.7054	0.7855334
5211420060 ..	0.6511	0.7250650
5211420080 ..	0.6511	0.7250650
5211430030 ..	0.6511	0.7250650
5211430050 ..	0.6511	0.7250650
5211490020 ..	0.6511	0.7250650
5211490090 ..	0.6511	0.7250650
5211510020 ..	0.6511	0.7250650
5211510030 ..	0.6511	0.7250650
5211510050 ..	0.6511	0.7250650
5211510090 ..	0.6511	0.7250650
5211520020 ..	0.6511	0.7250650
5211520040 ..	0.6511	0.7250650
5211590015 ..	0.6511	0.7250650
5211590025 ..	0.6511	0.7250650
5211590040 ..	0.6511	0.7250650
5211590060 ..	0.6511	0.7250650
5211590090 ..	0.6511	0.7250650
5212111010 ..	0.5845	0.6508992
5212111020 ..	0.6231	0.6938842
5212116010 ..	0.8681	0.9667162
5212116020 ..	0.8681	0.9667162
5212116030 ..	0.8681	0.9667162
5212116040 ..	0.8681	0.9667162
5212116050 ..	0.8681	0.9667162
5212116060 ..	0.8681	0.9667162
5212116070 ..	0.8681	0.9667162
5212116080 ..	0.8681	0.9667162
5212116090 ..	0.8681	0.9667162
5212121010 ..	0.5845	0.6508992
5212121020 ..	0.6231	0.6938842
5212126010 ..	0.8681	0.9667162
5212126020 ..	0.8681	0.9667162
5212126030 ..	0.8681	0.9667162
5212126040 ..	0.8681	0.9667162
5212126050 ..	0.8681	0.9667162
5212126060 ..	0.8681	0.9667162
5212126070 ..	0.8681	0.9667162
5212126080 ..	0.8681	0.9667162
5212126090 ..	0.8681	0.9667162
5212131010 ..	0.5845	0.6508992
5212131020 ..	0.6231	0.6938842
5212136010 ..	0.8681	0.9667162
5212136020 ..	0.8681	0.9667162
5212136030 ..	0.8681	0.9667162

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5212136040 ..	0.8681	0.9667162
5212136050 ..	0.8681	0.9667162
5212136060 ..	0.8681	0.9667162
5212136070 ..	0.8681	0.9667162
5212136080 ..	0.8681	0.9667162
5212136090 ..	0.8681	0.9667162
5212141010 ..	0.5845	0.6508992
5212141020 ..	0.6231	0.6938842
5212146010 ..	0.8681	0.9667162
5212146020 ..	0.8681	0.9667162
5212146030 ..	0.8681	0.9667162
5212146090 ..	0.8681	0.9667162
5212151010 ..	0.5845	0.6508992
5212151020 ..	0.6231	0.6938842
5212156010 ..	0.8681	0.9667162
5212156020 ..	0.8681	0.9667162
5212156030 ..	0.8681	0.9667162
5212156040 ..	0.8681	0.9667162
5212156050 ..	0.8681	0.9667162
5212156060 ..	0.8681	0.9667162
5212156070 ..	0.8681	0.9667162
5212156080 ..	0.8681	0.9667162
5212156090 ..	0.8681	0.9667162
5212211010 ..	0.5845	0.6508992
5212211020 ..	0.6231	0.6938842
5212216010 ..	0.8681	0.9667162
5212216020 ..	0.8681	0.9667162
5212216030 ..	0.8681	0.9667162
5212216040 ..	0.8681	0.9667162
5212216050 ..	0.8681	0.9667162
5212216060 ..	0.8681	0.9667162
5212216090 ..	0.8681	0.9667162
5212221010 ..	0.5845	0.6508992
5212221020 ..	0.6231	0.6938842
5212226010 ..	0.8681	0.9667162
5212226020 ..	0.8681	0.9667162
5212226030 ..	0.8681	0.9667162
5212226040 ..	0.8681	0.9667162
5212226050 ..	0.8681	0.9667162
5212226060 ..	0.8681	0.9667162
5212226090 ..	0.8681	0.9667162
5212231010 ..	0.5845	0.6508992
5212231020 ..	0.6231	0.6938842
5212236010 ..	0.8681	0.9667162
5212236020 ..	0.8681	0.9667162
5212236030 ..	0.8681	0.9667162
5212236040 ..	0.8681	0.9667162
5212236050 ..	0.8681	0.9667162
5212236060 ..	0.8681	0.9667162
5212236090 ..	0.8681	0.9667162
5212241010 ..	0.5845	0.6508992
5212241020 ..	0.6231	0.6938842
5212246010 ..	0.8681	0.9667162
5212246020 ..	0.7054	0.7855334
5212246030 ..	0.8681	0.9667162
5212246040 ..	0.8681	0.9667162
5212246090 ..	0.8681	0.9667162
5212251010 ..	0.5845	0.6508992
5212251020 ..	0.6231	0.6938842
5212256010 ..	0.8681	0.9667162
5212256020 ..	0.8681	0.9667162
5212256030 ..	0.8681	0.9667162
5212256040 ..	0.8681	0.9667162
5212256050 ..	0.8681	0.9667162
5212256060 ..	0.8681	0.9667162
5212256090 ..	0.8681	0.9667162
5309213005 ..	0.5426	0.6042394
5309213010 ..	0.5426	0.6042394
5309213015 ..	0.5426	0.6042394

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5309213020 ..	0.5426	0.6042394
5309214010 ..	0.2713	0.3021197
5309214090 ..	0.2713	0.3021197
5309293005 ..	0.5426	0.6042394
5309293010 ..	0.5426	0.6042394
5309293015 ..	0.5426	0.6042394
5309293020 ..	0.5426	0.6042394
5309294010 ..	0.2713	0.3021197
5309294090 ..	0.2713	0.3021197
5311003005 ..	0.5426	0.6042394
5311003010 ..	0.5426	0.6042394
5311003015 ..	0.5426	0.6042394
5311003020 ..	0.5426	0.6042394
5311004010 ..	0.8681	0.9667162
5311004020 ..	0.8681	0.9667162
5407810010 ..	0.5426	0.6042394
5407810020 ..	0.5426	0.6042394
5407810030 ..	0.5426	0.6042394
5407810040 ..	0.5426	0.6042394
5407810090 ..	0.5426	0.6042394
5407820010 ..	0.5426	0.6042394
5407820020 ..	0.5426	0.6042394
5407820030 ..	0.5426	0.6042394
5407820040 ..	0.5426	0.6042394
5407820090 ..	0.5426	0.6042394
5407830010 ..	0.5426	0.6042394
5407830020 ..	0.5426	0.6042394
5407830030 ..	0.5426	0.6042394
5407830040 ..	0.5426	0.6042394
5407830090 ..	0.5426	0.6042394
5407840010 ..	0.5426	0.6042394
5407840020 ..	0.5426	0.6042394
5407840030 ..	0.5426	0.6042394
5407840040 ..	0.5426	0.6042394
5407840090 ..	0.5426	0.6042394
5509210000 ..	0.1053	0.1172621
5509220010 ..	0.1053	0.1172621
5509220090 ..	0.1053	0.1172621
5509530030 ..	0.3158	0.3516749
5509530060 ..	0.3158	0.3516749
5509620000 ..	0.5263	0.5860877
5509920000 ..	0.5263	0.5860877
5510300000 ..	0.3684	0.4102502
5511200000 ..	0.3158	0.3516749
5512110010 ..	0.1085	0.1208256
5512110022 ..	0.1085	0.1208256
5512110027 ..	0.1085	0.1208256
5512110030 ..	0.1085	0.1208256
5512110040 ..	0.1085	0.1208256
5512110050 ..	0.1085	0.1208256
5512110060 ..	0.1085	0.1208256
5512110070 ..	0.1085	0.1208256
5512110090 ..	0.1085	0.1208256
5512190005 ..	0.1085	0.1208256
5512190010 ..	0.1085	0.1208256
5512190015 ..	0.1085	0.1208256
5512190022 ..	0.1085	0.1208256
5512190027 ..	0.1085	0.1208256
5512190030 ..	0.1085	0.1208256
5512190035 ..	0.1085	0.1208256
5512190040 ..	0.1085	0.1208256
5512190045 ..	0.1085	0.1208256
5512190050 ..	0.1085	0.1208256
5512190090 ..	0.1085	0.1208256
5512210010 ..	0.0326	0.0363034
5512210020 ..	0.0326	0.0363034
5512210030 ..	0.0326	0.0363034
5512210040 ..	0.0326	0.0363034
5512210060 ..	0.0326	0.0363034

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5512210070 ..	0.0326	0.0363034
5512210090 ..	0.0326	0.0363034
5512290010 ..	0.217	0.2416512
5512910010 ..	0.0543	0.0604685
5512990005 ..	0.0543	0.0604685
5512990010 ..	0.0543	0.0604685
5512990015 ..	0.0543	0.0604685
5512990020 ..	0.0543	0.0604685
5512990025 ..	0.0543	0.0604685
5512990030 ..	0.0543	0.0604685
5512990035 ..	0.0543	0.0604685
5512990040 ..	0.0543	0.0604685
5512990045 ..	0.0543	0.0604685
5512990090 ..	0.0543	0.0604685
5513110020 ..	0.3581	0.3987802
5513110040 ..	0.3581	0.3987802
5513110060 ..	0.3581	0.3987802
5513110090 ..	0.3581	0.3987802
5513120000 ..	0.3581	0.3987802
5513130020 ..	0.3581	0.3987802
5513130040 ..	0.3581	0.3987802
5513130090 ..	0.3581	0.3987802
5513190010 ..	0.3581	0.3987802
5513190020 ..	0.3581	0.3987802
5513190030 ..	0.3581	0.3987802
5513190040 ..	0.3581	0.3987802
5513190050 ..	0.3581	0.3987802
5513190060 ..	0.3581	0.3987802
5513190090 ..	0.3581	0.3987802
5513210020 ..	0.3581	0.3987802
5513210040 ..	0.3581	0.3987802
5513210060 ..	0.3581	0.3987802
5513210090 ..	0.3581	0.3987802
5513230121 ..	0.3581	0.3987802
5513230141 ..	0.3581	0.3987802
5513230191 ..	0.3581	0.3987802
5513290010 ..	0.3581	0.3987802
5513290020 ..	0.3581	0.3987802
5513290030 ..	0.3581	0.3987802
5513290040 ..	0.3581	0.3987802
5513290050 ..	0.3581	0.3987802
5513290060 ..	0.3581	0.3987802
5513290090 ..	0.3581	0.3987802
5513310000 ..	0.3581	0.3987802
5513390111 ..	0.3581	0.3987802
5513390115 ..	0.3581	0.3987802
5513390191 ..	0.3581	0.3987802
5513410020 ..	0.3581	0.3987802
5513410040 ..	0.3581	0.3987802
5513410060 ..	0.3581	0.3987802
5513410090 ..	0.3581	0.3987802
5513491000 ..	0.3581	0.3987802
5513492020 ..	0.3581	0.3987802
5513492040 ..	0.3581	0.3987802
5513492090 ..	0.3581	0.3987802
5513499010 ..	0.3581	0.3987802
5513499020 ..	0.3581	0.3987802
5513499030 ..	0.3581	0.3987802
5513499040 ..	0.3581	0.3987802
5513499050 ..	0.3581	0.3987802
5513499060 ..	0.3581	0.3987802
5513499090 ..	0.3581	0.3987802
5514110020 ..	0.4341	0.4834138
5514110030 ..	0.4341	0.4834138
5514110050 ..	0.4341	0.4834138
5514110090 ..	0.4341	0.4834138
5514120020 ..	0.4341	0.4834138
5514120040 ..	0.4341	0.4834138
5514191020 ..	0.4341	0.4834138

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5514191040 ..	0.4341	0.4834138
5514191090 ..	0.4341	0.4834138
5514199010 ..	0.4341	0.4834138
5514199020 ..	0.4341	0.4834138
5514199030 ..	0.4341	0.4834138
5514199040 ..	0.4341	0.4834138
5514199090 ..	0.4341	0.4834138
5514210020 ..	0.4341	0.4834138
5514210030 ..	0.4341	0.4834138
5514210050 ..	0.4341	0.4834138
5514210090 ..	0.4341	0.4834138
5514220020 ..	0.4341	0.4834138
5514220040 ..	0.4341	0.4834138
5514230020 ..	0.4341	0.4834138
5514230040 ..	0.4341	0.4834138
5514230090 ..	0.4341	0.4834138
5514290010 ..	0.4341	0.4834138
5514290020 ..	0.4341	0.4834138
5514290030 ..	0.4341	0.4834138
5514290040 ..	0.4341	0.4834138
5514290090 ..	0.4341	0.4834138
5514303100 ..	0.4341	0.4834138
5514303210 ..	0.4341	0.4834138
5514303215 ..	0.4341	0.4834138
5514303280 ..	0.4341	0.4834138
5514303310 ..	0.4341	0.4834138
5514303390 ..	0.4341	0.4834138
5514303910 ..	0.4341	0.4834138
5514303920 ..	0.4341	0.4834138
5514303990 ..	0.4341	0.4834138
5514410020 ..	0.4341	0.4834138
5514410030 ..	0.4341	0.4834138
5514410050 ..	0.4341	0.4834138
5514410090 ..	0.4341	0.4834138
5514420020 ..	0.4341	0.4834138
5514420040 ..	0.4341	0.4834138
5514430020 ..	0.4341	0.4834138
5514430040 ..	0.4341	0.4834138
5514430090 ..	0.4341	0.4834138
5514490010 ..	0.4341	0.4834138
5514490020 ..	0.4341	0.4834138
5514490030 ..	0.4341	0.4834138
5514490040 ..	0.4341	0.4834138
5514490090 ..	0.4341	0.4834138
5515110005 ..	0.1085	0.1208256
5515110010 ..	0.1085	0.1208256
5515110015 ..	0.1085	0.1208256
5515110020 ..	0.1085	0.1208256
5515110025 ..	0.1085	0.1208256
5515110030 ..	0.1085	0.1208256
5515110035 ..	0.1085	0.1208256
5515110040 ..	0.1085	0.1208256
5515110045 ..	0.1085	0.1208256
5515110090 ..	0.1085	0.1208256
5515120010 ..	0.1085	0.1208256
5515120022 ..	0.1085	0.1208256
5515120027 ..	0.1085	0.1208256
5515120030 ..	0.1085	0.1208256
5515120040 ..	0.1085	0.1208256
5515120090 ..	0.1085	0.1208256
5515190005 ..	0.1085	0.1208256
5515190010 ..	0.1085	0.1208256
5515190015 ..	0.1085	0.1208256
5515190020 ..	0.1085	0.1208256
5515190025 ..	0.1085	0.1208256
5515190030 ..	0.1085	0.1208256
5515190035 ..	0.1085	0.1208256
5515190040 ..	0.1085	0.1208256
5515190045 ..	0.1085	0.1208256

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5515190090 ..	0.1085	0.1208256
5515290005 ..	0.1085	0.1208256
5515290010 ..	0.1085	0.1208256
5515290015 ..	0.1085	0.1208256
5515290020 ..	0.1085	0.1208256
5515290025 ..	0.1085	0.1208256
5515290030 ..	0.1085	0.1208256
5515290035 ..	0.1085	0.1208256
5515290040 ..	0.1085	0.1208256
5515290045 ..	0.1085	0.1208256
5515290090 ..	0.1085	0.1208256
5515999005 ..	0.1085	0.1208256
5515999010 ..	0.1085	0.1208256
5515999015 ..	0.1085	0.1208256
5515999020 ..	0.1085	0.1208256
5515999025 ..	0.1085	0.1208256
5515999030 ..	0.1085	0.1208256
5515999035 ..	0.1085	0.1208256
5515999040 ..	0.1085	0.1208256
5515999045 ..	0.1085	0.1208256
5515999090 ..	0.1085	0.1208256
5516210010 ..	0.1085	0.1208256
5516210020 ..	0.1085	0.1208256
5516210030 ..	0.1085	0.1208256
5516210040 ..	0.1085	0.1208256
5516210090 ..	0.1085	0.1208256
5516220010 ..	0.1085	0.1208256
5516220020 ..	0.1085	0.1208256
5516220030 ..	0.1085	0.1208256
5516220040 ..	0.1085	0.1208256
5516220090 ..	0.1085	0.1208256
5516230010 ..	0.1085	0.1208256
5516230020 ..	0.1085	0.1208256
5516230030 ..	0.1085	0.1208256
5516230040 ..	0.1085	0.1208256
5516230090 ..	0.1085	0.1208256
5516240010 ..	0.1085	0.1208256
5516240020 ..	0.1085	0.1208256
5516240030 ..	0.1085	0.1208256
5516240040 ..	0.1085	0.1208256
5516240085 ..	0.1085	0.1208256
5516240095 ..	0.1085	0.1208256
5516410010 ..	0.3798	0.4229453
5516410022 ..	0.3798	0.4229453
5516410027 ..	0.3798	0.4229453
5516410030 ..	0.3798	0.4229453
5516410040 ..	0.3798	0.4229453
5516410050 ..	0.3798	0.4229453
5516410060 ..	0.3798	0.4229453
5516410070 ..	0.3798	0.4229453
5516410090 ..	0.3798	0.4229453
5516420010 ..	0.3798	0.4229453
5516420022 ..	0.3798	0.4229453
5516420027 ..	0.3798	0.4229453
5516420030 ..	0.3798	0.4229453
5516420040 ..	0.3798	0.4229453
5516420050 ..	0.3798	0.4229453
5516420060 ..	0.3798	0.4229453
5516420070 ..	0.3798	0.4229453
5516420090 ..	0.3798	0.4229453
5516430010 ..	0.217	0.2416512
5516430015 ..	0.3798	0.4229453
5516430020 ..	0.3798	0.4229453
5516430035 ..	0.3798	0.4229453
5516430080 ..	0.3798	0.4229453
5516440010 ..	0.3798	0.4229453
5516440022 ..	0.3798	0.4229453
5516440027 ..	0.3798	0.4229453
5516440030 ..	0.3798	0.4229453

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5516440040 ..	0.3798	0.4229453
5516440050 ..	0.3798	0.4229453
5516440060 ..	0.3798	0.4229453
5516440070 ..	0.3798	0.4229453
5516440090 ..	0.3798	0.4229453
5516910010 ..	0.0543	0.0604685
5516910020 ..	0.0543	0.0604685
5516910030 ..	0.0543	0.0604685
5516910040 ..	0.0543	0.0604685
5516910050 ..	0.0543	0.0604685
5516910060 ..	0.0543	0.0604685
5516910070 ..	0.0543	0.0604685
5516910090 ..	0.0543	0.0604685
5516920010 ..	0.0543	0.0604685
5516920020 ..	0.0543	0.0604685
5516920030 ..	0.0543	0.0604685
5516920040 ..	0.0543	0.0604685
5516920050 ..	0.0543	0.0604685
5516920060 ..	0.0543	0.0604685
5516920070 ..	0.0543	0.0604685
5516920090 ..	0.0543	0.0604685
5516930010 ..	0.0543	0.0604685
5516930020 ..	0.0543	0.0604685
5516930090 ..	0.0543	0.0604685
5516940010 ..	0.0543	0.0604685
5516940020 ..	0.0543	0.0604685
5516940030 ..	0.0543	0.0604685
5516940040 ..	0.0543	0.0604685
5516940050 ..	0.0543	0.0604685
5516940060 ..	0.0543	0.0604685
5516940070 ..	0.0543	0.0604685
5516940090 ..	0.0543	0.0604685
5601210010 ..	0.9767	1.0876531
5601210090 ..	0.9767	1.0876531
5601220010 ..	0.1085	0.1208256
5601220050 ..	0.1085	0.1208256
5601220091 ..	0.1085	0.1208256
5601300000 ..	0.3256	0.3625882
5602101000 ..	0.0543	0.0604685
5602109090 ..	0.4341	0.4834138
5602290000 ..	0.4341	0.4834138
5602909000 ..	0.3256	0.3625882
5603143000 ..	0.2713	0.3021197
5603910010 ..	0.0217	0.0241651
5603910090 ..	0.0651	0.0724954
5603920010 ..	0.0217	0.0241651
5603920090 ..	0.0651	0.0724954
5603930010 ..	0.0217	0.0241651
5603930090 ..	0.0651	0.0724954
5603941090 ..	0.3256	0.3625882
5603943000 ..	0.1628	0.1812941
5603949010 ..	0.0326	0.0363034
5604100000 ..	0.2632	0.2930995
5604909000 ..	0.2105	0.2344128
5605009000 ..	0.1579	0.1758374
5606000010 ..	0.1263	0.1406477
5606000090 ..	0.1263	0.1406477
5607502500 ..	0.1684	0.1875302
5607909000 ..	0.8421	0.9377626
5608901000 ..	1.0526	1.1721754
5608902300 ..	0.6316	0.7033498
5608902700 ..	0.6316	0.7033498
5608903000 ..	0.3158	0.3516749
5609001000 ..	0.8421	0.9377626
5609004000 ..	0.2105	0.2344128
5701101300 ..	0.0526	0.0585754
5701101600 ..	0.0526	0.0585754
5701104000 ..	0.0526	0.0585754
5701109000 ..	0.0526	0.0585754

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5701901010 ..	1	1.1136000
5701901020 ..	1	1.1136000
5701901030 ..	0.0526	0.0585754
5701901090 ..	0.0526	0.0585754
5701902010 ..	0.9474	1.0550246
5701902020 ..	0.9474	1.0550246
5701902030 ..	0.0526	0.0585754
5701902090 ..	0.0526	0.0585754
5702101000 ..	0.0447	0.0497779
5702109010 ..	0.0447	0.0497779
5702109020 ..	0.85	0.9465600
5702109030 ..	0.0447	0.0497779
5702109090 ..	0.0447	0.0497779
5702201000 ..	0.0447	0.0497779
5702311000 ..	0.0447	0.0497779
5702312000 ..	0.0895	0.0996672
5702322000 ..	0.0895	0.0996672
5702391000 ..	0.0895	0.0996672
5702392010 ..	0.8053	0.8967821
5702392090 ..	0.0447	0.0497779
5702411000 ..	0.0447	0.0497779
5702412000 ..	0.0447	0.0497779
5702421000 ..	0.0895	0.0996672
5702422020 ..	0.0895	0.0996672
5702422080 ..	0.0895	0.0996672
5702491020 ..	0.8947	0.9963379
5702491080 ..	0.8947	0.9963379
5702492000 ..	0.0895	0.0996672
5702502000 ..	0.0895	0.0996672
5702504000 ..	0.0447	0.0497779
5702505200 ..	0.0895	0.0996672
5702505600 ..	0.85	0.9465600
5702912000 ..	0.0447	0.0497779
5702913000 ..	0.0447	0.0497779
5702914000 ..	0.0447	0.0497779
5702921000 ..	0.0447	0.0497779
5702929000 ..	0.0447	0.0497779
5702990500 ..	0.8947	0.9963379
5702991500 ..	0.8947	0.9963379
5703201000 ..	0.0452	0.0503347
5703202010 ..	0.0452	0.0503347
5703302000 ..	0.0452	0.0503347
5703900000 ..	0.3615	0.4025664
5705001000 ..	0.0452	0.0503347
5705002005 ..	0.0452	0.0503347
5705002015 ..	0.0452	0.0503347
5705002020 ..	0.7682	0.8554675
5705002030 ..	0.0452	0.0503347
5705002090 ..	0.1808	0.2013389
5801210000 ..	0.9767	1.0876531
5801221000 ..	0.9767	1.0876531
5801229000 ..	0.9767	1.0876531
5801230000 ..	0.9767	1.0876531
5801260010 ..	0.7596	0.8458906
5801260020 ..	0.7596	0.8458906
5801271000 ..	0.9767	1.0876531
5801275010 ..	1.0852	1.2084787
5801275020 ..	0.9767	1.0876531
5801310000 ..	0.217	0.2416512
5801320000 ..	0.217	0.2416512
5801330000 ..	0.217	0.2416512
5801360010 ..	0.217	0.2416512
5801360020 ..	0.217	0.2416512
5802110000 ..	1.0309	1.1480102
5802190000 ..	1.0309	1.1480102
5802200020 ..	0.1085	0.1208256
5802200090 ..	0.3256	0.3625882
5802300030 ..	0.4341	0.4834138
5802300090 ..	0.1085	0.1208256

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5803001000 ..	1.0852	1.2084787
5803002000 ..	0.8681	0.9667162
5803003000 ..	0.8681	0.9667162
5803005000 ..	0.3256	0.3625882
5804101000 ..	0.4341	0.4834138
5804109090 ..	0.2193	0.2442125
5804291000 ..	0.8772	0.9768499
5804300020 ..	0.3256	0.3625882
5805001000 ..	0.1085	0.1208256
5805003000 ..	1.0852	1.2084787
5806101000 ..	0.8681	0.9667162
5806103090 ..	0.217	0.2416512
5806200010 ..	0.2577	0.2869747
5806200090 ..	0.2577	0.2869747
5806310000 ..	0.8681	0.9667162
5806393080 ..	0.217	0.2416512
5806400000 ..	0.0814	0.0906470
5807100510 ..	0.8681	0.9667162
5807102010 ..	0.8681	0.9667162
5807900510 ..	0.8681	0.9667162
5807902010 ..	0.8681	0.9667162
5808104000 ..	0.217	0.2416512
5808107000 ..	0.217	0.2416512
5808900010 ..	0.4341	0.4834138
5810100000 ..	0.3256	0.3625882
5810910010 ..	0.7596	0.8458906
5810910020 ..	0.7596	0.8458906
5810921000 ..	0.217	0.2416512
5810929030 ..	0.217	0.2416512
5810929050 ..	0.217	0.2416512
5810929080 ..	0.217	0.2416512
5811002000 ..	0.8681	0.9667162
5901102000 ..	0.5643	0.6284045
5901904000 ..	0.8139	0.9063590
5903101000 ..	0.4341	0.4834138
5903103000 ..	0.1085	0.1208256
5903201000 ..	0.4341	0.4834138
5903203090 ..	0.1085	0.1208256
5903901000 ..	0.4341	0.4834138
5903903090 ..	0.1085	0.1208256
5904901000 ..	0.0326	0.0363034
5905001000 ..	0.1085	0.1208256
5905009000 ..	0.1085	0.1208256
5906100000 ..	0.4341	0.4834138
5906911000 ..	0.4341	0.4834138
5906913000 ..	0.1085	0.1208256
5906991000 ..	0.4341	0.4834138
5906993000 ..	0.1085	0.1208256
5907002500 ..	0.3798	0.4229453
5907003500 ..	0.3798	0.4229453
5907008090 ..	0.3798	0.4229453
5908000000 ..	0.7813	0.8700557
5909001000 ..	0.6837	0.7613683
5909002000 ..	0.4883	0.5437709
5910001010 ..	0.3798	0.4229453
5910001020 ..	0.3798	0.4229453
5910001030 ..	0.3798	0.4229453
5910001060 ..	0.3798	0.4229453
5910001070 ..	0.3798	0.4229453
5910001090 ..	0.6837	0.7613683
5910009000 ..	0.5697	0.6344179
5911101000 ..	0.1736	0.1933210
5911102000 ..	0.0434	0.0483302
5911201000 ..	0.4341	0.4834138
5911310010 ..	0.4341	0.4834138
5911310020 ..	0.4341	0.4834138
5911310030 ..	0.4341	0.4834138
5911310080 ..	0.4341	0.4834138
5911320010 ..	0.4341	0.4834138

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
5911320020 ..	0.4341	0.4834138
5911320030 ..	0.4341	0.4834138
5911320080 ..	0.4341	0.4834138
5911400000 ..	0.5426	0.6042394
5911900040 ..	0.3158	0.3516749
5911900080 ..	0.2105	0.2344128
6001106000 ..	0.1096	0.1220506
6001210000 ..	0.9868	1.0989005
6001220000 ..	0.1096	0.1220506
6001290000 ..	0.1096	0.1220506
6001910010 ..	0.8772	0.9768499
6001910020 ..	0.8772	0.9768499
6001920010 ..	0.0548	0.0610253
6001920020 ..	0.0548	0.0610253
6001920030 ..	0.0548	0.0610253
6001920040 ..	0.0548	0.0610253
6001999000 ..	0.1096	0.1220506
6002404000 ..	0.7401	0.8241754
6002408020 ..	0.1974	0.2198246
6002408080 ..	0.1974	0.2198246
6002904000 ..	0.7895	0.8791872
6002908020 ..	0.1974	0.2198246
6002908080 ..	0.1974	0.2198246
6003201000 ..	0.8772	0.9768499
6003203000 ..	0.8772	0.9768499
6003301000 ..	0.1096	0.1220506
6003306000 ..	0.1096	0.1220506
6003401000 ..	0.1096	0.1220506
6003406000 ..	0.1096	0.1220506
6003901000 ..	0.1096	0.1220506
6003909000 ..	0.1096	0.1220506
6004100010 ..	0.2961	0.3297370
6004100025 ..	0.2961	0.3297370
6004100085 ..	0.2961	0.3297370
6004902010 ..	0.2961	0.3297370
6004902025 ..	0.2961	0.3297370
6004902085 ..	0.2961	0.3297370
6004909000 ..	0.2961	0.3297370
6005210000 ..	0.7127	0.7936627
6005220000 ..	0.7127	0.7936627
6005230000 ..	0.7127	0.7936627
6005240000 ..	0.7127	0.7936627
6005360010 ..	0.1096	0.1220506
6005360080 ..	0.1096	0.1220506
6005370010 ..	0.1096	0.1220506
6005370080 ..	0.1096	0.1220506
6005380010 ..	0.1096	0.1220506
6005380080 ..	0.1096	0.1220506
6005390010 ..	0.1096	0.1220506
6005390080 ..	0.1096	0.1220506
6005410010 ..	0.1096	0.1220506
6005410080 ..	0.1096	0.1220506
6005420010 ..	0.1096	0.1220506
6005420080 ..	0.1096	0.1220506
6005430010 ..	0.1096	0.1220506
6005430080 ..	0.1096	0.1220506
6005440010 ..	0.1096	0.1220506
6005440080 ..	0.1096	0.1220506
6005909000 ..	0.1096	0.1220506
6006211000 ..	1.0965	1.2210624
6006219020 ..	0.7675	0.8546880
6006219080 ..	0.7675	0.8546880
6006221000 ..	1.0965	1.2210624
6006229020 ..	0.7675	0.8546880
6006229080 ..	0.7675	0.8546880
6006231000 ..	1.0965	1.2210624
6006239020 ..	0.7675	0.8546880
6006239080 ..	0.7675	0.8546880
6006241000 ..	1.0965	1.2210624

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6006249020 ..	0.7675	0.8546880
6006249080 ..	0.7675	0.8546880
6006310020 ..	0.3289	0.3662630
6006310040 ..	0.3289	0.3662630
6006310060 ..	0.3289	0.3662630
6006310080 ..	0.3289	0.3662630
6006320020 ..	0.3289	0.3662630
6006320040 ..	0.3289	0.3662630
6006320060 ..	0.3289	0.3662630
6006320080 ..	0.3289	0.3662630
6006330020 ..	0.3289	0.3662630
6006330040 ..	0.3289	0.3662630
6006330060 ..	0.3289	0.3662630
6006330080 ..	0.3289	0.3662630
6006340020 ..	0.3289	0.3662630
6006340040 ..	0.3289	0.3662630
6006340060 ..	0.3289	0.3662630
6006340080 ..	0.3289	0.3662630
6006410025 ..	0.3289	0.3662630
6006410085 ..	0.3289	0.3662630
6006420025 ..	0.3289	0.3662630
6006420085 ..	0.3289	0.3662630
6006430025 ..	0.3289	0.3662630
6006430085 ..	0.3289	0.3662630
6006440025 ..	0.3289	0.3662630
6006440085 ..	0.3289	0.3662630
6006909000 ..	0.1096	0.1220506
6101200010 ..	1.02	1.1358720
6101200020 ..	1.02	1.1358720
6101301000 ..	0.2072	0.2307379
6101900500 ..	0.1912	0.2129203
6101909010 ..	0.5737	0.6388723
6101909030 ..	0.51	0.5679360
6101909060 ..	0.255	0.2839680
6102100000 ..	0.255	0.2839680
6102200010 ..	0.9562	1.0648243
6102200020 ..	0.9562	1.0648243
6102300500 ..	0.1785	0.1987776
6102909005 ..	0.5737	0.6388723
6102909015 ..	0.4462	0.4968883
6102909030 ..	0.255	0.2839680
6103101000 ..	0.0637	0.0709363
6103104000 ..	0.1218	0.1356365
6103105000 ..	0.1218	0.1356365
6103106010 ..	0.8528	0.9496781
6103106015 ..	0.8528	0.9496781
6103106030 ..	0.8528	0.9496781
6103109010 ..	0.5482	0.6104755
6103109020 ..	0.5482	0.6104755
6103109030 ..	0.5482	0.6104755
6103109040 ..	0.1218	0.1356365
6103109050 ..	0.1218	0.1356365
6103109080 ..	0.1827	0.2034547
6103320000 ..	0.8722	0.9712819
6103398010 ..	0.7476	0.8325274
6103398030 ..	0.3738	0.4162637
6103398060 ..	0.2492	0.2775091
6103411010 ..	0.3576	0.3982234
6103411020 ..	0.3576	0.3982234
6103412000 ..	0.3576	0.3982234
6103421020 ..	0.8343	0.9290765
6103421035 ..	0.8343	0.9290765
6103421040 ..	0.8343	0.9290765
6103421050 ..	0.8343	0.9290765
6103421065 ..	0.8343	0.9290765
6103421070 ..	0.8343	0.9290765
6103422010 ..	0.8343	0.9290765
6103422015 ..	0.8343	0.9290765
6103422025 ..	0.8343	0.9290765

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6103431520 ..	0.2384	0.2654822
6103431535 ..	0.2384	0.2654822
6103431540 ..	0.2384	0.2654822
6103431550 ..	0.2384	0.2654822
6103431565 ..	0.2384	0.2654822
6103431570 ..	0.2384	0.2654822
6103432020 ..	0.2384	0.2654822
6103432025 ..	0.2384	0.2654822
6103491020 ..	0.2437	0.2713843
6103491060 ..	0.2437	0.2713843
6103492000 ..	0.2437	0.2713843
6103498010 ..	0.5482	0.6104755
6103498014 ..	0.3655	0.4070208
6103498024 ..	0.2437	0.2713843
6103498026 ..	0.2437	0.2713843
6103498034 ..	0.5482	0.6104755
6103498038 ..	0.3655	0.4070208
6103498060 ..	0.2437	0.2713843
6104196010 ..	0.8722	0.9712819
6104196020 ..	0.8722	0.9712819
6104196030 ..	0.8722	0.9712819
6104196040 ..	0.8722	0.9712819
6104198010 ..	0.5607	0.6243955
6104198020 ..	0.5607	0.6243955
6104198030 ..	0.5607	0.6243955
6104198040 ..	0.5607	0.6243955
6104198060 ..	0.3738	0.4162637
6104198090 ..	0.2492	0.2775091
6104320000 ..	0.8722	0.9712819
6104392010 ..	0.5607	0.6243955
6104392030 ..	0.3738	0.4162637
6104392090 ..	0.2492	0.2775091
6104420010 ..	0.8528	0.9496781
6104420020 ..	0.8528	0.9496781
6104499010 ..	0.5482	0.6104755
6104499030 ..	0.3655	0.4070208
6104499060 ..	0.2437	0.2713843
6104520010 ..	0.8822	0.9824179
6104520020 ..	0.8822	0.9824179
6104598010 ..	0.5672	0.6316339
6104598030 ..	0.3781	0.4210522
6104598090 ..	0.2521	0.2807386
6104610010 ..	0.2384	0.2654822
6104610020 ..	0.2384	0.2654822
6104610030 ..	0.2384	0.2654822
6104621010 ..	0.7509	0.8362022
6104621020 ..	0.8343	0.9290765
6104621030 ..	0.8343	0.9290765
6104622006 ..	0.7151	0.7963354
6104622011 ..	0.8343	0.9290765
6104622016 ..	0.7151	0.7963354
6104622021 ..	0.8343	0.9290765
6104622026 ..	0.7151	0.7963354
6104622028 ..	0.8343	0.9290765
6104622030 ..	0.8343	0.9290765
6104622050 ..	0.8343	0.9290765
6104622060 ..	0.8343	0.9290765
6104631020 ..	0.2384	0.2654822
6104631030 ..	0.2384	0.2654822
6104632006 ..	0.8343	0.9290765
6104632011 ..	0.8343	0.9290765
6104632016 ..	0.7151	0.7963354
6104632021 ..	0.8343	0.9290765
6104632026 ..	0.3576	0.3982234
6104632028 ..	0.3576	0.3982234
6104632030 ..	0.3576	0.3982234
6104632050 ..	0.7151	0.7963354
6104632060 ..	0.3576	0.3982234
6104691000 ..	0.3655	0.4070208

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6104692030 ..	0.3655	0.4070208
6104692060 ..	0.3655	0.4070208
6104698010 ..	0.5482	0.6104755
6104698014 ..	0.3655	0.4070208
6104698020 ..	0.2437	0.2713843
6104698022 ..	0.5482	0.6104755
6104698026 ..	0.3655	0.4070208
6104698038 ..	0.2437	0.2713843
6104698040 ..	0.2437	0.2713843
6105100010 ..	0.9332	1.0392115
6105100020 ..	0.9332	1.0392115
6105100030 ..	0.9332	1.0392115
6105202010 ..	0.2916	0.3247258
6105202020 ..	0.2916	0.3247258
6105202030 ..	0.2916	0.3247258
6105908010 ..	0.5249	0.5845286
6105908030 ..	0.3499	0.3896486
6105908060 ..	0.2333	0.2598029
6106100010 ..	0.9332	1.0392115
6106100020 ..	0.9332	1.0392115
6106100030 ..	0.9332	1.0392115
6106202010 ..	0.2916	0.3247258
6106202020 ..	0.4666	0.5196058
6106202030 ..	0.2916	0.3247258
6106901500 ..	0.0583	0.0649229
6106902510 ..	0.5249	0.5845286
6106902530 ..	0.3499	0.3896486
6106902550 ..	0.2916	0.3247258
6106903010 ..	0.5249	0.5845286
6106903030 ..	0.3499	0.3896486
6106903040 ..	0.2916	0.3247258
6107110010 ..	1.0727	1.1945587
6107110020 ..	1.0727	1.1945587
6107120010 ..	0.4767	0.5308531
6107120020 ..	0.4767	0.5308531
6107191000 ..	0.1192	0.1327411
6107210010 ..	0.8343	0.9290765
6107210020 ..	0.7151	0.7963354
6107220010 ..	0.3576	0.3982234
6107220015 ..	0.1192	0.1327411
6107220025 ..	0.2384	0.2654822
6107299000 ..	0.1788	0.1991117
6107910030 ..	1.1918	1.3271885
6107910040 ..	1.1918	1.3271885
6107910090 ..	0.9535	1.0618176
6107991030 ..	0.3576	0.3982234
6107991040 ..	0.3576	0.3982234
6107991090 ..	0.3576	0.3982234
6107999000 ..	0.1192	0.1327411
6108199010 ..	1.0611	1.1816410
6108199030 ..	0.2358	0.2625869
6108210010 ..	1.179	1.3129344
6108210020 ..	1.179	1.3129344
6108299000 ..	0.3537	0.3938803
6108310010 ..	1.0611	1.1816410
6108310020 ..	1.0611	1.1816410
6108320010 ..	0.2358	0.2625869
6108320015 ..	0.2358	0.2625869
6108320025 ..	0.2358	0.2625869
6108398000 ..	0.3537	0.3938803
6108910005 ..	1.179	1.3129344
6108910015 ..	1.179	1.3129344
6108910025 ..	1.179	1.3129344
6108910030 ..	1.179	1.3129344
6108910040 ..	1.179	1.3129344
6108920005 ..	0.2358	0.2625869
6108920015 ..	0.2358	0.2625869
6108920025 ..	0.2358	0.2625869
6108920030 ..	0.2358	0.2625869

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6108920040 ..	0.2358	0.2625869
6108999000 ..	0.3537	0.3938803
6109100004 ..	1.0022	1.1160499
6109100007 ..	1.0022	1.1160499
6109100011 ..	1.0022	1.1160499
6109100012 ..	1.0022	1.1160499
6109100014 ..	1.0022	1.1160499
6109100018 ..	1.0022	1.1160499
6109100023 ..	1.0022	1.1160499
6109100027 ..	1.0022	1.1160499
6109100037 ..	1.0022	1.1160499
6109100040 ..	1.0022	1.1160499
6109100045 ..	1.0022	1.1160499
6109100060 ..	1.0022	1.1160499
6109100065 ..	1.0022	1.1160499
6109100070 ..	1.0022	1.1160499
6109901007 ..	0.2948	0.3282893
6109901009 ..	0.2948	0.3282893
6109901013 ..	0.2948	0.3282893
6109901025 ..	0.2948	0.3282893
6109901047 ..	0.2948	0.3282893
6109901049 ..	0.2948	0.3282893
6109901050 ..	0.2948	0.3282893
6109901060 ..	0.2948	0.3282893
6109901065 ..	0.2948	0.3282893
6109901070 ..	0.2948	0.3282893
6109901075 ..	0.2948	0.3282893
6109901090 ..	0.2948	0.3282893
6109908010 ..	0.3499	0.3896486
6109908030 ..	0.2333	0.2598029
6110201010 ..	0.7476	0.8325274
6110201020 ..	0.7476	0.8325274
6110201022 ..	0.7476	0.8325274
6110201024 ..	0.7476	0.8325274
6110201026 ..	0.7476	0.8325274
6110201029 ..	0.7476	0.8325274
6110201031 ..	0.7476	0.8325274
6110201033 ..	0.7476	0.8325274
6110202005 ..	1.1214	1.2487910
6110202010 ..	1.1214	1.2487910
6110202015 ..	1.1214	1.2487910
6110202020 ..	1.1214	1.2487910
6110202025 ..	1.1214	1.2487910
6110202030 ..	1.1214	1.2487910
6110202035 ..	1.1214	1.2487910
6110202041 ..	1.0965	1.2210624
6110202044 ..	1.0965	1.2210624
6110202046 ..	1.0965	1.2210624
6110202049 ..	1.0965	1.2210624
6110202067 ..	1.0965	1.2210624
6110202069 ..	1.0965	1.2210624
6110202077 ..	1.0965	1.2210624
6110202079 ..	1.0965	1.2210624
6110909010 ..	0.5607	0.6243955
6110909012 ..	0.1246	0.1387546
6110909014 ..	0.3738	0.4162637
6110909026 ..	0.5607	0.6243955
6110909028 ..	0.1869	0.2081318
6110909030 ..	0.3738	0.4162637
6110909044 ..	0.5607	0.6243955
6110909046 ..	0.5607	0.6243955
6110909052 ..	0.3738	0.4162637
6110909054 ..	0.3738	0.4162637
6110909064 ..	0.2492	0.2775091
6110909066 ..	0.2492	0.2775091
6110909067 ..	0.5607	0.6243955
6110909069 ..	0.5607	0.6243955
6110909071 ..	0.5607	0.6243955
6110909073 ..	0.5607	0.6243955

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6110909079 ..	0.3738	0.4162637
6110909080 ..	0.3738	0.4162637
6110909081 ..	0.3738	0.4162637
6110909082 ..	0.3738	0.4162637
6110909088 ..	0.2492	0.2775091
6110909090 ..	0.2492	0.2775091
6111201000 ..	1.1918	1.3271885
6111202000 ..	1.1918	1.3271885
6111203000 ..	0.9535	1.0618176
6111204000 ..	0.9535	1.0618176
6111205000 ..	0.9535	1.0618176
6111206010 ..	0.9535	1.0618176
6111206020 ..	0.9535	1.0618176
6111206030 ..	0.9535	1.0618176
6111206050 ..	0.9535	1.0618176
6111206070 ..	0.9535	1.0618176
6111301000 ..	0.2384	0.2654822
6111302000 ..	0.2384	0.2654822
6111303000 ..	0.2384	0.2654822
6111304000 ..	0.2384	0.2654822
6111305010 ..	0.2384	0.2654822
6111305015 ..	0.2384	0.2654822
6111305020 ..	0.2384	0.2654822
6111305030 ..	0.2384	0.2654822
6111305050 ..	0.2384	0.2654822
6111305070 ..	0.2384	0.2654822
6111901000 ..	0.2384	0.2654822
6111902000 ..	0.2384	0.2654822
6111903000 ..	0.2384	0.2654822
6111904000 ..	0.2384	0.2654822
6111905010 ..	0.2384	0.2654822
6111905020 ..	0.2384	0.2654822
6111905030 ..	0.2384	0.2654822
6111905050 ..	0.2384	0.2654822
6111905070 ..	0.2384	0.2654822
6112110010 ..	0.9535	1.0618176
6112110020 ..	0.9535	1.0618176
6112110030 ..	0.9535	1.0618176
6112110040 ..	0.9535	1.0618176
6112110050 ..	0.9535	1.0618176
6112110060 ..	0.9535	1.0618176
6112120010 ..	0.2384	0.2654822
6112120020 ..	0.2384	0.2654822
6112120030 ..	0.2384	0.2654822
6112120040 ..	0.2384	0.2654822
6112120050 ..	0.2384	0.2654822
6112120060 ..	0.2384	0.2654822
6112191010 ..	0.2492	0.2775091
6112191020 ..	0.2492	0.2775091
6112191030 ..	0.2492	0.2775091
6112191040 ..	0.2492	0.2775091
6112191050 ..	0.2492	0.2775091
6112191060 ..	0.2492	0.2775091
6112201060 ..	0.2492	0.2775091
6112201070 ..	0.2492	0.2775091
6112201080 ..	0.2492	0.2775091
6112201090 ..	0.2492	0.2775091
6112202010 ..	0.8722	0.9712819
6112202020 ..	0.3738	0.4162637
6112202030 ..	0.2492	0.2775091
6112310010 ..	0.1192	0.1327411
6112310020 ..	0.1192	0.1327411
6112390010 ..	1.0727	1.1945587
6112410010 ..	0.1192	0.1327411
6112410020 ..	0.1192	0.1327411
6112410030 ..	0.1192	0.1327411
6112410040 ..	0.1192	0.1327411
6112490010 ..	0.8939	0.9954470
6113001005 ..	0.1246	0.1387546

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6113001010 ..	0.1246	0.1387546
6113001012 ..	0.1246	0.1387546
6113009015 ..	0.3489	0.3885350
6113009020 ..	0.3489	0.3885350
6113009038 ..	0.3489	0.3885350
6113009042 ..	0.3489	0.3885350
6113009055 ..	0.3489	0.3885350
6113009060 ..	0.3489	0.3885350
6113009074 ..	0.3489	0.3885350
6113009082 ..	0.3489	0.3885350
6114200005 ..	0.9747	1.0854259
6114200010 ..	0.9747	1.0854259
6114200015 ..	0.8528	0.9496781
6114200020 ..	0.8528	0.9496781
6114200035 ..	0.8528	0.9496781
6114200040 ..	0.8528	0.9496781
6114200042 ..	0.3655	0.4070208
6114200044 ..	0.8528	0.9496781
6114200046 ..	0.8528	0.9496781
6114200048 ..	0.8528	0.9496781
6114200052 ..	0.8528	0.9496781
6114200055 ..	0.8528	0.9496781
6114200060 ..	0.8528	0.9496781
6114301010 ..	0.2437	0.2713843
6114301020 ..	0.2437	0.2713843
6114302060 ..	0.1218	0.1356365
6114303014 ..	0.2437	0.2713843
6114303020 ..	0.2437	0.2713843
6114303030 ..	0.2437	0.2713843
6114303042 ..	0.2437	0.2713843
6114303044 ..	0.2437	0.2713843
6114303052 ..	0.2437	0.2713843
6114303054 ..	0.2437	0.2713843
6114303060 ..	0.2437	0.2713843
6114303070 ..	0.2437	0.2713843
6114909045 ..	0.5482	0.6104755
6114909055 ..	0.3655	0.4070208
6114909070 ..	0.3655	0.4070208
6115100500 ..	0.4386	0.4884250
6115101510 ..	1.0965	1.2210624
6115103000 ..	0.9868	1.0989005
6115106000 ..	0.1096	0.1220506
6115298010 ..	1.0965	1.2210624
6115309030 ..	0.7675	0.8546880
6115956000 ..	0.9868	1.0989005
6115959000 ..	0.9868	1.0989005
6115966020 ..	0.2193	0.2442125
6115991420 ..	0.2193	0.2442125
6115991920 ..	0.2193	0.2442125
6115999000 ..	0.1096	0.1220506
6116101300 ..	0.3463	0.3856397
6116101720 ..	0.8079	0.8996774
6116104810 ..	0.4444	0.4948838
6116105510 ..	0.6464	0.7198310
6116107510 ..	0.6464	0.7198310
6116109500 ..	0.1616	0.1799578
6116920500 ..	0.8079	0.8996774
6116920800 ..	0.8079	0.8996774
6116926410 ..	1.0388	1.1568077
6116926420 ..	1.0388	1.1568077
6116926430 ..	1.1542	1.2853171
6116926440 ..	1.0388	1.1568077
6116927450 ..	1.0388	1.1568077
6116927460 ..	1.1542	1.2853171
6116927470 ..	1.0388	1.1568077
6116928800 ..	1.0388	1.1568077
6116929400 ..	1.0388	1.1568077
6116938800 ..	0.1154	0.1285094
6116939400 ..	0.1154	0.1285094

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6116994800 ..	0.1154	0.1285094
6116995400 ..	0.1154	0.1285094
6116999510 ..	0.4617	0.5141491
6116999530 ..	0.3463	0.3856397
6117106010 ..	0.9234	1.0282982
6117106020 ..	0.2308	0.2570189
6117808500 ..	0.9234	1.0282982
6117808710 ..	1.1542	1.2853171
6117808770 ..	0.1731	0.1927642
6117809510 ..	0.9234	1.0282982
6117809540 ..	0.3463	0.3856397
6117809570 ..	0.1731	0.1927642
6117909003 ..	1.1542	1.2853171
6117909015 ..	0.2308	0.2570189
6117909020 ..	1.1542	1.2853171
6117909040 ..	1.1542	1.2853171
6117909060 ..	1.1542	1.2853171
6117909080 ..	1.1542	1.2853171
6201121000 ..	0.8981	1.0001242
6201122010 ..	0.8482	0.9445555
6201122020 ..	0.8482	0.9445555
6201122025 ..	0.9979	1.1112614
6201122035 ..	0.9979	1.1112614
6201122050 ..	0.6486	0.7222810
6201122060 ..	0.6486	0.7222810
6201134015 ..	0.1996	0.2222746
6201134020 ..	0.1996	0.2222746
6201134030 ..	0.2495	0.2778432
6201134040 ..	0.2495	0.2778432
6201199010 ..	0.5613	0.6250637
6201199030 ..	0.3742	0.4167091
6201199060 ..	0.3742	0.4167091
6201920500 ..	0.8779	0.9776294
6201921700 ..	1.0974	1.2220646
6201921905 ..	0.9754	1.0862054
6201921910 ..	0.9754	1.0862054
6201921921 ..	1.2193	1.3578125
6201921931 ..	1.2193	1.3578125
6201921941 ..	1.2193	1.3578125
6201921951 ..	0.9754	1.0862054
6201921961 ..	0.9754	1.0862054
6201923000 ..	0.8779	0.9776294
6201923500 ..	1.0974	1.2220646
6201924505 ..	0.9754	1.0862054
6201924510 ..	0.9754	1.0862054
6201924521 ..	1.2193	1.3578125
6201924531 ..	1.2193	1.3578125
6201924541 ..	1.2193	1.3578125
6201924551 ..	0.9754	1.0862054
6201924561 ..	0.9754	1.0862054
6201931500 ..	0.2926	0.3258394
6201931810 ..	0.2439	0.2716070
6201931820 ..	0.2439	0.2716070
6201934911 ..	0.2439	0.2716070
6201934921 ..	0.2439	0.2716070
6201935000 ..	0.2926	0.3258394
6201935210 ..	0.2439	0.2716070
6201935220 ..	0.2439	0.2716070
6201936511 ..	0.2439	0.2716070
6201936521 ..	0.2439	0.2716070
6201991510 ..	0.5487	0.6110323
6201991530 ..	0.3658	0.4073549
6201991560 ..	0.2439	0.2716070
6201998010 ..	0.5487	0.6110323
6201998030 ..	0.3658	0.4073549
6201998060 ..	0.2439	0.2716070
6202121000 ..	0.8879	0.9887654
6202122010 ..	1.0482	1.1672755
6202122020 ..	1.0482	1.1672755

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6202122025 ..	1.2332	1.3732915
6202122035 ..	1.2332	1.3732915
6202122050 ..	0.8016	0.8926618
6202122060 ..	0.8016	0.8926618
6202134005 ..	0.2524	0.2810726
6202134010 ..	0.2524	0.2810726
6202134020 ..	0.3155	0.3513408
6202134030 ..	0.3155	0.3513408
6202199010 ..	0.5678	0.6323021
6202199030 ..	0.3786	0.4216090
6202199060 ..	0.2524	0.2810726
6202920300 ..	0.9865	1.0985664
6202920500 ..	0.9865	1.0985664
6202921210 ..	0.9865	1.0985664
6202921220 ..	0.9865	1.0985664
6202921226 ..	1.2332	1.3732915
6202921231 ..	1.2332	1.3732915
6202921261 ..	0.9865	1.0985664
6202921271 ..	0.9865	1.0985664
6202922500 ..	0.9865	1.0985664
6202923000 ..	0.9865	1.0985664
6202929010 ..	0.9865	1.0985664
6202929020 ..	0.9865	1.0985664
6202929026 ..	1.2332	1.3732915
6202929031 ..	1.2332	1.3732915
6202929061 ..	0.9865	1.0985664
6202929071 ..	0.9865	1.0985664
6202930100 ..	0.296	0.3296256
6202930310 ..	0.2466	0.2746138
6202930320 ..	0.2466	0.2746138
6202930911 ..	0.2466	0.2746138
6202930921 ..	0.2466	0.2746138
6202931500 ..	0.296	0.3296256
6202932510 ..	0.2466	0.2746138
6202932520 ..	0.2466	0.2746138
6202935511 ..	0.2466	0.2746138
6202935521 ..	0.2466	0.2746138
6202991511 ..	0.5549	0.6179366
6202991531 ..	0.37	0.4120320
6202991561 ..	0.2466	0.2746138
6202998011 ..	0.5549	0.6179366
6202998031 ..	0.37	0.4120320
6202998061 ..	0.2466	0.2746138
6203122010 ..	0.1233	0.1373069
6203122020 ..	0.1233	0.1373069
6203191010 ..	0.9865	1.0985664
6203191020 ..	0.9865	1.0985664
6203191030 ..	0.9865	1.0985664
6203199010 ..	0.5549	0.6179366
6203199020 ..	0.5549	0.6179366
6203199030 ..	0.5549	0.6179366
6203199050 ..	0.37	0.4120320
6203199080 ..	0.2466	0.2746138
6203221000 ..	1.2332	1.3732915
6203321000 ..	0.6782	0.7552435
6203322010 ..	1.1715	1.3045824
6203322020 ..	1.1715	1.3045824
6203322030 ..	1.1715	1.3045824
6203322040 ..	1.1715	1.3045824
6203322050 ..	1.1715	1.3045824
6203332010 ..	0.1233	0.1373069
6203332020 ..	0.1233	0.1373069
6203392010 ..	0.1233	0.1373069
6203392020 ..	0.1233	0.1373069
6203399010 ..	0.5549	0.6179366
6203399030 ..	0.37	0.4120320
6203399060 ..	0.2466	0.2746138
6203420300 ..	1.0616	1.1821978
6203420505 ..	0.7077	0.7880947

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6203420510 ..	0.9436	1.0507930
6203420525 ..	0.9436	1.0507930
6203420550 ..	0.9436	1.0507930
6203420590 ..	0.9436	1.0507930
6203420703 ..	1.0616	1.1821978
6203420706 ..	1.1796	1.3136026
6203420711 ..	1.1796	1.3136026
6203420716 ..	0.9436	1.0507930
6203420721 ..	1.1796	1.3136026
6203420726 ..	1.1796	1.3136026
6203420731 ..	1.1796	1.3136026
6203420736 ..	1.1796	1.3136026
6203420741 ..	0.9436	1.0507930
6203420746 ..	0.9436	1.0507930
6203420751 ..	0.8752	0.9746227
6203420756 ..	0.8752	0.9746227
6203420761 ..	0.8752	0.9746227
6203421700 ..	1.0616	1.1821978
6203422505 ..	0.7077	0.7880947
6203422510 ..	0.9436	1.0507930
6203422525 ..	0.9436	1.0507930
6203422550 ..	0.9436	1.0507930
6203422590 ..	0.9436	1.0507930
6203424503 ..	1.0616	1.1821978
6203424506 ..	1.1796	1.3136026
6203424511 ..	1.1796	1.3136026
6203424516 ..	0.9436	1.0507930
6203424521 ..	1.1796	1.3136026
6203424526 ..	1.1796	1.3136026
6203424531 ..	1.1796	1.3136026
6203424536 ..	1.1796	1.3136026
6203424541 ..	0.9436	1.0507930
6203424546 ..	0.9436	1.0507930
6203424551 ..	0.8752	0.9746227
6203424556 ..	0.8752	0.9746227
6203424561 ..	0.8752	0.9746227
6203430100 ..	0.1887	0.2101363
6203430300 ..	0.118	0.1314048
6203430505 ..	0.118	0.1314048
6203430510 ..	0.2359	0.2626982
6203430525 ..	0.2359	0.2626982
6203430550 ..	0.2359	0.2626982
6203430590 ..	0.2359	0.2626982
6203431110 ..	0.059	0.0657024
6203431190 ..	0.059	0.0657024
6203431310 ..	0.1167	0.1299571
6203431315 ..	0.1167	0.1299571
6203431320 ..	0.1167	0.1299571
6203431330 ..	0.1167	0.1299571
6203431335 ..	0.1167	0.1299571
6203431340 ..	0.1167	0.1299571
6203434500 ..	0.1887	0.2101363
6203435500 ..	0.118	0.1314048
6203436005 ..	0.118	0.1314048
6203436010 ..	0.2359	0.2626982
6203436025 ..	0.2359	0.2626982
6203436050 ..	0.2359	0.2626982
6203436090 ..	0.2359	0.2626982
6203436500 ..	0.4128	0.4596941
6203437510 ..	0.059	0.0657024
6203437590 ..	0.059	0.0657024
6203439010 ..	0.1167	0.1299571
6203439015 ..	0.1167	0.1299571
6203439020 ..	0.1167	0.1299571
6203439030 ..	0.1167	0.1299571
6203439035 ..	0.1167	0.1299571
6203439040 ..	0.1167	0.1299571
6203490105 ..	0.118	0.1314048
6203490110 ..	0.2359	0.2626982

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6203490125 ..	0.2359	0.2626982
6203490150 ..	0.2359	0.2626982
6203490190 ..	0.2359	0.2626982
6203490515 ..	0.2359	0.2626982
6203490520 ..	0.2359	0.2626982
6203490530 ..	0.118	0.1314048
6203490545 ..	0.118	0.1314048
6203490550 ..	0.118	0.1314048
6203490560 ..	0.118	0.1314048
6203490920 ..	0.5308	0.5910989
6203490930 ..	0.3539	0.3941030
6203490945 ..	0.2359	0.2626982
6203492505 ..	0.118	0.1314048
6203492510 ..	0.2359	0.2626982
6203492525 ..	0.2359	0.2626982
6203492550 ..	0.2359	0.2626982
6203492590 ..	0.2359	0.2626982
6203493500 ..	0.4128	0.4596941
6203495015 ..	0.2359	0.2626982
6203495020 ..	0.2359	0.2626982
6203495030 ..	0.118	0.1314048
6203495045 ..	0.118	0.1314048
6203495050 ..	0.118	0.1314048
6203495060 ..	0.118	0.1314048
6203499020 ..	0.5308	0.5910989
6203499030 ..	0.3539	0.3941030
6203499045 ..	0.2359	0.2626982
6204110000 ..	0.0617	0.0687091
6204120010 ..	0.9865	1.0985664
6204120020 ..	0.9865	1.0985664
6204120030 ..	0.9865	1.0985664
6204120040 ..	0.9865	1.0985664
6204132010 ..	0.1233	0.1373069
6204132020 ..	0.1233	0.1373069
6204192000 ..	0.1233	0.1373069
6204198010 ..	0.5549	0.6179366
6204198020 ..	0.5549	0.6179366
6204198030 ..	0.5549	0.6179366
6204198040 ..	0.5549	0.6179366
6204198060 ..	0.3083	0.3433229
6204198090 ..	0.2466	0.2746138
6204221000 ..	1.2332	1.3732915
6204321000 ..	0.6782	0.7552435
6204322010 ..	1.1715	1.3045824
6204322020 ..	1.1715	1.3045824
6204322030 ..	0.9865	1.0985664
6204322040 ..	0.9865	1.0985664
6204398010 ..	0.5549	0.6179366
6204398030 ..	0.3083	0.3433229
6204412010 ..	0.0603	0.0671501
6204412020 ..	0.0603	0.0671501
6204421000 ..	1.2058	1.3427789
6204422000 ..	0.6632	0.7385395
6204423010 ..	1.2058	1.3427789
6204423020 ..	1.2058	1.3427789
6204423030 ..	0.9043	1.0070285
6204423040 ..	0.9043	1.0070285
6204423050 ..	0.9043	1.0070285
6204423060 ..	0.9043	1.0070285
6204431000 ..	0.4823	0.5370893
6204432000 ..	0.0603	0.0671501
6204442000 ..	0.4316	0.4806298
6204495010 ..	0.5549	0.6179366
6204495030 ..	0.2466	0.2746138
6204510010 ..	0.0631	0.0702682
6204510020 ..	0.0631	0.0702682
6204521000 ..	1.2618	1.4051405
6204522010 ..	1.1988	1.3349837
6204522020 ..	1.1988	1.3349837

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6204522030 ..	1.1988	1.3349837
6204522040 ..	1.1988	1.3349837
6204522070 ..	1.0095	1.1241792
6204522080 ..	1.0095	1.1241792
6204531000 ..	0.4416	0.4917658
6204532010 ..	0.0631	0.0702682
6204532020 ..	0.0631	0.0702682
6204533010 ..	0.2524	0.2810726
6204533020 ..	0.2524	0.2810726
6204591000 ..	0.4416	0.4917658
6204594010 ..	0.5678	0.6323021
6204594030 ..	0.2524	0.2810726
6204594060 ..	0.2524	0.2810726
6204610510 ..	0.059	0.0657024
6204610520 ..	0.059	0.0657024
6204611510 ..	0.059	0.0657024
6204611520 ..	0.059	0.0657024
6204611530 ..	0.059	0.0657024
6204611540 ..	0.118	0.1314048
6204616010 ..	0.059	0.0657024
6204616020 ..	0.059	0.0657024
6204618010 ..	0.059	0.0657024
6204618020 ..	0.059	0.0657024
6204618030 ..	0.059	0.0657024
6204618040 ..	0.118	0.1314048
6204620300 ..	0.8681	0.9667162
6204620505 ..	0.7077	0.7880947
6204620510 ..	0.9436	1.0507930
6204620525 ..	0.9436	1.0507930
6204620550 ..	0.9436	1.0507930
6204621503 ..	1.0616	1.1821978
6204621506 ..	1.1796	1.3136026
6204621511 ..	1.1796	1.3136026
6204621521 ..	0.9436	1.0507930
6204621526 ..	1.1796	1.3136026
6204621531 ..	1.1796	1.3136026
6204621536 ..	1.1796	1.3136026
6204621541 ..	1.1796	1.3136026
6204621546 ..	0.9436	1.0507930
6204621551 ..	0.9436	1.0507930
6204621556 ..	0.9335	1.0395456
6204621561 ..	0.9335	1.0395456
6204621566 ..	0.9335	1.0395456
6204625000 ..	0.8681	0.9667162
6204626005 ..	0.7077	0.7880947
6204626010 ..	0.9436	1.0507930
6204626025 ..	0.9436	1.0507930
6204626050 ..	0.9436	1.0507930
6204627000 ..	1.1796	1.3136026
6204628003 ..	1.0616	1.1821978
6204628006 ..	1.1796	1.3136026
6204628011 ..	1.1796	1.3136026
6204628021 ..	0.9436	1.0507930
6204628026 ..	1.1796	1.3136026
6204628031 ..	1.1796	1.3136026
6204628036 ..	1.1796	1.3136026
6204628041 ..	1.1796	1.3136026
6204628046 ..	0.9436	1.0507930
6204628051 ..	0.9436	1.0507930
6204628056 ..	0.9335	1.0395456
6204628061 ..	0.9335	1.0395456
6204628066 ..	0.9335	1.0395456
6204630100 ..	0.2019	0.2248358
6204630200 ..	0.118	0.1314048
6204630305 ..	0.118	0.1314048
6204630310 ..	0.2359	0.2626982
6204630325 ..	0.2359	0.2626982
6204630350 ..	0.2359	0.2626982
6204630810 ..	0.059	0.0657024

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6204630820 ..	0.059	0.0657024
6204630910 ..	0.0603	0.0671501
6204630990 ..	0.0603	0.0671501
6204631110 ..	0.2412	0.2686003
6204631125 ..	0.2412	0.2686003
6204631130 ..	0.2412	0.2686003
6204631132 ..	0.2309	0.2571302
6204631135 ..	0.2309	0.2571302
6204631140 ..	0.2309	0.2571302
6204635000 ..	0.2019	0.2248358
6204635500 ..	0.118	0.1314048
6204636005 ..	0.118	0.1314048
6204636010 ..	0.2359	0.2626982
6204636025 ..	0.2359	0.2626982
6204636050 ..	0.2359	0.2626982
6204636500 ..	0.4718	0.5253965
6204637010 ..	0.059	0.0657024
6204637020 ..	0.059	0.0657024
6204637510 ..	0.0603	0.0671501
6204637590 ..	0.0603	0.0671501
6204639010 ..	0.2412	0.2686003
6204639025 ..	0.2412	0.2686003
6204639030 ..	0.2412	0.2686003
6204639032 ..	0.2309	0.2571302
6204639035 ..	0.2309	0.2571302
6204639040 ..	0.2309	0.2571302
6204690105 ..	0.118	0.1314048
6204690110 ..	0.2359	0.2626982
6204690110 ..	0.2359	0.2626982
6204690125 ..	0.2359	0.2626982
6204690150 ..	0.2359	0.2626982
6204690210 ..	0.059	0.0657024
6204690220 ..	0.059	0.0657024
6204690230 ..	0.059	0.0657024
6204690310 ..	0.2359	0.2626982
6204690320 ..	0.2359	0.2626982
6204690330 ..	0.2359	0.2626982
6204690340 ..	0.2309	0.2571302
6204690350 ..	0.2309	0.2571302
6204690360 ..	0.2309	0.2571302
6204690510 ..	0.5308	0.5910989
6204690530 ..	0.2359	0.2626982
6204690570 ..	0.3539	0.3941030
6204690610 ..	0.5308	0.5910989
6204690630 ..	0.2359	0.2626982
6204690644 ..	0.2359	0.2626982
6204690646 ..	0.2359	0.2626982
6204690650 ..	0.3539	0.3941030
6204691505 ..	0.118	0.1314048
6204691510 ..	0.2359	0.2626982
6204691525 ..	0.2359	0.2626982
6204691525 ..	0.2359	0.2626982
6204691550 ..	0.2359	0.2626982
6204692210 ..	0.059	0.0657024
6204692220 ..	0.059	0.0657024
6204692230 ..	0.059	0.0657024
6204692810 ..	0.2359	0.2626982
6204692820 ..	0.2359	0.2626982
6204692830 ..	0.2359	0.2626982
6204692840 ..	0.2309	0.2571302
6204692850 ..	0.2309	0.2571302
6204692860 ..	0.2309	0.2571302
6204696510 ..	0.5308	0.5910989
6204696530 ..	0.2359	0.2626982
6204696570 ..	0.3539	0.3941030
6204698010 ..	0.5308	0.5910989
6204698030 ..	0.2359	0.2626982
6204698044 ..	0.2359	0.2626982
6204698046 ..	0.2359	0.2626982

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6204698050 ..	0.3539	0.3941030
6205201000 ..	1.1796	1.3136026
6205202003 ..	0.9436	1.0507930
6205202016 ..	0.9436	1.0507930
6205202021 ..	0.9436	1.0507930
6205202026 ..	0.9436	1.0507930
6205202031 ..	0.9436	1.0507930
6205202036 ..	1.0616	1.1821978
6205202041 ..	1.0616	1.1821978
6205202044 ..	1.0616	1.1821978
6205202047 ..	0.9436	1.0507930
6205202051 ..	0.9436	1.0507930
6205202056 ..	0.9436	1.0507930
6205202061 ..	0.9436	1.0507930
6205202066 ..	0.9436	1.0507930
6205202071 ..	0.9436	1.0507930
6205202076 ..	0.9436	1.0507930
6205301000 ..	0.4128	0.4596941
6205302010 ..	0.2949	0.3284006
6205302020 ..	0.2949	0.3284006
6205302030 ..	0.2949	0.3284006
6205302040 ..	0.2949	0.3284006
6205302050 ..	0.2949	0.3284006
6205302055 ..	0.2949	0.3284006
6205302060 ..	0.2949	0.3284006
6205302070 ..	0.2949	0.3284006
6205302075 ..	0.2949	0.3284006
6205302080 ..	0.2949	0.3284006
6205900710 ..	0.118	0.1314048
6205900720 ..	0.118	0.1314048
6205901000 ..	0.2359	0.2626982
6205903010 ..	0.5308	0.5910989
6205903030 ..	0.2359	0.2626982
6205903050 ..	0.1769	0.1969958
6205904010 ..	0.5308	0.5910989
6205904030 ..	0.2359	0.2626982
6205904040 ..	0.2359	0.2626982
6206100010 ..	0.5308	0.5910989
6206100030 ..	0.2359	0.2626982
6206100040 ..	0.118	0.1314048
6206100050 ..	0.2359	0.2626982
6206203010 ..	0.059	0.0657024
6206203020 ..	0.059	0.0657024
6206301000 ..	1.1796	1.3136026
6206302000 ..	0.6488	0.7225037
6206303003 ..	0.9436	1.0507930
6206303011 ..	0.9436	1.0507930
6206303021 ..	0.9436	1.0507930
6206303031 ..	0.9436	1.0507930
6206303041 ..	0.9436	1.0507930
6206303051 ..	0.9436	1.0507930
6206303061 ..	0.9436	1.0507930
6206401000 ..	0.4128	0.4596941
6206403010 ..	0.2949	0.3284006
6206403020 ..	0.2949	0.3284006
6206403025 ..	0.2949	0.3284006
6206403030 ..	0.2949	0.3284006
6206403040 ..	0.2949	0.3284006
6206403050 ..	0.2949	0.3284006
6206900010 ..	0.5308	0.5910989
6206900030 ..	0.2359	0.2626982
6206900040 ..	0.1769	0.1969958
6207110000 ..	1.0281	1.1448922
6207199010 ..	0.3427	0.3816307
6207199030 ..	0.4569	0.5088038
6207210010 ..	1.0502	1.1695027
6207210020 ..	1.0502	1.1695027
6207210030 ..	1.0502	1.1695027
6207210040 ..	1.0502	1.1695027

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6207220000 ..	0.3501	0.3898714
6207291000 ..	0.1167	0.1299571
6207299030 ..	0.1167	0.1299571
6207911000 ..	1.0852	1.2084787
6207913010 ..	1.0852	1.2084787
6207913020 ..	1.0852	1.2084787
6207997520 ..	0.2412	0.2686003
6207998510 ..	0.2412	0.2686003
6207998520 ..	0.2412	0.2686003
6208110000 ..	0.2412	0.2686003
6208192000 ..	1.0852	1.2084787
6208195000 ..	0.1206	0.1343002
6208199000 ..	0.2412	0.2686003
6208210010 ..	1.0026	1.1164954
6208210020 ..	1.0026	1.1164954
6208210030 ..	1.0026	1.1164954
6208220000 ..	0.118	0.1314048
6208299030 ..	0.2359	0.2626982
6208911010 ..	1.0852	1.2084787
6208911020 ..	1.0852	1.2084787
6208913010 ..	1.0852	1.2084787
6208913020 ..	1.0852	1.2084787
6208920010 ..	0.1206	0.1343002
6208920020 ..	0.1206	0.1343002
6208920030 ..	0.1206	0.1343002
6208920040 ..	0.1206	0.1343002
6208992010 ..	0.0603	0.0671501
6208992020 ..	0.0603	0.0671501
6208995010 ..	0.2412	0.2686003
6208995020 ..	0.2412	0.2686003
6208998010 ..	0.2412	0.2686003
6208998020 ..	0.2412	0.2686003
6209201000 ..	1.0967	1.2212851
6209202000 ..	1.039	1.1570304
6209203000 ..	0.9236	1.0285210
6209205030 ..	0.9236	1.0285210
6209205035 ..	0.9236	1.0285210
6209205045 ..	0.9236	1.0285210
6209205050 ..	0.9236	1.0285210
6209301000 ..	0.2917	0.3248371
6209302000 ..	0.2917	0.3248371
6209303010 ..	0.2334	0.2599142
6209303020 ..	0.2334	0.2599142
6209303030 ..	0.2334	0.2599142
6209303040 ..	0.2334	0.2599142
6209900500 ..	0.1154	0.1285094
6209901000 ..	0.2917	0.3248371
6209902000 ..	0.2917	0.3248371
6209903010 ..	0.2917	0.3248371
6209903015 ..	0.2917	0.3248371
6209903020 ..	0.2917	0.3248371
6209903030 ..	0.2917	0.3248371
6209903040 ..	0.2917	0.3248371
6210109010 ..	0.217	0.2416512
6210109040 ..	0.217	0.2416512
6210203000 ..	0.0362	0.0403123
6210205000 ..	0.0844	0.0939878
6210207000 ..	0.1809	0.2014502
6210303000 ..	0.0362	0.0403123
6210305000 ..	0.0844	0.0939878
6210307000 ..	0.0362	0.0403123
6210309020 ..	0.422	0.4699392
6210401500 ..	0.037	0.0412032
6210402520 ..	0.4316	0.4806298
6210402531 ..	0.0863	0.0961037
6210402539 ..	0.0863	0.0961037
6210402540 ..	0.4316	0.4806298
6210402550 ..	0.4316	0.4806298
6210402800 ..	0.111	0.1236096

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6210402925 ..	0.111	0.1236096
6210402933 ..	0.111	0.1236096
6210402945 ..	0.111	0.1236096
6210402960 ..	0.111	0.1236096
6210403500 ..	0.037	0.0412032
6210405520 ..	0.4316	0.4806298
6210405531 ..	0.0863	0.0961037
6210405539 ..	0.0863	0.0961037
6210405540 ..	0.4316	0.4806298
6210405550 ..	0.4316	0.4806298
6210407500 ..	0.111	0.1236096
6210408025 ..	0.111	0.1236096
6210408033 ..	0.111	0.1236096
6210408045 ..	0.111	0.1236096
6210408060 ..	0.111	0.1236096
6210500300 ..	0.037	0.0412032
6210500520 ..	0.0863	0.0961037
6210500531 ..	0.0863	0.0961037
6210500539 ..	0.0863	0.0961037
6210500540 ..	0.0863	0.0961037
6210500555 ..	0.0863	0.0961037
6210501200 ..	0.4316	0.4806298
6210502250 ..	0.148	0.1648128
6210502260 ..	0.148	0.1648128
6210502270 ..	0.148	0.1648128
6210502290 ..	0.148	0.1648128
6210503500 ..	0.037	0.0412032
6210505520 ..	0.0863	0.0961037
6210505531 ..	0.0863	0.0961037
6210505539 ..	0.0863	0.0961037
6210505540 ..	0.0863	0.0961037
6210505555 ..	0.0863	0.0961037
6210507500 ..	0.4316	0.4806298
6210508050 ..	0.148	0.1648128
6210508060 ..	0.148	0.1648128
6210508070 ..	0.148	0.1648128
6210508090 ..	0.148	0.1648128
6211111010 ..	0.1206	0.1343002
6211111020 ..	0.1206	0.1343002
6211118010 ..	1.0852	1.2084787
6211118020 ..	1.0852	1.2084787
6211118040 ..	0.2412	0.2686003
6211121010 ..	0.0603	0.0671501
6211121020 ..	0.0603	0.0671501
6211128010 ..	1.0852	1.2084787
6211128020 ..	1.0852	1.2084787
6211128030 ..	0.6029	0.6713894
6211200410 ..	0.7717	0.8593651
6211200420 ..	0.0965	0.1074624
6211200430 ..	0.7717	0.8593651
6211200440 ..	0.0965	0.1074624
6211200810 ..	0.3858	0.4296269
6211200820 ..	0.3858	0.4296269
6211201510 ..	0.7615	0.8480064
6211201515 ..	0.2343	0.2609165
6211201520 ..	0.6443	0.7174925
6211201525 ..	0.2929	0.3261734
6211201530 ..	0.7615	0.8480064
6211201535 ..	0.3515	0.3914304
6211201540 ..	0.7615	0.8480064
6211201545 ..	0.2929	0.3261734
6211201550 ..	0.7615	0.8480064
6211201555 ..	0.41	0.4565760
6211201560 ..	0.7615	0.8480064
6211201565 ..	0.2343	0.2609165
6211202400 ..	0.1233	0.1373069
6211202810 ..	0.8016	0.8926618
6211202820 ..	0.2466	0.2746138
6211202830 ..	0.3083	0.3433229

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6211203400 ..	0.1233	0.1373069
6211203810 ..	0.8016	0.8926618
6211203820 ..	0.2466	0.2746138
6211203830 ..	0.3083	0.3433229
6211204400 ..	0.1233	0.1373069
6211204815 ..	0.8016	0.8926618
6211204835 ..	0.2466	0.2746138
6211204860 ..	0.3083	0.3433229
6211205400 ..	0.1233	0.1373069
6211205810 ..	0.8016	0.8926618
6211205820 ..	0.2466	0.2746138
6211205830 ..	0.3083	0.3433229
6211206400 ..	0.1233	0.1373069
6211206810 ..	0.8016	0.8926618
6211206820 ..	0.2466	0.2746138
6211206830 ..	0.3083	0.3433229
6211207400 ..	0.1233	0.1373069
6211207810 ..	0.9249	1.0299686
6211207820 ..	0.2466	0.2746138
6211207830 ..	0.3083	0.3433229
6211325003 ..	0.6412	0.7140403
6211325007 ..	0.8016	0.8926618
6211325010 ..	0.9865	1.0985664
6211325015 ..	0.9865	1.0985664
6211325025 ..	0.9865	1.0985664
6211325030 ..	0.9249	1.0299686
6211325040 ..	0.9249	1.0299686
6211325050 ..	0.9249	1.0299686
6211325060 ..	0.9249	1.0299686
6211325070 ..	0.9249	1.0299686
6211325075 ..	0.9249	1.0299686
6211325081 ..	0.9249	1.0299686
6211329003 ..	0.6412	0.7140403
6211329007 ..	0.8016	0.8926618
6211329010 ..	0.9865	1.0985664
6211329015 ..	0.9865	1.0985664
6211329025 ..	0.9865	1.0985664
6211329030 ..	0.9249	1.0299686
6211329040 ..	0.9249	1.0299686
6211329050 ..	0.9249	1.0299686
6211329060 ..	0.9249	1.0299686
6211329070 ..	0.9249	1.0299686
6211329075 ..	0.9249	1.0299686
6211329081 ..	0.9249	1.0299686
6211335003 ..	0.0987	0.1099123
6211335007 ..	0.1233	0.1373069
6211335010 ..	0.3083	0.3433229
6211335015 ..	0.3083	0.3433229
6211335017 ..	0.3083	0.3433229
6211335025 ..	0.37	0.4120320
6211335030 ..	0.37	0.4120320
6211335035 ..	0.37	0.4120320
6211335040 ..	0.37	0.4120320
6211335054 ..	0.37	0.4120320
6211335058 ..	0.37	0.4120320
6211335061 ..	0.37	0.4120320
6211339003 ..	0.0987	0.1099123
6211339007 ..	0.1233	0.1373069
6211339010 ..	0.3083	0.3433229
6211339015 ..	0.3083	0.3433229
6211339017 ..	0.3083	0.3433229
6211339025 ..	0.37	0.4120320
6211339030 ..	0.37	0.4120320
6211339035 ..	0.37	0.4120320
6211339040 ..	0.37	0.4120320
6211339054 ..	0.37	0.4120320
6211339058 ..	0.37	0.4120320
6211339061 ..	0.37	0.4120320
6211390310 ..	0.1233	0.1373069

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6211390320 ..	0.1233	0.1373069
6211390330 ..	0.1233	0.1373069
6211390340 ..	0.1233	0.1373069
6211390345 ..	0.1233	0.1373069
6211390351 ..	0.1233	0.1373069
6211391510 ..	0.2466	0.2746138
6211391520 ..	0.2466	0.2746138
6211391530 ..	0.2466	0.2746138
6211391540 ..	0.2466	0.2746138
6211391550 ..	0.2466	0.2746138
6211391560 ..	0.2466	0.2746138
6211391570 ..	0.2466	0.2746138
6211391590 ..	0.2466	0.2746138
6211393010 ..	0.1233	0.1373069
6211393020 ..	0.1233	0.1373069
6211393030 ..	0.1233	0.1373069
6211393040 ..	0.1233	0.1373069
6211393045 ..	0.1233	0.1373069
6211393051 ..	0.1233	0.1373069
6211398010 ..	0.2466	0.2746138
6211398020 ..	0.2466	0.2746138
6211398030 ..	0.2466	0.2746138
6211398040 ..	0.2466	0.2746138
6211398050 ..	0.2466	0.2746138
6211398060 ..	0.2466	0.2746138
6211398070 ..	0.2466	0.2746138
6211398090 ..	0.2466	0.2746138
6211420503 ..	0.6412	0.7140403
6211420507 ..	0.8016	0.8926618
6211420510 ..	0.9865	1.0985664
6211420520 ..	0.9865	1.0985664
6211420525 ..	1.1099	1.2359846
6211420530 ..	0.8632	0.9612595
6211420540 ..	0.9865	1.0985664
6211420554 ..	1.1099	1.2359846
6211420556 ..	1.1099	1.2359846
6211420560 ..	0.9865	1.0985664
6211420570 ..	1.1099	1.2359846
6211420575 ..	1.1099	1.2359846
6211420581 ..	1.1099	1.2359846
6211421003 ..	0.6412	0.7140403
6211421007 ..	0.8016	0.8926618
6211421010 ..	0.9865	1.0985664
6211421020 ..	0.9865	1.0985664
6211421025 ..	1.1099	1.2359846
6211421030 ..	0.8632	0.9612595
6211421040 ..	0.9865	1.0985664
6211421054 ..	1.1099	1.2359846
6211421056 ..	1.1099	1.2359846
6211421060 ..	0.9865	1.0985664
6211421070 ..	1.1099	1.2359846
6211421075 ..	1.1099	1.2359846
6211421081 ..	1.1099	1.2359846
6211430503 ..	0.0987	0.1099123
6211430507 ..	0.1233	0.1373069
6211430510 ..	0.2466	0.2746138
6211430520 ..	0.2466	0.2746138
6211430530 ..	0.2466	0.2746138
6211430540 ..	0.2466	0.2746138
6211430550 ..	0.2466	0.2746138
6211430560 ..	0.2466	0.2746138
6211430564 ..	0.3083	0.3433229
6211430566 ..	0.2466	0.2746138
6211430574 ..	0.3083	0.3433229
6211430576 ..	0.37	0.4120320
6211430578 ..	0.37	0.4120320
6211430591 ..	0.2466	0.2746138
6211431003 ..	0.0987	0.1099123
6211431007 ..	0.1233	0.1373069

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6211431010 ..	0.2466	0.2746138
6211431020 ..	0.2466	0.2746138
6211431030 ..	0.2466	0.2746138
6211431040 ..	0.2466	0.2746138
6211431050 ..	0.2466	0.2746138
6211431060 ..	0.2466	0.2746138
6211431064 ..	0.3083	0.3433229
6211431066 ..	0.2466	0.2746138
6211431074 ..	0.3083	0.3433229
6211431076 ..	0.37	0.4120320
6211431078 ..	0.37	0.4120320
6211431091 ..	0.2466	0.2746138
6211492510 ..	0.2466	0.2746138
6211492520 ..	0.2466	0.2746138
6211492530 ..	0.2466	0.2746138
6211492540 ..	0.2466	0.2746138
6211492550 ..	0.2466	0.2746138
6211492560 ..	0.2466	0.2746138
6211492570 ..	0.2466	0.2746138
6211492580 ..	0.2466	0.2746138
6211492590 ..	0.2466	0.2746138
6211498010 ..	0.2466	0.2746138
6211498020 ..	0.2466	0.2746138
6211498030 ..	0.2466	0.2746138
6211498040 ..	0.2466	0.2746138
6211498050 ..	0.2466	0.2746138
6211498060 ..	0.2466	0.2746138
6211498070 ..	0.2466	0.2746138
6211498080 ..	0.2466	0.2746138
6211498090 ..	0.2466	0.2746138
6212105010 ..	0.9138	1.0176077
6212105020 ..	0.2285	0.2544576
6212105030 ..	0.2285	0.2544576
6212109010 ..	0.9138	1.0176077
6212109020 ..	0.2285	0.2544576
6212109040 ..	0.2285	0.2544576
6212200010 ..	0.6854	0.7632614
6212200020 ..	0.2856	0.3180442
6212200030 ..	0.1142	0.1271731
6212300010 ..	0.6854	0.7632614
6212300020 ..	0.2856	0.3180442
6212300030 ..	0.1142	0.1271731
6212900010 ..	0.1828	0.2035661
6212900020 ..	0.1828	0.2035661
6212900030 ..	0.1828	0.2035661
6212900050 ..	0.0914	0.1017830
6212900090 ..	0.4112	0.4579123
6213201000 ..	1.1187	1.2457843
6213202000 ..	1.0069	1.1212838
6213900700 ..	0.4475	0.4983360
6213901000 ..	0.4475	0.4983360
6213902000 ..	0.3356	0.3737242
6214300000 ..	0.1142	0.1271731
6214400000 ..	0.1142	0.1271731
6214900010 ..	0.8567	0.9540211
6214900090 ..	0.2285	0.2544576
6215100025 ..	0.1142	0.1271731
6215200000 ..	0.1142	0.1271731
6215900015 ..	1.0281	1.1448922
6216000800 ..	0.0685	0.0762816
6216001300 ..	0.3427	0.3816307
6216001720 ..	0.6397	0.7123699
6216001730 ..	0.1599	0.1780646
6216001900 ..	0.3427	0.3816307
6216002110 ..	0.578	0.6436608
6216002120 ..	0.2477	0.2758387
6216002410 ..	0.6605	0.7355328
6216002425 ..	0.1651	0.1838554
6216002600 ..	0.1651	0.1838554

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6216002910 ..	0.6605	0.7355328
6216002925 ..	0.1651	0.1838554
6216003100 ..	0.1651	0.1838554
6216003300 ..	0.5898	0.6568013
6216003500 ..	0.5898	0.6568013
6216003800 ..	1.1796	1.3136026
6216004100 ..	1.1796	1.3136026
6217109510 ..	0.9646	1.0741786
6217109520 ..	0.1809	0.2014502
6217109530 ..	0.2412	0.2686003
6217909003 ..	0.9646	1.0741786
6217909005 ..	0.1809	0.2014502
6217909010 ..	0.2412	0.2686003
6217909025 ..	0.9646	1.0741786
6217909030 ..	0.1809	0.2014502
6217909035 ..	0.2412	0.2686003
6217909050 ..	0.9646	1.0741786
6217909055 ..	0.1809	0.2014502
6217909060 ..	0.2412	0.2686003
6217909075 ..	0.9646	1.0741786
6217909080 ..	0.1809	0.2014502
6217909085 ..	0.2412	0.2686003
6301300010 ..	0.8305	0.9248448
6301300020 ..	0.8305	0.9248448
6301900030 ..	0.2215	0.2466624
6302100005 ..	1.1073	1.2330893
6302100008 ..	1.1073	1.2330893
6302100015 ..	1.1073	1.2330893
6302213010 ..	1.1073	1.2330893
6302213020 ..	1.1073	1.2330893
6302213030 ..	1.1073	1.2330893
6302213040 ..	1.1073	1.2330893
6302213050 ..	1.1073	1.2330893
6302215010 ..	0.7751	0.8631514
6302215020 ..	0.7751	0.8631514
6302215030 ..	0.7751	0.8631514
6302215040 ..	0.7751	0.8631514
6302215050 ..	0.7751	0.8631514
6302217010 ..	1.1073	1.2330893
6302217020 ..	1.1073	1.2330893
6302217030 ..	1.1073	1.2330893
6302217040 ..	1.1073	1.2330893
6302217050 ..	1.1073	1.2330893
6302219010 ..	0.7751	0.8631514
6302219020 ..	0.7751	0.8631514
6302219030 ..	0.7751	0.8631514
6302219040 ..	0.7751	0.8631514
6302219050 ..	0.7751	0.8631514
6302221010 ..	0.5537	0.6166003
6302221020 ..	0.3876	0.4316314
6302221030 ..	0.5537	0.6166003
6302221040 ..	0.3876	0.4316314
6302221050 ..	0.3876	0.4316314
6302221060 ..	0.3876	0.4316314
6302222010 ..	0.3876	0.4316314
6302222020 ..	0.3876	0.4316314
6302222030 ..	0.3876	0.4316314
6302290020 ..	0.2215	0.2466624
6302313010 ..	1.1073	1.2330893
6302313020 ..	1.1073	1.2330893
6302313030 ..	1.1073	1.2330893
6302313040 ..	1.1073	1.2330893
6302313050 ..	1.1073	1.2330893
6302315010 ..	0.7751	0.8631514
6302315020 ..	0.7751	0.8631514
6302315030 ..	0.7751	0.8631514
6302315040 ..	0.7751	0.8631514
6302315050 ..	0.7751	0.8631514
6302317010 ..	1.1073	1.2330893

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
6302317020 ..	1.1073	1.2330893
6302317030 ..	1.1073	1.2330893
6302317040 ..	1.1073	1.2330893
6302317050 ..	1.1073	1.2330893
6302319010 ..	0.7751	0.8631514
6302319020 ..	0.7751	0.8631514
6302319030 ..	0.7751	0.8631514
6302319040 ..	0.7751	0.8631514
6302319050 ..	0.7751	0.8631514
6302321010 ..	0.5537	0.6166003
6302321020 ..	0.3876	0.4316314
6302321030 ..	0.5537	0.6166003
6302321040 ..	0.3876	0.4316314
6302321050 ..	0.3876	0.4316314
6302321060 ..	0.3876	0.4316314
6302322010 ..	0.5537	0.6166003
6302322020 ..	0.3876	0.4316314
6302322030 ..	0.5537	0.6166003
6302322040 ..	0.3876	0.4316314
6302322050 ..	0.3876	0.4316314
6302322060 ..	0.3876	0.4316314
6302390030 ..	0.2215	0.2466624
6302402010 ..	0.9412	1.0481203
6302511000 ..	0.5537	0.6166003
6302512000 ..	0.8305	0.9248448
6302513000 ..	0.5537	0.6166003
6302514000 ..	0.7751	0.8631514
6302593020 ..	0.5537	0.6166003
6302600010 ..	1.1073	1.2330893
6302600020 ..	0.9966	1.1098138
6302600030 ..	0.9966	1.1098138
6302910005 ..	0.9966	1.1098138
6302910015 ..	1.1073	1.2330893
6302910025 ..	0.9966	1.1098138
6302910035 ..	0.9966	1.1098138
6302910045 ..	0.9966	1.1098138
6302910050 ..	0.9966	1.1098138
6302910060 ..	0.9966	1.1098138
6302931000 ..	0.4429	0.4932134
6302932000 ..	0.4429	0.4932134
6302992000 ..	0.2215	0.2466624
6303191100 ..	0.8859	0.9865382
6303910010 ..	0.609	0.6781824
6303910020 ..	0.609	0.6781824
6303921000 ..	0.2768	0.3082445
6303922010 ..	0.2768	0.3082445
6303922030 ..	0.2768	0.3082445
6303922050 ..	0.2768	0.3082445
6303990010 ..	0.2768	0.3082445
6304111000 ..	0.9966	1.1098138
6304113000 ..	0.1107	0.1232755
6304190500 ..	0.9966	1.1098138
6304191000 ..	1.1073	1.2330893
6304191500 ..	0.3876	0.4316314
6304192000 ..	0.3876	0.4316314
6304193060 ..	0.2215	0.2466624
6304200020 ..	0.8859	0.9865382
6304200070 ..	0.2215	0.2466624
6304910120 ..	0.8859	0.9865382
6304910170 ..	0.2215	0.2466624
6304920000 ..	0.8859	0.9865382
6304996040 ..	0.2215	0.2466624
6505001515 ..	1.1189	1.2460070
6505001525 ..	0.5594	0.6229478
6505001540 ..	1.1189	1.2460070
6505002030 ..	0.9412	1.0481203
6505002060 ..	0.9412	1.0481203
6505002545 ..	0.5537	0.6166003
6507000000 ..	0.3986	0.4438810

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor	Cents/kg
9404901000 ..	0.2104	0.2343014
9404908020 ..	0.9966	1.1098138
9404908040 ..	0.9966	1.1098138
9404908505 ..	0.6644	0.7398758
9404908536 ..	0.0997	0.1110259
9404909505 ..	0.6644	0.7398758
9404909570 ..	0.2658	0.2959949
9619002100 ..	0.8681	0.9667162
9619002500 ..	0.1085	0.1208256
9619003100 ..	0.9535	1.0618176
9619003300 ..	1.1545	1.2856512
9619004100 ..	0.2384	0.2654822
9619004300 ..	0.2384	0.2654822
9619006100 ..	0.8528	0.9496781
9619006400 ..	0.2437	0.2713843
9619006800 ..	0.3655	0.4070208
9619007100 ..	1.1099	1.2359846
9619007400 ..	0.2466	0.2746138
9619007800 ..	0.2466	0.2746138
9619007900 ..	0.2466	0.2746138

* * * * *

Authority: 7 U.S.C. 2101–2118.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2021–18322 Filed 8–25–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0142; Project Identifier MCAI–2020–01400–T; Amendment 39–21665; AD 2021–16–03]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a report of in-production findings of missing or incorrect application of the lightning strike edge glow sealant protection at specific locations in the wing tanks. This AD requires an inspection for missing or incorrect application of the lightning strike edge glow sealant protection at certain locations in the wing tanks, and corrective action, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 30, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 30, 2021.

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0142.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0142; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nick Wilson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3230; email *nicholas.wilson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0220, dated October 13, 2020 (EASA AD 2020–0220) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on March 11, 2021 (86 FR 13833). The NPRM was prompted by a report of in-production findings of missing or incorrect application of the lightning strike edge glow sealant protection at specific locations in the wing tanks. The NPRM proposed to require an inspection for missing or incorrect application of the lightning strike edge glow sealant protection at certain locations in the wing tanks, and corrective action, as specified in EASA AD 2020–0220.

The FAA is issuing this AD to address missing or incorrectly applied sealant, which in combination with an undetected incorrect installation of an adjacent fastener and a lightning strike in the immediate area, could result in ignition of the fuel air mixture inside the affected fuel tanks and loss of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. Air Line Pilots Association, International (ALPA) stated that it supports the NPRM.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0220 specifies procedures for an inspection for missing or incorrect application of the lightning strike edge glow sealant protection at certain locations in the wing tanks (discrepancies), and corrective action. Corrective actions include applying sealant in areas where sealant was found to be missing or incorrectly applied. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 16 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 67 work-hours × $85 per hour = Up to $5,695	$0	Up to $5,695	Up to $91,120.

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hours × $85 per hour = $85	$0	$85

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–16–03 Airbus SAS: Amendment 39–21665; Docket No. FAA–2021–0142; Project Identifier MCAI–2020–01400–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 30, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0220, dated October 13, 2020 (EASA AD 2020–0220).

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by in-production findings of missing or incorrect application of the lightning strike edge glow sealant protection at specific locations in the wing tanks. The FAA is issuing this AD to address missing or incorrectly applied sealant, which in combination with an undetected incorrect installation of an adjacent fastener and a lightning strike in the immediate area, could result in ignition of the fuel-air mixture inside the affected fuel tanks and loss of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0220.

(h) Exceptions to EASA AD 2020–0220

(1) Where EASA AD 2020–0220 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0220 does not apply to this AD.

(3) Where paragraph (1) of EASA AD 2020–0220 gives a compliance time of ''the next scheduled maintenance tank entry, or before exceeding 6 years since Airbus date of manufacture, whichever occurs first after the effective date of this AD,'' for this AD, the compliance time is the later of the times specified in paragraphs (h)(3)(i) and (ii) of this AD.

(i) The next scheduled maintenance tank entry, or before exceeding 6 years since Airbus date of manufacture, whichever occurs first after the effective date of this AD.

(ii) Within 6 months after the effective date of this AD.

(4) Where paragraph (2) of EASA AD 2020–0220 refers to ''discrepancies,'' for this AD, discrepancies include missing or incorrectly applied sealant.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Nick Wilson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3230; email *nicholas.wilson@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0220, dated October 13, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0220, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0142.

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

Issued on July 21, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–18332 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0717; Project Identifier AD–2021–00814–R; Amendment 39–21707; AD 2021–18–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–11–03, which applied to certain Airbus Helicopters Model EC 155B, EC155B1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters. AD 2021–11–03 required inspecting the main gearbox (MGB) fixed cowling front fitting (MGB front fitting), and depending on findings, corrective action. This AD retains the requirements of AD 2021–11–03, and includes service information that was omitted for Airbus Helicopter Model EC 155B and EC155B1 helicopters, as specified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective September 10, 2021.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in this AD as of July 15, 2021 (86 FR 30759, June 10, 2021).

The FAA must receive comments on this AD by October 12, 2021.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this material on the EASA website at *https://ad.easa.europa.eu*. For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html*. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. Service information also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0717.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0717; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued AD 2021–11–03, Amendment 39–21565 (86 FR 30759, June 10, 2021) (AD 2021–11–03), for certain Airbus Helicopters Model EC 155B, EC155B1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters. AD 2021–11–03 required inspecting and if necessary, replacing the MGB front fitting. AD 2021–11–03 also required modifying the MGB front fitting. AD 2021–11–03 was prompted by EASA AD 2019–0008, dated January 22, 2019 (EASA AD 2019–0008), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for certain Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale, Model EC 155 B, EC 155 B1, SA 365 N, SA 365 N1, AS 365 N2, and AS 365 N3 helicopters. EASA advises of reports of an in-flight loss of engine and MGB cowlings. Subsequent investigations revealed that the MGB cowling attachment fittings failed because of mounting stress in the MGB front fitting and air intake bulkhead. This condition, if not addressed, could result in damage to the helicopter, loss of helicopter control, and possible injury to persons on the ground.

Accordingly, EASA AD 2019–0008 requires inspecting the MGB front fittings and if there is a discrepancy, the EASA AD requires applicable corrective action(s) before next flight. EASA AD 2019–0008 also requires modification of the MGB fixed cowling attachments. Accomplishing the modification constitutes a terminating action for the required inspection.

Actions Since AD 2021–11–03 Was Issued

Since AD 2021–11–03 was issued, the FAA discovered that paragraph ''(h) Exceptions to EASA AD 2019–0008'' of AD 2021–11–03, inadvertently omitted service information required for Airbus Helicopters Model EC 155B and EC155B1 helicopters. This AD corrects subparagraph (h)(8) to add Airbus Helicopters Alert Service Bulletin ASB No. 53A035, Revision 0, dated March 13, 2017, and ASB No. 53A035, Revision 1, dated December 20, 2018. This AD also updates the U.S. fleet size in the Costs of Compliance section.

FAA's Determination

These products have been approved by the aviation authority of another country, and are approved for operation in the United States. Pursuant to the bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the EASA AD referenced above. The FAA is issuing this AD after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Related IBR Material Under 1 CFR Part 51

This AD requires EASA AD 2019–0008, dated January 22, 2019, which the Director of the Federal Register approved for incorporation by reference as of July 15, 2021 (86 FR 30759, June 10, 2021). EASA AD 2019–0008 requires inspecting the MGB front fittings within 110 flight hours after April 14, 2017 (the effective date of EASA AD 2017–0055, dated March 31, 2017). If there is a discrepancy, the EASA AD requires applicable corrective action(s) before next flight. EASA AD 2019–0008 also requires modification of the MGB fixed cowling attachments within 660 flight hours or 23 months, whichever occurs first, after the effective date described in EASA AD 2019–0008. Accomplishing the modification constitutes a terminating action for the required inspection.

This AD also requires Airbus Helicopters Alert Service Bulletin ASB No. AS365–53.00.62 and ASB No. EC155–53A038, each Revision 0 and dated December 20, 2018 (ASB AS365–53.00.62 and ASB EC155–53A038). ASB AS365–53.00.62 applies to Model AS365-series helicopters. ASB EC155–53A038 applies to Model EC155-series helicopters. The Director of the Federal Register also approved this service information for incorporation by reference as of July 15, 2021 (86 FR 30759, June 10, 2021). This service information specifies replacing the front bracket, inspecting for stress of the MGB fixed cowlings on the radiator bulkhead, and installing an additional locking system.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

AD Requirements

This AD requires accomplishing the actions specified in EASA AD 2019–0008 and the service information already described, except for any differences identified as exceptions in the regulatory text of this AD.

Justification for Immediate Adoption and Determination of the Effective Date

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

AD 2021–11–03 omitted service information required for compliance for certain Model EC 155B and EC155B1 helicopters. This AD corrects that error by including Airbus Helicopters Alert Service Bulletin ASB No. 53A035, Revision 0, dated March 13, 2017, and ASB No. 53A035, Revision 1, dated December 20, 2018 in the regulatory text. The public was previously provided opportunity for comment on the costs of the AD and required actions.

Accordingly, notice and opportunity for prior public comment are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B). In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA is incorporating EASA AD 2019–0008 by reference in this FAA final rule. This AD, therefore, requires compliance with EASA AD 2019–0008 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2019–0008 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2019–0008. Service information required by EASA AD 2019–0008 for compliance is available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0717.

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0717; Project Identifier AD–2021–00814–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this AD because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 53 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Inspecting the MGB front fittings takes about 2 work-hours for an estimated cost of $170 per helicopter and $9,010 for the U.S. fleet. If required, replacing an MGB front fitting takes about 2 work-hours and parts cost about $590 for an estimated total cost of $760 per fitting. Other repairs will take up to 8 work-hours (excluding drying time) and parts will cost a minimal amount for an estimated cost of up to $680 per helicopter.

Modifying the MGB fixed cowling attachments takes about 5 work-hours and parts cost about $630 for an estimated cost of $1,055 per helicopter and $55,915 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this regulation:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–11–03, Amendment 39–21565 (86 FR 30759, June 10, 2021); and

■ b. Adding the following new airworthiness directive:

2021–18–06 Airbus Helicopters: Amendment 39–21707; Docket No. FAA–2021–0717; Project Identifier AD–2021–00814–R.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 10, 2021.

(b) Affected ADs

This AD replaces AD 2021–11–03, Amendment 39–21565 (86 FR 30759, June 10, 2021) (AD 2021–11–03).

(c) Applicability

This AD applies to Airbus Helicopters Model EC 155B, EC155B1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, certificated in any category, as identified in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2019–0008, dated January 22, 2019 (EASA AD 2019–0008).

(d) Subject

Joint Aircraft System Component (JASC) Code: 7110, Engine Cowling System.

(e) Unsafe Condition

This AD was prompted by a report of an in-flight loss of main gearbox (MGB) and engine cowlings. The FAA is issuing this AD to address a failure of the MGB fixed cowling front fitting, and subsequent MGB cowling or engine cowling detachment, which could result in damage to the helicopter, loss of helicopter control, and possible injury to persons on the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0008.

(h) Exceptions to EASA AD 2019–0008

(1) Where EASA AD 2019–0008 refers to April 14, 2017 (the effective date of EASA AD 2017–0055, dated March 31, 2017), this AD requires using the effective date of this AD.

(2) Where EASA AD 2019–0008 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD 2019–0008 refers to flight hours (FH), this AD requires using hours time-in-service.

(4) Where EASA AD 2019–0008 requires the modification within 660 flight hours or 23 months, whichever occurs first, this AD requires the modification within 660 hours time-in-service instead.

(5) Although the service information referenced in EASA AD 2019–0008 specifies to discard certain parts, this AD requires removing those parts from service instead.

(6) Where the service information referenced in EASA AD 2019–0008 specifies to use tooling, equivalent tooling may be used.

(7) The ''Remarks'' section of EASA AD 2019–0008 does not apply to this AD.

(8) Where paragraph (1) of EASA AD 2019–0008 states to, ''inspect the MGB fixed cowling front fittings in accordance with the instructions of paragraph 1.E.2 of the applicable inspection ASB or in accordance with the instructions of the applicable modification ASB,'' this AD requires:

(i) For Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters: determining if Airbus Helicopters Alert Service Bulletin No. 53.00.55, Revision 0, dated March 13, 2017, or Revision 1, dated December 20, 2018, has or has not been complied with and following the instructions, ''For helicopters on which ALERT SERVICE BULLETIN No. 53.00.55 has not been complied with'' or ''For helicopters on which ALERT SERVICE BULLETIN No. 53.00.55 has been complied with,'' as applicable, in paragraph 1.E.2, of Airbus Helicopters Alert Service Bulletin No. AS365–53.00.62 Revision 0, dated December 20, 2018 (ASB AS365–53.00.62).

(ii) For Model EC 155B and EC155B1 helicopters: determining if Airbus Helicopters Alert Service Bulletin No. 53A035, Revision 0, dated March 13, 2017, or Revision 1, dated December 20, 2018, has or has not been complied with and following the instructions, ''For helicopters on which ALERT SERVICE BULLETIN No. 53A035 has not been complied with'' or ''For helicopters on which ALERT SERVICE BULLETIN No. 53A035 has been complied with,'' as applicable, in paragraph 1.E.2, of Airbus Helicopters Alert Service Bulletin No. EC155–53A038, Revision 0, dated December 20, 2018 (ASB EC155–53A038).

(9) Where paragraph (2) of EASA AD 2019–0008 states to, ''accomplish the applicable corrective action(s) in accordance with paragraph 1.E.2 of the applicable inspection ASB or in accordance with the instructions of the applicable modification ASB,'' this AD requires accomplishing the applicable corrective actions by following ASB AS365–53.00.62 or ASB EC155–53A038, as applicable to your model helicopter.

(10) Where paragraph 3.B.2.e.3 of the applicable modification ASB referenced in EASA AD 2019–0008 refers to paragraph 3.B.e.3, this AD requires referring to paragraph 3.B.3 of ASB AS365–53.00.62 or ASB EC155–53A038, as applicable to your model helicopter.

(i) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*.

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

(k) Related Information

For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov*.

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on July 15, 2021 (86 FR 30759, June 10, 2021).

(i) European Aviation Safety Agency (EASA) AD 2019–0008, dated January 22, 2019.

(ii) Airbus Helicopters Alert Service Bulletin ASB No. AS365–53.00.62, Revision 0, dated December 20, 2018.

(iii) Airbus Helicopters Alert Service Bulletin ASB No. EC155–53A038, Revision 0, dated December 20, 2018.

(3) For EASA AD 2019–0008, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999

000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html*.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0717.

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

Issued on August 23, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–18441 Filed 8–24–21; 11:15 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–92727; FOIA–194]

Freedom of Information Act Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is making an amendment to the Commission's Freedom of Information Act (''FOIA'') regulations to remove a provision stating that records that the FOIA requires to be made available for public inspection in an electronic format will be available to persons who do not have access to the internet in the Commission's Public Reference Room. The Commission's FOIA regulations will continue to provide that persons who do not have access to the internet can obtain the documents required to be made available for public inspection by telephone or email request to the Office of FOIA Services.

DATES: *Effective date:* August 26, 2021.

FOR FURTHER INFORMATION CONTACT: Ray McInerney, FOIA/PA Officer, Office of FOIA Services, (202) 551–6249; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION: The Commission is adopting an amendment to its FOIA regulations at 17 CFR 200.80(a)(2)(ii).

I. Background

The Freedom of Information Act requires each agency, in accordance with published rules, to make certain records available for public inspection in an electronic format.[1] The Commission's regulation at 17 CFR 200.80(a)(2)(ii) provides that records that the FOIA requires to be made available for public inspection in an electronic format are accessible through the Commission's website. In addition, under the existing regulation, persons without access to the internet may obtain these records by telephone or email request or by visiting the Public Reference Room at the Commission's headquarters in Washington, DC. The FOIA itself does not require that agencies provide access to documents that are available for public inspection in an electronic format in a public reference room.

The Public Reference Room, which is housed within the Commission's Library, contains a computer terminal that members of the public may use to access records that the SEC is required to make publicly available under the FOIA. The Commission's visitor logs and information from the Commission Library staff indicate that no one has used the computer terminal in the Public Reference Room to access records that the FOIA requires to be made available for public inspection in an electronic format from 2018 through the date of this document.[2] In light of the lack of use of the computer terminal in the Public Reference Room as a means of accessing the records, we are adopting technical amendments to our FOIA rules to remove the reference to obtaining access in the Public Reference Room. The Commission's regulation will continue to provide that persons who do not have access to the internet will be able to obtain the documents required to be made available for public inspection via telephone or email request to the Commission's Office of FOIA Services.

[1] 5 U.S.C. 552(a)(2).

[2] Due to the COVID pandemic, the public has not been allowed access to the Public Reference Room since April 13, 2020.

II. Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act (''APA''), that these revisions relate solely to agency organization, procedures, or practice and do not constitute a substantive rule. Accordingly, the APA's provisions regarding notice of rulemaking, opportunity for public comment, and advance publication of the amendments are not applicable.[3] For the same reason, and because these amendments do not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.[4]

Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable. These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.

III. Economic Analysis

We are adopting an amendment to remove a provision that states that documents that the FOIA requires to be made available for public inspection in an electronic format will be available to persons who do not have access to the internet in the Commission's Public Reference Room. This amendment does not impose any substantive regulatory obligations on any person. We do not believe the amendment will have any substantial economic effect, including on efficiency, competition, or capital formation. All documents that the FOIA requires to be available will remain available to the public via the internet, mail, email, or telephone request. Members of the public who wish to make use of the Commission's Public Reference Room but who must now make use of one of the alternatives could potentially incur net costs if the alternatives are less accessible than using the computer available in the Public Reference Room. However, since the documents at issue are readily available through any computer connected to the internet and can also be obtained by mail and since no person has used the Commission's Public Reference Room for this purpose in at least two years, we believe any such incremental costs will be small and incurred infrequently. Because the amendment imposes no substantial new burdens on private parties, the Commission believes that the amendment will not have any impact on

[3] 5 U.S.C. 553.

[4] 5 U.S.C. 804(3)(C).

competition for purposes of section 23(a)(2) of the Securities Exchange Act of 1934.[5]

IV. Statutory Authority

The amendments contained herein have been made under the authority set forth in 5 U.S.C. 552 and 15 U.S.C. 78w(a).

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information.

Text of Amendments

For the reasons stated in the preamble, the Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

■ 1. The authority citation for part 200, subpart D, continues to read in part as follows:

Authority: 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 77sss, 78m(F)(3), 78w, 80a–37, 80a–44(a), 80a–44(b), 80b–10(a), and 80b–11, unless otherwise noted.

Section 200.80 also issued under Public Law 114–185 sec. 3(a), 130 Stat. 538; 5 U.S.C. 552; 15 U.S.C. 77f(d), 77s, 77ggg(a), 78d–1, 78w(a), 80a–37(a), 80a–44(b), 80b–10(a), and 80b–11(a), unless otherwise noted.

* * * * *

■ 2. Amend § 200.80 by revising paragraph (a)(2) to read as follows:

§ 200.80 Securities and Exchange Commission records and information.

(a) * * *

(2)(i) Records that the FOIA requires to be made available for public inspection in an electronic format (pursuant to 5 U.S.C. 552(a)(2)) are accessible through the Commission's website, *http://www.sec.gov*. Each division and office of the Commission is responsible for determining which of its records are required to be made publicly available in an electronic format, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each division and office shall ensure that its posted records and indexes are reviewed and updated on an ongoing basis.

(ii) Persons who do not have access to the internet may obtain these records by contacting the Commission's Office of FOIA Services by telephone at 202–551–7900 or by email at *foiapa@sec.gov.*

* * * * *

By the Commission.

Dated: August 23, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–18425 Filed 8–25–21; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78w(a)(2).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM16–17–000]

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes

AGENCY: Federal Energy Regulatory Commission.

ACTION: Adopted revisions to information collection.

SUMMARY: The Federal Energy Regulatory Commission adopts a proposal to collect additional data from certain market-based rate sellers with ultimate upstream affiliates that have been granted blanket authorization to acquire the securities of those sellers or those sellers' upstream affiliates. The adopted proposal involves certain revisions to the data dictionary and XML schema that accompany the relational database established in Order No. 860.

DATES: These revisions will become effective October 25, 2021.

FOR FURTHER INFORMATION CONTACT:

Ryan Stertz (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC 20426, (202) 502–6473, *Ryan.Stertz@ferc.gov.*

Regine Baus (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC 20426, (202) 502–8757, *Regine.Baus@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Order Adopting Revisions to Information Collection

(Issued August 19, 2021)

1. On March 18, 2021, the Commission issued a notice requesting comments[1] on a proposal to collect additional data from certain market-based rate (MBR) sellers (Sellers)[2] through revisions to the data dictionary and XML schema that accompany the relational database established in Order No. 860 (MBR Data Dictionary).[3] Specifically, the Commission proposed revising the MBR Data Dictionary to require that Sellers whose ultimate upstream affiliate(s)[4] own their voting securities pursuant to a section 203(a)(2) blanket authorization provide, in the relational database, three additional data fields: The docket number of the section 203(a)(2) blanket authorization, the Utility ID Type CD of the utility whose securities were acquired under the corresponding section 203(a)(2) blanket authorization docket number, and the Utility ID of that utility.[5] In this order, we revise the MBR Data Dictionary as proposed in the March Notice.

I. Background

A. Order No. 860

2. On July 18, 2019, the Commission issued Order No. 860, which revised certain aspects of the substance and format of information Sellers submit to the Commission for market-based rate purposes. Among other things, the Commission adopted the approach to collect market-based rate information in a relational database.[6] The Commission also specified that any significant changes to the MBR Data Dictionary would be proposed in a Commission order or rulemaking, which would provide an opportunity for comment.[7]

3. In support, the Commission explained that the relational database construct provides for a more modern and flexible format for the reporting and retrieval of information. The

[1] *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* 86 FR 17823 (Apr. 6, 2021), 174 FERC ¶ 61,214 (2021) (March Notice).

[2] A Seller is defined as any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act (FPA). 18 CFR 35.36(a)(1); 16 U.S.C. 824d.

[3] *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* Order No. 860, 84 FR 36390 (July 26, 2019), 168 FERC ¶ 61,039 (2019), *order on reh'g and clarification,* Order No. 860–A, 85 FR 13012 (Oct. 1, 2020), 170 FERC ¶ 61,129 (2020).

[4] ''Ultimate upstream affiliate'' is defined as the furthest upstream affiliate(s) in the ownership chain—*i.e.,* each of the upstream of affiliate(s) of a Seller, who itself does not have 10% or more of its outstanding securities owned, held or controlled, with power to vote, by any person (including an individual or company). Order No. 860, 168 FERC ¶ 61,039 at P 5 n.10; *see also* 18 CFR 35.36(a)(10). ''Upstream affiliate'' means any entity described in § 35.36(a)(9)(i). 18 CFR 35.36(a)(10).

[5] The March Notice defined ''utilities'' as transmitting utilities, electric utility companies, or holding company systems containing such entities. March Notice, 174 FERC ¶ 61,214 at P 1 n.4.

[6] Order No. 860, 168 FERC ¶ 61,039 at P 4.

[7] *Id.* P 220.

Commission noted that Sellers would be linked to their market-based rate affiliates through common ultimate upstream affiliate(s) and that, through this linkage, the relational database would allow for the automatic generation of a complete asset appendix.[8] Therefore, the Commission required that, as part of their market-based rate applications or baseline submissions, Sellers identify, through the relational database, their ultimate upstream affiliate(s). The Commission also specified that Sellers must inform the Commission when they have a new ultimate upstream affiliate as part of their change in status reporting obligations, with any changes updated in the relational database on a monthly basis.[9]

B. Petition for Declaratory Order

4. On March 18, 2021, the Commission denied a petition for declaratory order filed by NextEra Energy, Inc., American Electric Power Company, Inc., Evergy, Inc., Exelon Corporation, and Xcel Energy Services Inc. on behalf of Xcel Energy Inc. (Petitioners).[10] Among other things, Petitioners requested that the Commission find that no affiliation arises under FPA section 205 when institutional investors acquire up to 20% of the voting securities of utilities pursuant to a section 203(a)(2) blanket authorization. Although the Commission disagreed with Petitioners regarding the issue of affiliation, it provided guidance that addressed, in part, the concerns raised by Petitioners. As explained more fully in *NextEra,* the Commission agreed with Petitioners that, as a result of the conditions in a section 203(a)(2) blanket authorization, institutional investors subject to a section 203(a)(2) blanket authorization lack the ability to control the utilities whose voting securities they acquire. The Commission concluded that, because those conditions prevent institutional investors from exercising control over those utilities, utilities commonly owned by an institutional investor are not affiliates of each other under 18 CFR 35.36(a)(9)(iv),[11] so long as their common institutional investor owner complies with the conditions imposed as part of a section 203(a)(2) blanket authorization.[12]

5. However, the Commission recognized in *NextEra* that the relational database, as contemplated in Order Nos. 860 and 860–A, does not provide for a method to distinguish between ultimate upstream affiliates that have or have not acquired securities of Sellers (or their upstream affiliates) through a section 203(a)(2) blanket authorization.[13] As a result, in the March Notice, the Commission proposed changes to the MBR Data Dictionary so that the relational database could accurately reflect the affiliations, or lack thereof, among Sellers if an ultimate upstream affiliate has acquired the securities of Sellers pursuant to a section 203(a)(2) blanket authorization.

II. Discussion

A. March Notice

6. In the March Notice, the Commission proposed to collect certain data in the relational database for purposes of generating accurate asset appendices when 10% or more of the securities of a Seller (or an upstream affiliate) have been acquired pursuant to a section 203(a)(2) blanket authorization. The Commission explained that this new data requirement would only be required for Sellers with upstream affiliates 10% or more of whose securities have been acquired pursuant to a section 203(a)(2) blanket authorization and concluded there would be no burden on other Sellers.[14]

7. Specifically, the Commission proposed to update the MBR Data Dictionary and add three new data fields to the entities_to_entities table: (1) The section 203(a)(2) blanket authorization docket number; (2) the Utility_ID_Type_CD of the utility whose securities were acquired under the corresponding section 203(a)(2) blanket authorization docket number; and (3) and the Utility_ID of that utility. That is, the appropriate Sellers would be required to identify, using these new data fields, the upstream affiliate whose securities were acquired pursuant to the section 203(a)(2) blanket authorization as well as the docket number of the proceeding in which the Commission granted the section 203(a)(2) blanket authorization.[15]

8. The Commission noted that these new data fields would be necessary to prevent the connection of unaffiliated entities when auto-generating asset appendices, consistent with its findings in *NextEra.* The Commission also stated that it anticipated that the MBR Data Dictionary with appropriate validations would be posted on the Commission's website upon issuance of a final order in this proceeding.[16]

B. Comments

9. Comments were filed by the Transmission Access Policy Study Group (TAPS), the Global Legal Entity Identifier Foundation (GLEIF), XBRL US (XBRL), and Edison Electric Institute (EEI) and Electric Power Supply Association (EPSA), jointly.

10. TAPS, GLEIF, and XBRL each support the Commission's proposal to collect additional data from certain Sellers through the inclusion of the three proposed data fields in the relational database.

11. TAPS supports the revisions proposed in the March Notice and urges the Commission to adopt them.[17] TAPS agrees that the proposed revisions are necessary for the relational database to properly identify the affiliates of all Sellers with market-based rate authority, while also maintaining necessary transparency into Sellers' ultimate upstream ownership structures.[18] In particular, TAPS argues that it is important that the March Notice maintains the requirement established in Order Nos. 860 and 860–A, and confirmed in *NextEra,*[19] that Sellers report their ultimate upstream affiliates, even when the ultimate upstream affiliates are institutional investors with section 203(a) blanket authorizations.[20] TAPS argues that transparent access to this information is essential to the Commission's ability to monitor market power and fulfill its statutory obligation to ensure just and reasonable rates.[21]

[8] *Id.* PP 5–6. ''Once a Seller identifies its own assets, the assets of its affiliates without market-based rate authority, and its ultimate upstream affiliate(s), the relational database will contain sufficient information to allow the Commission to identify all of that Seller's affiliates (*i.e.,* those with a common ultimate upstream affiliate) to create a complete asset appendix for the Seller, which includes all of its affiliates' assets.'' *Id.* P 40.

[9] *Id.* P 121.

[10] *NextEra Energy, Inc.,* 174 FERC ¶ 61,213, *granting clarification,* 175 FERC ¶ 61,214 (2021) (*NextEra*).

[11] Under § 35.36(a)(9)(iv), an affiliate of a specified company can mean ''[a]ny person that is under common control with the specified company.'' 18 CFR 35.36(a)(9)(iv); *see also id.* 35.36(a)(9)(i)–(iii) (providing the other aspects of the Commission's affiliate definition as applied in market-based rate proceedings).

[12] *NextEra,* 174 FERC ¶ 61,213 at P 52.

[13] *Id.* P 53.

[14] March Notice, 174 FERC ¶ 61,214 at P 8.

[15] *Id.* P 9.

[16] *Id.* PP 10–11.

[17] TAPS Comments at 2, 8.

[18] *Id.* at 2.

[19] 174 FERC ¶ 61,213.

[20] TAPS Comments at 5–6.

[21] *Id.* at 6–7.

12. GLEIF and XBRL support adding the proposed new data fields to the relational database and also support usage of the Legal Entity Identifier (LEI) in the Utility_ID_Type_CD attribute (proposed field 11 in the entities_to_entities table).[22] However, both GLEIF and XBRL suggest that the Commission incorporate the LEI more broadly by requiring the reporting of an LEI in all cases.[23] GLEIF argues that partial inclusion of the LEI results in partial coverage, which limits the potential benefits of using the LEI.[24] GLEIF further argues that consistent use of the LEI among U.S. federal agencies could greatly enhance information sharing across different government entities.[25] XBRL urges all U.S. regulators to adopt the LEI as a replacement for the industry-specific identifiers used today and adds that LEIs provide clarity regarding organizational provenance, and help businesses understand the origins of clients, contractors, and suppliers.[26]

13. EEI and EPSA believe there is little to no value in reporting ultimate upstream affiliates that are institutional investors to the relational database and express concern that adopting the proposed changes will result in another delay in implementation. As a result, EEI and EPSA urge the Commission not to move forward with the proposed changes.[27] If the Commission moves forward with its proposal to collect information about institutional investor ultimate upstream affiliates in the relational database, EEI and EPSA suggest several modifications and clarifications, which they believe are needed to make the proposed changes less cumbersome, more understandable, and easier to implement.[28]

14. First, EEI and EPSA explain that use of the term ''utility'' in the proposed new data fields Utility_ID_Type_CD and Utility_ID to identify the entity whose securities were acquired by a Seller's ultimate upstream affiliate(s) pursuant to a section 203(a)(2) blanket authorization may confuse the industry because, in most cases, such an entity is not a public utility, as defined by the FPA, but is instead a public utility holding company.[29]

15. Second, EEI and EPSA express concern about the workability of the Commission's proposal regarding the technical implementation and seek clarification on which attribute(s) will be used to generate a Seller's asset appendix.[30] Specifically, in the case that only the Utility_ID attribute will be used to link affiliated Sellers for purposes of generating the asset appendix, EEI and EPSA express concern that the nullable Utility_ID attribute will be blank for thousands of Sellers (because they do not have ultimate upstream affiliate(s) that acquired the securities of the Seller through a section 203(a)(2) blanket authorization). On the other hand, in the case that both the Utility_ID attribute and the Reportable_Entity_ID attribute will be used to link affiliated Sellers for purposes of generating the asset appendix, EEI and EPSA argue that this would be far more complex than always using one attribute (*i.e.* the Reportable_Entity_ID). EEI and EPSA argue that an additional benefit of always using the Reportable_Entity_ID attribute to link affiliated Sellers is that the Reportable_Entity_ID is likely to remain fixed for many years for most Sellers, whereas the existence of an institutional investor ultimate upstream affiliate may vary from quarter to quarter.[31] EEI and EPSA suggest that, should the Commission decide to move forward with its proposal, the concept of Reportable Entity should always be the entity that is used to compile the asset appendix and suggest that the Commission rename this field to be Asset_Appendix_Reportable_Entity.[32]

16. Third, EEI and EPSA seek clarification on whether the data fields relationship_start_date and relationship_end_date now refer to the relationship between a Seller and the Reportable Entity or to the relationship between a Seller and the utility, in the event that both fields are populated. EEI and EPSA suggest that two additional fields be added so that the relational database captures the start and end date of both relationships, when applicable.[33]

17. Finally, EEI and EPSA express concern that the Commission has not allowed adequate time for its proposed changes to be incorporated into software that Sellers may be relying on to create the XMLs for their database submissions, and request that any order in this docket include a step-by-step example to ensure that Sellers' software developers understand the correct approach to updating records.[34]

C. Commission Determination

18. We adopt the revisions to the MBR Data Dictionary, as proposed in the March Notice. In doing so, we provide additional clarification to address concerns raised by commenters. We note that all commenters agree that it is important to distinguish upstream affiliates that have control over Sellers, ultimate upstream affiliates that have received section 203(a)(2) blanket authorizations, and the upstream affiliates or Sellers whose securities were acquired pursuant to that blanket authorization. We find that the revisions, with the clarifications discussed below, strike the appropriate balance between ensuring the accuracy of auto-generated asset appendices and minimizing the burden on Sellers. Below, we respond to commenters' specific suggestions and concerns.

19. We decline to adopt the proposal that the Commission incorporate LEI more broadly by requiring the reporting of an entity's LEI broadly across the Commission's work. We appreciate XBRL's and GLEIF's emphasis on consistency and transparency throughout the Commission's information collection efforts. However, we find that such a proposal is beyond the scope of this proceeding, which more narrowly addresses the accurate identification and reporting of ultimate upstream affiliates in the relational database.

20. As to the argument that there is little to no value in reporting ultimate upstream affiliates where those entities have acquired the securities of the reporting Seller, or its upstream affiliate, pursuant to a section 203(a)(2) blanket authorization order, we note that the Commission has repeatedly emphasized the importance of both identifying and tracking these ultimate upstream affiliates in the relational database.[35] We believe that continuing to require Sellers to report all of their ultimate upstream affiliates and the information discussed herein will preserve the accuracy and integrity of the relational database, as contemplated in Order Nos. 860 and 860–A. These additional data fields will account for instances where certain ultimate upstream affiliates lack control over those Sellers, or their upstream affiliates, whose securities are acquired pursuant to a section 203(a)(2) blanket authorization.[36] Thus, these

[22] *See* GLEIF Comments at 1; XBRL Comments at 1.

[23] *Id.*

[24] GLEIF Comments at 2.

[25] *Id.*

[26] XBRL Comments at 2.

[27] EEI and EPSA Comments at 10.

[28] *Id.* at 3.

[29] *Id.* at 4.

[30] *Id.* at 5.

[31] *Id.* at 5–6.

[32] *Id.* at 8–9.

[33] *Id.* at 6, 9.

[34] *Id.* at 8.

[35] *See, e.g., NextEra,* 174 FERC ¶ 61,213 at P 56; Order No. 860–A, 170 FERC ¶ 61,129 at P 11.

[36] Notably, there is no dispute that entities that own greater than 10% of the voting securities of a market-based rate seller pursuant to a section 203(a)(2) blanket authorization are affiliated with that seller.

data fields will ensure that the relational database does not automatically make these Sellers affiliates of each other under § 35.36(a)(9)(iv),[37] consistent with *NextEra*.[38]

21. Furthermore, this order does not make any new determinations regarding affiliation; rather, it implements the technical components necessary to ensure the relational database functions as contemplated in *NextEra* and Order Nos. 860 and 860–A.[39] Requests for the Commission to not move forward with these proposals are collateral attacks on those orders.[40] As such, we decline to reconsider the Commission's determination to require Sellers to report certain ultimate upstream affiliates.

22. In addition, we decline to adopt a number of the suggestions proposed by EEI and EPSA, as well as their proposed edits to MBR Data Dictionary. EEI and EPSA argue that a single field, Asset_Appendix_Reportable_Entity, should link affiliated Sellers for purposes of generating the asset appendix to simplify submittals in the relational database. However, we find that EEI and EPSA misunderstand the purpose of the Reportable_Entity_ID field in this respect. The Reportable_Entity_ID field is intended for Sellers to report their ultimate upstream affiliates.[41] We believe that shifting this reporting obligation to a different field would, in certain circumstances, change the information submitted and obfuscate a Seller's ultimate upstream affiliate. The three additional data fields we are adopting in this order minimize the burden on all Sellers because these fields apply to only Sellers whose securities have been acquired (or whose upstream affiliate's securities have been acquired) by an ultimate upstream affiliate pursuant to a section 203(a)(2) blanket authorization. As EEI and EPSA note, thousands of Sellers will *not* have to change how they submit information into the relational database with the Commission's changes adopted herein. Because the Reportable_Entity_ID field is where all Sellers must report their ultimate upstream affiliates, we find that it is less burdensome to keep the field limited to reporting only ultimate upstream affiliates under § 35.36(a)(10).

23. As to the use of the term ''utility'' in the data fields, we note that the Commission has defined ''utility'' to mean transmitting utilities, electric utility companies, or holding company systems containing such entities, as those terms have been used in section 203(a)(2) blanket authorization orders.[42] We find that continuing to use ''utility'' in this manner is consistent with how that term has also been used in section 203(a)(2) blanket authorization orders.[43]

24. In addition, we appreciate EEI's and EPSA's concerns that the relational database is a complex system and that potential confusion may exist about how the adopted fields will be used when auto-generating asset appendices. Based on these concerns, we agree that certain clarifications to the MBR Data Dictionary will help to alleviate confusion regarding the relational database. Specifically, we have updated the descriptions of the Reportable_Entity_ID, Blanket_Auth_Docket_Number, Utility_ID_Type_CD, and Utility_ID fields to clarify how the system constructs relationships for the auto-generated asset appendices.[44] We have also added clarifying descriptions for the relationship_start_date and relationship_end_date fields.

25. Finally, we also appreciate EEI's and EPSA's concerns that the software that Sellers rely on for their XML submissions will need to be updated to incorporate these revisions. For a step-by-step example of how to comply with these revisions, we direct Sellers to the MBR Quick Start Guide, which can be found on the Commission's website.[45]

III. Information Collection Statement

26. The information collection requirements contained in this order are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[46] OMB's regulations require approval of certain information collection requirements imposed by agency rules (including reporting, record keeping, and public disclosure requirements).[47] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number. The following discussion describes and analyzes the collection of information to be revised by this order.

27. All burden estimates for the proposed information collection are discussed in this order. These provisions would affect the following information: FERC–919A, Refinements to Policies and Procedures for Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities (OMB Control No. 1902–0317).

28. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 (via email *DataClearance@ferc.gov* or telephone (202) 502–8663).

29. Send written comments on FERC–919A to the Office of Management and Budget (OMB) through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0317) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**. OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

30. These revisions affect Sellers that have ultimate upstream affiliates that own their voting securities pursuant to section 203(a)(2) blanket authorizations. Sellers continue to be required to report institutional investors who own 10% or more of their voting shares pursuant to section 203(a)(2) blanket authorizations as their reportable ultimate upstream affiliate in the relational database. However, these revisions also require these Sellers to identify their upstream affiliate(s) whose securities have been acquired, 10% or more, pursuant to a section 203(a)(2) blanket authorization. This requirement includes submitting,

[37] 18 CFR 35.36(a)(9)(iv).

[38] *NextEra,* 174 FERC ¶ 61,213 at P 52.

[39] *Id.* P 56; Order No. 860–A, 170 FERC ¶ 61,129 at P 11; Order No. 860, 168 FERC ¶ 61,039 at PP 121, 126–127, 129.

[40] We note that Commissioner Danly's dissent also raises concerns regarding the value of reporting ultimate upstream affiliates where those entities have received section 203(a)(2) blanket authorization.

[41] 18 CFR 35.36(a)(10).

[42] *See supra* note 5.

[43] We note that, in many section 203(a)(2) blanket authorization orders, the Commission has used the term ''U.S. Traded Utility'' to mean transmitting utilities, electric utility companies, or holding company systems containing such entities being acquired pursuant to section 203(a)(2) blanket authorization orders. ''Utility,'' as used here, has the same meaning as ''U.S. Traded Utility'' used in section 203(a)(2) blanket authorization orders.

[44] *See* appendix A.

[45] Federal Energy Regulatory Commission, *Market-Based Rate Quick Start Guide* (August 2021), *https://mbrwebsat.ferc.gov/MbrHelpLinks/DownLoadFiles/Quick%20Start%20Guide.*

[46] 44 U.S.C. 3507(d).

[47] 5 CFR 1320.

into the relational database, the docket number of the order granting the ultimate upstream affiliate a section 203(a)(2) blanket authorization, the identifier of the upstream affiliate(s) whose securities were acquired pursuant to the section 203(a)(2) blanket authorization, and the type of identifier reported. These revisions would not impose any additional reporting requirements for Sellers whose ultimate upstream affiliates do not hold their voting securities pursuant to section 203(a)(2) blanket authorizations.

31. There are approximately 2,647 Sellers that will submit information into the relational database. Six institutional investors currently have section 203(a)(2) blanket authorizations, which collectively own approximately 110 upstream affiliates that themselves own Sellers. In the March Notice, the Commission estimated an average of four Sellers affected for every upstream affiliate, equaling 440 total sellers. This order reaffirms the estimate of the number of Sellers impacted by the revisions herein.

Burden Estimate: The estimated burden and cost [48] for the requirements in this order are as follows. Information on estimated burden from Order No. 860 is displayed for background only.

32. The following table summarizes the average estimated annual burden and cost [49] changes due to March Notice (and includes, for background only, the estimate from Order No. 860):

A.	B.	C.	D.	E.	F.	G.	H.
Respondent/incremental burden category	Number of respondents	Number of responses per respondent	Number of responses (B * C)	Burden hours per response	Hourly cost ($) per response	Total annual burden hours (D * E)	Total cost ($) (F * G)
First Year, proposed incremental cost associated with the collection of reporting connections to an entity whose securities were acquired pursuant to a blanket authorization (Increase due to the March Notice)							
Impacted Sellers, as implemented in this Order.	440	1	440	[50] 2	88.54	880	77,915.20.
Ongoing (beginning in Year 2) collection of reporting connections to an entity whose securities were acquired pursuant to a blanket authorization							
Impacted Sellers, as implemented in this Order.	440	1	440	68	88.54	29,920	2,649,116.80.
Total Burden for Impacted Sellers in this Order.	440	1	440	70	88.54	30,800	2,727,032.00.
Impacted Sellers have an offsetting decrease in reporting requirements compared to those required to be reported in Order 860							
Reduction in Burden of Order 860 Reporting Requirements for Impacted Sellers [51].	440	1	−440	70 [former estimate, being replaced].	88.54	−30,800 [former estimate, being replaced].	−2,727,032.00 [former estimate, being replaced].
Therefore, there is no net change for impacted Sellers in burden due to these revisions. [52]							

IV. Environmental Analysis

33. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[53] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[54] The actions proposed here fall within a categorical exclusion in the Commission's regulations, *i.e.,* they involve information gathering, analysis, and dissemination.[55] Therefore, environmental analysis is unnecessary and has not been performed.

V. Regulatory Flexibility Act

34. The Regulatory Flexibility Act of 1980 (RFA) [56] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities. In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.

35. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[57] The SBA size standard for electric utilities is based on the number of employees, including affiliates.[58] Under SBA's

[48] The estimated hourly cost burden for respondents—$88.54—is the average of mean hourly wages from May 2020 Bureau of Labor Statistics (BLS) data at *http://www.bls.gov/oes/current/oes_nat.htm,* and BLS benefits data at *http://www.bls.gov/news.release/ecec.nr0.htm* for the following occupations: Legal Occupations (23–0000) $142.25, Computer and Information Systems Managers (11–3021) $103.61, Computer and Mathematical Occupations (15–0000) $65.73, and Information and Record Clerks (43–4199) $42.57.

[49] The following table displays BLS cost calculations from 2020 which updated the March Notice's estimates from the initial 2019 data.

[50] The two hours represents the additional time required to address the three new fields.

[51] Order No. 860, 168 FERC ¶ 61,039 at P 323.

[52] We estimate that the additional burden (440 hours) due to these revisions of reporting this information will not have a net change in overall burden because sellers will no longer be affiliated through common ultimate upstream affiliates with blanket authorizations, as contemplated in Order Nos. 860 and 860–A. We conservatively estimate that the net change on the impacted sellers reporting this information will be zero. The net additional cost calculations were determined by subtracting the total burden for impacted sellers for these revisions from the estimated burden in Order No. 860 which results in no change in burden.

[53] *Reguls. Implementing the Nat'l Envt'l Pol'y Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[54] *Id.*

[55] 18 CFR 380.4.

[56] 5 U.S.C. 601–612.

[57] 13 CFR 121.101.

[58] *Id.*

current size standards, an electric utility (one that falls under NAICS codes 221122 [electric power distribution, with a small business threshold of 1,000 employees], 221121 [electric bulk power transmission and control, with a small business threshold of 500 employees], or 221118 [other electric power generation, with a small business threshold of 250 employees]) [59] are small if it, including its affiliates, employs 1,000 or fewer people.[60]

36. Of the 440 affected entities discussed above, we estimate that none of these will be small entities. Accordingly, we certify that this order will not have a significant economic impact on a substantial number of small entities.

[59] The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, North American Industry Classification System, *https://www.census.gov/eos/www/naics/.*

[60] 13 CFR 121.201 (Sector 22—Utilities). To be conservative, we are using a small business threshold of 1,000 employees.

VI. Document Availability

37. 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*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

38. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

39. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

40. These revisions are effective October 25, 2021. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this order is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission. Commissioner Chatterjee is not participating.

Commissioner Danly is dissenting with a separate statement attached.

Issued: August 19, 2021

Kimberly D. Bose,

Secretary.

BILLING CODE 6717–01–P

Note: The following appendix will not appear in the Code of Federal Regulations:
Appendix A (Clean)

entities_to_entities	DRAFT DATA DICTIONARY UPDATING THE ENTITIES TO ENTITIES TABLE *Mapping of reporting entities to ultimate upstream affiliates* (gray rows auto-populated by database system were removed for readability)						
#	**Attribute**	**Description**	**Identifier Type**	**Nullable**	**SQL Type**	**Format**	**Validations**
7	record_type_cd	Indicates whether this is a new submission or a submission to update an existing record.	Options List: • New • Update	N	CHARACTER (6)	NA	Must either be "New" or "Update" if information is included in this table.
8	reference_id	Identifier of existing record being updated.		Y	INTEGER		Required if record_type_cd is "Update." Must match an existing entry from the "Entities to Entities ID" column of the Entities to Entities Submitted Data Table, found here.
9	reportable_entity_ID_type_CD	User selects one of the three identifier types it will provide for these 2 fields: -Company Identifier/CID of the Reportable Entity. (Required if available.) -Legal Entity Identifier/LEI of the Reportable Entity. (Required if available and CID is not available.) -FERC generated ID/GID of the Reportable Entity. (Required if CID and LEI are not available.)	Options List: • CID • LEI • GID	N	CHARACTER (3)		Must be "CID," "LEI," or "GID."

entities_to_entities	DRAFT DATA DICTIONARY UPDATING THE ENTITIES TO ENTITIES TABLE *Mapping of reporting entities to ultimate upstream affiliates* (gray rows auto-populated by database system were removed for readability)						
#	**Attribute**	**Description**	**Identifier Type**	**Nullable**	**SQL Type**	**Format**	**Validations**
10	reportable_entity_ID	CID, LEI, or GID for the entity being reported. Note: this field is used to identify affiliate relationships to generate the Asset Appendix, other than when a Utility_ID is submitted. When provided, the Utility_ID field is used to establish the downstream affiliate relationships for Asset Appendix generation and the reportable_entity_ID is used to identify the Ultimate Upstream Affiliate.	Foreign Key (CID) Foreign Key (LEI) Foreign Key (GID)	N	CHARACTER (7) CHARACTER (20) CHARACTER (10)		Must match an active record identifier. These identifiers can be found using General Search, found here.
11	Blanket_Auth_Docket_Number	Docket number wherein the Reportable Entity received a of the section 203(a)(2) blanket authorization. This field should be left blank if this does not apply.		Y	CHARACTER VARYING (15)	XXXX-X-XXX; XXXX-XX-XXX; XXXX-XXX-XXX; or XXXX-XXXX-XXX	Required if the Reportable Entity received a 203(a)(2) blanket authorization. Otherwise, should be left blank.

entities_to_entities	DRAFT DATA DICTIONARY UPDATING THE ENTITIES TO ENTITIES TABLE *Mapping of reporting entities to ultimate upstream affiliates* (gray rows auto-populated by database system were removed for readability)						
#	**Attribute**	**Description**	**Identifier Type**	**Nullable**	**SQL Type**	**Format**	**Validations**
12	Utility_ID_ Type_CD	User selects one of the three identifier types it will provide for these 2 fields: -Company Identifier/CID of the Reportable Entity. (Required if available.) -Legal Entity Identifier/LEI of the Reportable Entity. (Required if available and CID is not available.) -FERC generated ID/GID of the Reportable Entity. (Required if CID and LEI are not available.)	Options List • CID • LEI • GID	Y	CHARACTER (3)		Required if the Reportable Entity received a 203(a)(2) blanket authorization. Otherwise, should be left blank. If submitted, must be "CID," "LEI," or "GID."
13	Utility_ID	CID, LEI, or GID for the entity whose securities were acquired pursuant to the blanket authorization. This field should be left blank if this does not apply. Note: when provided, this field is used to establish downstream affiliate relationships to generate the Asset Appendix. The reportable_entity_ID is used to identify the Ultimate Upstream Affiliate.	Foreign Key (CID) Foreign Key (LEI) Foreign Key (GID)	Y	CHARACTER (7) CHARACTER (20) CHARACTER (10)		Required if the Reportable Entity received a 203(a)(2) blanket authorization. Otherwise, should be left blank. Must match an active record identifier. These identifiers can be found using General Search, found here.
14	relationship_ start_date	Date relationship to the Reportable Entity (field 10) started.		N	DATE	YYYY-MM-DD (ANSI)	Valid date
15	relationship_ end_date	Date relationship to the Reportable Entity (field 10) ended.		Y	DATE	YYYY-MM-DD (ANSI)	Valid date Value must be ≥ relationship_start_ date

Appendix B (Redline)

entities_to_entities	DRAFT DATA DICTIONARY UPDATING THE ENTITIES TO ENTITIES TABLE *Mapping of reporting entities to ultimate upstream affiliates* (gray rows auto-populated by database system were removed for readability)						
#	**Attribute**	**Description**	**Identifier Type**	**Nullable**	**SQL Type**	**Format**	**Validations**
7	record_type_cd	Indicates whether this is a new submission or a submission to update an existing record.	Options List: • New • Update	N	CHARACTER (6)	NA	Must either be "New" or "Update" if information is included in this table.
8	reference_id	Identifier of existing record being updated.		Y	INTEGER		Required if record_type_cd is "Update." Must match an existing entry from the "Entities to Entities ID" column of the Entities to Entities Submitted Data Table, found here.
9	reportable_entity_ID_type_CD	User selects one of the three identifier types it will provide for these 2 fields: -Company Identifier/CID of the Reportable Entity. (Required if available.) -Legal Entity Identifier/LEI of the Reportable Entity. (Required if available and CID is not available.) -FERC generated ID/GID of the Reportable Entity. (Required if CID and LEI are not available.)	Options List: • CID • LEI • GID	N	CHARACTER (3)		Must be "CID," "LEI," or "GID."

entities_to_entities	DRAFT DATA DICTIONARY UPDATING THE ENTITIES TO ENTITIES TABLE *Mapping of reporting entities to ultimate upstream affiliates* (gray rows auto-populated by database system were removed for readability)						
#	**Attribute**	**Description**	**Identifier Type**	**Nullable**	**SQL Type**	**Format**	**Validations**
10	reportable_entity_ID	CID, LEI, or GID for the entity being reported. Note: this field is used to identify affiliate relationships to generate the Asset Appendix, other than when a Utility_ID is submitted. When provided, the Utility_ID field is used to establish the downstream affiliate relationships for Asset Appendix generation and the reportable_entity_ID is used to identify the Ultimate Upstream Affiliate.	Foreign Key (CID) Foreign Key (LEI) Foreign Key (GID)	N	CHARACTER (7) CHARACTER (20) CHARACTER (10)		Must match an active record identifier. These identifiers can be found using General Search, found here.
11	Blanket_Auth_Docket_Number	Docket number wherein the Reportable Entity received a of the section 203(a)(2) blanket authorization. This field should be left blank if this does not apply.		Y	CHARACTER VARYING (15)	XXXX-X-XXX; XXXX-XX-XXX; XXXX-XXX-XXX; or XXXX-XXXX-XXX	Required if the Reportable Entity received a 203(a)(2) blanket authorization. Otherwise, should be left blank.

entities_to_entities	DRAFT DATA DICTIONARY UPDATING THE ENTITIES TO ENTITIES TABLE *Mapping of reporting entities to ultimate upstream affiliates* (gray rows auto-populated by database system were removed for readability)						
#	**Attribute**	**Description**	**Identifier Type**	**Nullable**	**SQL Type**	**Format**	**Validations**
12	Utility_ID_ Type_CD	User selects one of the three identifier types it will provide for these 2 fields: -Company Identifier/CID of the Reportable Entity. (Required if available.) -Legal Entity Identifier/LEI of the Reportable Entity. (Required if available and CID is not available.) -FERC generated ID/GID of the Reportable Entity. (Required if CID and LEI are not available.)	Options List • CID • LEI • GID	Y	CHARACTER (3)		Required if the Reportable Entity received a 203(a)(2) blanket authorization. Otherwise, should be left blank. If submitted, must be "CID," "LEI," or "GID."
13	Utility_ID	CID, LEI, or GID for the entity whose securities were acquired pursuant to the blanket authorization. This field should be left blank if this does not apply. Note: when provided, this field is used to establish downstream affiliate relationships to generate the Asset Appendix. The reportable_entity_ID is used to identify the Ultimate Upstream Affiliate.	Foreign Key (CID) Foreign Key (LEI) Foreign Key (GID)	Y	CHARACTER (7) CHARACTER (20) CHARACTER (10)		Required if the Reportable Entity received a 203(a)(2) blanket authorization. Otherwise, should be left blank. Must match an active record identifier. These identifiers can be found using General Search, found here.
14	relationship_ start_date	Date relationship to the Reportable Entity (field 10) started.		N	DATE	YYYY-MM-DD (ANSI)	Valid date
15	relationship_ end_date	Date relationship to the Reportable Entity (field 10) ended.		Y	DATE	YYYY-MM-DD (ANSI)	Valid date Value must be ≥ relationship_start_ date

BILLING CODE 6717–01–C

United States of America

Federal Energy Regulatory Commission

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes

Docket No. RM16–17–000

(August 19, 2021)

DANLY, Commissioner, *dissenting:*

1. I dissent from today's order adopting the proposal to collect additional information for the relational database.[1] With this issuance, the Commission now requires further submissions from market-based rate sellers with upstream affiliates holding blanket authorizations under Federal Power Act (FPA) section 203(a)(2).[2] This additional administrative burden which we now foist upon these entities is unnecessary (and therefore unjustifiable) because the information we will glean simply cannot aid us as the majority supposes.

2. Earlier this year, in a separate proceeding, Commissioner Chatterjee and I concurred in an order denying a petition for declaratory order filed by NextEra Energy, Inc. and a number of other utilities. In that order, the Commission seized upon the opportunity to reiterate public utilities' reporting obligations regarding the informational database.[3] Although we concurred in the result of that order, we objected to inclusion of institutional investors in the relational database as a pointless regulatory burden with little to no value.[4] Many of the objections we offered in that concurrence are equally applicable to this order. I recite those objections in large measure here.

3. As today's order recognizes, in *NextEra,* the Commission found that as a result of the conditions in a section 203(a)(2) blanket authorization, institutional investors subject to a section 203(a)(2) blanket authorization lack the ability to control the utilities whose voting securities they acquire. The Commission concluded that, because those conditions prevent institutional investors from exercising control over those utilities, utilities commonly owned by an institutional investor are not affiliates of each other under 18 CFR 35.36(a)(9)(iv), so long as their common institutional investor owner complies with the conditions imposed as part of a section 203(a)(2) blanket authorization.[5]

The Commission thus acknowledged that, in conditioning those blanket authorizations, institutional investors were prevented from exercising control over utilities by acquiring their securities.

4. That determination remains true. Under our current regime, there is little to no value in listing institutional investors as the ultimate upstream affiliate of market-based rate sellers in the relational database. The Commission grants blanket authorizations premised on the finding that the institutional investors can exercise no control over the utilities whose securities they have purchased and that the acquisition would not adversely affect competition.[6] The conclusion that the institutional investors cannot exercise control or influence sellers so as to affect market power is confirmed by our holding that sellers under common control of an institutional investor are not affiliates. Indeed, it could not be otherwise.

5. Given those predicate determinations, I cannot understand why the Commission believes it important to include institutional investors in a database that is designed to enable the Commission to monitor the opportunity for market-based rate sellers to exercise market power. For the same reason, I do not understand why the Commission should require change in status filings to be made whenever an institutional investor's ownership of the seller's voting securities crosses the 10% threshold. To the extent that a particular institutional investor's ownership of voting securities ever becomes relevant to the Commission because it may have violated the conditions of its authorization, that information is easily ascertainable from the quarterly informational filings we require as a condition of granting the blanket authorizations.[7]

6. There is a simple solution that would allow the Commission to eliminate the requirement to include institutional investors in the relational database and in change of status filings without waiving the applicability of section 35.36(a)(9)(i) of our regulations. Section 35.36(b) provides: ''The provisions of this subpart apply to all Sellers authorized, or seeking authorization, to make sales for resale of electric energy, capacity or ancillary services at market-based rates *unless otherwise ordered by the Commission.*'' [8] Here the Commission could have—and in my opinion should have—used this authority to order that sellers are not obligated to report institutional investors in the relational database or to make change in status filings when institutional investor holdings cross the 10% voting security threshold. The Commission would also need to make a minor amendment to its relational database regulations to provide that when an institutional investor is the ultimate upstream affiliate, sellers should instead list the next highest upstream affiliate in the database. For example, subsidiaries of NextEra should list NextEra as the ultimate upstream affiliate in the database if any institutional investor owns 10% or more of NextEra pursuant to a blanket authorization.

7. I appreciate that the Commission has acted to reduce the burden on sellers resulting from the requirement to include institutional investors in the relational database and in change-in-status filings. But a pointless regulatory burden is a pointless regulatory burden, no matter how small.

For these reasons, I respectfully dissent.

James P. Danly,

Commissioner.

[FR Doc. 2021–18283 Filed 8–25–21; 8:45 am]

BILLING CODE 6717–01–P

[59] The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, North American Industry Classification System, *https://www.census.gov/eos/www/naics/.*

[60] 13 CFR 121.201 (Sector 22—Utilities). To be conservative, we are using a small business threshold of 1,000 employees.

[1] *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* 176 FERC ¶ 61,109 (2021) (August 2021 Order); *see also Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* 174 FERC ¶ 61,214 (2021); *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh'g and clarification,* Order No. 860–A, 170 FERC ¶ 61,129 (2020).

[5] August 2021 Order, 176 FERC ¶ 61,109 at P 4 (citations omitted).

[6] *See, e.g., Legg Mason, Inc.,* 121 FERC ¶ 61,061, at P 26 (2007).

[7] *See, e.g., id.* P 30.

[8] 18 CFR 35.36(b) (emphasis added).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0208]

RIN 1625–AA87

Security Zones; Lewes and Rehoboth Canal and Atlantic Ocean, Rehoboth, DE

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two security zones for certain waters of Rehoboth Beach to prevent waterside threats and incidents for persons under the protection of the United States Secret Service (USSS) in the vicinity of Rehoboth Beach, Delaware. These security zones will be enforced intermittently and only for the protection of persons protected by USSS when in the area and will restrict vessel traffic while the zone is being enforced. This rule prohibits vessels and people from entering the zones unless specifically exempt under the provisions of this rule or granted specific permission from the Captain of the Port (COTP) Delaware Bay or a designated representative. Any vessel requesting to transit the zones without pause or delay will typically be authorized to do so by on-scene enforcement vessels.

DATES: This rule is effective August 26, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0208 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone 215–271–4889, email *Edmund.J.Ofalt@usccg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On occasion the USSS has requested heightened security measures for persons protected by the USSS in the vicinity of Rehoboth Beach, Delaware. In response, on June 3, 2021, the Coast guard published a notice of proposed rulemaking (NPRM) titled ''Security Zones; Lewes and Rehoboth Canal and Atlantic Ocean, Rehoboth, DE'' (86 FR 29727). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these visits by USSS protectees. During the comment period that ended July 19, 2021, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. This rule must be immediately effective to guard against potential acts of terrorism, sabotage, subversive acts, accidents, or other causes of a similar nature.

III. Legal Authority and Need for Rule

Under the Ports and Waterways Safety Act, the Coast Guard has authority to establish water or waterfront safety zones, or other measures, for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area, 46 U.S.C. 70011(b)(3). This rule safeguards the lives of persons protected by the Secret Service, and of the general public, by enhancing the safety and security of navigable waters of the United States during USSS protectee presence in Rehoboth, Delaware. The Coast Guard will activate the security zone when requested by the USSS for the protection of persons the USSS protects under 18 U.S.C. 3056 or pursuant to Presidential memorandum. The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231), as delegated by Department of Homeland Security Delegation No.00170.1(II)(70), Revision No. 01.2, from the Secretary of DHS to the Commandant of the U.S. Coast Guard, and further redelegated by 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5 to the Captains of the Port. The Captain of the Port Delaware Bay (COTP) has determined that recurring presence of persons under the protection of the USSS, which started in January of 2021, presents a potential target for terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. This security zone is necessary to protect these persons, the public, and the surrounding waterways.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published June 3, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM, other than a correction of a minor grammatical error in paragraph (a).

This rule establishes two security zones for the protection of USSS protectees when present in the vicinity of Rehoboth Beach, Delaware. This rule is necessary to expedite the establishment and enforcement of these security zones when short notice is provided to the COTP for USSS protectees who may be present in the area.

Security Zone One is bounded on the north by a line drawn from 38°44.36′ North Latitude (N), 075°5.32′ West Longitude (W), thence easterly to 38°44.37′ N, 075°5.31′ W proceeding from shoreline to shoreline on the Lewes and Rehoboth Canal in a Southeasterly direction where it is bounded by a line drawn from 38°43.89′ N, 075°5.31′ W, thence easterly to 38°43.90′ N, 075°5.07′ W thence northerly across the entrance to the yacht basin to 38°43.93′ N, 075°5.09′ W.

Security Zone Two extends 500 yards seaward from the shoreline, into the Atlantic Ocean beginning at 38° 44.86′ N, 075° 4.83′ W, proceeding southerly along the shoreline to 38°43.97′ N, 075°4.70′ W.

These security zones may be activated individually or simultaneously with respect to the presence of USSS protectees. These zones will be enforced intermittently. Enforcement of these zones will be broadcast via Broadcast Notice to Mariners (BNM) and/or local Safety Marine Information Broadcast (SMIB) on VHF–FM marine channel 16, as well as actual notice via on-scene Coast Guard Personnel. The public can learn the status of the security zone via an information release for the public via website *https://homeport.uscg.mil/my-homeport/coast-guard-prevention/waterway-management?cotpid=40.*

No vessel or person is permitted to enter either security zone without first obtaining permission from the COTP or a designated representative. However, we anticipate that vessels requesting to transit these zones will typically be authorized to transit without pause or delay by on-scene enforcement vessels. When a vessel or person is permitted to enter the security zone after obtaining permission from the COTP or a designated representative, the vessel or person must proceed as directed by on-scene enforcement vessels. Any vessel or person permitted to transit the security zone will be required to continue through the zone without pause or delay as directed by on-scene enforcement vessels. No vessel or person will be permitted to stop or anchor in the security zone. At times, for limited duration, it is anticipated that vessels may be prohibited from entering the zone due to movement of persons protected by USSS. During those times, actual notice will be given to vessels in the area.

When these security zones are enforced, the COTP will issue a BNM and/or SMIB via VHF–FM channel 16.

The public can learn the status of the security zone via an information release for the public via website *https://homeport.uscg.mil/my-homeport/coast-guard-prevention/waterway-management?cotpid=40.*

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A combined regulatory analysis (RA) and Regulatory Flexibility Analysis follows.

This rule will establish the following two security zones: (1) A half-mile stretch of the Lewes and Rehoboth Canal; and (2) a one-mile section of Rehoboth Beach stretching 500 yards from the shoreline. The enforcement of these two security zones is expected to be intermittent. Vessels will normally be allowed to transit but not stop within the security zones. However, when persons protected by the USSS are moving in or out of the area, the Coast Guard may halt traffic in these two security zones. The Coast Guard expects such instances to happen relatively infrequently and for a short duration (1–3 hours).

The Coast Guard will station Coast Guard personnel at the borders of the security zones with the authority to enforce this security zone. In the few instances where USSS protectees are in transit, these Coast Guard personnel will ensure that no traffic transits through the security zones. Recreational boaters wishing to transit the area may inquire directly with the Coast Guard personnel posted at the boundaries of the security zones, rather than being required to contact the COTP.

Table 1 provides a summary of the rule's costs and qualitative benefits.

TABLE 1—SUMMARY OF THE RULE'S IMPACTS

Category	Summary
Potentially Affected Population	This rule will impact recreational boaters wishing to use the Lewes and Rehoboth Canal or the North Shores section of Rehoboth Beach.
Unquantified Costs	Recreational boaters of the Lewes and Rehoboth Canal will need to speak with Coast Guard personnel stationed at the entrances of the security zones. These recreational boaters will be informed that they will be unable to stop or loiter inside the security zone. In certain instances where persons protected by USSS are in transit, traffic may be halted on the Lowes and Rehoboth Canal. In these instances, recreational boaters wishing to use the canal will instead need to take a circuitous route or forgo their trip all together.
Unquantified Benefits	This rule will secure the area to meet objectives of the USSS and keep USSS protectees safe.

Affected Population

The Coast Guard does not collect data on the vessels and individuals using either the Lewes and Rehoboth Canal or the North Shores Section of Rehoboth Beach, the areas that would be impacted by this rule. To estimate the affected population, we used information directly observable from Google Maps, as well as the subject-matter expertise of Coast Guard personnel with knowledge of the area.

The two security zones—a half-mile section of the Lowes Rehoboth Canal and a one-mile section of Rehoboth Beach—are distinct. As such, we assess the affected populations for these two areas separately.

(1) Security Zone 1: Lewes Rehoboth Canal

This regulation will impact any recreational boater wishing to transit the Lewes Rehoboth Canal. The Lewes Rehoboth Canal is about 10 miles long and connects the Broadkill River and the Delaware Bay to Rehoboth Bay. The security zone begins approximately two-thirds of the way through the canal (if starting from the Delaware Bay) and lasts for about a half mile. As such, recreational boaters wishing to transit the canal from the communities of Lewes, Dewey Beach, North Shores, Rehoboth Beach, and West Rehoboth may be impacted by this rule.[1]

These communities are seasonal; their populations are much larger and more active in the summer than in the winter. Vessel traffic in the canal follows the same pattern. Coast Guard officers stationed in this region estimated the numbers of vessels transiting this zone per day by season. We present these estimates in table 2.

TABLE 2—VESSEL TRAFFIC BY TIME OF YEAR

Months	Vessels transiting the canal per day
January through March	20 vessels per day.
April	75 vessels per day.
May through September	More than 200 vessels per day.
October through December	50 vessels per day.

[1] Dewey Beach lies on the isthmus between Rehoboth Bay and the Atlantic Ocean south of Rehoboth beach and north of the Delaware Seashore State Park.

The vessel traffic in the canal is entirely recreational. There are no commercial vessels that transit the canal. Moreover, the canal is quite shallow. The Coast Guard's 27-foot vessels navigate the canal with difficulty because of the depth. Kayaks, canoes, and other manually powered watercraft are frequently used in the canal (not counted in the daily vessel traffic estimates).

In addition to the daily traffic of recreational boaters wishing to transit the security zone, there are a number of boat slips located either within the security zone or that require transiting the security zone to access. There are also houses that border sections of the canal wholly inside the security zone. We reviewed satellite images from Google Maps to identify the number of boat slips within the security zone or that require transiting the security zone to access. Based on these satellite images, we estimate that 17 private houses that lie entirely within the canal security zone contain either a boat slip or dock. The boat slips indicate that recreational vessel usage might be undertaken by the owners or occupiers of these properties. Because they lie fully inside the security zone, they will be impacted every time they take out their vessels.

Additionally, a small man-made canal branches off the main Lewes and Rehoboth Canal and leads into a small man-made lake. The southern edge of the safety zone continues just past the entrance to this second canal. Private houses and the North Shores Marina inhabit the land surrounding the second canal and its adjoining lake. Some of these houses contain docks or boat slips. Recreational vessel operations will require transiting through the security zone to reach either the boat slips at these private homes or the North Shores Marina. Use of this canal and lake is primarily local and by small recreational vessels, as this second canal may only be 3 feet deep in certain places. Using Google Maps, we count 14 boat slips or docks connected to private houses and 30 spaces for recreational vessels at the North Shores Marina.

(2) Security Zone 2: Rehoboth Beach

This rule will also impact any recreational boaters that transit the area 1 mile by 500 yards offshore of the North Shores section of Rehoboth Beach. Because of its proximity to the shore, the Coast Guard does not estimate any recreational boaters or commercial vessels routinely operate in this section of the ocean. Vessels operating this close to shore could face additional hazards due to the surf and other marine currents and would avoid this area.

Costs

As above, we assess the costs of the two security zones separately.

(1) Security Zone 1: Lewes and Rehoboth Canal

In table 2, we present the Coast Guard's estimate of the average vessel traffic. Under normal course of operations, the Coast Guard anticipates that recreational boaters transiting the canal would have a brief conversation with the Coast Guard official stationed at the entrance to the security zone. Recreational boaters would then proceed through the security zone (without stopping or loitering) and exit the security zone. We anticipate that this conversation would last between 15 and 30 seconds per recreational boater. Because we do not know how many recreational boaters are on the average boat and because of how small the amount of time per recreational boaters is likely to be, we do not estimate the total costs of these conversations.

Additionally, above we discussed that there are a number of houses and a marina that are contained within the security zone or would require transiting the security zone in order to access. Recreational vessel operators who reside or are visiting a location inside the security zone should be able to relay this information to the Coast Guard personnel stationed at the entrance of the security zone. When recreational boaters provide this additional information, it may increase the duration of the conversation. However, there are only 17 houses with private docks or boat slips contained within the security zone. It is likely, therefore, that the Coast Guard personnel stationed at either end of the security zone would become aware of these vessels and their owners and operators. As a result, conversations may become more brief over time.

In order to access the private docks and boat slips of the 14 houses and the North Shores Marina, recreational vessel operators will need to transit through a small portion of the security zone. The Coast Guard will interpret the vessels seeking to access this second canal as innocent passage. As a result, the Coast Guard personnel do not intend to converse with recreational boaters intending to access the second canal unless they notice suspicious activity. Instead, Coast Guard personnel will report vessels transiting the second canal to the USSS representatives. Because Coast Guard personnel will not converse with the recreational vessel operators transiting this region, we estimate that there would be no costs on boaters who only pass through the lower stretch of the canal security zone in order to access the North Shores Marina or the private houses on the canal or lake.

The costs discussed above cover the normal operations when access to the canal is still permitted. However, when certain individuals protected by the USSS are transiting the area, the Coast Guard may shut down access to the canal. Such closures could last from 1 to 3 hours, or longer. If the security zone is closed to all traffic, recreational boaters will not be able to transit the length of the canal. Recreational boaters wishing to transit through the security zone will be unable to do so.

If this closure happens suddenly, recreational boaters could be stranded on either side of the canal. The distance through the canal is about 10 miles, but to avoid the canal by taking a more circuitous route around Rehoboth Beach would add 25 miles to the journey. Additionally, a significant portion of this distance requires operating in the Atlantic Ocean. The Atlantic Ocean is considerably rougher than the intracoastal waterways. As a result, many of the recreational watercraft unable to transit the security zone may be unable to take an alternate route, either because they may not have a vessel suitable to a coastwise route or may not have the time to add an additional 25 miles on to the journey.

Because we do not know the frequency or duration of full closures of the security zone, we are unable to quantitatively assess the costs to either temporarily stranded vessel operators or to vessel operators wishing to transit the closed waterway.

(2) Security Zone 2: North Shores Section of Rehoboth Beach on the Atlantic Ocean

We do not estimate that any vessels routinely operate in this section of Rehoboth Beach, as discussed in the Affected Population section above. Additionally, were recreational vessel operators to transit this security zone, it is far easier to exit or avoid the security zone than in the canal. Recreational boaters merely will need to be greater than 500 yards from shore. As a result, we do not estimate any costs incurred by the second security zone.

Benefits

Upon request by the USSS for the Coast Guard to implement security measures in certain sections of the Lewes and Rehoboth Canal and certain sections offshore from Rehoboth Beach,

the Coast Guard is establishing two security zones covering these areas. The security zones are necessary to prevent waterside threats and incidents that could impact the safety and security of USSS protectees when present in the area.

Both security zones aid the USSS in controlling the area and preventing actors wishing to cause harm to the functioning of the U.S. Government by attacking persons protected by the USSS. Were such an attack to be attempted or to occur, the societal impacts could be sizable and potentially severe to the Nation's Government. Additionally, the local impacts would be substantial as well. The area could be closed for a significant period as any necessary investigations occur. This regulatory action will greatly decrease the likelihood of these potential impacts. The Coast Guard has no way to quantify the frequency of malfeasant actors or the extent to which this rule will diminish the frequency of their attempted or successful actions. However, we believe that the value of these benefits justify the costs of the regulation.

Regulatory Alternatives Considered

We considered alternatives to the regulatory action to determine if an alternative could accomplish the stated objectives of applicable statutes and could minimize any economic impact on small entities. In developing this rule, the Coast Guard considered the following alternatives:

Alternative 1: No Action/Status Quo

Without this rule, malfeasant actors could have unfettered access to locations near persons protected by USSS. We believe that this unfettered access presents an unacceptable security risk to the United States. As such, we rejected this alternative.

Alternative 2: Do Not Permit any Traffic Inside the Security Zone

The Coast Guard considered closing the security zone to traffic entirely, which would have had the added cost of making it impossible to fully transit the canal. We rejected this alternative because there are potentially over 200 recreational boaters a day transiting the security zones in the summer. These boaters would lose their ability to have recreational access of the waterway and any enjoyment that provides them. Additionally, 31 homes with boat slips and a marina with 30 spots are inaccessible without transiting the security zones. These homes, despite existing on the canal with a dock, would be unable to use the waterway. Consequently, we rejected this alternative because the costs would be too high.

Alternative 3: Allow Vessels To Transit the Waterway, but Do Not Permit Vessels To Transit During the Movement of Certain Individuals Protected by USSS

This is our preferred alternative and discussed throughout the regulatory analysis. We believe it balances the costs to public in the form of quick conversations with transiting recreational vessels and the occasional inconvenience of a temporary canal closure due to USSS protectees moving around the area with the benefits of ensuring the security of these protected persons.

B. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic effect on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

As discussed above, the affected population is entirely recreational. As a result, the individuals directly regulated by this rule are not small entities as defined by the Regulatory Flexibility Act. Based on this analysis, we found this rulemaking will not affect a substantial number of small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated

implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves two security zones for the protection of USSS protectees while present in the vicinity of Rehoboth Beach, Delaware. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.561 to read as follows:.

§ 165.561 Security Zones; Lewes and Rehoboth Canal and Atlantic Ocean, Rehoboth Beach, DE.

(a) *Location.* The following areas are security zones; these coordinates are based on North American Datum 83 (NAD83):

(1) *Security zone one:* All waters of the Lewes and Rehoboth Canal bounded on the north by a line drawn from 38° 44.35′ North Latitude (N), 075°5.32′ West Longitude (W), thence easterly to 38°44.37′ N, 075°5.31′ W proceeding from shoreline to shoreline on the Lewes and Rehoboth Canal in a Southeasterly direction where it is bounded by a line drawn from 38°43.89′ N, 075°5.31′ W, thence easterly to 38°43.90′ N, 075°5.07′ W thence northerly across the entrance to the yacht basin to 38°43.93′ N, 075° 5.09′ W.

(2) *Security zone two:* All waters of the Atlantic Ocean extending 500 yards seaward from a line beginning at 38°44.86′ N, 075°4.86′ W, proceeding southerly along the shoreline to 38°43.97′ N, 075°4.70′ W.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the security zone.

USSS protectee means any person for whom the United States Secret Service requests implementation of a security zone in order to supplement protection of said person(s).

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP, Sector Delaware Bay, or designated representative.

(2) Entry into or remaining in a security zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or designated representative when the security zones are being enforced. At the start of each enforcement, all persons and vessels within the security zone must depart the zones immediately or obtain authorization from the COTP or designated representative to remain within either zone. All vessels authorized to remain in the zone(s) must proceed as directed by the COTP or designated representative.

(3) A person or vessel operator who intends to enter or transit the security zones while the zones are being enforced must obtain authorization from the COTP or designated representative. While the zones are being enforced the COTP or designated representative will determine access to the zones on a case-by-case basis. A person or vessel operator requesting permission to enter or transit the security zone may contact the COTP or designated representative at 215–271–4807 or on marine band radio VHF–FM channel 16 (156.8 MHz), or by visually or verbally hailing the on-scene law enforcement vessel enforcing the zone. On-scene Coast Guard personnel enforcing this section can be contacted on marine band radio, VHF–FM channel 16 (156.8 MHz). The operator of a vessel must proceed as directed upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light, or other means. When authorized by the COTP or designated representative to enter the security zone all persons and vessels must comply with the instructions of the COTP or designated representative and proceed at the minimum speed necessary to maintain a safe course while within the security zone.

(4) Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light or other means, a person or operator of a vessel must proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(5) Unless specifically authorized by on-scene enforcement vessels, no vessel or person will be permitted to stop or anchor in the security zone. A vessel granted permission to enter or transit within the security zone(s) must do so without delay or pause for the entirety of its time within the boundaries of the security zone(s). At times, for limited duration, it is anticipated that vessels may be prohibited from entering the zone due to movement of persons protected by USSS. During those times, the Coast Guard will provide actual notice to vessels in the area.

(6) The U.S. Coast Guard may secure the entirety of either or both security zones if deemed necessary to address security threats or concerns.

(7) The U.S. Coast Guard may be assisted by Federal, State, and local law enforcement agencies in the patrol and enforcement of the security zone described in paragraph (a) of this section.

(d) *Enforcement.* (1) The Coast Guard activates the security zones when requested by the U.S. Secret Service for the protection of individuals who qualify for protection under 18 U.S.C 3056(a) or Presidential memorandum. The COTP will provide the public with notice of enforcement of security zone by Broadcast Notice to Mariners (BNM), information release at the website: *https://homeport.uscg.mil/my-homeport/coast-guard-prevention/waterway-management?cotpid=40* as well as on-scene notice by designated

representative or other appropriate means in accordance with 33 CFR 165.7.

(2) These security zones may be enforced individually or simultaneously.

Dated: August 20, 2021.

Jonathan D. Theel,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2021–18427 Filed 8–25–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0341; FRL–8728–02–R9]

Severe Area Submission Requirements for the 2008 Ozone NAAQS; California; Eastern Kern Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act, the Environmental Protection Agency (EPA) is establishing a schedule for the the California Air Resources Board (CARB) to submit revisions to the state implementation plan (SIP) addressing ''Severe'' area requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS) for the Eastern Kern nonattainment area (''Eastern Kern''). CARB will be required to submit SIP revisions addressing Severe area requirements for Eastern Kern, including revisions to new source review (NSR) rules, no later than January 7, 2023. Submittal of any necessary revisions to the title V rules that apply in Eastern Kern are due no later than January 7, 2022. Lastly, the EPA is establishing a deadline for implementation of new reasonably available control technology (RACT) rules as expeditiously as practicable but no later than July 7, 2024.

DATES: This rule is effective September 27, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0341. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ben Leers, Air Planning Office (AIR–2), EPA Region IX, (415) 947–4279, *leers.ben@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Background

On June 7, 2021, the EPA issued a final rulemaking granting a request by CARB to reclassify Eastern Kern from ''Serious'' to Severe for the 2008 ozone NAAQS under section 181(b)(3) of the Clean Air Act (CAA).[1] Our reclassification of Eastern Kern from Serious to Severe is in effect as of July 7, 2021. In a separate document published on June 7, 2021, the EPA proposed a schedule for CARB to submit revisions to the California SIP addressing Severe area requirements for the 2008 ozone NAAQS and to submit revisions to the title V operating permit rules for Eastern Kern.[2]

Our June 7, 2021 proposed rule includes background information concerning the EPA's promulgation of the 2008 ozone NAAQS and history of the designation and classification of Eastern Kern for the 2008 ozone NAAQS. Our proposed rule also describes the Severe area SIP requirements that apply to Eastern Kern as a result of the reclassification and proposes a schedule for CARB to submit Severe area SIP requirements and title V rule revisions.

More specifically, in our proposed rule, we proposed to establish a deadline for CARB to submit SIP revisions addressing Severe area requirements for Eastern Kern, including revisions to NSR rules, no later than 18 months from the effective date of the EPA's final rule reclassifying Eastern Kern to Severe for the 2008 ozone NAAQS. We also proposed to establish a deadline of no later than six months from the effective date of the reclassification for CARB to submit any corresponding revisions to title V rules for Eastern Kern. Lastly, we proposed to establish a deadline for implementation of new RACT rules in Eastern Kern as expeditiously as practicable but no later than 18 months from the date when the Severe area RACT SIP is due. The effective date of the EPA's final rule reclassifying Eastern Kern to Severe for the 2008 ozone NAAQS is July 7, 2021. In this final rule, we are taking final action to establish the various deadlines based on the July 7, 2021 effective date for reclassification.

II. Public Comment Period

The public comment period on the proposed rule opened on June 7, 2021, the date of its publication in the **Federal Register**, and closed on July 7, 2021. During this period, the EPA did not receive any comments on our proposed action.

III. Final Action

For the reasons described in our June 7, 2021 proposed rule, the EPA is invoking its CAA section 301(a) authority to establish a deadline of no later than January 7, 2023 (*i.e.,* 18 months from the effective date of our final rule reclassifying Eastern Kern as Severe) for CARB to submit SIP revisions addressing all Severe area SIP elements for the Eastern Kern ozone nonattainment area. We are also establishing a deadline of January 7, 2022 (*i.e.,* six months from the effective date of reclassification to Severe) for CARB to submit any necessary revisions to title V rules for Eastern Kern. Lastly, the EPA is establishing a deadline for implementation of Severe area RACT controls in Eastern Kern as expeditiously as practicable but no later than July 7, 2024 (*i.e.,* 18 months from the date when the Severe area RACT SIP is due, or 36 months from the effective date of reclassification to Severe).

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classification, the timing of the submittal of the Severe area requirements does not impose a materially adverse impact under

[1] 86 FR 30204.

[2] 86 FR 30234.

Executive Order 12866. For these reasons, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

In addition, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the action addresses only the timing of submittals required by the Clean Air Act. For the same reason, this action does not have regulatory requirements that might significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' There are no Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Eastern Kern ozone nonattainment area, and thus, this action 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.

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not alter the relationship, or the distribution of power and responsibilities established in the Clean Air Act.

This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action does not concern an environmental health risk or safety risk.

As this action establishes a deadline for the submittal of CAA required plans and information, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This action addresses the timing for the submittal of Severe area ozone planning requirements, and we find that it does not have disproportionately high and adverse human health or environmental health effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 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 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: August 19, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2021–18344 Filed 8–25–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACQUISITION SECURITY COUNCIL

41 CFR Parts 201 and 201–1

Federal Acquisition Security Council Rule

AGENCY: Federal Acquisition Security Council.

ACTION: Final rule.

SUMMARY: As authorized by the Federal Acquisition Supply Chain Security Act of 2018 (FASCSA), the Federal Acquisition Security Council (FASC) is issuing this final rule to implement the requirements of the laws that govern the operation of the FASC, the sharing of supply chain risk information, and the exercise of the FASC's authorities to recommend issuance of removal and exclusion orders to address supply chain security risks. This rule finalizes the interim final rule and corrects the codification structure of the interim final rule.

DATES: Effective September 27, 2021.

FOR FURTHER INFORMATION CONTACT: Kosta I. Kalpos, 202–881–9601, *Konstandinos.I.Kalpos@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Information and communications technology and services (ICTS) are essential to the proper functioning of U.S. Government information systems. The U.S. Government's efforts to evaluate threats to and vulnerabilities in ICTS supply chains have historically been ad hoc, undertaken by individual or small groups of agencies to address specific supply chain security risks. Because of the scale of supply chain risks faced by Government agencies, and the need for Government-wide coordination, Congress adopted new legislation in 2018 to improve executive branch coordination, supply chain information sharing, and actions to address supply chain risks.

The Federal Acquisition Supply Chain Security Act of 2018 (FASCSA or Act) (Title II of Pub. L. 115–390), signed into law on December 21, 2018, established the Federal Acquisition Security Council (FASC). The FASC is an executive branch interagency council chaired by a senior-level official from the Office of Management and Budget. It includes representatives from the General Services Administration; Department of Homeland Security (DHS); Office of the Director of National Intelligence (ODNI); Department of Justice; Department of Defense (DOD); and Department of Commerce. The FASC is authorized to perform a variety of functions, including making recommendations for orders that would require the removal of covered articles from executive agency information systems or the exclusion of sources or covered articles from executive agency procurement actions.

II. Rulemaking

Pursuant to subsection 202(d) of the FASCSA, the FASC is required to prescribe first an interim final rule and then a final rule to implement subchapter III of chapter 13 of title 41, U.S. Code. The FASC published the interim final rule (interim rule) at 85 FR 54263 on September 1, 2020. The interim rule invited interested persons to submit comments on or before November 2, 2020. Six entities submitted comments. The final rule reflects changes made based upon some of those comments, as well as feedback received from internal Federal stakeholders. The final rule also corrects certain structural issues introduced by the interim rule, as explained in more detail in section III. This final rule retains the organization and much of the content of the interim rule. It contains three subparts. Subpart A explains the scope of the rule, provides definitions for relevant terms, and establishes the membership of the FASC. Subpart B establishes the role of the FASC's information sharing agency (ISA). DHS, acting primarily through the Cybersecurity and Infrastructure Security Agency, will serve as the ISA. The ISA standardizes processes and procedures for submission and dissemination of supply chain information and facilitates the operations of a Supply Chain Risk Management (SCRM) Task Force under the FASC. This FASC Task Force consists of of designated technical experts who assist the FASC in implementing its information sharing, risk analysis, and risk assessment functions. Subpart B also prescribes mandatory and voluntary information sharing criteria and associated information protection requirements.

Subpart C provides the procedures by which the FASC will evaluate supply chain risk from sources and covered articles and recommend issuance of orders requiring removal of covered articles from executive agency information systems (removal orders) and orders excluding sources or covered articles from future procurements (exclusion orders). Subpart C also provides the process for issuance of removal orders and exclusion orders and agency requests for waivers from such orders.

III. Summary of Changes to Interim Rule

Headings and section numbers for the final rule have been adjusted to match the distinctive structure of CFR title 41. The standard structure of 41 CFR, unlike other titles, is:

- Subtitle [capital letter]
- Chapter [Arabic numeral]
- Part [Arabic numeral hyphen Arabic numeral]
- Subpart [capital letter]
- Section [Arabic numeral hyphen Arabic numeral period Arabic numeral]

The interim rule however, did not align with that structure. It did not add a chapter to title 41 CFR, and its numbering scheme for part and section numbers did not match that of title 41. Because of these structural issues, the interim rule added part 201 to subtitle E (where the amendments could not be codified) instead of adding chapter 201 to subtitle D. The final rule fixes those structural issues, changing interim part 201 to part 201–1, adjusting the section numbering according, and eliminating the improperly codified interim part 201. Internal cross-references within the rule have been updated accordingly.

In general, numerous minor changes were made to the interim rule's text to clarify or simplify it. Although the substance of the final rule largely matches that of the interim rule, several changes have been made in response to public comments and input from Federal stakeholders. Those changes, as well as numerous more minor, technical changes, are summarized below for each section of the final rule that has been modified from the interim rule.

A. Changes to Subpart A

1. § 201–1.101—Definitions

The final rule incorporates minor technical, clarifying, or simplifying changes to the definitions of ''exclusion order,'' ''national security system,'' and ''removal order,'' and ''supply chain risk information.''

2. § 201–1.103—Federal Acquisition Security Council (FASC)

Minor changes were made to paragraph (c) of this section to track the underlying statutory language more closely.

B. Changes to Subpart B

1. § 201–1.200—Information Sharing Agency (ISA)

Paragraph (a) was modified to clarify that information should be submitted to the FASC by sending it to the ISA.

Paragraph (b) was modified to provide that the ISA, the FASC Task Force, and support personnel will carry out information receipt and dissemination functions on behalf of the FASC.

Paragraph (c) was modified to remove the obligation for the ISA to provide a physical facility to host the FASC Task Force.

Paragraph (d) was modified to clarify the nature of the processes and procedures to be adopted by the FASC.

Paragraph (e) of this section of the interim rule has been deleted from the final rule. That paragraph, which provided for the ISA to identify ''resource gaps'' to the FASC, was determined to be unnecessary.

2. § 201–1.201—Submitting Information to the FASC

Minor technical corrections and clarifying changes were made to paragraphs (a) and (b).

Paragraph (d) was modified to make minor technical and clarifying changes and to make clear that its provisions apply only to submissions by Federal agencies.

The section corresponding to this one in the interim rule erroneously included two provisions labeled as paragraph (d). The second provision labeled paragraph (d) has been labeled paragraph (f) in the final rule. Paragraph (f)(3) of the final rule has been modified from its analogue in the interim rule to clarify that the FASC will not release a recommendation to a non-Federal entity unless an exclusion or removal order has been issued based on that recommendation, and the affected source has been notified.

The provision that appeared in paragraph (e) of this section of the interim rule has been removed from the final rule because it was superfluous and could have been interpreted to imply incorrectly that the FASC must explicitly authorize agencies to rely upon information disseminated to them by the FASC.

Paragraph (e) of this section of the final rule has been added to describe the protection that will be afforded to voluntary submissions by non-Federal entities.

C. Changes to Subpart C

1. § 201–1.300—Evaluation of Sources and Covered Articles

Paragraph (a) was edited for clarity and brevity.

The heading of paragraph (b) was changed to ''Relevant factors'' from ''Criteria.'' The list appearing in that paragraph has been modified to clarify or adjust the description of some factors and to include as a factor the user environment in which a covered article is used or installed.

The language in paragraph (c) of the interim rule was shifted to paragraph (d) and replaced with a statement providing that nothing in this section shall be construed to authorize the issuance of a removal order based solely on the fact of the foreign ownership of a potential procurement source that is otherwise qualified to enter into procurement contracts with the Federal Government.

Paragraph (d)(3) (interim rule paragraph (c)(3)) was removed as duplicative of paragraph (d)(1).

Paragraph (e) of the interim rule was broken into two separate paragraphs and moved into § 201–1.301 to simplify the structure of the final rule.

2. § 201–1.301—Recommendation

Paragraph (e) of interim rule § 201.301 has been moved to this section as paragraphs (a) and (b). Minor clarifying changes were made to the language of those paragraphs.

3. § 201–1.302—Notice of Recommendation To Source and Opportunity To Respond

The language included in paragraphs (c) and (d) of interim rule § 201.302 was relocated to paragraphs (d) and (e) in this section of the final rule. A new provision was added as paragraph (c) to clarify how the FASC may rescind a recommendation upon consideration of a source's response in opposition to a notice of recommendation. Paragraph (d) of the interim rule, now located in paragraph (e) of the final rule, was modified so that the protections afforded under that provision are the same as those afforded with respect to information submitted voluntarily by non-Federal entities.

4. § 201–1.303—Issuance of Orders and Related Activities

Various simplifying or clarifying edits were made to the provisions of interim rule § 201.303, and the content of that interim rule section was also reorganized into a more logical paragraph structure for the final rule. The interim rule's description of the authority of the Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence was modified to mirror the underlying statutory language more closely and make clear that the authority to issue exclusion and removal orders is discretionary.

5. § 201–1.304—Executive Agency Compliance With Exclusion and Removal Orders

The final rule includes minor technical corrections and clarifications that were made to the provisions of this section of the interim rule. Paragraph (a)(2) no longer requires agencies to obtain FASC approval before publicly releasing an exclusion or removal order. Instead, the final rule requires that agencies comply with any dissemination or other controls placed upon an exclusion or removal order by the issuing official.

Paragraph (b) of the final rule includes new language specifying certain requirements to be met by agencies requesting to be excepted from the provisions of an exclusion or removal order. Those agencies must submit their request in writing to the official who issued the order and provide specified information, including a compelling justification for the waiver and a description of any forms of risk mitigation to be undertaken if the waiver is granted.

IV. Comments and Responses

The FASC received six sets of comments from the public in response to the publication of the interim rule. Relevant comments from those submissions are addressed below in connection with the rule subpart to which they relate or, if they do not relate to a particular subpart, under the heading ''General Comments.'' Because no comments related particularly to subpart A of the interim rule, no heading is provided for that subpart in this section for Comments and Responses.

A. Interim Rule Subpart B

Subpart B establishes the role of the FASC's information sharing agency (ISA), provides for an interagency Task Force to support the FASC, prescribes mandatory information-sharing criteria for Federal agencies, and outlines requirements for marking, handling, and disseminating protected supply chain risk information. Multiple commenters asked for further clarification of the protections that would be afforded to non-Federal entities who voluntarily share information with the FASC. In response to these comments, § 201–1.201(e) was added to the final rule to describe the protection that will be afforded to information that is submitted to the FASC by such non-Federal entities (NFEs) and that is not otherwise publicly or commercially available. If such information is marked by the submitting NFE with the legend, ''Confidential and Not to Be Publicly Disclosed,'' the FASC will not release the marked material to the public, except to the extent required by law. Regardless of any protection offered by that general rule, § 201–1.201(e)(2) makes clear that the FASC retains broad discretion to disclose information submitted by NFEs to appropriate recipients in a range of circumstances.

The FASC recognizes that its retention of such broad discretion may dissuade some NFEs from submitting sensitive information. At this time, however, the FASC has chosen to prioritize greater sharing of information in appropriate circumstances over the possibility of receiving more supply chain risk information from NFEs. If the FASC determines over time that the Federal Government's interests would be better served by a different weighing of priorities, the FASC may revise the rule accordingly.

One commenter asked whether NFEs who shared information with the FASC would receive protection under the Cybersecurity Information Sharing Act of 2015 (CISA 2015), Public Law 114–113, div. N. The final rule does not address that issue. The FASC is continuing to coordinate with FASC member agencies to consider any intersections between CISA 2015 and the FASC's authorities and may, as appropriate, provide further guidance to stakeholders at a future date.

Several commenters also suggested that the FASC should afford protections to NFEs whose information might be used to support the issuance of an exclusion or removal order. The final rule provides for no such protections. The FASC lacks authority to obviate, restrict, or otherwise alter the potential legal liability of one private party to another. And other, more indirect forms of protection—such as an automatic guarantee of confidentiality or protection from public disclosure of the identity of providers of information—could decrease the quality of information received from NFEs by removing disincentives that would otherwise deter the submission of inaccurate or misleading information. Shielding the identity of NFEs who

submit information might also, depending on the circumstances, unduly interfere with the ability of an affected source to respond substantively to a notice of the FASC's recommendation for the issuance of an exclusion or removal order. In light of these considerations, the final rule includes no additional provisions aimed at protecting NFEs from legal liability. One commenter asked how the ISA will maintain data submitted to the FASC and in what system that data will be stored. The FASC anticipates that the ISA will handle, store, and protect information in accordance with all applicable laws, regulations, and policies. The final rule does not specify the nature of the system in which the ISA will store FASC data or provide detailed requirements for the technical means by which the ISA will maintain that data; such specifications would unduly restrict the ISA.

Another commenter requested more information about the FASC's ''influence'' on ''priorities and taskings'' within the intelligence community. No changes to the rule have been made in response to that request. Executive agencies, including those encompassing components of the intelligence community, will continue to follow their relevant authorities with regard to their own priorities and taskings.

Several comments concerned the possible release of information to the public by the FASC. Some commenters requested more information about the circumstances in which the FASC will share supply chain risk information with the private sector; others suggested that the FASC should maintain a public list of sources and covered articles that have been the subject of exclusion or removal orders. The final rule does not specify circumstances in which the FASC must share information with the public, or require maintenance of a public list of sources and covered articles that have been the subject of exclusion or removal orders. The FASC anticipates that determining whether to release supply chain risk information—including the names of sources and covered articles addressed by exclusion or removal orders—will be a highly fact-specific inquiry. Other applicable law and binding government-wide policies may also limit the information that the FASC may publicly disclose. For instance, national security considerations may require that, in some scenarios, the nature of certain covered articles or sources or the rationale for some FASC recommendations not be made public. Accordingly, the final rule simply states that the FASC will comply with applicable legal requirements in light of the particular circumstances to decide the extent to which supply chain risk information can be released to non-government entities.

B. Interim Rule Subpart C

Subpart C addresses evaluation of sources and covered articles by the FASC. It enumerates the processes by which the FASC may issue a recommendation, obtain a response to a recommendation from named sources, and, when appropriate, rescind a recommendation. Commenters raised several topics in connection with this subpart.

One commenter asked whether protections would be offered for ''companies that have been identified to the FASC as a potential risk'' but are not the subject of a recommendation or a removal/exclusion order. The commenter speculated that contracting offices in the Federal Government could create an ''informal blacklist'' that would prevent companies that had been identified as security risks from contracting with the Federal Government. The FASC has seen no evidence that its activities will result in a blacklist. As a result, the final rule does not include any changes in response to this public comment.

Some commenters suggested that because NFEs may submit information voluntarily to the FASC, the FASC may receive inaccurate or false information from companies attempting to sabotage competitors. Commenters suggested various means to address this contemplated problem: Requiring NFEs submitting information to execute a certification of some kind attesting to their good faith; providing affected sources with remedies against NFEs who submit false information; enlisting private-sector entities to ''vet'' supply chain risk information; or limiting the extent to which information may be requested by the FASC or submitted by NFEs. The FASC does not believe that the rule should include any of these measures at this time. The final rule retains in § 201–1.300(d) the requirement that the FASC perform ''appropriate due diligence'' in evaluating supply chain risk. The FASC may request and obtain information from a wide range of sources within the Federal Government, including investigative and intelligence-gathering agencies; it has ample means to assess the reliability of information received from the private sector or elsewhere. As a result, the FASC concludes that there is little basis to believe that the submission of inaccurate information by NFEs will subvert the outcome of the FASC's deliberations.

Commenters also expressed concern that, under § 201–1.300(b), a source's ties to foreign countries are expressly identified as one factor among many to be considered as part of a supply chain risk analysis. These commenters pointed out that many companies have connections to other nations, and asserted that companies fear that their association with a certain country or countries will automatically place them under suspicion within the FASC. In response to these comments, the interim rule was modified to include § 201–1.300(c), which echoes 41 U.S.C. 1323(f)(2)'s text to emphasize that nothing in the rule may be construed to authorize the issuance of an exclusion or removal order based solely on the foreign ownership of an otherwise qualified source. Additionally, the final rule, like the interim rule, lists a source's foreign ties merely as one factor among a non-exclusive list of factors to be considered in the FASC's evaluation; nothing in either rule requires that factor to be given determinative weight.

For that reason, the FASC disagrees with a commenter who suggested that such a factor was inconsistent with treaties intended to encourage international trade. Such treaties form part of the backdrop against which the FASC will make its decisions. Given the international ties of many companies and the extensive participation of the United States in the global economy, the FASC will not be inclined to recommend exclusion of a company simply because it is active in more than one country.

One commenter suggested that the FASC consider foreign ties in its analysis only if those ties concern a country other than an ally of the United States. Another requested that the rule be amended to specify the component of the Federal Government with authority to designate a country as ''a country of special concern or a foreign adversary'' pursuant to § 201–1.300(b). Neither recommendation has been implemented in the final rule because the FASC is already able to account for the considerations suggested by the commenters. In evaluating the risk posed by a covered article or a source, the FASC may consider not just whether a source has connections to a foreign country, but also the nature of that country's relationship with the United States; it may consider not just whether a Federal agency has designated a country as an adversary, but also which agency or official made that designation and why.

Several comments concerned the process by which exclusion or removal orders may be issued. One, for example, recommended that any source being evaluated by the FASC should be notified ''at the outset'' of that review and allowed to comment ''as early as possible.'' The final rule does not implement that recommendation. Depending on the circumstances of a particular case, national security considerations may weigh against informing a source that it has drawn the attention of the FASC at a time when no recommendation has been issued. As a result, the final rule does not mandate either early or ongoing communication with a source prior to the issuance of a recommendation.

Other comments raised the concern that sources named in a recommendation would not receive enough information from the FASC to mount an adequate response. The final rule, like the interim rule, provides that the source named in a recommendation must be notified of the criteria relied upon by the FASC in developing that recommendation. § 201–1.302(b)(2). The source must also be advised of the information upon which the FASC based its recommendation, so long as disclosure of that information is consistent with national security and law enforcement interests. This body of information will allow the source to understand the FASC's reasoning and so to prepare a response. Contrary to one commenter's suggestion, the ''criteria'' to be disclosed to the source are not equivalent to a simple list of the generically described factors identified in § 201–1.300(b) of the final rule. To make that fact clear, the label for that list of factors in the final rule has been changed from ''Criteria'' to ''Relevant Factors.''

The interim final rule provided that the administrative record on judicial review of an exclusion or removal order would include, among other things, ''any information or materials directly relied upon by the'' official who issued the order. One commenter objected that the use of the word ''directly'' indicated that the administrative record supporting exclusion or removal orders would not conform to the requirements of the FASCSA. To prevent any such misinterpretation and mirror the language of the FASCSA more closely, the word ''directly'' has been removed from paragraphs (b)(4) and (c) of § 201–1.303.

Some commenters made broader or more general suggestions regarding FASC processes. One recommended that the FASC should require what it called ''standard due process trappings,'' including ''hearings, discovery, right to counsel, [and] the ability to appeal [to the] [F]ederal court system.'' No change to the interim rule has been made in response to this comment. The final rule, like the interim rule and the FASCSA statutory scheme, provides for due process by ensuring that affected sources will be notified of possible adverse action and given an opportunity to address the Federal Government's basis for such an action. The rule and the statutory scheme also provide for review by a Federal court of appeals of any exclusion or removal order resulting from a FASC recommendation. Discovery is not contemplated by the FASCSA and is not a ''standard due process'' element in judicial review based upon an administrative record. There is no due process right to counsel in civil matters. Mandating additional procedures such as a discovery process would make the FASC's proceedings considerably slower and more expensive, thereby impeding the Federal Government's ability to protect against serious cyber threats to its systems—a result that is contrary to the purposes of the FASCSA and would significantly undermine important Federal Government interests.

Another commenter requested that the FASC afford the public the opportunity for comment before enacting new rules, and that an opportunity for appeal be given for ''measures targeting specific companies.'' The FASC has concluded that any applicable requirements of the Administrative Procedure Act are fully sufficient to address the public interests implicated by new rules. In addition, the FASCSA provides sources named in exclusion or removal orders the opportunity to appeal an order to a Federal court of appeals. 41 U.S.C. 1327(b). Because these requests are addressed by statute, the FASC has not modified the interim rule to address them.

One commenter objected to the statement in the preamble to the interim rule that ''the FASC does not intend to publicly disclose communications with the source(s) except to the extent required by law,'' suggesting that it conflicted with provisions of the interim rule concerning the treatment of confidential information submitted by a source in response to a notice of a FASC recommendation. For the final rule, the relevant provision of the interim rule has been modified to clarify that confidential information submitted by a source is subject to the same degree of protection provided pursuant to new § 201–1.201(d) for confidential information submitted voluntarily by NFEs.

One commenter inquired about the timing of the FASC recommendation process, suggesting that the rule prescribe ''a reasonable timeline regarding when'' an exclusion or removal order is issued and ''when it will go into effect.'' The same commenter asserted that a source named in an exclusion or removal order should be afforded at least 60 days from the effective date of an order ''to respond to the FASC.'' This comment reflects a misunderstanding of the FASC process. The FASC does not issue exclusion or removal orders, and so a source has no reason to ''respond to the FASC'' once such an order is issued. The FASC makes recommendations for the issuance of orders. Any sources named in a FASC recommendation will have the opportunity to respond to the FASC before an order may be issued. The FASC may alter or withdraw its recommendation based on a source's response. If the FASC chooses not to do so, then an appropriate official from DHS, DOD, or ODNI may issue an order based on the recommendation.

Pursuant to 41 U.S.C. 1327, a source may request judicial review of an order within 60 days after being notified of its issuance. The ordering official, not the FASC, is responsible both for deciding the effective date of the order and for providing notification of the order to the source. 41 U.S.C. 1323(c)(5), (6). As a result, the FASC does not in the interim or the final rule attempt to constrain the ordering official's discretion as to the manner in which the effective date of an order is determined or in which notification of an order is issued to the source.

The same commenter opined that the FASC should prescribe in the final rule ''a reasonable timeline'' for when a covered procurement action may be announced and when it may go into effect. Fact-specific considerations, such as the imminence of the risk posed by a source and the characteristics of the procurement at issue, will heavily influence the timeline for a covered procurement action. The final rule therefore allows authorized officials to determine an appropriate timeline on a case-by-case basis, rather than prescribing a single approach.

The same commenter also suggested that the FASC should issue a preliminary recommendation, allow submission of a response by the affected source(s), and then issue a final recommendation. The final rule provides for such a process, although it does not label recommendations as ''preliminary'' or ''final.'' Instead, the

final rule includes a new provision at paragraph (c) of § 201–1.302, which makes clear that after the FASC issues a recommendation and the source submits a response, the FASC has the discretion to rescind the recommendation. The final rule thus makes explicit that, if a source demonstrates through its response to the FASC that a removal or exclusion order is unwarranted, the FASC may withdraw its recommendation.

One commenter asked that the FASC clarify whether the FASC may release its recommendation even if no related exclusion or removal order is issued. The final rule addresses that issue in paragraph (f)(3) of § 201–1.201, providing that if a recommendation is rescinded, or the relevant officials determine that no exclusion or removal order will be issued based upon it, the recommendation will be kept confidential and will not be released to entities, other than the source, outside of the Federal Government.

Two commenters suggested that exclusion or removal orders should be narrowly tailored, or should incorporate a finding that the action ordered represents the least intrusive measure reasonably available to address a given supply chain risk. No change to the rule was made in response to these comments. As the interim rule did, the final rule requires the FASC to include in a recommendation for an exclusion or removal order ''a discussion of less intrusive measures that were considered and why such measures were not reasonably available to reduce supply chain risk.'' § 201–1.301(a)(4). That requirement ensures that the FASC will consider the disruption that may result from a contemplated action, weigh it against the threat to be addressed, and issue a recommendation of appropriate scope.

Several comments requested rule provisions establishing the nature and extent of contractors' and subcontractors' obligations under exclusion or removal orders. The FASC anticipates that such obligations will vary widely depending on the nature of the circumstances addressed by an exclusion or removal order. As a result, it is not feasible to attempt to prescribe those obligations categorically through this rulemaking. Instead, those obligations must be ascertained based upon the content of the order in question and any guidance issued by the ordering agency or the agencies implementing that order, as well as any applicable contract terms or procurement regulations.

One commenter recommended that the FASC adopt a rule requiring the notification of prime contractors whenever a subcontractor is the subject of a recommendation. The FASC declines to follow that suggestion. If a FASC recommendation is not implemented through the issuance of one or more exclusion or removal orders, then there may never be a need for prime contractors to react to that recommendation. Furthermore, alerting primes to the issuance of a recommendation that may never yield an order may conflict with national security interests and/or the named source's interest in confidentiality.

One commenter requested further detail on the manner in which an agency can obtain a waiver relieving it of obligations under an exclusion or removal order. The final rule includes a new paragraph in § 201–1.304 that clarifies the waiver process. An agency seeking an exception to some or all of the requirements of an order must submit a request for that exception to the ordering official. The request must identify the relevant order and the covered article or source affected, describe precisely the exception sought, and provide a compelling justification for the grant of an exception as well as an account of any alternative risk reduction techniques the agency will employ in lieu of complying with the order. The official who issued the order has the authority to decide whether an exception will be granted.

3. Miscellaneous Comments

Some commenters urged the FASC to adopt rule provisions creating a permanent or standardized relationship between the FASC and the private sector. Although the FASC recognizes that the private sector has a great deal of knowledge about and experience with supply chain risk analysis and mitigation, the final rule does not provide for a particular type of formal relationship or engagement with industry. The FASC is still in the early stages of its operations and requires further information—gained from experience—to determine the most effective ways to interact with the private sector. It is premature to prescribe regulations dictating the nature of that engagement at this time.

Some comments suggested that the FASC rely upon an already existing task force housed within the Department of Homeland Security. Although the FASC certainly intends to draw upon the knowledge and experience of that task force to the extent feasible, the final rule does not mandate a role for it. The task force managed by the Department of Homeland Security is not a permanent entity. It would therefore be impractical to mandate a role for that task force in FASC operations.

Other comments emphasized the numerous supply chain risk initiatives within the Federal Government and requested that the FASC make efforts to bring coherence to the standards and activities stemming from those various initiatives. The FASC recognizes that the Federal Government's supply chain risk management activities may benefit from greater consistency and coordination and intends to work toward those goals.

Similarly, one comment urged the FASC to operate through an ''inter-agency process'' that accounts for ''other supply chain-related laws, regulations, and risk mitigation measures.'' The FASC emphasizes that it is itself an interagency body drawing upon the efforts and resources of its constituent members. The final rule, like the interim rule, provides that the FASC will be supported by a FASC Task Force composed of SCRM experts drawn from across the Federal Government. Because the FASC's activities necessarily constitute an ''inter-agency process,'' no changes have been made to the interim rule in response to this comment.

One commenter protested that exclusion or removal orders could have ''disparate impacts'' on small businesses. But that commenter did not suggest any specific change that might address that putative problem while ensuring the FASC retained its ability to address supply chain risks. Both the interim and the final rule require the FASC to consider the intrusiveness of its recommendations; the effect of a recommended order on contractors, including small business, may be considered as appropriate as part of that analysis. As a result, no change to the rule has been made based on this comment.

No change to the rule has been made in response to a comment asserting that complying with exclusion and removal orders is likely to be ''incredibly expensive'' to American companies. The FASC expects to weigh the burden likely to result from a recommended order against the anticipated benefit and would not lightly recommend an order that would be ''incredibly expensive'' either to the Federal Government or to the private sector. The final rule requires the FASC to include in a recommendation for an exclusion or removal order ''a discussion of less intrusive measures that were considered and why such measures were not reasonably available to reduce supply chain risk.'' That requirement will help to ensure that the costs of exclusion and

removal orders are not disproportionate to the scale of the risk at issue.

Finally, one commenter asserted that commercial products and commercial-off-the-shelf (COTS) items should be excluded from the reach of the FASC because addressing them through exclusion or removal orders would ''deprive government of significant innovation and the latest technologies.'' The FASC strongly disagrees with that recommendation. The ubiquity of commercial products and COTS items, not only within the Federal Government, but within the private sector as well, means that they are a frequent target of malicious actors seeking to find and capitalize upon technological vulnerabilities. Excluding those items from oversight by the FASC would undermine the Council's ability to reduce the Federal Government's exposure to supply chain risk. No changes have been made in response to this comment.

V. Procedural Requirements

Executive Orders 12866 (Classification): This final rule has been designated non-significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act: Because the FASC was not required to publish a notice of proposed rulemaking for either the interim rule or this final rule under 5 U.S.C. 553, no Regulatory Flexibility Analysis is required. *See* 5 U.S.C. 603(a), 604(a).

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).

Unfunded Mandates Reform Act of 1995: This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 (Federalism): This rule does not have Federalism implications as specified in Executive Order 13132.

Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights): This rule does not implement policies that have takings implications as identified in Executive Order 12630.

Executive Order 13175 (*Consultation and Coordination with Indian Tribes):* 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.

National Environmental Policy Act: This rule does not require a detailed environmental analysis as the establishment and operation of FASC will not ''individually or cumulatively have a significant effect on the human environment'' (40 CFR 1508.4).

List of Subjects in 41 CFR Part 201–1

Computer technology, Cybersecurity, Government procurement, Government technology, Information technology, National security, Security measures, Science and technology, Supply chain, Supply chain risk management.

Christopher DeRusha,

Chair, Federal Acquisition Security Council.

For the reasons set out in the preamble, the FASC amends 41 CFR subtitles D and E as follows:

Subtitle D—Federal Acqusition Supply Chain Security

■ 1. Revise the heading to subtitle D to read as set forth above.

■ 2. Add chapter 201, consisting of part 201–1, to subtitle D to read as follows:

Chapter 201—FEDERAL ACQUISITION SECURITY COUNCIL

PART 201–1—GENERAL REGULATIONS

Subpart A—General

Sec.
201–1.100 Scope.
201–1.101 Definitions.
201–1.102 Federal Acquisition Security Council (FASC).

Subpart B—Supply Chain Risk Information Sharing

201–1.200 Information sharing agency (ISA).
201–1.201 Submitting information to the FASC.

Subpart C—Exclusion and Removal Orders

201–1.300 Evaluation of sources and covered articles.
201–1.301 Recommendation.
201–1.302 Notice of recommendation to source and opportunity to respond.
201–1.303 Issuance of orders and related activities.
201–1.304 Executive agency compliance with exclusion and removal orders.

Authority: 41 U.S.C. 1321–1328, 4713.

Subpart A—General

§ 201–1.100 Scope.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this part applies to the following:

(1) The membership and operations of the FASC, including all Federal Government and contractor personnel supporting the FASC's operations;

(2) Submission and dissemination of supply chain risk information; and

(3) Recommendations for, issuance of, and associated procedures related to removal orders and exclusion orders.

(b) *Clarification of scope.* This part does not require the following:

(1) Mandatory submission of supply chain risk information by non-Federal entities; or

(2) The removal or exclusion of any covered article by non-Federal entities, except to the extent that an exclusion or removal order issued pursuant to subpart C of this part applies to prime contractors and subcontractors to Federal agencies.

§ 201–1.101 Definitions.

For the purposes of this part:

Appropriate congressional committees and leadership means:

(1) The Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Select Committee on Intelligence, and the majority and minority leader of the Senate; and

(2) The Committee on Oversight and Government Reform, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Homeland Security, the Committee on Armed Services, the Committee on Energy and Commerce, the Permanent Select Committee on Intelligence, and the Speaker and minority leader of the House of Representatives.

Council or FASC means the Federal Acquisition Security Council.

Covered article means any of the following:

(1) Information technology, as defined in 40 U.S.C. 11101, including cloud computing services of all types;

(2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program or subsequent U.S. Government program for controlling sensitive unclassified information; or

(4) Hardware, systems, devices, software, or services that include embedded or incidental information technology.

Covered procurement means:

(1) A source selection for a covered article involving either a performance specification, as provided in subsection (a)(3)(B) of 41 U.S.C. 3306, or an evaluation factor, as provided in subsection (b)(1)(A) of 41 U.S.C. 3306,

relating to a supply chain risk, or where supply chain risk considerations are included in the executive agency's determination of whether a source is a responsible source;

(2) The consideration of proposals for and issuance of a task or delivery order for a covered article, as provided in 41 U.S.C. 4106(d)(3), where the task or delivery order contract includes a contract clause establishing a requirement relating to a supply chain risk;

(3) Any contract action involving a contract for a covered article where the contract includes a clause establishing requirements relating to a supply chain risk; or

(4) Any other procurement in a category of procurements determined appropriate by the Federal Acquisition Regulatory Council, with the advice of the FASC.

Covered procurement action means any of the following actions, if the action takes place in the course of conducting a covered procurement:

(1) The exclusion of a source that fails to meet qualification requirements established under 41 U.S.C. 3311, for the purpose of reducing supply chain risk in the acquisition or use of covered articles;

(2) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order;

(3) The determination that a source is not a responsible source, based on considerations of supply chain risk; or

(4) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor to exclude a particular source from consideration for a subcontract under the contract.

Executive agency means:

(1) An executive department specified in 5 U.S.C. 101;

(2) A military department specified in 5 U.S.C. 102;

(3) An independent establishment as defined in 5 U.S.C. 104(1); and

(4) A wholly owned Government corporation fully subject to chapter 91 of title 31, United States Code.

Exclusion order means an order issued pursuant to 41 U.S.C. 1323(c)(5) that requires the exclusion of one or more sources or covered articles from executive agency procurement actions.

Information and communications technology means:

(1) Information technology as defined in 40 U.S.C. 11101;

(2) Information systems, as defined in 44 U.S.C. 3502; and

(3) Telecommunications equipment and telecommunications services, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

Information technology has the definition provided in 40 U.S.C. 11101.

Intelligence Community includes the following:

(1) The Office of the Director of National Intelligence;

(2) The Central Intelligence Agency;

(3) The National Security Agency;

(4) The Defense Intelligence Agency;

(5) The National Geospatial-Intelligence Agency;

(6) The National Reconnaissance Office;

(7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;

(9) The Bureau of Intelligence and Research of the Department of State;

(10) The Office of Intelligence and Analysis of the Department of the Treasury;

(11) The Office of Intelligence and Analysis of the Department of Homeland Security;

(12) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the Intelligence Community.

National security system has the definition provided in 44 U.S.C. 3552.

Removal order means an order issued pursuant to 41 U.S.C. 1323(c)(5) that requires the removal of one or more covered articles from executive agency information systems.

Responsible source means a responsible prospective contractor and subcontractors, at any tier, as defined in part 9 of the Federal Acquisition Regulation (48 CFR part 9).

Source means a non-Federal supplier, or potential supplier, of products or services, at any tier.

Supply chain risk means the risk that any person may sabotage, maliciously introduce unwanted functionality, extract data, or otherwise manipulate the design, integrity, manufacturing, production, distribution, installation, operation, maintenance, disposition, or retirement of covered articles so as to surveil, deny, disrupt, or otherwise manipulate the function, use, or operation of the covered articles or information stored or transmitted by or through covered articles.

Supply chain risk information includes, but is not limited to, information that describes or identifies:

(1) Functionality and features of covered articles, including access to data and information system privileges;

(2) The user environment where a covered article is used or installed;

(3) The ability of a source to produce and deliver covered articles as expected;

(4) Foreign control of, or influence over, a source or covered article (*e.g.,* foreign ownership, personal and professional ties between a source and any foreign entity, legal regime of any foreign country in which a source is headquartered or conducts operations);

(5) Implications to government mission(s) or assets, national security, homeland security, or critical functions associated with use of a source or covered article;

(6) Vulnerability of Federal systems, programs, or facilities;

(7) Market alternatives to the covered source;

(8) Potential impact or harm caused by the possible loss, damage, or compromise of a product, material, or service to an organization's operations or mission;

(9) Likelihood of a potential impact or harm, or the exploitability of a system;

(10) Security, authenticity, and integrity of covered articles and their supply and compilation chain;

(11) Capacity to mitigate risks identified;

(12) Factors that may reflect upon the reliability of other supply chain risk information; and

(13) Any other considerations that would factor into an analysis of the security, integrity, resilience, quality, trustworthiness, or authenticity of covered articles or sources.

§ 201–1.102 Federal Acquisition Security Council (FASC).

(a) *Composition.* The following agencies and agency components shall be represented on the FASC:

(1) Office of Management and Budget;

(2) General Services Administration;

(3) Department of Homeland Security;

(4) Cybersecurity and Infrastructure Security Agency;

(5) Office of the Director of National Intelligence;

(6) National Counterintelligence and Security Center;

(7) Department of Justice;

(8) Federal Bureau of Investigation;

(9) Department of Defense;

(10) National Security Agency;

(11) Department of Commerce;

(12) National Institute of Standards and Technology; and

(13) Any other executive agency, or agency component, as determined by the Chairperson of the FASC.

(b) *FASC information requests.* The FASC may request such information from executive agencies as is necessary for the FASC to carry out its functions, including evaluation of sources and covered articles for purposes of determining whether to recommend the issuance of removal or exclusion orders, and the receiving executive agency shall provide the requested information to the fullest extent possible.

(c) *Consultation and coordination with other councils.* The FASC will consult and coordinate, as appropriate, with other relevant councils and interagency committees, including the Chief Information Officers Council, the Chief Acquisition Officers Council, the Federal Acquisition Regulatory Council, and the Committee on Foreign Investment in the United States, with respect to supply chain risks posed by the acquisition and use of covered articles.

(d) *Program office and committees.* The FASC may establish a program office and any committees, working groups, or other constituent bodies the FASC deems appropriate, in its sole and unreviewable discretion, to carry out its functions. Such a committee, working group, or other constituent body is authorized to perform any function lawfully delegated to it by the FASC.

Subpart B—Supply Chain Risk Information Sharing

§ 201–1.200 Information sharing agency (ISA).

The Act requires the FASC to identify an appropriate executive agency—the FASC's information sharing agency (ISA)—to perform administrative information sharing functions on behalf of the FASC, as provided at 41 U.S.C. 1323(a)(3). The ISA facilitates and provides administrative support to a FASC supply chain and risk management Task Force, and serves as the liaison to the FASC on behalf of the Task Force, as the Task Force develops the processes under which the functions described in 41 U.S.C. 1323(a)(3) are implemented on behalf of the FASC. The Department of Homeland Security (DHS), acting primarily through the Cybersecurity and Infrastructure Security Agency, is named the appropriate executive agency to serve as the FASC's ISA. The ISA's administrative functions shall not be construed to limit or impair the authority or responsibilities of any other Federal agency with respect to information sharing.

(a) *Submission of information.* Information should be submitted to the FASC by sending it to the ISA, acting on behalf of the FASC.

(b) *Receipt and dissemination functions.* The ISA, the Task Force, and support personnel at the FASC member agencies will carry out administrative information receipt and dissemination functions on behalf of the FASC.

(c) *Interagency supply chain risk management task force.* The FASC may identify members for an interagency supply chain risk management (SCRM) task force (the Task Force) to assist the FASC with implementing its information sharing, analysis, and risk assessment functions as described in 41 U.S.C. 1323(a)(3). The purpose of the Task Force is to allow the FASC to capitalize on the various supply chain risk management and information sharing efforts across the Federal enterprise. This Task Force includes technical experts in SCRM and related interdisciplinary experts from agencies identified in § 201–1.102 and any other agency, or agency component, the FASC Chairperson identifies. The ISA facilitates the efforts of, and provide administrative support to, the Task Force and periodically reports to the FASC on Task Force efforts.

(d) *Processes and procedures.* The FASC will adopt and, as it deems necessary, revise:

(1) Processes and procedures describing how the ISA operates and supports FASC recommendations issued pursuant to 41 U.S.C. 1323(c);

(2) Processes and procedures describing how Federal and non-Federal entities must submit supply chain risk information (both mandatory and voluntary submissions of information) to the FASC, including any necessary requirements for information handling, protection, and classification;

(3) Processes and procedures describing the requirements for the dissemination of classified, controlled unclassified, or otherwise protected information submitted to the FASC by executive agencies;

(4) Processes and procedures describing how the ISA facilitates the sharing of information to support supply chain risk analyses under 41 U.S.C. 1326, recommendations issued by the FASC, and covered procurement actions under 41 U.S.C. 4713;

(5) Processes and procedures describing how the ISA will provide to the FASC and to executive agencies on behalf of the FASC information regarding covered procurement actions and any issued removal or exclusion orders; and

(6) Any other processes and procedures determined by the FASC Chairperson.

§ 201–1.201 Submitting information to the FASC.

(a) *Requirements for submission of information.* All submissions of information to the FASC must be accomplished through the processes and procedures approved by the FASC pursuant to § 201–1.200. Any information submission to the FASC must comply with information sharing protections described in this subpart and be consistent with applicable law and regulations.

(b) *Mandatory information submission requirements.* Executive agencies must expeditiously submit supply chain risk information to the ISA in accordance with guidance approved by the FASC pursuant to § 201–1.200 when:

(1) The FASC requests information relating to a particular source, covered article, or covered procurement; or

(2) An executive agency has determined there is a reasonable basis to conclude that a substantial supply chain risk exists in connection with a source or covered article. In such instances, the executive agency shall provide the FASC with relevant information concerning the source or covered article, including:

(i) Supply chain risk information identified in the course of the agency's activities in furtherance of identifying, mitigating, or managing its supply chain risk;

(ii) Supply chain risk information regarding any covered procurement actions by the agency under 41 U.S.C. 4713; and

(iii) Supply chain risk information regarding any orders issued by the agency under 41 U.S.C. 1323.

(c) *Voluntary information submission.* All Federal and non-Federal entities may voluntarily submit to the FASC information relevant to SCRM, covered articles, sources, or covered procurement actions.

(d) *Information protections—Federal agency submissions.* To the extent that the law requires the protection of information submitted to the FASC, agencies providing such information must ensure that it bears proper markings to indicate applicable handling, dissemination, or use restrictions. Agencies shall also comply with any relevant handling, dissemination, or use requirements, including but not limited to the following:

(1) For classified information, the transmitting agency shall ensure that information is provided to designated ISA personnel who have an appropriate security clearance and a need to know the information. The ISA, Task Force, and the FASC will handle such information consistent with the applicable restrictions and the relevant processes and procedures adopted pursuant to § 201–1.200.

(2) With respect to controlled unclassified or otherwise protected unclassified information, the transmitting agency, the FASC, the ISA, and the Task Force will handle the information in a manner consistent with the markings applied to the information and the relevant processes and procedures adopted pursuant to § 201–1.200.

(e) *Information protections—submissions by non-Federal entities.* Information voluntarily submitted to the FASC by a non-Federal entity shall be subject to the following provisions:

(1) Supply chain risk information not otherwise publicly or commercially available that is voluntarily submitted to the FASC by non-Federal entities and marked ''Confidential and Not to Be Publicly Disclosed'' will not be released to the public, including pursuant to a request under 5 U.S.C. 552, except to the extent required by law.

(2) Notwithstanding paragraph (e)(1) of this section, the FASC may, to the extent permitted by law, and subject to appropriate handling and confidentiality requirements as determined by the FASC, disclose the supply chain risk information referenced in paragraph (e)(1) in the following circumstances:

(i) Pursuant to any administrative or judicial proceeding;

(ii) Pursuant to a request from any duly authorized committee or subcommittee of Congress;

(iii) Pursuant to a request from any domestic governmental entity or any foreign governmental entity of a United States ally or partner, but only to the extent necessary for national security purposes;

(iv) Where the non-Federal entity that submitted the information has consented to disclosure; or

(v) For any other purpose authorized by law.

(3) This paragraph (e) shall continue to apply to supply chain risk information referenced in paragraph (e)(1) even after the FASC issues a recommendation for exclusion or removal pursuant to 41 U.S.C. 1323.

(f) *Dissemination of information by the FASC.* The FASC may, in its sole discretion, disclose its recommendations and any supply chain risk information relevant to those recommendations to Federal or non-Federal entities if the FASC determines that such sharing may facilitate identification or mitigation of supply chain risk, and disclosure is consistent with the following paragraphs:

(1) The FASC may maintain its recommendations and any supply chain risk information as nonpublic, to the extent permitted by law, or release such information to impacted entities and appropriate stakeholders. The FASC shall have discretion to determine the circumstances under which information will be released, as well as the timing of any such release, the scope of the information to be released, and the recipients to whom information will be released.

(2) Any release by the FASC of recommendations or supply chain risk information will be in accordance title 41 U.S.C. 1323 and the provisions of this subpart.

(3) The FASC will not release a recommendation to a non-Federal entity, other than a source named in the recommendation, unless an exclusion or removal order has been issued based on that recommendation, and the named source has been notified.

(4) The FASC (including the ISA, Task Force, and any other FASC constituent bodies) shall comply with applicable limitations on dissemination of supply chain risk information submitted pursuant to this subpart, including but not limited to the following restrictions:

(i) Controlled Unclassified Information, such as Law Enforcement Sensitive, Proprietary, Privileged, or Personally Identifiable Information, may only be disseminated in compliance with the restrictions applicable to the information and in accordance with the FASC's processes and procedures for disseminating controlled unclassified information as required by this part.

(ii) Classified Information may only be disseminated consistent with the restrictions applicable to the information and in accordance with the FASC's processes and procedures for disseminating classified information as required by this part.

Subpart C—Exclusion and Removal Orders

§ 201–1.300 Evaluation of sources and covered articles.

(a) *Referral procedure.* The FASC may commence an evaluation of a source or covered article in any of the following ways:

(1) Upon the referral of the FASC or any member of the FASC;

(2) Upon the request, in writing, of the head of an executive agency or a designee, accompanied by a submission of relevant information; or

(3) Based on information submitted to the FASC by any Federal or non-Federal entity that the FASC deems, in its discretion, to be credible.

(b) *Relevant factors.* In evaluating sources and covered articles, the FASC will analyze available information and consider, as appropriate, any relevant factors contained in the following non-exclusive list:

(1) Functionality and features of the covered article, including the covered article's or source's access to data and information system privileges;

(2) The user environment in which the covered article is used or installed;

(3) Security, authenticity, and integrity of covered articles and associated supply and compilation chains, including for embedded, integrated, and bundled software;

(4) The ability of the source to produce and deliver covered articles as expected;

(5) Ownership of, control of, or influence over the source or covered article(s) by a foreign government or parties owned or controlled by a foreign government, or other ties between the source and a foreign government, which may include the following considerations:

(i) Whether a Federal agency has identified the country as a foreign adversary or country of special concern;

(ii) Whether the source or its component suppliers have headquarters, research, development, manufacturing, testing, packaging, distribution, or service facilities or other operations in a foreign country, including a country of special concern or a foreign adversary;

(iii) Personal and professional ties between the source—including its officers, directors or similar officials, employees, consultants, or contractors—and any foreign government; and

(iv) Laws and regulations of any foreign country in which the source has headquarters, research development, manufacturing, testing, packaging, distribution, or service facilities or other operations.

(6) Implications for government missions or assets, national security, homeland security, or critical functions associated with use of the source or covered article;

(7) Potential or existing threats to or vulnerabilities of Federal systems, programs or facilities, including the potential for exploitability;

(8) Capacity of the source or the U.S. Government to mitigate risks;

(9) Credibility of and confidence in available information used for assessment of risk associated with proceeding, with using alternatives, and/or with enacting mitigation efforts;

(10) Any transmission of information or data by a covered article to a country outside of the United States; and

(11) Any other information that would factor into an assessment of supply chain risk, including any impact to agency functions, and other information as the FASC deems appropriate.

(c) *Foreign Ownership.* Nothing in this section shall be construed to authorize the issuance of an exclusion or removal order based solely on the fact of the foreign ownership of a potential procurement source that is otherwise qualified to enter into procurement contracts with the Federal Government.

(d) *Due Diligence.* As part of the analysis performed pursuant to paragraph (b) of this section, the FASC will conduct appropriate due diligence. Such due diligence may include, but need not be limited to, the following actions:

(1) Reviewing any information the FASC considers appropriate; and

(2) Assessing the reliability of the information considered.

(e) *Consultation with NIST.* NIST will participate in FASC activities as a member and will advise the FASC on NIST standards and guidelines issued under 40 U.S.C. 11331.

§ 201–1.301 Recommendation.

(a) *Content of recommendation.* The FASC shall include the following in any recommendation for the issuance of an exclusion or removal order made to the Secretary of Homeland Security, Secretary of Defense, and/or Director of National Intelligence:

(1) Information necessary to positively identify any source or covered article recommended for exclusion or removal;

(2) Information regarding the scope and applicability of the recommended exclusion or removal order, including whether the order should apply to all executive agencies or a subset of executive agencies;

(3) A summary of the supply chain risk assessment reviewed or conducted in support of the recommended exclusion or removal order, including significant conflicting or contrary information, if any;

(4) A summary of the basis for the recommendation, including a discussion of less intrusive measures that were considered and why such measures were not reasonably available to reduce supply chain risk;

(5) A description of the actions necessary to implement the recommended exclusion or removal order; and,

(6) Where practicable, in the FASC's sole and unreviewable discretion, a description of the mitigation steps that could be taken by the source that may result in the FASC's rescission of the recommendation.

(b) *Information sharing in the absence of a recommendation:* If the FASC decides not to issue a recommendation, information received and analyzed pursuant to the procedures in this section may be shared, as appropriate, in accordance with subpart B of this part.

§ 201–1.302 Notice of recommendation to source and opportunity to respond.

(a) *Notice to source.* The FASC shall provide a notice of its recommendation to any source named in the recommendation.

(b) *Content of notice.* The notice under paragraph (a) of this section shall advise the source:

(1) That a recommendation has been made;

(2) Of the criteria the FASC relied upon and, to the extent consistent with national security and law enforcement interests, the information that forms the basis for the recommendation;

(3) That, within 30 days after receipt of the notice, the source may submit information and argument in opposition to the recommendation;

(4) Of the procedures governing the review and possible issuance of an exclusion or removal order; and

(5) Where practicable, in the FASC's sole and unreviewable discretion, a description of the mitigation steps that could be taken by the source that may result in the FASC rescinding the recommendation.

(c) *Submission of response by source and potential rescission of recommendation.* Subject to any applicable procedures or processes developed by the FASC, and in accordance with any instructions provided to the source pursuant to paragraph (b) of this section, a source may submit to the ISA information or argument in opposition to a FASC recommendation. If a source submits information or argument in opposition:

(1) The ISA will convey the source's submission to the FASC and any appropriate constituent bodies and to the Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence.

(2) Upon receipt of such information or argument in opposition, the FASC may rescind the recommendation if the FASC, consistent with the sole and unreviewable discretion provided in paragraph (b)(5) of this section:

(i) Determines that the source has undertaken sufficient mitigation to reduce supply chain risk to an acceptable level; or

(ii) Decides that other grounds justify rescission.

(3) In the event that the FASC rescinds its recommendation, the ISA will communicate that decision to the source. The ISA will notify Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence of the rescission, and provide those officials with a summary of the FASC's reasoning.

(d) *Confidentiality of notice issued to source.* U.S. Government personnel shall:

(1) Keep confidential and not make available outside of the executive branch, except to the extent required by law, any notice issued to a source under paragraph (a) of this section until an exclusion order or removal order is issued and the source has been notified; and

(2) Keep confidential and not make available outside of the executive branch, except to the extent required by law, any notice issued to a source under paragraph (a) of this section if the FASC rescinds the associated recommendation or the Secretary of Homeland Security, Secretary of Defense, and Director of National Intelligence, as applicable, decide not to issue the recommended order.

(e) *Confidentiality of information submitted by source.* Information not otherwise publicly or commercially available that is submitted to the FASC by a source pursuant to paragraph (c) of this section and marked ''Confidential and Not to Be Publicly Disclosed'' will not be released to the public, including pursuant to a request under 5 U.S.C. 552, except to the extent required by law. That general rule notwithstanding, such information may be released as provided in § 201–1.201(d)(2).

§ 201–1.303 Issuance of orders and related activities.

(a) *Consideration of recommendation and issuance of orders.* The Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence shall each review the FASC's recommendation, any accompanying information and materials provided pursuant to § 201–1.301, and any information submitted by a source pursuant to § 201–1.302, and determine whether to issue an exclusion or removal order based upon the recommendation.

(b) *Administrative record.* The administrative record for judicial review of an exclusion or removal order issued pursuant to 41 U.S.C. 1323(c)(6) shall, subject to the limitations set forth in 41 U.S.C. 1327(b)(4)(B)(ii) through (v), consist only of:

(1) The recommendation issued pursuant to 41 U.S.C. 1323(c)(2);

(2) The notice of recommendation issued pursuant to 41 U.S.C. 1323(c)(3);

(3) Any information and argument in opposition to the recommendation submitted by the source pursuant to 41 U.S.C. 1323(c)(3)(C);

(4) The exclusion or removal order issued pursuant to 41 U.S.C. 1323(c)(5), and any information or materials relied upon by the deciding official in issuing the order; and

(5) The notification to the source issued pursuant to 41 U.S.C. 1323(c)(6)(A).

(6) *Other information.* Other information or material collected by, shared with, or created by the FASC or its member agencies shall not be included in the administrative record unless the deciding official relied on that information or material in issuing the exclusion or removal order.

(d) *Issuing officials.* Exclusion or removal orders may be issued as follows:

(1) The Secretary of Homeland Security may issue removal or exclusion orders applicable to civilian agencies, to the extent not covered by paragraph (d)(2) or (3) of this section.

(2) The Secretary of Defense may issue removal or exclusion orders applicable to the Department of Defense and national security systems other than sensitive compartmented information systems.

(3) The Director of National Intelligence may issue removal or exclusion orders applicable to the Intelligence Community and sensitive compartmented information systems, to the extent not covered by paragraph (d)(2) of this section.

(4) The officials identified in paragraphs (d)(1) through (3) of this section may not delegate the authority to issue exclusion and removal orders to an official below the level one level below the Deputy Secretary or Principal Deputy Director level, except that the Secretary of Defense may delegate authority for removal orders to the Commander of U.S. Cyber Command, who may not re-delegate such authority to an official below the level of the Deputy Commander.

(e) *Applicability of issued orders to non-Federal entities.* An exclusion or removal order may affect non-Federal entities, including as follows:

(1) An exclusion order may require the exclusion of sources or covered articles from any executive agency procurement action, including but not limited to source selection and consent for a contractor to subcontract. To the extent required by the exclusion order, agencies shall exclude the source or covered articles, as applicable, from being supplied by any prime contractor and subcontractor at any tier.

(2) A removal order may require removal of a covered article from an executive agency information system owned and operated by an agency; from an information system operated by a contractor on behalf of an agency; and from other contractor information systems to the extent that the removal order applies to contractor equipment or systems within the scope of ''information technology,'' as defined in § 201–1.101.

(f) *Notification of order issuance.* The official who issues an exclusion or removal order:

(1) Shall, upon issuance of an exclusion or removal order pursuant to paragraph (a) of this section:

(i) Notify any source named in the order of the order's issuance, and to the extent consistent with national security and law enforcement interests, of the information that forms the basis for the order;

(ii) Provide classified or unclassified notice of the order to the appropriate congressional committees and leadership;

(iii) Provide the order to the ISA; and

(iv) Notify the Interagency Suspension and Debarment Committee of the order.

(2) May provide a copy of the order to other persons, including through public disclosure, as the official deems appropriate and to the extent consistent with national security and law enforcement interests.

(g) *Removal from Federal supply contracts.* If the officials identified in paragraphs (d)(1) through (3) of this section, or their delegates, issue orders collectively resulting in a Government-wide exclusion, the Administrator for General Services and officials at other executive agencies responsible for management of the Federal Supply Schedules, Government-wide acquisition contracts, and multi-agency contracts shall facilitate implementation of such orders by removing the covered articles or sources identified in the orders from such contracts.

(h) *Annual review of issued orders.* The officials identified in paragraphs (d)(1) through (3) of this section shall review all issued exclusion and removal orders not less frequently than annually pursuant to procedures established by the FASC.

(i) *Modification or rescission of issued orders.* The officials identified in paragraphs (d)(1) through (3) of this section may modify or rescind an issued exclusion or removal order, provided that a modified order shall not apply more broadly than the order before the modification.

§ 201–1.304 Executive agency compliance with exclusion and removal orders.

(a) *Agency compliance.* Executive agencies shall:

(1) Comply with exclusion and removal orders issued pursuant to § 201–1.303 and applicable to their agency, as required by 41 U.S.C. 1323(c)(7) and 44 U.S.C. 3554(a)(1)(B); and

(2) Comply with handling and/or dissemination restrictions placed upon the order or its contents by the issuing official.

(b) *Exceptions to issued exclusion and removal orders.* An executive agency required to comply with an exclusion or removal order may submit to the issuing official a request to be excepted from the order's provisions. The requesting agency:

(1) May ask to be excepted from some or all of the order's requirements. The agency may ask, for example, that the order not apply to the agency, to specific actions of the agency, or to actions of the agency for a period of time before compliance with the order is practicable.

(2) Shall submit the request in writing and include in it all necessary information for the issuing official to review and evaluate it, including—

(i) Identification of the applicable exclusion order or removal order;

(ii) A description of the exception sought, including, if limited to only a portion of the order, a description of the order provisions from which an exception is sought;

(iii) The name or a description sufficient to identify the covered article or the product or service provided by a source that is subject to the order from which an exception is sought;

(iv) Compelling justification for why an exception should be granted, such as the impact of the order on the agency's ability to fulfill its mission- critical functions, or considerations related to the national interest, including national security reviews, national security investigations, or national security agreements;

(v) Any alternative mitigations to be undertaken to reduce the risks addressed by the exclusion or removal order; and

(vi) Any other information requested by the issuing official.

Subtitle E [Removed and reserved]

■ 3. Remove and reserve subtitle E.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

[Docket No. FWS–HQ–MB–2021–0048; FXMB 12330900000//212//FF09M13000]

RIN 1018–BF62

Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising the regulations governing the annual Federal Migratory Bird Hunting and Conservation Stamp Contest (also known as the Federal Duck Stamp Contest (Contest)). We are removing the previously specified permanent theme and the mandatory inclusion of an appropriate hunting element within all Contest entries and revising the qualifications of the judging panel to reflect this change beginning with the 2022 Contest.

DATES: This rule is effective September 27, 2021.

ADDRESSES: You can view the 2022 Contest Artist Brochure after October 1, 2021, by one of the following methods:

- Accessing the Duck Stamp Contest & Event Information page at: *https://www.fws.gov/birds/get-involved/duck-stamp/duck-stamp-contest-and-event-information.php.*
- Requesting a copy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–1050.

SUPPLEMENTARY INFORMATION:

Background

History of the Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Program

On March 16, 1934, Congress passed and President Franklin D. Roosevelt signed the Migratory Bird Hunting Stamp Act, which was later amended to become the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718–718j, 48 Stat. 452). Popularly known as the Duck Stamp Act, the law requires all waterfowl hunters who have attained the age of 16 to buy an annual stamp. Funds generated from Duck Stamp sales are used to protect waterfowl and wetland habitat that is incorporated into the National Wildlife Refuge System from willing sellers and those interested in obtaining conservation easements.

Over 1.5 million stamps are sold each year, and, as of 2021, Federal Duck Stamps have generated more than $1.1 billion for the conservation of more than 6 million acres of waterfowl habitat in the United States. In addition to waterfowl, numerous other birds, mammals, fish, reptiles, and amphibians benefit from habitat protected by the Duck Stamp revenues, including an estimated one-third of the nation's endangered and threatened species. The healthy wetlands protected by Duck Stamp funding sequester carbon and contribute to addressing the impacts of climate change, including absorbing flood waters and storm surge. These wetlands purify water supplies and provide economic support to local communities as they attract outdoor recreationists from many different backgrounds.

History of the Duck Stamp Contest

The first Federal Duck Stamp was designed at President Roosevelt's request by Jay N. ''Ding'' Darling, a nationally known political cartoonist for the *Des Moines Register* and a hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs for the stamp. The first Contest was opened in 1949 to any U.S. artist who wished to enter. Since then, the Contest has attracted large numbers of entrants, and it remains the only art competition of its kind sponsored by the U.S. Government. The Secretary of the Interior appoints a panel of judges who have expertise in the area of art, waterfowl, or philately to select each year's winning design. Winners receive no compensation for the work, except a pane of Duck Stamps, based on their winning design, signed by the Secretary of the Interior. However, winners maintain the copyright to their artwork and may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

Waterfowl hunters have been the greatest contributors to the program, as they are required to purchase Duck Stamps in order to hunt waterfowl. Many individuals not engaged in hunting also purchase Duck Stamps to contribute to conservation or for the stamp's artistic value.

The 2020 Final Rule and 2021 Contest

On May 8, 2020, the Service published a final rule (85 FR 27313) revising the regulations in title 50 of the Code of Federal Regulations (CFR) at part 91 (50 CFR part 91) governing the annual Federal Duck Stamp Contest. The Contest regulations made permanent the theme ''celebrating our waterfowl hunting heritage'' for all future Contests. The regulations required the inclusion of a waterfowl hunting-related scene or accessory in every entry but did not specify what accessories to include. Requirements for the judging panel specified that all judges would have one or more prerequisite qualifications, which could include the ability to recognize waterfowl hunting accessories. An image of a drake lesser scaup with a lanyard and duck calls was chosen as the winner of the 2020 Contest, and this image appears on the 2021–2022 Federal Duck Stamp.

The 2021 Contest species and regulations, with the permanent theme and mandatory inclusion of waterfowl hunting-related accessories or scenes in all entries, were widely publicized and in effect for the 2021 Contest. The entry period for artwork closed on August 15, 2021. The Service reminded artists that their entries for the 2021 Contest must adhere to the theme, entry qualifications, and judging requirements published in the regulations. Regardless of the effective date of this rule (see **DATES**, above), the 2021 Contest species and regulations apply to the 2021 Contest.

Proposed Rule To Amend the Duck Stamp Regulations

On June 23, 2021, we published a proposed rule (86 FR 32878) to remove the permanent ''celebrating our waterfowl hunting heritage'' theme, which required the mandatory inclusion of an appropriate hunting-related element in all Contest entries, and accordingly to revise the qualifications for selection as a judge and the scoring criteria for the Contest, beginning with the 2022 Contest. The Service proposed the changes to the regulations to allow artists more freedom of expression when designing their Contest entries.

Summary of Public Comments and Responses

We accepted public comments on our June 23, 2021, proposed rule for 30 days, ending July 23, 2021, and we invited comments on the proposed changes from artists, stamp collectors,

hunters, and other user groups. We received more than 200 unique responses, including those from 15 organizations, specifically addressing the proposed rule. Commenters included self-identified members representing artists, waterfowl hunters, Duck Stamp and art print collectors, National Wildlife Refuge users, bird watchers, photographers, former Duck Stamp Contest judges, and several others who identified as conservationists or outdoor recreationists. The 15 organizations responding included all four Flyway Councils, bird watching organizations, bird conservation and advocacy organizations, avian ornithological organizations, and National Wildlife Refuge System support groups.

Overall, more than 80 percent of respondents were in favor of the proposed rule. All organizations expressed their support of removing the mandatory inclusion of hunting accessories. The majority of comments in favor of removing the theme expressed their opinion that a broader appeal for the stamp will allow for marketing to all audiences interested in conserving habitat. A focus on the common desire for habitat conservation, without alienating and dividing different user groups was recommended as the best way to increase sales and program support.

All of the self-identified Duck Stamp artists indicated they were in favor of removing the permanent theme and mandatory inclusion of a waterfowl hunting accessory or theme. Artists reported that the permanent theme stifled their creativity, that the mandatory inclusion of a hunting accessory was difficult from a design and composition perspective, that the requirement limited the choice of eligible subjects to hunted waterfowl species, that the mandatory accessory inclusion detracts from the natural beauty of the waterfowl species itself, and that the requirement put new, young, and nonhunting artists at a severe disadvantage for successfully competing in the Contest. Artists and others commenting on the artwork itself pointed to the decrease in number of entries and a decrease in quality of the 2018 and 2020 entries, as indicators that artists were not happy with the mandatory inclusion.

Twenty-seven percent of those wishing to see the permanent theme removed pointed out that traditionally, the Duck Stamp Contest has not had a mandate for the inclusion of a mandatory hunting theme or accessory. It was also pointed out that only three entries prior to 2018 successfully included a hunting accessory due to the artist's choice.

Of the respondents against the removal of the theme, many seemed to misunderstand the intent of the rule change or how it related to previous Contest regulations. Two-thirds of those wanting the theme to remain expressed the mistaken impression that the theme and a hunting accessory were traditional elements in the Contest regulations. The permanent theme and the mandatory hunting accessory inclusion were only instituted in the 2020 Contest after a temporary inclusion in the 2018 Contest. The majority of comments that expressed disapproval in removing the mandatory hunting element expressed that the Service was trying to change the tradition of the artwork or rewrite 88 years of history and support for the Duck Stamp program by the waterfowl hunting community. The Service does not intend to change the formal name of the Duck Stamp or otherwise diminish the contributions to conservation by the waterfowl hunting community. Instead, we prefer to find other ways to celebrate our waterfowl hunting community.

Thirty-six percent of self-identified waterfowl hunters were also in favor of removing the permanent theme. Only one person who indicated they were in favor of keeping the permanent theme self-identified as a nonhunter.

Several commenters simply expressed disapproval or support for the proposed revised Contest rules. However, the majority had specific comments, which are presented below under headings that identify similar subjects. Several commentators offered suggestions that were outside the scope of this rule; these are not addressed at this time but may be further investigated.

Permanent Theme Recognizes Waterfowl Hunters

(1) *Comment:* Of the commenters opposed to removing the permanent theme of ''celebrating our waterfowl hunting heritage,'' many stated that hunters provided all or most of the funding for wildlife conservation and only waterfowl hunters purchased Duck Stamps. Some self-identified waterfowl hunters stated they purchased more than one annual stamp. Several expressed that the removal of the permanent theme was against the tradition and purpose of the Federal Duck Stamp. A couple of commenters stated that if the hunting theme was removed, as hunters, they would opt out of purchasing a Duck Stamp. Several were strongly opposed to the nonhunting community having any say in the perpetuation of the theme.

Those who responded in favor of removing the permanent theme stated that they purchased stamps and included self-identified hunters, nonhunters, bird watchers, users of and volunteers at National Wildlife Refuges, general conservationists or naturalists, land managers, photographers, and stamp and art collectors. Nonconsumptive users expressed the desire to also feel recognized and appreciated for their conservation contributions as they were voluntary contributors and were not legally bound to purchase a Duck Stamp for hunting. Many commented that they were aware and thankful for the contributions to conservation that hunters have made but felt that the permanent theme was not necessary because the hunting community was acknowledged in other ways. Recognizing the decrease in the number of waterfowl hunters and the increase in the number of nonconsumptive users who benefit from habitat conservation led to several comments stating the nonhunting community had the responsibility to take on a larger financial contribution to the conservation of wildlife habitat within the National Wildlife Refuge System. Comments from several respondents recognized that habitat conservation provides many benefits of which hunting is just one and that it was the responsibility of all to support conservation. Several comments asked hunters to recognize the advocacy of all who worked to conserve habitat. Several commented that the permanent theme reinforced the idea that the Duck Stamp's only purpose was as a hunting stamp, rather than a widely available mechanism to raise funds for habitat conservation within the National Wildlife Refuge System.

Service Response: The Service made no changes to the final rule in response to these comments. The Service will continue to provide information and messaging that honors hunters' conservation contributions and promotes the interest and contributions of all user groups towards habitat conservation. The Service will use messaging on the Duck Stamp to highlight important anniversaries, successes, and challenges in habitat and wildlife conservation. The formal name of the Duck Stamp will continue to promote both the hunting and general conservation purposes of the stamp. Waterfowl will continue to be the primary species of focus on the Duck Stamp. Waterfowl hunters will still be required to purchase an annual stamp, as a theme or depicted species on the stamp has no bearing on the legal

requirements for migratory bird hunters to have a valid Duck Stamp as part of their annual licensing. As the permanent hunting theme was only instituted in 2020, removing the theme aligns with the origins of the Duck Stamp Contest.

Mandatory Inclusion of a Hunting Element in Entries

(2) *Comment:* Commenters in favor of and against removing the mandatory inclusion of a hunting related accessory presented two primary arguments: One based on creating the art and the annual art contest, and the second on the effect of the design on the Duck Stamp's marketing potential.

Of the commenters opposed to removing the mandatory inclusion of a hunting element in the design of the stamp, one stated the need for a clear and unambiguous illustrative connection between hunters and wildlife resource conservation. Another stated that the art must show a tie to hunting or it becomes just another wildlife art contest. Several commenters felt that removal of the mandatory hunting element would go against the traditional artwork of the Duck Stamp or would lead to the same stale images.

Several commenters felt the mandatory inclusion greatly limited artistic creativity. Artists are already limited to producing a design that has a live portrayal of an eligible species as the dominant and central focus of their entry. The entry size requirements and the subsequent reduction of the chosen entry to the size of a stamp is seen as a limit to the choice of an appropriate element that could be incorporated. Several commenters wanted a better description of what was acceptable as a ''hunting element'' and thought past entries in the 2018 and 2020 Contests incorporated inappropriate elements, which created a bad image of hunters instead of celebrating their conservation ethic.

Several commenters felt that the overall design should promote wildlife and were afraid that mandatory inclusions made viewers lose sight of the beauty of the depicted species itself. One respondent commented that the inclusion of hunting elements limits the eligible species list to those only with open seasons and favored the most popularly harvested species.

Because not all artists who enter the Contest are hunters, many felt they were at an unfair disadvantage in composing their entry and gathering reference materials. One commenter also noted that any hunting element or scene would need to be appropriate for the depicted season and plumage of waterfowl so that no implicit game violations would be illustrated. The mandatory inclusion of a hunting element was seen to discourage young and new artists interested in entering the Contest but who are already overwhelmed by the restrictive rules and competition.

Service Response: The Service made no changes to the final rule in response to these comments. Like other elements, hunting accessories and scenes will be optional to be used at the artist's discretion in their composition. The Service does not intend to change requirements for the entry size or remove the primary focus of the Duck Stamp art from the actual waterfowl species. Comments on the judging procedures are not within the scope of this rule and will not be addressed here.

The Service believes the annual Contest functions to promote wildlife artists, inform different audiences about the many contributions to conservation, diversify our audience and stakeholders in habitat conservation, and promote the tradition and heritage of the Duck Stamp. The Service feels the Contest should be as inclusive as possible to achieve these goals.

Marketing the Duck Stamp

(3) *Comment:* Those who provided comments on marketing the Duck Stamp agreed with the importance of revenues from sales of the stamp to conserve habitat. The majority of respondents recognized the many contributions that waterfowl hunters provide in their role as conservationists. Most felt that the annual purchase of a stamp, while necessary for legal migratory bird hunting, should not preclude purchase by other interested parties. Continuation of stamp and print collections, having to sign the stamp used for hunting, purchase of the stamp as a pass to a National Wildlife Refuge, and support of conservation were expressed as reasons to purchase a Duck Stamp other than to be legal while hunting migratory birds.

Those in favor of the removing the permanent hunting theme and the mandatory hunting element overwhelmingly stated that this was a precursor to increasing sales and expanding support for the Duck Stamp as a conservation tool. They expressed the opinion that mandatory inclusion of hunting elements in the artwork was a divisive and alienating barrier which perpetuated the perception of exclusivity of Duck Stamp purchasers. Several individual comments indicated that stamps that are artistically pleasing and concentrate on the wildlife species itself are the ones most sought after and are what attracts new audiences to the Duck Stamp.

Several respondents offered other specific changes to the Duck Stamp that they felt would make them more accepted among different audiences. Several specific marketing tactics were also suggested.

Service Response: The Service made no changes to the final rule in response to these comments. The Service is continually looking for ways to increase our relevance and promote our mission among a changing demographic while recognizing all partners. The Service believes the Duck Stamp can play an important role in supporting habitat conservation among an increasingly diverse population but only if it is seen as an inclusive tool with a wide appeal to a variety of stakeholders.

While the Service appreciates the comments on specific marketing tactics for the Duck Stamp, they are beyond the scope of this rule and are not addressed here.

Effect of Final Rule on 2021 Duck Stamp Contest

(4) *Comment:* One comment was received that stated that the Service should make accommodations for artists who did not include the mandatory hunting element or theme in their entries for the 2021 Contest.

Service Response: The Service made no changes to the final rule in response to this comment. This final rule will be in effect starting with the 2022 Contest and will not change the requirements for the 2021 Contest entries. The Contest Rules Brochure for the 2021 Contest was made public in October 2020. This annual brochure outlined the requirements for entries in the 2021 Contest, included a list of the eligible species, and emphasized the requirement of the mandatory inclusion of a waterfowl hunting element or scene. Many artists begin their entries as soon as the brochure is available and work diligently throughout the following months to complete it on time. Art entries are accepted beginning on June 1, and must be postmarked by August 15 to be eligible for the Contest. Artists have been made aware of the 2021 Contest requirements and are expected to follow all the rules or be disqualified. As in the 2018 and 2020 Contests, the mandatory hunting accessory or scene can include a variety of different elements; there are many ways an artist may choose to illustrate the required theme of ''celebrating our waterfowl hunting heritage'' to be successful in adhering to this requirement.

Judge Qualifications and Scoring Criteria

(5) *Comment:* Six of the seven comments did not oppose the alignment of the qualifications for selection as a judge and the scoring criteria for the Contest with the removal of the permanent theme and requirement for inclusion of a mandatory waterfowl hunting accessory in Contest entries. One comment stated that given the change in the Contest rules, the Service should eliminate the qualification that a judge be familiar with the wildlife sporting world in which the Duck Stamp is used. Several comments addressed other changes to the judging panel and process that are beyond the scope of this rule.

Service Response: The Service made no changes to the final rule in response to these comments. An understanding of the wildlife sporting world in which the Duck Stamp is used is only one of several qualifications that an individual may possess in order to qualify to be a judge.

Amendments to Existing Regulations

The Service made no changes to the final rule in response to the comments we received on the proposed rule. As we proposed on June 23, 2021, at 86 FR 32878, this rule removes the permanent theme of ''celebrating our waterfowl hunting heritage'' and the mandatory inclusion of a waterfowl hunting-related scene or accessory in Contest entries and accordingly revises the qualifications for selection as a judge and the scoring criteria for the Contest, beginning with the 2022 Contest.

Accordingly, this rule sets forth amended regulations for:

- The Contest restrictions on subject matter for entries at 50 CFR 91.14.
- Judge qualifications at 50 CFR 91.21(b).
- Scoring criteria at 50 CFR 91.23.

These regulatory amendments allow artists more freedom of expression when designing their Contest entries and better engage the nonhunting audience in understanding that Duck Stamps are a vital tool available for all to contribute to habitat conservation. The Service acknowledges that waterfowl hunters remain the primary customers of Duck Stamps, as these hunters must carry an annual signed stamp as part of their licensing requirements, and rather than mandating a permanent theme for the Contest and the inclusion of a hunting-related accessory in Contest entries, we will develop other methods to promote the wildlife and habitat conservation contributions by waterfowl hunters.

Required Determinations

For this final rule, we affirm the following required determinations provided in our June 23, 2021, proposed rule (86 FR 32878):

- National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);
- Endangered Species Act (16 U.S.C. 1531 *et seq.*);
- Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2));
- Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*);
- Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*); and
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Regulation Promulgation

Accordingly, we amend part 91, subchapter G of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

■ 2. Revise § 91.14 to read as follows:

§ 91.14 Restrictions on subject matter for entry.

A live portrayal of any bird(s) of the five or fewer identified eligible waterfowl species must be the dominant feature of the design. The design may depict more than one of the eligible species. The judges' overall mandate is to select the best design that will make an interesting, useful, and attractive duck stamp that will be accepted and prized by hunters, stamp collectors, conservationists, and others. The design must be the contestant's original hand-drawn creation. The entry design may not be copied or duplicated from previously published art, including photographs, or from images in any format published on the internet. Photographs, computer-generated art, or art produced from a computer printer or other computer/mechanical output device (airbrush method excepted) are not eligible to be entered into the contest and will be disqualified. An entry submitted in a prior contest that was not selected for a Federal or State stamp design may be submitted in the current contest if the entry meets the criteria set forth in this section.

■ 3. Amend § 91.21 by revising paragraph (b) to read as follows:

§ 91.21 Selection and qualification of contest judges.

* * * * *

(b) *Qualifications.* The panel of five judges will comprise individuals who have one or more of the following prerequisites: Recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, and demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community.

* * * * *

■ 4. Revise § 91.23 to read as follows:

§ 91.23 Scoring criteria for contest.

Entries will be judged on the basis of anatomical accuracy, artistic composition, and suitability for reduction in the production of a stamp.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2021–18479 Filed 8–24–21; 11:15 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[RTID 0648–XB264]

Pacific Island Fisheries; 2021 U.S. Territorial Longline Bigeye Tuna Catch Limits for the Commonwealth of the Northern Mariana Islands

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

ACTION: Announcement of a valid specified fishing agreement.

SUMMARY: NMFS announces a valid specified fishing agreement that allocates up to 1,500 metric tons (t) of the 2021 bigeye tuna limit for the Commonwealth of the Northern Mariana Islands (CNMI) to U.S. longline fishing vessels. The agreement supports the long-term sustainability of fishery resources of the U.S. Pacific Islands, and fisheries development in the CNMI.

DATES: The specified fishing agreement was valid as of July 15, 2021. The start

date for attributing 2021 bigeye tuna catch to the CNMI is August 30, 2021.

ADDRESSES: The Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) describes specified fishing agreements and is available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808–522–8220, fax 808–522–8226, or *http://www.wpcouncil.org.*

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the action. The analyses, identified by NOAA–NMFS–2020–0010, are available from *https://www.regulations.gov/search/docket?filter=NOAA-NMFS-2020-0010,* or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Lynn Rassel, NMFS PIRO Sustainable Fisheries, 808–725–5184.

SUPPLEMENTARY INFORMATION: In a final rule published on January 12, 2021, NMFS specified a 2021 limit of 2,000 t of longline-caught bigeye tuna for each of the U.S. Pacific Island territories of American Samoa, Guam, and the CNMI (86 FR 2297). NMFS allows each territory to allocate up to 1,500 t of the 2,000 t limit to U.S. longline fishing vessels identified in a valid specified fishing agreement, but the total allocation among all territories may not exceed 3,000 t.

On June 25, 2021, NMFS received from the Council a specified fishing agreement between the CNMI and the Hawaii Longline Association. The Council's Executive Director advised that the agreement is consistent with the FEP and its implementing regulations. On July 15, 2021, NMFS reviewed the agreement and determined that it is consistent with the FEP, implementing regulations, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

In accordance with 50 CFR 300.224(d) and 50 CFR 665.819(c)(9), vessels in the agreement may retain and land bigeye tuna in the western and central Pacific Ocean under the CNMI attribution specified in the fishing agreement. On August 30, 2021, NMFS began attributing bigeye tuna caught by vessels in the agreement to the CNMI. If NMFS determines that the fishery will reach the 1,500 t allocation specified in the CNMI agreement, we will restrict the retention of bigeye tuna caught by vessels in the agreement, unless the vessels are included in a subsequent specified fishing agreement with another U.S. territory.

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

Dated: August 20, 2021.

Kelly Denit,

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

[FR Doc. 2021–18365 Filed 8–25–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210210–0018; RTID 0648–XB337]

Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fishery by Non-Rockfish Program Catcher Vessels Using Trawl Gear in the Western and Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening directed fishing for groundfish, other than pollock, by non-Rockfish Program catcher vessels using trawl gear in the Western and Central Regulatory Areas of the Gulf of Alaska (GOA). This action is necessary to fully use the 2021 groundfish total allowable catch available for non-Rockfish Program catcher vessels directed fishing for groundfish, other than pollock, using trawl gear in the Western and Central Regulatory Areas of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 24, 2021, through 2400 hours, A.l.t., December 31, 2021. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 7, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0140, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2020–0140 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, 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).

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS prohibited directed fishing for groundfish, other than pollock, by non-Rockfish Program catcher vessels using trawl gear in the Western and Central Regulatory Areas of the GOA, effective 1200 hours, A.l.t., March 26, 2021 (86 FR 16677, March 31, 2021) under § 679.21(i)(8)(ii).

On August 20, 2021, NMFS published an inseason adjustment (86 FR 46792, August 20, 2021) that reapportioned 1,350 Chinook salmon prohibited species catch limit to the non-Rockfish Program catcher vessel sector participating in the directed fishery for groundfish, other than pollock, in the Western and Central Regulatory Areas of the GOA that is available from August 18, 2021 until December 31, 2021 (§ 679.21(h)(5)(iii)). Therefore, in accordance with § 679.25(a)(1)(i)), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2021 groundfish total allowable catch available for non-Rockfish Program catcher vessels directed fishing for groundfish, other than pollock, using trawl gear in the Western and Central Regulatory Areas of the GOA, NMFS is terminating the previous closure and is opening directed fishing for non-Rockfish Program catcher vessels directed fishing for groundfish, other than pollock, using

trawl gear in the Western and Central Regulatory Areas of the GOA.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay opening directed fishing for groundfish, other than pollock, by non-Rockfish Program catcher vessels using trawl gear in the Western and Central Regulatory Areas of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 20, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: August 23, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–18371 Filed 8–23–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 163
Thursday, August 26, 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

Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS–SC–21–0056; SC21–987–1 PR]

Domestic Dates Produced or Packed in Riverside County, California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Date Administrative Committee to increase the assessment rate for the 2020–21 and subsequent crop years. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 10, 2021.

ADDRESSES: Interested persons are invited to submit comments concerning this proposed rule. Comments must be submitted via the internet at: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: *Barry.Broadbent@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 987, as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California. Part 987, (referred to as the ''Order''), is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The California Date Administrative Committee (Committee) locally administers the Order and is comprised of producers and producer-handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California date handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable dates for the 2020–21 crop year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act (7 U.S.C. 608(15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Members are familiar with the Committee's needs and costs of goods and services in their local area, and they can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

This proposed rule would increase the assessment rate from $0.15 per hundredweight, the rate that was established for the 2018–19 and subsequent crop years, to $0.20 per hundredweight of dates handled for the 2020–21 and subsequent crop years. The Committee met on June 25, 2020, and unanimously recommended increasing the assessment rate to fund necessary administrative expenses and maintain a sufficient operating reserve. The rate increase should provide sufficient funds to cover most of the Committee's 2020–21 crop year budgeted expenses, with the balance coming from other revenue sources and reserve funds.

The Committee estimates the 2020–21 domestic date crop to be 32,000,000 pounds (320,000 hundredweight), which would generate $64,000 in assessment income at the recommended $0.20 per hundredweight assessment rate. The Committee expects other income of approximately $5,000. Total income of $69,000, combined with $6,250 from the financial reserve, should provide enough funds to cover 2020–21 crop year budgeted expenditures. Reserve funds remaining at the end of the 2020–21 crop year are expected to be $28,750.

The Committee's budget for the 2020–21 crop year is estimated to be $75,250. Committee's expenses include $47,000 for management, $19,250 for office administration, and $9,000 for the financial audit. In comparison, the previous crop year's total budget was $74,200, and the administrative expenses were $43,000, $21,200, and $10,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, the expected volume of dates handled, and the amount of funds available in the operating reserve. Income derived from handler assessments of $64,000 (320,000 hundredweight assessed at the proposed rate of $0.20) should be adequate to cover most budgeted expenses of $75,250, with the balance covered from $5,000 in other income and $6,250 from reserve funds. After expending $6,250, the ending 2020–21 crop year balance in the financial reserve is expected to be $28,750, which would be less than the average of the annual expenses of the preceding five years, as mandated by § 987.72(d).

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Dates and times of Committee meetings are available from the Committee or USDA. Meetings are public and held virtually or in a hybrid style with participants having a choice whether to attend in person or virtually. All interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 70 date producers in the production area and 11 date handlers subject to regulation under the Order. The Small Business Administration defines small agricultural producers as those having annual receipts of less than $1,000,000, and small agricultural service firms as those whose annual receipts are less than $30,000,000. (13 CFR 121.201)

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year (2019) shows that producer price for fresh market California dates was $4,130 per ton. With the estimated 16,000-ton crop, the total farm gate value for California date producers was approximately $66,080,000 (16,000 times $4,130). Therefore, the average fresh market date revenue for the 70 producers within the production area would be about $944,000 ($66,080,000 divided by 70). Thus, assuming a normal bell-curve distribution of receipts among producers, AMS estimates the majority of producers would qualify as small businesses under the SBA definition.

Furthermore, USDA Market News reported an average terminal market price of $50.88 per 11-pound carton for the 2019–20 crop year. With approximately 32,000,000 pounds handled, the industry would have shipped an estimated 2,909,091 11-pound cartons (32,000,000 divided by 11) of packaged dates for a total value of $148,014,550 (2,909,091 times $50.88). With 11 date handlers within the production area, the average revenue per handler is estimated to be $13,455,868 for the 2019–20 crop year ($148,014,550 divided by 11). Thus, most California date handlers would be considered small businesses under the SBA definition.

This proposed rule would increase the assessment rate collected from handlers for the 2020–21 and subsequent crop years from $0.15 to $0.20 per hundredweight of dates handled. The Committee unanimously recommended 2020–21 crop year expenditures of $75,250 and an assessment rate of $0.20 per hundredweight of dates, which is $0.05 higher than the rate currently in effect. The quantity of assessable dates for the 2020–21 crop year is estimated to be 32,000,000 pounds (320,000 hundredweight). The proposed $0.20 rate should provide $64,000 in assessment income. Income derived from handlers' assessments, plus $5,000 of other income and $6,250 from the Committee's authorized reserve, should be adequate to cover the Committee's budgeted expenses for the 2020–21 crop year.

The total budget recommended by the Committee for the 2020–21 crop year is $75,250, compared to $74,200 for the 2019–20 crop year. The Committee recommended the higher assessment rate to fully fund ongoing program expenses without depleting its operating reserve.

The income generated from the proposed higher assessment rate, combined with other income and a small amount from the financial reserve, should be sufficient to cover anticipated 2020–21 expenses and to maintain a financial reserve within the limit specified by the Order.

Section 987.72(d) states that the Committee may maintain an operating monetary reserve not to exceed the average of one year's expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. The Committee estimated that funds in its reserve would be approximately $35,000 at the beginning of the 2020–21 crop year. It expects to utilize $6,250 of the reserve during the year, leaving a reserve of approximately $28,750 to start the 2021–22 crop year, which would be within the limit specified in the Order.

The Committee reviewed and unanimously recommended 2020–21 crop year expenditures of $75,250. The Committee considered several factors before making its recommendation, including the size of the anticipated 2020–21 crop, the Committee's estimated 2020–21 reserve carry-in,

other sources of income, and its anticipated expenses. Further, the Committee considered several alternative expenditure levels and assessment rates, including not changing the assessment rate or adjusting expenses. Ultimately, the Committee recommended the $0.20 per hundredweight assessment rate to fund the program's expenses and maintain its reserve at a reasonable level.

A review of historical and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2020–21 crop year is estimated to be $201.50 per hundredweight of dates. Utilizing that price, the estimated crop size, and the proposed assessment rate of $0.20 per hundredweight, the estimated assessment revenue for the 2020–21 crop year as a percentage of total producer revenue will be approximately 0.1 percent ($0.20 per hundredweight divided by $201.50 per hundredweight).

This proposed action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the Order. In addition, the Committee's and the Subcommittee's meetings were widely publicized throughout the California date industry. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. The June 25, 2020 Committee meeting was a virtually held public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in these requirements would be necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 987 is proposed to be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ 1. The authority citation for part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2020, an assessment rate of $0.20 per hundredweight is established for dates produced or packed in Riverside County, California.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–17912 Filed 8–25–21; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 628

RIN 3052–AD42

Risk Weighting of High Volatility Commercial Real Estate (HVCRE) Exposures

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) is seeking comments on this proposed rule that would revise our regulatory capital requirements for Farm Credit System (FCS or System) institutions to define and establish risk-weightings for High Volatility Commercial Real Estate (HVCRE) exposures.

DATES: Please send us your comments on or before November 24, 2021.

ADDRESSES: For accuracy and efficiency reasons, please submit comments by email or through FCA's website. We do not accept comments submitted by facsimiles (fax), as faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act of 1973. Please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Website: http://www.fca.gov.* Click inside the ''I want to. . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Mail:* Kevin J. Kramp, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive on our website at *http://www.fca.gov.* Once you are on the website, click inside the ''I want to. . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments.

We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam. You may also review comments at our office in McLean, Virginia. Please call us at (703) 883–4056 or email us at *reg-comm@fca.gov* to make an appointment.

FOR FURTHER INFORMATION CONTACT:

Technical information: Ryan Leist, *LeistR@fca.gov,* Senior Accountant, or Jeremy R. Edelstein, *EdelsteinJ@fca.gov,* Associate Director, Finance and Capital Markets Team, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4056 or *ORPMailbox@fca.gov;* or

Legal information: Jennifer Cohn, *CohnJ@fca.gov,* Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (720) 213–0440, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Objectives of the Proposed Rule

The FCA's objectives in proposing this rule are to:

- Update capital requirements to reflect the increased risks that exposures to certain acquisition, development or construction loans pose to System institutions; and
- Ensure that the System's capital requirements are comparable to the Basel III framework and the standardized approach the Federal banking regulatory agencies have adopted, with deviations as appropriate to accommodate the different operational and credit considerations of the System.

B. Background

In October 2013 and April 2014, the Federal banking regulatory agencies (FBRAs) [1] published in the **Federal Register** capital rules governing the banking organizations they regulate.[2] Those rules follow the Basel Committee on Banking Supervision's (BCBS or Basel Committee) document entitled ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III), including subsequent changes to the BCBS's capital standards and BCBS consultative papers.[3]

On September 4, 2014, FCA published in the **Federal Register** a notice of proposed rulemaking seeking public comment on revisions to our regulatory capital requirements.[4] Our proposed rule was comparable to the final rule of the FBRAs and the Basel III framework, while taking into account the cooperative structure and the organization of the System. Beginning in 2010, System institutions had sought for FCA to adopt a capital framework that was as similar as possible to the capital guidelines of the FBRAs as revised to implement the Basel III standards. In particular, System institutions had asserted that consistency of FCA capital requirements with those of the FBRAs would allow investors, shareholders, and others to better understand the financial strength and risk-bearing capacity of the System.[5]

Included in the provisions we proposed to adopt was a 150 percent risk-weight for HVCRE exposures. Our proposed definition of HVCRE was very similar to the definition the FBRAs had adopted at the time. System commenters expressed concern about parts of the proposed HVCRE definition and asked us not to adopt the definition. We did not adopt the HVCRE provisions when we adopted our final capital rules because we wanted to further consider and analyze HVCRE.[6] In the preamble to the final capital rule, we said that we expected to engage in additional HVCRE rulemaking in the future.[7]

Beginning in 2017, the FBRAs issued several proposed rules on HVCRE exposures, in an effort to address concerns with the original definition.[8] On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) [9] was enacted, adding a new statutory definition that would have to be satisfied for an exposure to be risk-weighted as an HVCRE exposure. On December 13, 2019, the FBRAs published a final rule, which became effective on April 1, 2020, implementing the EGRRCPA requirements.[10]

Many of the provisions in the FBRAs' final rule address the concerns commenters raised in response to the FCA's 2014 proposed rule. Accordingly, to ensure that System institutions continue to hold enough regulatory capital to fulfill their mission as a Government-sponsored enterprise, we propose provisions that are, in general, similar to the FBRA provisions. However, we propose differences in two general areas. First, in their rule the FBRAs clarified the interpretation of certain terms generally to be consistent with their usage in other FBRA regulations or Call Report instructions; while we do not propose different interpretations of these terms, we do not propose to refer to these FBRA references, as we do not believe that is appropriate in our rules. Second, we propose some differences where appropriate to accommodate the different operational and credit considerations of the System, while continuing to maintain appropriate safety and soundness.

II. Proposed Rule

Because of the increased risk in exposures that fall within the definition of HVCRE exposures, we propose, consistent with the FBRAs, to assign a 150 percent risk-weight to those exposures, rather than the 100 percent risk-weight generally assigned to commercial real estate and other corporate exposures under FCA regulation § 628.32(f)(1). As discussed below, our proposed rule is similar to the FBRAs' rule in most respects. In general, the same loan to the same borrower—whether it is made by a commercial bank or a System institution—carries the same risk and should be assigned the same risk-weight. The proposed definition of HVCRE exposure is intended to capture only those exposures that have increased risk characteristics in the acquisition, development, or construction of real property.

As with the risk-weighting provisions of our capital rules generally, language in the proposed definition of HVCRE exposure that refers to the financing of certain types of property or projects does not itself provide authority for an institution to engage in that financing,

[1] The FBRAs are the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC).

[2] 78 FR 62018 (October 11, 2013) (final rule of the OCC and the FRB); 79 FR 20754 (April 14, 2014) (final rule of the FDIC).

[3] Basel III was published in December 2010 and revised in June 2011. The text is available at *http://www.bis.org/publ/bcbs189.htm.* The BCBS was established in 1974 by central banks with bank supervisory authorities in major industrial countries. The BCBS develops banking guidelines and recommends them for adoption by member countries and others. BCBS documents are available at *http://www.bis.org.* The FCA does not have representation on the Basel Committee as the FBRAs do.

[4] 79 FR 52814.

[5] See 79 FR 52814, 52820. FCA is not required by law to follow the Basel Committee standards.

[6] 81 FR 49719, 49736 (July 28, 2016).

[7] *See supra footnote* 6.

[8] FCA staff submitted a comment letter in response to one of the proposals that communicated our concerns with a proposed exemption for agricultural land.

[9] Public Law 115–174, 132 Stat. 1296 (2018).

[10] 84 FR 68019.

or to have an exposure to that property or project. This is a risk-weighting regulation only.[11] System scope and eligibility authorities are contained in other provisions of our regulations and in the Farm Credit Act of 1971, as amended (Act).[12]

A. Scope of HVCRE Exposure Definition

As the FBRAs did, we propose to define an HVCRE exposure as ''a credit facility secured by land or improved real property'' that meets three criteria (and that does not meet any of the definition's exclusions, which are discussed below).[13] The FBRAs defined this term in a manner that is consistent with the definition of ''a loan secured by real estate'' in their Call Report forms and instructions. In that definition, a loan is secured by real estate if the estimated value of the real estate collateral at origination (after deducting all senior liens held by others) is greater than 50 percent of the principal amount of the loan at origination.

We propose to adopt the same meaning of ''a credit facility secured by land or improved real property'' as the FBRAs have adopted. Therefore, for example, if an institution makes a loan to construct and equip a building, and the loan is secured by both the real estate and the equipment, the institution must estimate the value of the building, upon completion, and of the equipment. If the value of the building is greater than 50 percent of the principal amount of the loan at origination, the loan would be a ''loan secured by real estate,'' and it would therefore be a ''credit facility secured by land or improved real property.'' [14] If the value of the building, upon completion, is less than 50 percent of the principal amount of the loan at origination, it would not be a ''loan secured by real estate,'' and it would therefore not be a ''credit facility secured by land or improved real property.'' Accordingly, it would not be an HVCRE exposure.

Under our proposal, a ''credit facility secured by land or improved real property'' would not be classified as an HVCRE exposure unless it met the following three criteria. If such a credit facility did not meet all three criteria, it would not be an HVCRE exposure. First, the credit facility must primarily finance or refinance the acquisition, development, or construction of real property. Second, the purpose of the credit facility must be to provide financing to acquire, develop, or improve such real property into income-producing property. Finally, the repayment of the credit facility must depend upon the future income or sales proceeds from, or refinancing of, such real property.

The first criterion is that the credit facility must primarily finance or refinance the acquisition, development, or construction of real property. This criterion is satisfied if more than 50 percent of the proposed use of the loan funds is for the acquisition, development, or construction of real property. The criterion is not satisfied if 50 percent or less of the proposed use of the loan funds is for the acquisition, development, or construction of real property.

The second criterion is that the credit facility has the purpose of providing financing to acquire, develop, or improve the real property into income-producing property.

The third criterion is that the credit facility is dependent for repayment upon future income or sales proceeds from, or refinancing of, the real property. This criterion narrows the scope of the definition of HVCRE exposure from the definition we proposed in 2014. The definition we proposed in 2014 would have included within the scope of HVCRE exposures credit facilities for which repayment would be from the ongoing business of the borrower, as well as credit facilities that were dependent for repayment upon future income or sales proceeds.

The Farm Credit Council and several System banks and association commenters expressed concern with the breadth of this definition from the 2014 proposal.[15] This proposal addresses that concern, since credit facilities that will be repaid from the borrower's ongoing business would not be classified as an HVCRE exposure. We believe that a majority of System loans are repaid from the borrower's ongoing business rather than from future income or sales proceeds, and therefore that a majority of potential System HVCRE exposures would not meet this criterion and would not be HVCRE exposures.

B. Exclusions From HVCRE Exposure Definition

Under this proposal, the exposures described in the following paragraphs would be excluded from the definition of HVCRE exposure:

1. One- to Four-Family Residential Properties

Under this proposal, as in the FBRA rule, an HVCRE exposure would not include a credit facility financing the acquisition, development, or construction of properties that are one- to four-family residential properties, provided that the dwelling (including attached components such as garages, porches, and decks) represents at least 50 percent of the total appraised value of the collateral secured by the first or subsequent lien.

Manufactured homes permanently affixed to the underlying property, when deemed to be real property under state law, would qualify for this exclusion, as would construction loans secured by single family dwelling units, duplex units, and townhouses. Condominium and cooperative construction loans would qualify for this exclusion, even if the loan is financing the construction of a building with five or more dwelling units, as long as the repayment of the loan comes from the sale of individual condominium dwelling units or individual cooperative housing units. This exclusion would apply to all credit facilities that fall within its scope, whether rural home financing under § 613.3030 or one- to four-family residential property financing under § 613.3000(b). Similar to the reduced risk-weight assigned to residential mortgage exposures under § 628.32(g)(1), a credit facility would qualify for this exclusion only if the property securing the credit facility exhibits characteristics of residential property rather than agricultural property including, but not limited to, the requirement that the dwelling (including attached components such as garages, porches, and decks) represents at least 50 percent of the total appraised value of the collateral secured by the first or subsequent lien. If examiners determined that the property was not residential in nature, the credit facility would not qualify for this exclusion.

Loans for multifamily residential property construction (such as apartment buildings where loan repayment is dependent upon

[11] As stated in the preamble to the Tier 1/Tier 2 Capital Framework final rule, ''We remind System institutions that the presence of a particular risk weighting does not itself provide authority for a System institution to have an exposure to that asset or item.'' See 81 FR 49719, 49722 (July 28, 2016).

[12] There may be overlap between HVCRE exposures and exposures to land in transition—agricultural land in the path of development. System institutions contemplating land in transition financing must review and understand FCA Bookletter BL–058 and must ensure they are in full compliance with all FCA regulations.

[13] FCA regulation § 614.4240(q) defines ''real property'' as ''all interests, benefits, and rights inherent in the ownership of real estate.''

[14] A determination that a loan is a ''credit facility secured by land or improved real property'' does not mean that the loan is necessarily an HVCRE exposure. As mentioned above, a loan also has to satisfy three criteria, and not be subject to an exclusion, to be an HVCRE exposure.

[15] *See e.g.,* Farm Credit Council comment letter, Regulatory Capital, Implementation of Tier1/Tier2 Framework, dated February 13, 2015.

apartment rental income) would not qualify for this exclusion.[16]

Loans used solely to acquire undeveloped land would not qualify for this exclusion; the credit facility would also have to include financing for the construction of one- to four-family residential structures. Moreover, credit facilities that do not finance the construction of one- to four-family residential structures (as defined above), but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, would not qualify for this exclusion. A credit facility that combines the financing of land development and the construction of one- to four-family structures would qualify for this exclusion.

2. Agricultural Land

We propose to exclude from the HVCRE definition credit facilities financing ''agricultural land,'' as defined in FCA regulation § 619.9025, or real estate used as an integral part of an aquatic operation. Section 619.9025 defines ''agricultural land'' as ''land improved or unimproved which is devoted to or available for the production of crops and other products such as but not limited to fruits and timber or for the raising of livestock.''

This exclusion would apply only to financing for the agricultural and aquatic needs of bona fide farmers, ranchers, and producers and harvesters of aquatic products under § 613.3000 of FCA regulations. It would not apply to loans for farm property construction and land development purposes.

With one exception, we intend our proposed agricultural land exclusion to have the same scope as the agricultural land exclusion of the FBRAs. The FBRAs' definition of agricultural land has the same meaning as ''farmland'' in their Call Report forms and instructions.[17] They define farmland as ''all land known to be used or usable for agricultural purposes, such as crop and livestock production. Farmland includes grazing or pastureland, whether tillable or not and whether wooded or not.'' Loans for farm property construction and land development purposes are not loans on ''farmland,'' and therefore such loans do not fall within the agricultural land exclusion. Unlike the FBRAs, we propose to expressly include within the agricultural land exclusion real estate that is an integral part of an aquatic operation.

As the FBRAs did in their final rule, loans for land development purposes and farm property construction would not be eligible in this proposed rule for the agricultural land exclusion from the HVCRE exposure definition. Loans made for land development purposes would include loans made to finance property improvements, such as laying sewers or water pipes preparatory to erecting new structures. Loans made for farm property construction would include loans made to finance the on-site construction of industrial, commercial, residential, or farm buildings. For the purposes of this exclusion, ''construction'' includes not only construction of new structures, but also additions or alterations to existing structures and the demolition of existing structures to make way for new structures.

3. Loans on Existing Income Producing Properties That Qualify as Permanent Financings

As in the FBRA rule, we propose to exclude from the definition of HVCRE exposure credit facilities that finance the acquisition or refinance of existing income-producing real property secured by a mortgage on such property, so long as the cash flow generated by the real property covers the debt service and expenses of the property in accordance with the System institution's underwriting criteria for permanent loans. We also propose to exclude credit facilities financing improvements to existing income-producing real property secured by a mortgage on such property. Examiners may review the reasonableness of a System institution's underwriting criteria for permanent loans through the regular examination process to ensure the real estate lending policies are consistent with safe and sound banking practices.

We believe this income-producing property exclusion would address certain concerns expressed in comment letters from FCA's 2014 proposed HVCRE definition regarding agribusiness and rural utility loans. System institutions commented they did not believe the definition of HVCRE was intended to include agribusiness or rural project financing transactions to build processing and marketing facilities or rural infrastructure. Under this proposal, these types of loans could qualify for the income-producing property exclusion if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property in accordance with the System institution's underwriting criteria for permanent loans.

Agribusiness and rural project loans that are not secured by existing income-producing real property would not fall under this exclusion. Such loans often pose a greater credit risk than permanent loans. We believe it is appropriate to classify these loans as HVCRE exposures and impose a 150 percent risk-weight given their increased risk compared to other commercial real estate exposures (unless the loan satisfies one of the other exclusions). However, as discussed in section 5—Reclassification as a Non-HVCRE Exposure section below, a System institution would be allowed to reclassify these HVCRE exposures as a non-HVCRE exposure if two conditions are met:

- Substantial completion of the development or construction on the real property has occurred; and
- the cash flow generated by the property covers the debt service and expenses on the property in accordance with the System institution's loan underwriting standards for permanent financings.

4. Certain Commercial Real Property Projects

As in the FBRA rule, we propose to exclude from the definition of HVCRE exposure credit facilities for certain commercial real property projects that are underwritten in a safe and sound manner in accordance with proposed loan-to-value (LTV) limits and where the borrower has contributed a specified amount of capital to the project. A commercial real property project loan generally is used to acquire, develop, construct, improve, or refinance real property, and the primary source of repayment is dependent on the sale of the real property or the revenues from third-party rent or lease payments. Commercial real property project loans do not include ordinary business loans and lines of credit in which real property is taken as collateral. As it relates to the System, we believe this exclusion is most relevant to agribusiness (processing and marketing entities and farm-related businesses) and rural project loans.

In order to qualify for this exclusion, a credit facility that finances a commercial real property project would be required to meet four distinct criteria. First, the LTV ratio would have to be less than or equal to the applicable maximum set forth in proposed Appendix A. Second, the borrower

[16] *See supra footnote* 11. Additionally, certain multifamily residential property may meet the ''other credit needs'' financing available to eligible borrowers as authorized by sections 1.11(a)(1) and 2.4(a)(1) of the Act and referenced in § 613.3000.

[17] See Federal Financial Institutions Examination Council (FFIEC) 031 and FFIEC 041—Instructions for Preparation of Consolidated Reports of Condition and Income.

would have to contribute capital of at least 15 percent of the real property's value to the project. Third, the 15 percent amount of contributed capital would have to be contributed prior to the institution's advance of funds (other than a nominal sum to secure the institution's lien on the real property). Fourth, the 15 percent amount of contributed capital would have to be contractually required to remain in the project until the loan could be reclassified as a non-HVCRE exposure. The proposed interpretations of terms relevant to the four criteria for this exclusion are discussed below.

a. Loan-to-Value Limits

To qualify for this exclusion from the HVCRE exposure definition, the FBRAs' rule requires that a credit facility be underwritten in a safe and sound manner in accordance with the Supervisory Loan-to-Value Limits contained in the Interagency Guidelines for Real Estate Lending Policies.[18] These Interagency Guidelines require banking institutions, for real estate loans, to establish internal LTV limits that do not exceed specified supervisory limits ranging from 65 percent for raw land to 85 percent for 1- to 4-family residential and improved property.

The FCA has not adopted these supervisory LTV limits.[19] Nevertheless, FCA examination guidance from 2009 makes clear that FCA expectations are consistent with the Interagency Guidelines, including the supervisory LTV limits.[20] We believe exposures should satisfy these LTV limits to qualify for this exclusion to the HVCRE definition. We propose to adopt these LTV limits, for the purpose of the HVCRE definition only, in a new Appendix A to part 628.

b. Contributed Capital

Under the proposal, cash, unencumbered readily marketable assets, paid development expenses out-of-pocket, and contributed real property or improvements would count as forms of capital for purposes of the 15 percent capital contribution criterion. A System institution could consider costs incurred by the project and paid by the borrower prior to the advance of funds by the System institution as out-of-pocket development expenses paid by the borrower.

The FBRAs' version of the rule provides that the value of contributed real property means the appraised value of real property contributed by the borrower as determined under the standards prescribed by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339) (FIRREA). Because FCA is not named in FIRREA as one of the Federal financial regulatory agencies covered by its real estate appraisal provisions, our proposal does not expressly require that the value must be determined under the FIRREA standards; rather, we propose to require that the value must be determined in accordance with FCA regulations at Subpart F of 12 CFR part 614. FCA's collateral evaluation rules are generally similar, although not identical, to the FIRREA standards, however, and therefore there should be few substantive differences in the approach to valuation.

FCA has long recognized that Congress, through the enactment of FIRREA, expressed a strong belief that all financial transactions involving real property collateral should be supported by adequate and accurate collateral evaluations. Congress also expressed the belief that such collateral evaluations should be based on standards and guidelines that are consistently applied by the financial and appraisal industries. We believe that following the collateral evaluation requirements of FIRREA and the overarching beliefs of Congress is an essential element of the safe and sound lending activities covered by the System. FCA's collateral evaluation regulations, at 12 CFR part 614, subpart F, are generally similar, although not identical, to the FIRREA appraisal requirements.[21]

The value of the real property that could count toward the 15 percent contributed capital requirement would be reduced by the aggregate amount of any liens on the real property securing the HVCRE exposure.

To ensure that tangible equity is invested in the project, funds borrowed from a third party (such as another lender, an owner or parent organization, or a related party) could count toward the capital contribution as long as the borrowed funds are not derived from, related to, or encumber any collateral that has been contributed to the project. Additionally, the recognition of any contribution of funds to a project would have to be in conformance with safe and sound lending practices and in accordance with the System institution's underwriting criteria and internal policies.

In addition, contributed property or improvements would have to be directly related to the project to be eligible to count towards the capital contribution. Real estate not developed as part of the project would not be counted toward the capital contribution.

We would interpret the term ''unencumbered readily marketable assets'' to mean insured deposits, financial instruments, and bullion in which the System institution has a perfected interest. For collateral to be considered ''readily marketable'' by a System institution, the institution's expectation would be that the financial instrument and bullion would be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, an auction or similarly available daily bid and ask price market.[22] Readily marketable collateral should be appropriately discounted by the institution consistent with the institution's usual practices for making loans secured by such collateral. Examiners may review the reasonableness of a System institution's underwriting criteria to ensure the real estate lending policies are consistent with safe and sound banking practices.

c. Value Appraisal

Under the proposal, the 15 percent capital contribution would be required to be calculated using the real property's value. An appraised ''as completed'' value is preferred; however, an ''as completed'' value appraisal may not always be available, such as in the case of purchasing raw land without plans for development in the near term, which would typically have an ''as is'' value appraisal. Therefore, we propose to permit the use of an ''as is'' appraisal, if an ''as completed'' appraisal is not available, for purposes of the 15 percent capital contribution.[23]

[18] See 12 CFR part 365, subpart A, Appendix A (FDIC); 12 CFR part 208, Appendix C (FRB); 12 CFR part 34, Appendix A (OCC).

[19] Section 1.10(a) of the Act and § 614.4200(b)(1) of FCA regulations require at least an 85 percent LTV ratio for long-term real estate mortgage loans that are comprised primarily of agricultural or rural property, except for loans that have government guarantees or are covered by private mortgage insurance. Under § 614.4200(b)(1), agricultural or rural property includes agricultural land and improvements thereto, a farm-related business, a marketing or processing operation, a rural residence, or real estate used as an integral part of an aquatic operation.

[20] Examination Bulletin FCA 2009–2, Guidance for Evaluating the Safety and Soundness of FCS Real Estate Lending (focusing on land in transition), December 2009.

[21] See FCA Informational Memorandum, Guidance on Addressing Personal and Intangible Property within Collateral Evaluation Policies and Procedures (§ 614.4245), August 29, 2016; FCA Examination Manual EM–22.6, Loan Portfolio Management: Collateral Risk management, dated August 20, 2014.

[22] This interpretation is consistent with the definitions of ''unencumbered'' and ''marketable'' in § 615.5134 of our regulations.

[23] We intend that the terms ''as completed'' and ''as is,'' as used in the definition of HVCRE

Continued

In addition, we would allow the use of a collateral evaluation of the real property instead of an appraisal to determine the value, for purposes of the HVCRE exposure definition, where our appraisal regulations [24] permit collateral evaluations to be used in lieu of appraisals.

The FBRAs' regulatory exclusion for Certain Commercial Real Property Projects specifies that an ''as completed'' value appraisal must be used. This is consistent with the EGRRCPA's statutory definition for the Certain Commercial Real Property Projects exclusion, which included only appraised ''as completed'' values. As explained by the FBRAs, the EGRRCPA required this appraised ''as completed'' value for their regulations. In the preamble of their final rule, the FBRAs clarified their definition allows ''as is'' appraisals for raw land loans and collateral evaluations for loans in amounts under certain specified thresholds in their appraisal regulations.[25] However, the FBRAs did not change the wording of the EGRRCPA's statutory definition in their regulations to reflect this interpretation. The EGRRCPA does not apply to System institutions, and FCA is not required to adopt the statutory definition. Accordingly, we propose to deviate from the statutory definition for Certain Commercial Real Property Projects to include ''as is'' appraisals and collateral evaluations to align our regulation with the FBRAs' interpretation of the definition.

d. Project

In this proposal, the 15 percent capital contribution and the appraisal or collateral evaluation would be measured in relation to a ''project.'' Some credit facilities for the acquisition, development, or construction of real property may have multiple phases as part of a larger construction or development project. In the case of a project with multiple phases, in order for a loan financing a phase to be eligible for the contributed capital exclusion, the phase must have its own appraised value or an appropriate evaluation in order for it to be deemed a separate ''project'' for the purpose of the 15 percent capital contribution calculation. We expect that each project phase being financed by a credit facility have a proper appraisal or evaluation with an associated ''as completed'' or ''as is'' value. Where appropriate and in accordance with the System institution's applicable underwriting standards, a System institution may look at a multiphase project as a complete project rather than as individual phases.

5. Reclassification as a Non-HVCRE Exposure

Under the proposal, a System institution would be allowed to reclassify an HVCRE exposure as a non-HVCRE exposure when the substantial completion of the development or construction on the real property has occurred and the cash flow generated by the property covered the debt service and expenses on the property in accordance with the institution's loan underwriting standards for permanent financings. We expect each System institution to have prudent, clear, and measurable underwriting standards, which we may review through the examination process.

6. Applicability Only to Loans Made After Effective Date

In consideration of the changes this rule would require, we propose that only loans made after the effective date of this rule would be subject to the HVCRE risk-weighting requirements. Loans made prior to the rule's effective date could continue to be risk-weighted as if the rule had not been adopted.

After the effective date, when a System institution modifies a loan or if a project is altered in a manner that materially changes the underwriting of the credit facility (such as increases to the loan amount, changes to the size and scope of the project, or removing all or part of the 15 percent minimum capital contribution in a project), the institution must treat the loan as a new exposure and reevaluate the exposure to determine whether or not it is an HVCRE exposure.

C. Impact on Prior FCA Board Actions

FCA Bookletter BL–070 authorizes System institutions to assign a reduced risk-weight (lower than the 100 percent risk-weight generally assigned to commercial real estate exposures under FCA regulation § 628.32(f)(1)) for rural water and wastewater (RWW) facilities that satisfy criteria.[26] BL–070 does not permit this reduced risk-weight for exposures when a RWW facility is not fully operational due to initial construction or major renovation; instead, institutions must assign risk-weights to these ''major construction'' exposures in accordance with Part 628 of our regulations.[27] If this proposed regulation is adopted, BL–070 would continue to assign risk-weights to these ''major construction'' exposures in accordance with Part 628 as it would be amended; in other words, an exposure to a RWW facility that is not fully operational due to initial construction or major renovation would continue to be assigned a risk-weight in accordance with Part 628 (either as an HVCRE exposure or as a corporate exposure under § 628.32(f)(1), depending on whether it satisfies the definition of HVCRE exposure or not). Under BL–070, a RWW exposure during construction or major renovation, when the facility is not fully operational, may not be assigned a reduced risk-weight. All other RWW exposures would continue to receive reduced risk-weights in accordance with BL–070.

FCA Bookletter BL–053 authorizes System institutions to assign a reduced risk-weight to certain electric cooperative exposures, including for some power plants that are in the construction phase.[28] This treatment is authorized under our reservation of authority.[29] In the future, we may consider whether the risk-weight authorized by BL–053 remains appropriate.

III. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

exposure, would have the same meaning as in the Interagency Appraisal and Evaluation Guidelines (December 2, 2010), issued by the OCC, the FRB, the FDIC, the Office of Thrift Supervision, and the National Credit Union Administration. Under these Guidelines, ''as completed'' reflects property's market value as of the time that development is expected to be completed, and ''as is'' means the estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal's effective date.

[24] See § 614.4260(c), which sets forth the types of real estate-related transactions that do not require appraisals.

[25] See 84 FR 68019, 68027 (December 13, 2019).

[26] BL–070: Revised Capital Treatment for Certain Water and Wastewater Exposures, November 8, 2018.

[27] BL–070 does allow the reduced risk-weight for exposures during routine repair, upgrade, or maintenance projects that do not impede the facility's full operation.

[28] FCA BL–053: Revised Regulatory Capital Treatment for Certain Electric Cooperatives Assets, February 12, 2007.

[29] *See* § 628.1(d)(3).

List of Subjects in 12 CFR Part 628

Accounting, Agriculture, Banks, Banking, Capital, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 628 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 628—CAPITAL ADEQUACY OF SYSTEM INSTITUTIONS

■ 1. The authority citation for part 628 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a), Pub. L. 100–233, 101 Stat. 1568, 1608 ((12 U.S.C. 2154 note); sec. 939A, Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note).

■ 2. Amend § 628.2 by adding paragraph (6) to the definition of ''Corporate exposure'' and a new definition, in alphabetical order, for ''High volatility commercial real estate (HVCRE) exposure'' to read as follows:

§ 628.2 Definitions.

* * * * *

Corporate exposure * * *

* * * * *

(6) A high volatility commercial real estate (HVCRE) exposure;

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the System institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition:

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or improve such real property into income producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility.

(2) An HVCRE exposure does not include a credit facility financing:

(i) The acquisition, development, or construction of properties that are:

(A) One- to four-family residential properties, provided that the dwelling (including attached components such as garages, porches, and decks) represents at least 50 percent of the total appraised value of the collateral secured by the first or subsequent lien. Credit facilities that do not finance the construction of one- to four-family residential structures, but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, do not qualify for the one- to four-family residential properties exclusion;

(B) [Reserved]

(C) Agricultural land, as defined in § 619.9025 of this chapter, or real estate used as an integral part of an aquatic operation. This provision applies only to financing for the agricultural and aquatic needs of bona fide farmers, ranchers, and producers and harvesters of aquatic products under § 613.3000 of this chapter. This provision does not apply to loans for farm property construction and land development purposes;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the System institution's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the System institution's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which:

(A) The loan-to-value ratio is less than or equal to the applicable loan-to-value limit set forth in Appendix A to this part;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, ''as completed'' value to the project. The use of an ''as is'' appraisal is allowed in instances where an ''as completed'' value appraisal is not available. The use of an evaluation of the real property instead of an appraisal to determine the ''as completed'' appraised value is allowed if § 614.4260(c) of this chapter permits evaluations to be used in lieu of appraisals. The contribution may be in the form of:

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket; or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the amount of capital required by paragraph (2)(iv)(B) of this definition before the System institution advances funds (other than the advance of a nominal sum made in order to secure the System institution's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has been reclassified by the System institution as a non-HVCRE exposure under paragraph (6) of this definition.

(3) An HVCRE exposure does not include any loan made prior to the effective date of this rule.

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6) of this definition.

(5) Value of contributed real property: For the purposes of this HVCRE exposure definition, the value of any real property contributed by a borrower as a capital contribution is the appraised value of the property as determined under standards prescribed in accordance with FCA regulations at subpart F of part 614 of this chapter, in connection with the extension of the credit facility or loan to such borrower.

(6) Reclassification as a non-HVCRE exposure: For purposes of this HVCRE exposure definition and with respect to a credit facility and a System institution, a System institution may reclassify an HVCRE exposure as a non-HVCRE exposure upon:

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the System institution's applicable loan underwriting criteria for permanent financings.

(7) [Reserved].

* * * * *

■ 3. Amend § 628.32 by adding paragraph (j) to read as follows:

§ 628.32 General risk weights.

* * * * *

(j) *High volatility commercial real estate (HVCRE) exposures.* A System institution must assign a 150-percent risk weight to an HVCRE exposure.

* * * * *

■ 4. Amend § 628.63 by adding entry (b)(8) to Table 3 to § 628.63 to read as follows:

§ 628.63 Disclosures.

* * * * *

(b) * * *

(4) * * *

* * * * *

TABLE 3 TO § 628.63—CAPITAL ADEQUACY

*	*	*	*	*	*	*
Quantitative disclosures			(b) Risk-weighted assets for:			
*	*	*	*	*	*	*
			(8) HVCRE exposures;			
*	*	*	*	*	*	*

* * * * *

■ 5. Add Appendix A to Part 628 to read as follows:

Appendix A to Part 628—Loan-to-Value Limits for High Volatility Commercial Real Estate Exposures

Table A sets forth the loan-to-value limits specified in paragraph (2)(iv)(A) of the definition of high volatility commercial real estate exposure in § 628.2.

TABLE A—LOAN-TO-VALUE LIMITS FOR HIGH VOLATILITY COMMERCIAL REAL ESTATE EXPOSURES

Loan category	Loan-to-value limit (percent)
Raw Land	65
Land development	75
Construction:	
Commercial, multifamily,[1] and other non-residential	80
1- to 4-family residential	85
Improved property	85
Owner-occupied 1- to 4-family and home equity	[2] 85

[1] Multifamily construction includes condominiums and cooperatives.

[2] If a loan is covered by private mortgage insurance, the loan-to-value (LTV) may exceed 85 percent to the extent that the loan amount in excess of 85 percent is covered by the insurance. If a loan is guaranteed by Federal, State, or other governmental agencies, the LTV limit is 97 percent.

The loan-to-value limits should be applied to the underlying property that collateralizes the loan. For loans that fund multiple phases of the same real estate project (*e.g.,* a loan for both land development and construction of an office building), the appropriate loan-to-value limit is the limit applicable to the final phase of the project funded by the loan; however, loan disbursements should not exceed actual development or construction outlays. In situations where a loan is fully cross-collateralized by two or more properties or is secured by a collateral pool of two or more properties, the appropriate maximum loan amount under loan-to-value limits is the sum of the value of each property, less senior liens, multiplied by the appropriate loan-to-value limit for each property. To ensure that collateral margins remain within the limits, System institutions should redetermine conformity whenever collateral substitutions are made to the collateral pool.

Dated: August 12, 2021.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2021–17560 Filed 8–25–21; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0697; Project Identifier MCAI–2020–01540–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. Model A109E helicopters. This proposed AD was prompted by reports of cracking in the center fuselage frame assembly in the intersection of the lateral pylon and floor spar at station (STA) 1815 on the left- and right-hand sides. This proposed AD would require repetitive inspections of the intersection of the lateral pylon and floor spar at STA 1815 for cracking and, depending on the findings, repair, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 12, 2021.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material that is proposed for IBR in this AD, contact EASA,

Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0697.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0697; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0697; Project Identifier MCAI–2020–01540'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0256, dated November 17, 2020 (EASA AD 2020–0256), to correct an unsafe condition for Leonardo S.p.A., formerly Finmeccanica S.p.A., AgustaWestland S.p.A., and Agusta S.p.A., Model A109E helicopters, serial numbers 11001 through 11674 inclusive.

This proposed AD was prompted by reports of cracking in the center fuselage frame assembly in the intersection of the lateral pylon and floor spar at STA 1815 on the left- and right-hand sides. The FAA is proposing this AD to address cracking in the center fuselage frame assembly in the intersection of the lateral pylon and floor spar at STA 1815 on the left- and right-hand sides, which, if not addressed, could affect the structural integrity of the helicopter. See EASA AD 2020–0256 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0256 requires repetitive inspections of STA 1815 for cracking, fluorescent liquid penetrant inspections of any cracking to determine the extent of the cracking, and repair if necessary. For both the left- and right-hand side repair, the actions include removing equipment and furnishings to gain access to the work area; testing the flight control system for correct travel of the flight controls; performing an operational test of the cockpit and passenger doors caution system; installing a new forward cap; installing a new angle, butt strap, and web; installing new cotter pins; and re-installing the removed equipment and furnishings when the repair is complete.

For the left-hand side repair, the actions also include replacing the nut plates with new nut plates, and an operational test of the collective control system and tail rotor control system. For the right-hand side repair, the actions include an operational test of the cyclic control system.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2020–0256, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

Differences Between This Proposed AD and the MCAI

EASA AD 2020–0256 specifies to accomplish corrective actions if ''any crack is detected in an affected area'' during a required inspection. Figure 1 of the service information referenced in EASA AD 2020–0256 depicts the affected area, but the FWD bulkhead is mislabeled as AFT. This proposed AD includes an exception to clarify the correct location of the FWD bulkhead depicted in Figure 1.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2020–0256 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0256 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2020–0256 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2020–0256. Service information referenced in EASA AD 2020–0256 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0697 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 70 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	6 work-hours × $85 per hour = $510 per inspection cycle.	$0	$510 per inspection cycle	$35,700 per inspection cycle.

The FAA estimates the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. The agency has no way of determining the number of helicopters that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair left-hand side	120 work-hours × $85 per hour = $10,200.	$6,600	$16,800
Repair right-hand side	120 work-hour × $85 per hour = $10,200.	5,200	15,400

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.a.: Docket No. FAA–2021–0697; Project Identifier MCAI–2020–01540–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 12, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model A109E helicopters, certificated in any

category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0256, dated November 17, 2020 (EASA AD 2020–0256).

(d) Subject

Joint Aircraft Service Component (JASC) Code: 5300, Fuselage Structure.

(e) Unsafe Condition

This AD was prompted by reports of cracking in the center fuselage frame assembly in the intersection of the lateral pylon and floor spar at station (STA) 1815 on the left- and right-hand sides. The FAA is issuing this AD to address cracking in the intersection of the lateral pylon and floor spar at STA 1815 on the left- and right-hand sides, which, if not addressed, could affect the structural integrity of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0256.

(h) Exceptions to EASA AD 2020–0256

(1) Where EASA AD 2020–0256 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2020–0256 AD refers to its effective date, this AD requires using the effective date of this AD.

(3) Where Figure 1 of the service information referenced in EASA AD 2020–0256 depicts the AFT bulkhead twice, for clarification, the FWD bulkhead is mislabeled as AFT and depicted on the left side of Figure 1, below 109–0320–96 POST ASSY (REF) and above FWD CAP.

(4) Where the service information referenced in EASA AD 2020–0256 specifies discarding parts, this AD requires removing those parts from service.

(5) Where paragraph (2) of EASA AD 2020–0256 or the service information referenced in EASA AD 2020–0256 specifies to contact the manufacturer for repair information, for this AD: Before further flight, do the repair using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Leonardo S.p.a.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(6) This AD does not require the ''Remarks'' section of EASA AD 2020–0256.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0256 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

(1) For EASA AD 2020–0256, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0697.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

Issued on August 18, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–18256 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0201]

RIN 1625–AA00

Safety Zone; Columbia River Outfall Project, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of the Columbia River. This action is necessary to provide for the safety of life on these navigable waters near Knapp, WA, at Columbia River Mile 95.8 from October 1, 2021, through March 15, 2022. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 10, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0201 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On November 18, 2020, the Discovery Clean Water Alliance notified the Coast Guard that it would begin construction for their Phase 5A Project: Columbia River Outfall and Effluent Pipeline from 12:01 a.m. on October 1, 2021, through 11:59 p.m. on March 15, 2022, to remove and replace existing pipeline. The construction project includes the removal and replacement of an existing navigation marker (3-pile dolphin), installation of a 48″ pipeline in the riverbed outside the navigation channel, and removal of an existing 30″ pipeline from the riverbed. The scope of work may include the need to construct temporary pile-supported work platforms, or dredge, to access shallow water areas. Lighted barges will be used in deeper water. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the construction project would be a safety concern for anyone within the designated area of the Columbia River Outfall and Effluent Pipeline construction project.

The purpose of this rulemaking is to ensure the safety of vessels and the

navigable waters within the designated area of the Columbia River Outfall and Effluent Pipeline construction project. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from October 1, 2021, through March 15, 2022. The safety zone would cover all navigable waters of the Columbia River, surface to bottom, encompassed by a line connecting the following points beginning at the shoreline at 45°43′57.0″ N/122°45′21.0″ W, west to 45°43′58.0″ N/122°45′33.0″ W, south to 45°43′39.0″ N/122°45′35.0″ W, thence east to 45°43′39.0″ N/122°45′21″ W, and along the shoreline back to the beginning point. The duration of the zone is intended to ensure the safety of vessels and these navigable waters while the pipeline construction is underway. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to act on his behalf, or a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Columbia River in the enforcement of the safety zone. Vessel operators desiring to enter or operate with the safety zone would contact the COTP's on-scene designated representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone would comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Columbia River during the construction project. Moreover, the Coast Guard would issue a Notice to Mariners about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 166 days that would prohibit vessel traffic to

transit the area during construction operations. Normally such actions are categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

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 NPRM 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. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

■ 2. Add § 165.T13–0201 to read as follows:

§ 165.T13–0201 Safety Zones: Safety Zone; Columbia River Outfall and Effluent Pipeline Construction Project, Columbia River, Vancouver, WA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Columbia River, surface to bottom, encompassed by a line connecting the following points beginning at the shoreline at 45°43′57.0″ N/122°45′21.0″ W, west to 45°43′58.0″ N/122°45′33.0″ W, south to 45°43′39.0″ N/122°45′35.0″ W, thence east to 45°43′39.0″ N/122°45′21″ W, and along the shoreline back to the beginning point.

(b) *Definitions.* As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Sector Columbia River (COTP) to act on his behalf, or a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Columbia River in the enforcement of the safety zone.

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

(2) Vessel operators desiring to enter or operate with the safety zone may contact the COTP's on-scene designated representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This safety zone is in effect from 12:01 a.m. on October 1, 2021, through 11:59 p.m. on March 15, 2022. It will be subject to enforcement this entire period unless the Captain of the Port, Sector Columbia River determines it is no longer needed. The Coast Guard will inform mariners of any change to this period of enforcement via Notice to Mariners.

Dated: August 17, 2021.

M. Scott Jackson,

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

[FR Doc. 2021–18388 Filed 8–25–21; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register

Vol. 86, No. 163

Thursday, August 26, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FGIS–21–0009]

United States Standards for Beans

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of final action.

SUMMARY: This action is being taken under the authority of the Agricultural Marketing Act of 1946, as amended, (AMA). The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is adding the new criterion, Cotyledon Damage, in the Bean Inspection Handbook pertaining to the class chickpea/garbanzo beans in the U.S. Standards for Beans. Stakeholders in the dry bean processing/handling industry requested AMS to revise the Bean Inspection Handbook to include the criterion for the new damage factor, Cotyledon Damage, in chickpeas/garbanzo beans.

DATES: *Applicability date:* August 26, 2021.

FOR FURTHER INFORMATION CONTACT: Loren Almond, USDA AMS; Telephone: (816) 702–3925; email: *Loren.L.Almond@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the AMA (7 U.S.C. 1621–1627), as amended, AMS establishes and maintains a variety of quality and grade standards for agricultural commodities that serve as a fundamental starting point to define commodity quality in the domestic and global marketplace.

Standards developed under the AMA include those for rice, whole dry peas, split peas, feed peas, lentils, and beans. United States standards for whole dry peas, split peas, feed peas, lentils and beans no longer appear in the Code of Federal Regulations but are now maintained by USDA–AMS-Federal Grain Inspection Service (AMS–FGIS). The U.S. Standards for beans are voluntary and widely used in private contracts, government procurement, marketing communication, and for some commodities, consumer information.

Bean standards facilitate bean marketing and define U.S. bean quality in the domestic and global marketplace. These standards define commonly used industry terms; contain basic principles governing the application of standards, such as the type of sample used for a particular quality analysis; provide the basis of determination; and specify grades and grade requirements. Official procedures for determining grading factors are provided in the Bean Inspection Handbook. Together, grading standards and testing procedures allow buyers and sellers to communicate quality requirements, compare bean quality using equivalent forms of measurement, and assist in price discovery.

AMS engages in outreach with stakeholders to ensure commodity standards maintain relevance to the modern market. Bean industry stakeholders include the USA Dry Pea and Lentil Council (USADPLC).

The United States Standards for Beans and official inspection procedures for beans in the Bean Inspection Handbook are available on the AMS public website. The United States Standards for Beans were last revised in 2017. Currently, under bean inspection criteria, white chalky or wafer-like spots are not considered damage in chickpea/garbanzo beans and there is not a definition or factor for Cotyledon Damage in Chickpea/Garbanzo Beans. Stakeholders stated that such spots in chickpea/garbanzo beans negatively affect bean flavor and specifically asked AMS to revise bean damage factors to include the addition of a new criterion, Cotyledon Damage, in the class Chickpea/Garbanzo Beans.

Addition of Cotyledon Damage Factor in the Class Chickpea/Garbanzo Beans

Stakeholders recommended that AMS revise the Bean Inspection Handbook criteria to include the new damage factor, Cotyledon Damage, in the class Chickpea/Garbanzo Beans. AMS and stakeholders worked collaboratively to define and state the criteria for Cotyledon Damage in Chickpea/Garbanzo Beans. Additionally, these changes were recommended to AMS by stakeholders to facilitate current marketing practices.

Comment Review

AMS published a Notice in the **Federal Register** on April 22, 2021 (86 FR 21268), inviting interested parties to comment on the proposed revisions to the U.S. Standards for Beans. AMS received two comments in response to the notice that strongly supported the proposed revision. AMS received no comments opposing the proposed revision. AMS believes this revision will facilitate inspections, better reflect current marketing practices, be cost efficient, and facilitate purchasing and selling of chickpea/garbanzo beans. Accordingly, AMS is making no changes to the revised chickpea/garbanzo bean inspection methods as proposed. The revision to chickpea/garbanzo bean inspection is effective August 1, 2021. The Bean Inspection Handbook will be revised to incorporate the revision.

Final Action

AMS is revising the Chickpea/Garbanzo bean inspection criteria by amending the Bean Inspection Handbook to include the definition and criteria requirements for Cotyledon Damage in Chickpea/Garbanzo Beans. The new damage factor will be defined as, ''Chickpea/Garbanzo beans or pieces of Chickpea/Garbanzo beans with a white chalky or wafer-like spot that penetrates the cotyledon (singularly or in combination) that meets or exceeds the minimum coverage shown on VRI–Bean–5.1 Cotyledon Damage (Chickpea/Garbanzo).'' The criteria also specify that damage portion size requirements for chickpea/garbanzo beans are approximately 250 grams for small-seeded beans and 500 grams for large-seeded beans. Further, suspect beans must be scraped to confirm the spot penetrates into the cotyledon and is of a size to constitute damage, per the definition.

Authority: 7 U.S.C. 1621–1627.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2021–18321 Filed 8–25–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New York Advisory Committee (Committee) will hold meetings via WebEx on Friday, September 3, 2021; from 1:00–2:15 p.m. ET, and Friday, September 17, 2021; from 1:00–2:15 p.m. ET, for the purpose of debriefing testimony heard related to the Committee's project on potential racial discrimination in eviction policies and enforcement in New York.

DATES: The meetings will be held on Friday, September 3, 2021; from 1:00 p.m.–2:15 p.m. ET and Friday, September 17, 2021; from 1:00 p.m.–2:15 p.m. ET Access details for both meetings:

- To join by web conference please click the link below; password is USCCR: *https://bit.ly/3mcmZtw*.
- To join by phone only, dial: 1–800–360–9505; Access Code: 199 963 9326#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 202–809–9618.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number. To request additional accommodations, please email *mtrachtenberg@usccr.gov* at least 7 days prior to the meeting for which accommodations are requested.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at *www.facadatase.gov* under the Commission on Civil Rights, New York Advisory Committee. Persons interested in the work of this Committee are also directed to the Commission's website, *www.usccr.gov;* persons may also contact the Regional Programs Unit office at the above email or phone number.

Agenda

I. Welcome and Roll Call
II. Announcements and Updates
III. Approval of Minutes
IV. Discussion: Committee's Project on Eviction Policy and Enforcement in New York
V. Public Comment
VI. Review Next Steps
VII. Adjournment

Dated: August 20, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–18353 Filed 8–25–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–874]

Certain Hot-Rolled Steel Flat Products From Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Nippon Steel Corporation (NSC) and Tokyo Steel Manufacturing Co., Ltd. (Tokyo Steel), producers and exporters of hot-rolled steel flat products (hot-rolled steel) from Japan, sold subject merchandise in the United States at prices below normal value during the period of review (POR) October 1, 2018, through September 30, 2019. In addition, Commerce determines that Honda Trading Canada, Inc. (Honda), Panasonic Corporation (Panasonic), and Mitsui & CO., Ltd. (Mitsui) had no shipments during the POR.

DATES: Applicable August 26, 2021.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1396 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2021, Commerce published the *Preliminary Results* of this review in the **Federal Register**.[1] We invited interested parties to comment on the *Preliminary Results.* Between March 25 and April 1, 2021, Commerce received timely filed briefs and rebuttal briefs from the petitioners[2] and NSC.[3] On March 25, 2021, Commerce received a hearing request from NSC.[4] On July 2, 2021, NSC withdrew its hearing request.[5]

On April 14, 2021, we extended the deadline for the final results.[6] The deadline for the final results of this review is August 20, 2021.

These final results cover 26 producers and exporters of subject merchandise.[7] Based on an analysis of the comments received, we did not make changes to the weighted-average dumping margins

[1] *See Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019;* 86 FR 10920 (February 23, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] The petitioners consist of AK Steel Corporation; ArcelorMittal USA LLC; Nucor Corporation; SSAB Enterprises, LLC; Steel Dynamic, Inc.; and United States Steel Corporation.

[3] *See* Petitioners' Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: Case Brief,'' dated March 25, 2021; *see also* NSC's Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: NSC's Case Brief,'' dated March 25, 2021; Petitioners' Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: Petitioner's Rebuttal Brief,'' dated April 1, 2021; NSC's Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: NSC's Rebuttal Brief,'' dated April 1, 2021.

[4] *See* NSC's Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: NSC's Hearing Request,'' dated March 25, 2021.

[5] *See* NSC's Letter, ''Certain Hot-Rolled Steel Flat Products from Japan: Withdrawl of NSC's Hearing Request,'' July 2, 2021.

[6] *See* Memorandum, ''Certain Hot-Rolled Steel Products from Japan: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2018–2019,'' dated April 14, 2021.

[7] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 67712 (December 11, 2019).

determined for the respondents. The weighted-average dumping margins are listed in the ''Final Results of Review'' section, below. Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [8]

The merchandise covered by the *Order* is certain hot-rolled steel flat products. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[9]

Final Determination of No Shipments

In the *Preliminary Results,* Commerce preliminarily determined that Honda, Panasonic, and Mitsui had no shipments of subject merchandise during the POR. U.S. Customs and Border Protection (CBP) subsequently confirmed that these three companies had no shipments.[10] As no party has identified any record evidence which would call into question these preliminary findings with respect to these three companies, we continue to find they made no shipments of subject merchandise during the POR. Accordingly, consistent with our practice, we intend to instruct CBP to liquidate any existing entries of subject merchandise produced by Honda, Panasonic, and Mitsui, but exported by other parties without their own rate, at the all-others rate.[11]

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum, which is hereby adopted with this notice. The issues are identified in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty 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/index.html.*

Changes Since the Preliminary Results

Based on our review and analysis of the comments received from parties, we did not make changes to the margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

For these final results, we calculated weighted-average dumping margins that are not zero, *de minimis,* or determined entirely on the basis of facts available for NSC and Tokyo Steel. Accordingly, Commerce has assigned to the companies not individually examined a margin of 10.95 percent, which is the weighted-average (using the publicly ranged U.S. value) of NSC's and Tokyo Steel's calculated weighted-average dumping margins for these final results.

Final Results of Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period October 1, 2018, through September 30, 2019:

Producers/exporters	Weighted-average dumping margin (percent)
Nippon Steel Corporation/Nippon Steel Nisshin Co., Ltd./Nippon Steel Trading Corporation [12]	11.70
Tokyo Steel Manufacturing Co., Ltd	6.80
Review-Specific Average Rate Applicable to the Following Companies	
Hanwa Co., Ltd	10.95
Higuchi Manufacturing America, LLC	10.95
Higuchi Seisakusho Co., Ltd	10.95
Hitachi Metals, Ltd	10.95
JFE Steel Corporation/JFE Shoji Trade Corporation [13]	10.95
JFE Shoji Trade America	10.95
Kanematsu Corporation	10.95
Kobe Steel, Ltd	10.95
Metal One Corporation	10.95
Miyama Industry Co., Ltd	10.95
Nakagawa Special Steel Inc	10.95
Nippon Steel & Sumikin Logistics Co., Ltd	10.95
Okaya & Co. Ltd	10.95
Saint-Gobain K.K	10.95
Shinsho Corporation	10.95
Sumitomo Corporation	10.95
Suzukaku Corporation	10.95
Toyota Tsusho Corporation Nagoya	10.95

Assessment

Consistent with its recent notice,[14] 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

[8] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016) (*Order*).

[9] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Certain Hot-Rolled Steel Flat Products from Japan; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[10] *See* Memorandum, ''Certain Hot-Rolled Steel Flat Products from Japan; No Shipment Inquiry for Honda Trading Canada, Inc. during the period 10/01/2018 through 09/30/2019,'' dated February 19, 2021; ''Certain Hot-Rolled Steel Flat Products from Japan; No Shipment Inquiries for Mitsui & Co., Ltd. and the Panasonic Corporation During the Period 10/01/2018 through 09/30/2019,'' dated February 24, 2021.

[11] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[12] Commerce found in a changed circumstances review that NSC, Nippon Steel Nisshin Co., Ltd. (Nippon Nisshin), and Nippon Steel Trading Corporation (NSTC) are affiliated companies that should be treated as a single entity and as the successor-in-interest to Nippon Steel & Sumitomo Metal Corporation (NSSMC), Nisshin Steel Co., Ltd. (Nisshin Steel), and Nippon Steel & Sumikin Bussan Corporation (NSSBC), respectively. *See Certain Hot-Rolled Steel Flat Products from Japan: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 46713 (September 5, 2019). We have continued to treat NSC, Nippon Nisshin, and NSTC as a single entity for purposes of this administrative review.

[13] We collapsed JFE Shoji Trade Corporation with JFE Steel Corporation in the underlying investigation. *See Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination,* 81 FR 15222 (March 22, 2016), and accompanying PDM at 8–9. We have continued to treat these companies as a single entity for purposes of this administrative review.

[14] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duly Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

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).

Where the respondent reported reliable entered values, we calculated importer—(or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[15] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer—(or customer-) specific assessment rates based on the resulting per-unit rates.[16] Where an importer—(or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[17] Where an importer—(or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[18]

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the ''Rates for Non-Examined Companies'' section, above.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by NSC, Tokyo Steel, or the non-examined companies for which the producer did not know that its 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.[19]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of 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 for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed in these final results will be equal to the weighted-average dumping margins 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 rate will continue to be the company-specific rate published for the most recently completed segment in which the company was reviewed; (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, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.58 percent,[20] the all-others rate established in the LTFV investigation. 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 the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 351.221(b)(5) of Commerce's regulations.

Dated: August 20, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Application of Partial Facts Available and Use of Adverse Inference
V. Final Determination of No Shipments
VI. Changes Since the Preliminary Results
VII. Discussion of the Issues
Comment 1: Whether Commerce Should Deduct Section 232 Duties From U.S. Price
Comment 2: Whether Commerce Should Apply Adverse Facts Available to NSC's Home Market Sales Made to Certain Affiliated Customers
Comment 3: Whether Commerce Should Apply Differential Pricing Methodology With Zeroing Negative Margins for Sales That Pass Commerce's Differential Pricing Test
Comment 4: Whether Commerce Should Include Certain Separately Invoiced U.S. Revenue Fields in Calculating the Net U.S. Price
Comment 5: Whether Commerce Should Make Certain Adjustments to NSC's Reported G&A Expenses
VIII. Recommendation

[FR Doc. 2021–18414 Filed 8–25–21; 8:45 am]

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[15] *See* 19 CFR 351.212(b)(1).

[16] *Id.*

[17] *Id.*

[18] *See* 19 CFR 351.106(c)(2).

[19] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[20] *See Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 53409 (August 12, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 8, 2021, the Department of Commerce (Commerce) published the initiation and preliminary results of a changed circumstances review (CCR) of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from the Socialist Republic of Vietnam (Vietnam). For these final results, Commerce continues to find that Camimex Group Joint Stock Company is the successor-in-interest (SII) to Camau Frozen Seafood Processing Import Export Corporation, in the context of the AD order on shrimp from Vietnam.

DATES: Applicable August 26, 2021.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Samuel Glickstein, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905 or (202) 482–5307, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2021, Camimex Group Joint Stock Company requested that, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), Commerce conduct a CCR of the *Order*[1] to confirm that Camimex Group Joint Stock Company is the SII to Camau Frozen Seafood Processing Import Export Corporation and, accordingly, to assign it the cash deposit rate of its predecessor.[2] In its request, Camimex Group Joint Stock Company stated that it undertook a legal name change from Camau Frozen Seafood Processing Import Export Corporation, but the company is, otherwise, unchanged.[3]

On July 8, 2021, Commerce initiated a CCR and preliminarily determined that Camimex Group Joint Stock Company is the SII to Camau Frozen Seafood Processing Import Export Corporation.[4] In the *CCR Initiation and Prelim,* we provided all interested parties with an opportunity to comment.[5] However, we received no comments.

Scope of the Order

The merchandise subject to the *Order* is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.10.30, and 1605.29.10.10.[6] Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description, provided in the Appendix, remains dispositive.

Final Results of Changed Circumstances Review

For the reasons stated in the *CCR Initiation and Prelim,* Commerce continues to find that Camimex Group Joint Stock Company is the SII to Camau Frozen Seafood Processing Import Export Corporation. As a result of this determination and consistent with established practice, we find that Camimex Group Joint Stock Company should receive the cash deposit rate previously assigned to Camau Frozen Seafood Processing Import Export Corporation. Consequently, we will instruct CBP to suspend liquidation of all shipments of subject merchandise exported by Camimex Group Joint Stock Company, and entered or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the cash deposit rate in effect for Camau Frozen Seafood Processing Import Export Corporation. This cash deposit requirement shall remain in effect until further notice.

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act, and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: August 20, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix—Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wildcaught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[7] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order. Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTS subheadings: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005) (*Order*).

[2] *See* Camimex Group Joint Stock Company's Letter, ''Request for Changed Circumstances Review,'' dated June 3, 2021. Camimex Group Joint Stock Company also requested that Commerce conduct an expedited initiation and preliminary results of the CCR, pursuant to 19 CFR 351.221(c)(3)(ii).

[3] *Id.* at 4–10.

[4] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 86 FR 36091 (July 8, 2021) (*CCR Initiation and Prelim*).

[5] *See CCR Initiation and Prelim,* 86 FR at 36092.

[6] On July 6, 2021, Commerce revised the HTS subheadings within the scope of the *Order* based on a request received from U.S. Customs and Border Protection (CBP). *See* Memorandum, ''Request from Customs and Border Protection to Update the ACE AD Case Reference File,'' dated July 6, 2021 (ACCESS Barcode 4139823–01).

[7] ''Tails'' in this context means the tail fan which includes the telson and the uropods.

and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.[8]

[FR Doc. 2021–18368 Filed 8–25–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–877]

Stainless Steel Flanges From India: Final Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that exporters/producers of stainless steel flanges from India made sales at prices below normal value during the period of review (POR) March 28, 2018, through September 30, 2019.

DATES: Applicable August 26, 2021.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros, 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) 482–7425.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2021, Commerce published the *Preliminary Results.*[1] On April 2, 2021, we received timely-filed case briefs from Bebitz Flanges Works Private Limited (Bebitz) [2] Chandan Steel Limited (Chandan),[3] and Pradeep Metals Limited,[4] and a joint brief from Balkrishna *et al.* and Bebitz.[5] On April 9, 2021, the petitioner timely filed its rebuttal brief.[6] On May 11, 2021, Commerce held a public hearing, limited to the issues raised in the case and rebuttal briefs.[7] On June 2, 2021, we extended the deadline for the final results of this review until August 20, 2021.[8] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[9]

Scope of the Order

The merchandise covered by the order is stainless steel flanges from India. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.[10]

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. Attached to this notice, in Appendix I, is a list of the issues which parties raised. 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/index.html/.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, and for the reasons explained in the Issues and Decision Memorandum, we made no changes to the *Preliminary Results.*[11]

Rate for Non-Selected Companies

In accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle,*[12] Commerce continues to assign to the companies not individually examined (*see* Appendix II for a full list of these companies) a margin of 145.25 percent, which is the dumping margin assigned to mandatory respondent Chandan. Commerce has addressed arguments from various interested parties regarding this rate, which we assigned to the non-examined companies in the *Preliminary Results,* and, for the final results, the determination remains unchanged, as discussed in the Issues and Decision Memorandum.[13]

Final Results of Administrative Review

We are assigning the following dumping margin to the firms listed below for the POR, March 28, 2018, through September 30, 2019:

Exporter/producer	Dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent) [14]
Chandan Steel Limited	145.25	140.38
Companies Not Individually Examined (excluding Bebitz Flanges Works Private Limited) [15]	145.25	140.38

[8] On April 26, 2011, Commerce amended the order to include dusted shrimp, pursuant to the U.S. Court of International Trade (CIT) decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (USITC) determination, which found the domestic like product to include dusted shrimp. *See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277 (April 26, 2011); *see also Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010); and *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011.

[1] *See Stainless Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 11233 (February 24, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Bebitz's Letter, ''Stainless Steel Flanges from India: Case Brief,'' dated April 2, 2021.

[3] On April 30, 2021, we rejected Chandan's case brief for relying on untimely-filed new factual information (NFI). *See* Commerce Letter, ''Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Rejection of New Factual Information,'' dated April 30, 2021. Therefore, on May 4, 2021, Chandan refiled its case brief after removing the NFI. *See* Chandan's Letter, ''Certain Stainless Steel Flanges from India (A–533–877—AR1), Submission of Case Brief for Chandan Steel (Refile),'' dated May 4, 2021.

[4] *See* Pradeep Metals' Letter, ''Certain Stainless Steel Flanges from India (A–533–877—AR1), Submission of Case Brief for Pradeep Metals Limited,'' dated April 2, 2021.

[5] *See* Balkrishna *et al.*/Bebitz's Letter, ''Stainless Steel Flanges from India: 'All Other' Case Brief,'' dated April 2, 2021.

[6] On July 19, 2021, we rejected the petitioner's rebuttal brief for containing citations to untimely-filed NFI submitted by Chandan. *See* Commerce's Letter, ''Antidumping Duty Administrative Review of Stainless Steel Flanges from India: Rejection of Petitioner's Rebuttal Brief,'' dated July 19, 2021. On July 21, 2021, the petitioner refiled its rebuttal brief after removing the NFI. *See* Petitioner's Letter, ''Stainless Steel Flanges from India: Resubmission of Petitioner's Rebuttal Brief,'' dated July 21, 2021.

[7] *See* Hearing Transcript, ''The Administrative Review of the Antidumping Duty Order on Stainless Steel Flanges from India: Public Hearing,'' dated May 11, 2021.

[8] *See* Memorandum, ''Stainless Steel Flanges from India: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2018–2019,'' dated June 2, 2021.

[9] *See* Memorandum, ''Stainless Steel Flanges from India: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2018–2019,'' dated August 20, 2021 (Issues and Decision Memorandum) which is dated concurrently with, and hereby adopted by, this notice.

[10] *Id.*

[11] *Id.*

[12] *See Preliminary Results* (citing *Albemarle Corp.* v. *United States,* 821 F. 3d 1345 (Fed. Cir. 2016) (*Albemarle*)).

[13] *See* Issues and Decision Memorandum at Comment 3.

Exporter/producer	Dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent) [14]
Bebitz Flanges Works Private Limited [16]	145.25	145.25

Disclosure

Normally, Commerce discloses the calculations performed in its analysis to parties in a review within five days of the date of publication of the notice of final results, in accordance with 19 CFR 351.224(b). However, because Commerce applied a rate based on total AFA to the mandatory respondent in this review, in accordance with section 776 of the Act, there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. We intend to issue appropriate 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).[17]

For the final results, we will instruct CBP to apply an *ad valorem* assessment rate equal to the dumping margins shown above to all entries of subject merchandise during the POR which were produced and/or exported by Chandan or exported by the companies which were not selected for individual examination. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2) of the Act: (1) The cash deposit rate for Chandan and the companies not individually examined will be equal to the rates established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered by this review but covered by a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered by 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 of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 14.29 percent,[18] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

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 which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 20, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
  Comment 1: Application of AFA to Chandan
  Comment 2: Selection of the AFA Rate
  Comment 3: All-Others Rate for Non-Examined Companies
  Comment 4: Export Subsidies Offset
V. Recommendation

Appendix II—List of Non-Examined Companies

1. Arien Global
2. Armstrong International Pvt. Ltd
3. Avinimetal
4. Balkrishna Steel Forge Pvt. Ltd
5. Bebitz Flanges Works Private Limited
6. Bee Gee Enterprises
7. Bsl Freight Solutions Pvt., Ltd
8. CD Industries (Prop. Kisaan Engineering Works Pvt. Ltd)
9. Cipriani Harrison Valves Pvt. Ltd
10. CTL Logistics (India) Pvt. Ltd
11. Echjay Forgings Private Ltd [19]
12. Fivebros Forgings Pvt. Ltd
13. Fluid Controls Pvt. Ltd
14. Geodis Oversea Pvt., Ltd
15. Globelink WW India Pvt., Ltd
16. Goodluck India Ltd
17. Hilton Metal Forging Limited
18. Jai Auto Pvt. Ltd
19. JAY JAGDAMBA FORGINGS PRIVATE LIMITED
20. JAY JAGDAMBA LIMITED [20]
21. JAY JAGDAMBA PROFILE PRIVATE LIMITED

[14] *See Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstance Determination,* 83 FR 40745 (August 16, 2018).

[15] *See* Appendix II.

[16] *See* Issues and Decision Memorandum at Comment 4.

[17] *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).

[18] *See Stainless Steel Flanges from India: Antidumping Duty Order,* 83 FR 50639 (October 9, 2018) (*Order*).

[19] In the *Initiation Notice,* this company also appeared as ''Echjay Forgings Private Limited.'' *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 67712, 67714 (December 11, 2019) (*Initiation Notice*).

[20] In the *Initiation Notice,* this company also appeared as ''Jay Jagdamba Ltd.'' *Id.*

22. Kisaan Die Tech
23. Kunj Forgings Pvt. Ltd
24. Montane Shipping Pvt., Ltd
25. Noble Shipping Pvt. Ltd
26. Paramount Forge
27. Pashupati Tradex Pvt., Ltd
28. Peekay Steel Castings Pvt. Ltd
29. Pradeep Metals Ltd
30. R D Forge Pvt., Ltd
31. Rolex Fittings India Pvt. Ltd
32. Rollwell Forge Pvt. Ltd
33. Safewater Lines (I) Pvt. Ltd
34. Saini Flange Pvt. Ltd
35. SAR Transport Systems
36. Shilpan Steelcast Pvt. Ltd
37. Shree Jay Jagdamba Flanges Pvt. Ltd
38. Teamglobal Logistics Pvt. Ltd
39. Technical Products Corporation
40. Technocraft Industries India Ltd
41. Transworld Global
42. VEEYES Engineering Pvt. Ltd
43. Vishal Shipping Agencies Pvt. Ltd
44. Yusen Logistics (India) Pvt. Ltd

[FR Doc. 2021–18367 Filed 8–25–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–857]

Certain Softwood Lumber Products From Canada: Notice of Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 12, 2021, the Department of Commerce (Commerce) published the initiation and preliminary results of a changed circumstances review (CCR) of the antidumping duty (AD) order on certain softwood lumber products from Canada. For these final results, Commerce continues to find that CHAP Alliance, Inc. (CHAP) is the successor-in-interest to L'Atelier de Réadaptation au Travail de Beauce Inc. (L'Atelier) in the context of the AD order on certain softwood lumber products from Canada.

DATES: Applicable August 26, 2021.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, 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) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 2021, CHAP requested [1] that, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216, Commerce conduct an expedited CCR of the AD order on certain softwood lumber products from Canada [2] to confirm that CHAP is the successor-in-interest to L'Atelier, and accordingly to assign it the cash deposit rate of L'Atelier.[3] In its submission, CHAP states that while L'Atelier undertook its name, the company is otherwise primarily unchanged.[4] On June 8, 2021, Commerce informed CHAP that it required additional information in order to determine whether to initiate the requested CCR.[5] On June 24, 2021, CHAP provided the requested information.[6]

On July 6, 2021, Commerce initiated a CCR and preliminarily determined that CHAP is the successor-in-interest to L'Atelier.[7] In the *Initiation and Preliminary Results CCR,* Commerce provided all interested parties with an opportunity to comment.[8] However, we received no comments.

Scope of the Order

The merchandise covered by the *Order* is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.[9]

Final Results of Changed Circumstances Review

For the reasons stated in the *Initiation and Preliminary Results CCR,* Commerce continues to find that CHAP is the successor-in-interest to L'Atelier. As a result of this determination and consistent with established practice, we find that CHAP should receive the cash deposit rates previously assigned to L'Atelier. Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced or exported by L'Atelier and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the cash deposit rate in effect for L'Atelier. This cash deposit requirement shall remain in effect until further notice.

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act, and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: August 20, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2021–18369 Filed 8–25–21; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* CHAP's Letter, ''Certain Softwood Lumber from Canada: L'Atelier de Réadaptation au Travail de Beauce Inc. Request for Changed Circumstances Reviews,'' dated May 5, 2021 (CCR Request).

[2] *See Certain Softwood Lumber Products from Canada: Antidumping Duty Order and Partial Amended Final Determination,* 83 FR 350 (January 3, 2018) (*Order*).

[3] *See* CCR Request at 1–2.

[4] *Id.* at 2–6.

[5] *See* Commerce's Letter, ''Changed Circumstances Review of Certain Softwood Lumber Products from Canada: Supplemental Questionnaire,'' dated June 8, 2021.

[6] *See* CHAP's Letter, ''Certain Softwood Lumber from Canada: Supplemental Questionnaire Response,'' dated June 24, 2021.

[7] *See Initiation and Preliminary Results of Changed Circumstances Review: Certain Softwood Lumber Products from Canada,* 86 FR 36525 (July 12, 2021) (*Initiation and Preliminary Results CCR*), and accompanying Preliminary Decision Memorandum.

[8] *See Initiation and Preliminary Results CCR,* 86 FR at 36526.

[9] For a complete description of the scope of the *Order, see Initiation and Preliminary Results CCR* Preliminary Decision Memorandum (no changes in these final results).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–884]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to Hyundai Steel Co., Ltd. (Hyundai Steel), a producer and exporter of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea). The period of review (POR) is January 1, 2018, through December 31, 2018.

DATES: Applicable August 26, 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

Commerce published the *Preliminary Results* of this review on February 22,

2021.[1] On June 8, 2021, Commerce extended the deadline for the final results of this administrative review until August 20, 2021.[2] On June 24, 2021, Commerce issued a post-preliminary analysis relating to an electricity for less than adequate remuneration allegation.[3] For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[4]

Scope of the Order

The product covered by this order is hot-rolled steel. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all issues raised in interested parties' case briefs in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by parties, to which Commerce responded in the Issues and Decision Memorandum, is provided as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Changes Since the Preliminary Results

After evaluating the comments received from interested parties and record information, we have made no changes to the net subsidy rate calculated for Hyundai Steel. For a discussion of these comments, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

We determine that, for the period January 1, 2018, through December 31, 2018, the following net countervailable subsidy rate exists:

Company	Subsidy rate (percent *ad valorem*)
Hyundai Steel Co., Ltd	0.51

Disclosure

No changes were made to the calculations since the *Preliminary Results* and Post-Preliminary Analysis; therefore, there are no calculations to release for Hyundai Steel.

Assessment Rate

Pursuant to section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for Hyundai Steel at the applicable *ad valorem* assessment rate listed. 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**.[6] If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rates

In accordance with section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the company listed above. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notice to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: August 20, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. List of Issues
III. Background
IV. Scope of the Order
V. Period of Review
VI. Subsidies Valuation Information
VII. Analysis of Programs
VIII. Discussion of Comments
  Comment 1: Whether Electricity for LTAR Confers a Benefit
  Comment 2: Whether Commerce Properly Countervailed the Port Usage Rights Program
  Comment 3: Whether the Reduction for Sewerage Usage Fees Is Countervailable
IX. Recommendation

[FR Doc. 2021–18370 Filed 8–25–21; 8:45 am]

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[1] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018,* 86 FR 10533 (February 22, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated June 8, 2021.

[3] *See* Memorandum, ''Countervailing Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Post-Preliminary Analysis Memorandum—Electricity for Less Than Adequate Remuneration,'' dated June 25, 2021 (Post-Preliminary Analysis).

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2018 Administrative Review of the Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *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.

[6] *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).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–878]

Stainless Steel Flanges From India: Final Results of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of stainless steel flanges (steel flanges) from India during the period of review, January 23, 2018, through December 31, 2018.

DATES: Applicable August 26, 2021.

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:

Background

Commerce published the *Preliminary Results* of this review on February 24, 2021.[1] On June 2, 2021, Commerce extended the deadline for the final results by 177 days. The deadline for the final results of this review is now August 20, 2021. For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order

The products covered by this order are stainless steel flanges from India. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty 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/index.html.*

Changes Since the Preliminary Results

After evaluating the comments received from interested parties and record information, we have made no changes to the net subsidy rate calculated for Chandan Steel Limited (Chandan) or Kisaan Die Tech Pvt Ltd. (Kisaan). For a discussion of these comments, *see* the Issues and Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and the subsidy is specific.[3] For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates calculated for Chandan and Kisaan are above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on the weighted-average of the subsidy rates calculated for Chandan and Kisaan using publicly ranged sales data submitted by the respondents.[4] We have made no changes to the subsidy rate calculated for companies not selected for individual review.

Final Results of Administrative Review

In accordance with section 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(5), we determine the total estimated net countervailable subsidy rates for the period January 23, 2018, through December 31, 2018 to be as follows:

Company	Subsidy rate (percent *ad valorem*)
Chandan Steel Limited	4.15
Kisaan Die Tech Pvt Ltd	4.51
Non-Selected Companies Under Review[5]	4.22

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final results 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 determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because there are no changes from the *Preliminary Results,* there are no new calculations to disclose.

Assessment Rate

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after publication of these final results. 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

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the

[1] *See Stainless Steel Flanges from India: Preliminary Results of Countervailing Duty Administrative Review; 2018,* 86 FR 11231 (February 24, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2018 Administrative Review of the Countervailing Duty Order on Stainless Steel Flanges from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *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.

[4] *See* Memorandum, ''Calculation of Subsidy Rate for Non-Selected Companies Under Review,'' dated February 17, 2021.

[5] *See* Appendix II for a list of the companies not selected for individual examination.

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 proceeding. 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

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: August 20, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the *Preliminary Results*
V. Subsidies Valuation Information
VI. Use of Facts Otherwise Available and Application of Adverse Inferences
VII. Analysis of Programs
VIII. Discussion of the Issues
  Comment 1: Whether Commerce Should Apply Total Adverse Facts Available (AFA) to Kisaan
  Comment 2: Whether Commerce Should Countervail the Provision of Stainless Steel, Billet, and Bar by Steel Authority of India Ltd. (SAIL) for Less Than Adequate Renumeration (LTAR) Program for Kisaan
  Comment 3: Whether Commerce Should Countervail the Advance Authorization Program (AAP)/Advance License Program (ALP) Scheme for Chandan
IX. Recommendation

Appendix II

List of Non-Selected Companies

Arien Global
Armstrong International Pvt. Ltd.
Avinimetal
Balkrishna Steel Forge Pvt. Ltd.
Bebitz Flanges Works Private Limited also known as Bebitz Flanges Works
Bee Gee Enterprises
Bsl Freight Solutions Pvt., Ltd.
CD Industries (Prop. Kisaan Engineering Works Pvt. Ltd).
Cipriani Harrison Valves Pvt. Ltd.
CTL Logistics (India) Pvt. Ltd.
Echjay Forgings Private Limited
Fivebros Forgings Pvt. Ltd.
Fluid Controls Pvt. Ltd.
Geodis Oversea Pvt., Ltd.
Globelink WW India Pvt., Ltd.
Goodluck India Ltd.
Hilton Metal Forging Limited
Jai Auto Pvt. Ltd.
JAY JAGDAMBA FORGINGS PRIVATE LIMITED
Jay Jagdamba Ltd.
JAY JAGDAMBA LIMITED
JAY JAGDAMBA PROFILE PRIVATE LIMITED
Kunj Forgings Pvt. Ltd.
Montane Shipping Pvt., Ltd.
Noble Shipping Pvt. Ltd.
Paramount Forge
Pashupati Tradex Pvt., Ltd.
Peekay Steel Castings Pvt. Ltd.
Pradeep Metals Limited
Pradeep Metals Ltd.
R D Forge Pvt., Ltd.
Rolex Fittings India Pvt. Ltd.
Rollwell Forge Pvt. Ltd.
Safewater Lines (I) Pvt. Ltd.
Saini Flange Pvt. Ltd.
SAR Transport Systems
Shilpan Steelcast Pvt. Ltd.
SHREE JAY JAGDAMBA FLANGES PRIVATE LIMITED
Shree Jay Jagdamba Flanges Pvt. Ltd.
Teamglobal Logistics Pvt. Ltd.
Technical Products Corporation
Technocraft Industries India Ltd.
Transworld Global
VEEYES Engineering Pvt. Ltd.
Vishal Shipping Agencies Pvt. Ltd.
Yusen Logistics (India) Pvt. Ltd.

[FR Doc. 2021–18413 Filed 8–25–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–823, A–351–857, A–533–903, A–823–820, A–552–833]

Raw Honey From Argentina, Brazil, India, Ukraine, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 26, 2021.

FOR FURTHER INFORMATION CONTACT: Thomas Martin at (202) 482–3936 or Eva Kim at (202) 482–8283 (Argentina); Justin Neuman at (202) 482–0486 (Brazil); Brittany Bauer at (202) 482–3860 (India); Jasun Moy at (202) 482–8194 (Ukraine); and Jonathan Hill at (202) 482–3518 (the Socialist Republic of Vietnam (Vietnam)); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 2021, the Department of Commerce (Commerce) initiated the less-than-fair-value (LTFV) investigations of raw honey from Argentina, Brazil, India, Ukraine, and Vietnam.[1] Currently, the preliminary determinations are due no later than September 28, 2021.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On August 17, 2021, the American Honey Producers Association and the Sioux Honey Association (collectively, the petitioners) submitted a timely request that Commerce postpone the preliminary determinations in the LTFV investigations for Argentina, Brazil, India, Ukraine, and Vietnam.[2] The petitioners stated that they request postponement due to concerns that Commerce will need more time to issue supplemental questionnaires to address deficiencies in the respondents' initial questionnaire responses. Further, the petitioners noted that Commerce has not yet determined the cost of production methodology that it will rely on for many of these investigations.[3]

For the reasons stated above, and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), is postponing the deadline for the

[1] *See Raw Honey from Argentina, Brazil, India, Ukraine, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 86 FR 26897 (May 18, 2021).

[2] *See* Petitioners' Letter, ''Raw Honey from Argentina, Brazil, India, Ukraine, and Vietnam—Petitioners' Request for Postponement of Preliminary Antidumping Determinations,'' dated August 17, 2021.

[3] *Id.*

preliminary determinations for Argentina, Brazil, India, Ukraine, and Vietnam by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than November 17, 2021. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations in these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 20, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–18366 Filed 8–25–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–831]

Investigation of Urea Ammonium Nitrate Solutions From the Russian Federation: Notice of Extension of Due Date for the Submission of Comments on the Russian Federation's Status as a Market Economy Country Under the Antidumping Duty Laws

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) granted an eight-day extension of the deadline to submit comments on Russia's status as a market economy (ME) country. Accordingly, the deadline to submit such comments, for all interested parties, is now no later than the close of business (*i.e.,* 5 p.m. Eastern Time) on September 7, 2021.

DATES: Applicable August 26, 2021.

FOR FURTHER INFORMATION CONTACT: Leah Wils-Owens, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4203.

SUPPLEMENTARY INFORMATION: On July 30, 2021, Commerce published *Opportunity to Comment on Russian Federation's Status as a Market Economy Country Under the Antidumping Duty Laws,* 86 FR 41008 (July 30, 2021). In that notice, Commerce announced that it is seeking public comment and information with respect to the whether to continue to treat Russia as a ME country for purposes of the antidumping duty law, and invited the public to submit comments by August 30, 2021, on such inquiry. We have received a request to extend the comment period.

In response to the request for additional time to comment, we have extended the due date for the submission of comments.[1] The revised due date for comments is September 7, 2021. Interested parties may submit comments and information at the Federal eRulemaking Portal: *www.Regulations.gov.* The identification number is ITA–2021–0003. To be assured of consideration, written comments and information must be received no later than September 7, 2021.

Dated: August 24, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2021–18487 Filed 8–25–21; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Memorandum, ''Urea Ammonium Nitrate Solutions from the Russian Federation: Extension of Time to File Comments on Russia's Status,'' dated August 23, 2021.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB369]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of web conference.

SUMMARY: The North Pacific Fishery Management Council (Council) Crab Plan Team will meet September 13, 2021, through September 17, 2021 and on September 24, 2021.

DATES: The meeting will be held on Monday, September 13, 2021 through Friday, September 17, 2021, and Friday, September 24, 2021, from 8 a.m. to 4 p.m. Alaska Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2441.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; phone: (907) 271–2809; email: *diana.stram@noaa.gov.* For technical support please contact our admin Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

September 13, 2021, Through Friday, September 17, 2021

The agenda will include: (a) Final 2021 stock assessments for Eastern Bering Sea snow crab, Bristol Bay red king crab, and Eastern Bering Sea Tanner crab; (b) stock assessment modeling scenarios for Norton Sound red king crab; (c) other discussions including St. Matthew blue king crab specifications, updates on the NMFS trawl survey and fishery catches and bycatch, discussions about ecosystem and socioeconomic profiles, an ABSC questionnaire, GMACS, Climate Science Regional Action Plan, and (d) planning for future meetings.

September 24, 2021

The Crab Plan Team will convene on this day to review supplemental information for the final 2021 stock assessment for Bristol Bay red king crab, if necessary. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2441* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2441.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2441.*

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

Dated: August 23, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–18410 Filed 8–25–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB367]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 141st Scientific and Statistical Committee (SSC), Fishery Data Collection and Research Committee (FDCRC), Executive and Budget Standing Committee, and 187th Council meetings to take actions on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held between September 14 and September 23, 2021. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held by web conference via WebEx. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

The Council has arranged host sites only for the 187th Council meeting at the following venues: Cliff Pointe, 304 W. O'Brien Drive, Hagatna, Guam; BRI Building Suite 205, Kopa Di Oru St., Garapan, Saipan, CNMI; and, Tedi of Samoa Building Suite 208B, Fagatogo Village, American Samoa.

FOR FURTHER INFORMATION CONTACT: Contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: All times shown are in Hawaii Standard Time. The 141st SSC meeting will be held between 11 a.m. and 5 p.m. on September 14–16, 2021. The Fishery Data Collection and Research Committee will be held between 12:30 p.m. and 2:30 p.m. on September 20, 2021. The Executive and Budget Standing Committee meeting will be held between 3:30 p.m. and 5:30 p.m. on September 20, 2021. The 187th Council meeting will be held between 11 a.m. and 5 p.m. on September 21–23, 2021.

Please note that the evolving public health situation regarding COVID–19 may affect the conduct of the September Council and its associated meetings. At the time this notice was submitted for publication, the Council anticipated convening the meeting by web conference with host site locations in Guam, CNMI and American Samoa only for the 187th Council meeting. Council staff will monitor COVID–19 developments and will determine the extent to which in-person public participation at host sites will be allowable consistent with applicable local and federal safety and health guidelines. If public participation will be limited to web conference only or on a first-come-first-serve basis consistent with applicable guidelines, the Council will post notice on its website at *www.wpcouncil.org.*

Agenda items noted as ''Final Action'' refer to actions that may result in Council transmittal of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the MSA. In addition to the agenda items listed here, the Council and its advisory bodies will hear recommendations from Council advisors. An opportunity to submit public comment will be provided throughout the agendas. The order in which agenda items are addressed may change and will be announced in advance at the Council meeting. The meetings will run as late as necessary to complete scheduled business.

Background documents for the 187th Council meeting will be available at *www.wpcouncil.org.* Written public comments on final action items at the 187th Council meeting should be received at the Council office by 5 p.m. HST, September 17, 2021, and should be sent to Kitty M. Simonds, Executive Director; Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220 or fax: (808) 522–8226; or email: *info.wpcouncil@noaa.gov.* Written public comments on all other agenda items may be submitted for the record by email throughout the duration of the meeting. Instructions for providing oral public comments during the meeting will be posted on the Council website. This meeting will be recorded (audio only) for the purposes of generating the minutes of the meeting.

Agenda for the 141st Scientific and Statistical Committee Meeting

Tuesday, September 14, 2021, 11 a.m. to 5 p.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 140th SSC Meeting Recommendations
4. Report from Pacific Islands Fisheries Science Center Director
5. Program Planning and Research
   - A. Essential Fish Habitat (EFH) Model for the Main Hawaiian Island (MHI) Uku
   - B. Report on the Bottomfish Fishery in the Opened Bottomfish Restricted Fishing Areas (BRFA)
   - C. American Samoa Bottomfish Stock Assessment Improvement Plan
   - D. Review of the Magnuson-Stevens Act (MSA) Five-Year Research Priorities
   - E. Potential MSA Reauthorization Provisions Affecting the SSC
   - F. SSC Three-Year Plan
   - G. Public Comment
   - H. SSC Discussion and Recommendations
6. Protected Species
   - A. Hawaii Longline Fishery Seabird Mitigation Measures
     - 1. Results of the Tori Line Experimental Fishing Permit Study in the Hawaii Deep-set Longline Fishery
     - 2. Options for Revising Seabird Mitigation Measures in the Hawaii Deep-set Longline Fishery (Action Item)
   - B. SSC Working Group Issues Paper on Alternative Approaches to Reduce Impacts to False Killer Whales
   - C. Endangered Species Act (ESA) Consultations for the Hawaii Deep-set Longline Fishery, American Samoa Longline Fishery, and Bottomfish Fisheries
   - D. ESA and Marine Mammal Protection Act (MMPA) Updates
   - E. Public Comment
   - F. SSC Discussion and Recommendations

Wednesday, September 15, 2021, 11 a.m. to 5 p.m.

7. Pelagic Fisheries
   - A. Update on Southwest Fisheries Science Center Pelagic Fisheries Research
   - B. Investigating the Impact of Imports on the Hawaii Fish Market
   - C. Shark Depredation in the Mariana Archipelago
   - D. Review of Impacts of the Papahānaumokuākea Marine National Monument Expansion

E. Suitability of a Depletion-Based Limit Reference Point versus Maximum Sustainable Yield for Highly Productive Pelagic Stocks
F. International Fisheries
1. Inter-American Tropical Tuna Commission (IATTC) Science Advisory Committee
2. Report of the 2021 International Scientific Committee (ISC) Plenary
3. Outcomes of the 17th Western-Central Pacific Fisheries Commission (WCPFC) Science Committee
4. Outcomes of the 2nd Tropical Tuna Workshop
G. Public Comment
H. SSC Discussion and Recommendations

Thursday, September 16, 2021, 11 a.m. to 5 p.m.

8. Other Business
A. November 30–December 2, 2021 SSC Meeting Dates
9. Summary of SSC Recommendations to the Council

Agenda for the Fishery Data Collection and Research Committee

Monday, September 20, 2021, 12:30 p.m. to 2:30 p.m.

1. Welcome Remarks and Introductions
2. FDCRC Strategic Plan 2022–26
3. Report on the Catchit Logit Implementation
4. Critical Role of Mandatory License and Reporting Regulation
5. Transfer of Catchit Logit Implementation to Territorial Agencies
A. Transition Plan
B. Timeline
6. Public Comment
7. Other Business
8. Discussions and Recommendations

Agenda for the Executive and Budget Standing Committee

Monday, September 20, 2021, 3:30 p.m. to 5:30 p.m.

1. Financial Reports
2. Administrative Reports
3. Huffman MSA Reauthorization
4. Council Family Changes
5. Meetings and Workshops
6. Other Issues
7. Public Comment
8. Discussion and Recommendations

Agenda for the 187th Council Meeting

Tuesday, September 21, 2021, 11 a.m. to 5 p.m.

1. Welcome and Introductions
2. Oath of Office
3. Approval of the 187th Agenda
4. Approval of the 186th Meeting Minutes
5. Executive Director's Report
6. Agency Reports
A. National Marine Fisheries Service
1. Pacific Islands Regional Office
2. Pacific Islands Fisheries Science Center
B. NOAA Office of General Counsel Pacific Islands Section
C. Enforcement
1. U.S. Coast Guard
2. NOAA Office of Law Enforcement
3. NOAA Office of General Counsel Enforcement Section
D. U.S. State Department
E. U.S. Fish and Wildlife Service
F. Public Comment
G. Council Discussion and Action
7. Program Planning and Research
A. National Legislative Report
1. Huffman MSA Reauthorization
2. Advisory Group Review of the MSA Reauthorization
B. Standardized Bycatch Reporting Methodology & Fishery Ecosystem Plan Amendments for Updating Consistency (Final Action)
C. Regional Research Priorities and Plans
D. FDCRC Strategic Plan
E. SSC Three-Year Plan
F. Review of Council Aquaculture Management and Programmatic Environmental Impact Statement Update
G. Regional Communications & Outreach Report
H. Advisory Group Report and Recommendations
1. Advisory Panel
2. Fishing Industry Advisory Committee
3. Non-Commercial Fishing Advisory Committee
4. Fishery Data Collection and Research Committee
5. Scientific & Statistical Committee
I. Public Comment
J. Council Discussion and Action

Tuesday, September 21, 2021, 4:30 p.m. to 5 p.m.

Public Comment on Non-Agenda Items

Wednesday, September 22, 2021, 11 a.m. to 5 p.m.

8. Mariana Archipelago
A. Guam
1. Isla Informe
2. Department of Agriculture/Division Aquatic and Wildlife Resources Report
B. CNMI
1. Arongol Falú
2. Department Land Natural Resources (DLNR)/Division Fish and Wildlife Report
C. Shark Depredation in the Mariana Archipelago
D. Advisory Group Report and Recommendations
1. Advisory Panel
2. Fishing Industry Advisory Committee
3. Non-Commercial Fishing Advisory Committee
4. Scientific & Statistical Committee
E. Public Comment
F. Council Discussion and Action
9. Protected Species
A. Hawaii Longline Fishery Seabird Mitigation Measures
1. Results of the Tori Line Experimental Fishing Permit Study in the Hawaii Deep-set Longline Fishery
2. Options for Revising Seabird Mitigation Measures in the Hawaii Deep-set Longline Fishery (Initial Action)
B. SSC Working Group Issues Paper on Alternative Approaches to Reduce Impacts to False Killer Whales
C. Green Turtle Management
D. ESA Consultations for the Hawaii Deep-set Longline Fishery, American Samoa Longline Fishery, and Bottomfish Fisheries
E. ESA and MMPA Updates
F. Advisory Group Report and Recommendations
1. Advisory Panel
2. Fishing Industry Advisory Committee
3. Non-Commercial Fishing Advisory Committee
4. Scientific & Statistical Committee
G. Public Comment
H. Council Discussion and Action
10. American Samoa Archipelago
A. Motu Lipoti
B. Department of Marine and Wildlife Resources Report
C. American Samoa Bottomfish Fishery
1. Bottomfish Management Unit Species Rebuilding Plan (Final Action)
2. Territorial Bottomfish Fishery Management Plan
3. Bottomfish Community Development Program Request
4. Bottomfish Stock Assessment Improvement Process
D. Advisory Group Report and Recommendations
1. Advisory Panel
2. Fishing Industry Advisory Committee
3. Non-Commercial Fishing Advisory Committee
4. Scientific & Statistical Committee
E. Public Comment
F. Council Discussion and Action

Thursday, September 23, 2021, 11 a.m. to 5 p.m.

11. Pelagic and International Fisheries

A. American Samoa Large Vessel Prohibited Area Monitoring
B. Investigating the Impact of Imports on the Hawaii Fish Market
C. Review of Impacts to the Hawaii Longline Fishery from the Papahānaumokuākea Marine National Monument Expansion
D. International Fisheries
1. IATTC Science Advisory Committee
2. Report of the 2021 ISC Plenary
3. Outcomes of the 17th WCPFC Science Committee
4. Defining Purse Seine Vessels of American Samoa
5. Outcomes of the 2nd Tropical Tuna Workshop
6. Permanent Advisory Committee
E. Advisory Group Report and Recommendations
1. Advisory Panel
2. Fishing Industry Advisory Committee
3. Non-Commercial Fishing Advisory Committee
4. Scientific & Statistical Committee
F. Public Comment
G. Council Discussion and Action
12. Hawai'i Archipelago & Pacific Remote Island Areas (PRIA)
A. Moku Pepa
B. DLNR/Division of Aquatic Resources Report (Legislation, Enforcement, Bottomfish Management including BRFA)
C. Specifying Annual Catch Limits for the Main Hawaiian Islands Uku Fishery (Final Action)
D. EFH Model for the Main Hawaiian Island Uku
E. Northwestern Hawaiian Islands Proposed National Marine Sanctuary Update
F. Advisory Group Report and Recommendations
1. Advisory Panel
2. Fishing Industry Advisory Committee
3. Non-Commercial Fishing Advisory Committee
4. Scientific & Statistical Committee
G. Public Comment
H. Council Discussion and Action
13. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. Council Family Changes
D. Meetings and Workshops
E. Standing Committee Report
F. Public Comment
G. Council Discussion and Action
14. Other Business

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 187th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: August 23, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–18409 Filed 8–25–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB366]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Monday, September 13, 2021, at 1 p.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/1149004808330467 95.*

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Herring Advisory Panel will review and select final preferred alternatives for Framework 9, an action considering a rebuilding plan and potential adjustments to herring accountability measures. They will discuss initial work priorities for 2022 specific to the Herring Fishery Management Plan. The Council will consider these recommendations at the September Council meeting. Other business may be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 23, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–18408 Filed 8–25–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB365]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its

Herring Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, September 15, 2021, at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/6943427340740638731.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Herring Committee will review and select final preferred alternatives for Framework 9, an action considering a rebuilding plan and potential adjustments to herring accountability measures. They will discuss initial work priorities for 2022 specific to the Herring Fishery Management Plan. The Council will consider these recommendations at the September Council meeting. Other business may be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 23, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–18407 Filed 8–25–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the Department of the Air Force F–35A Operational Beddown 125th Fighter Wing, Air National Guard Jacksonville International Airport

ACTION: Notice of availability of Record of Decision.

SUMMARY: On July 27, 2021, the Department of the Air Force (DAF) signed a Record of Decision (ROD) based on the Air National Guard Final Environmental Impact Statement.

ADDRESSES: Mr. Will Strickland, NGB/A4AM, 3501 Fetchett Ave., Joint Base Andrews, Maryland 20762, (240) 612–7042; *william.strickland.7@us.af.mil.*

SUPPLEMENTARY INFORMATION: The DAF will beddown 18 F–35A Primary Aircraft Authorized (PAA) and 2 Back-up Inventory (BAI) with associated construction activities as identified under the NGB for Ops 9 at the 125 FW, Jacksonville IAP, Florida. The DAF decision documented in the ROD was based on matters discussed in the Final Environmental Impact Statement, inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available to the public on February 5, 2021 through a Notice of Availability in the **Federal Register** (Volume 86, Number 23, page 8356) with a waiting period that ended on March 8, 2021.

Authority: This Notice of Availability is published pursuant to the regulations (40 CFR part 1506.6) implementing the provisions of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (32 CFR parts 989.21(b) and 989.24(b)(7)).

Adriane Paris,

Acting Air Force Federal Register Officer.

[FR Doc. 2021–18336 Filed 8–25–21; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2021–0013; OMB Control Number 0704–0246]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DFARS Part 245, Government Property

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposed revision and extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 27, 2021.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 245, Government Property, related clauses in DFARS 252, and related forms in DFARS 253; OMB Control Number 0704–0246.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 1,509.

Responses per Respondent: 25, approximately.

Annual Responses: 37,484.

Hours per response: 1, approximately.

Estimated Hours: 36,459.

Reporting Frequency: On occasion.

Needs and Uses: This requirement provides for the collection of information related to providing Government property to contractors; contractor use and management of Government property; and reporting, redistribution, and disposal of property.

a. DFARS 245.302 concerns contracts with foreign governments or international organizations. Paragraph (1)(i) requires contractors to request and obtain contracting officer approval before using Government property on work for foreign governments and international organizations.

b. DFARS 245.604–3 concerns the sale of surplus Government property. Under paragraph (b), a contractor may be directed by the plant clearance officer to issue informal invitations for bids.

Under paragraph (d), a contractor may be authorized by the plant clearance officer to purchase or retain Government property at less than cost if the plant clearance officer determines this method is essential for expeditious plant clearance.

c. The clause at DFARS 252.245–7003, Contractor Property Management System Administration, prescribed at 245.107(5), and DFARS 245.105, Contractor's Property Management System Compliance, address the requirement for contractors to respond in writing to initial and final determinations from the administrative contracting officer that identifies deficiencies in the contractor's property management system. Estimated hours, number of respondents, and number of responses were increased slightly to accommodate a public comment.

d. DD Form 1348–1A, DoD Single Line Item Release/Receipt Document, is prescribed at DFARS 245.7001–3. The form is used when authorized by the plant clearance officer.

e. DD Form 1639, Scrap Warranty, is prescribed in the clause at DFARS 252.245–7004, Reporting, Reutilization, and Disposal. When scrap is sold by the contractor, after Government approval, the purchaser of the scrap material(s) may be required to certify, by signature on the DD Form 1639, that (i) the purchased material will be used only as scrap and (ii), if sold by the purchaser, the purchaser will obtain an identical warranty from the individual buying the scrap from the initial purchaser. The warranty contained in the DD Form 1639 expires by its terms five years from the date of the sale.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2021–18300 Filed 8–25–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0126]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; ARP ESSER Rule Collection Activities

AGENCY: Office of Elementary and Secondary Education (OESE), 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 September 27, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Britt Jung, 202–453–6046.

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: ARP ESSER Rule Collection Activities.

OMB Control Number: 1810–0755.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 80,104.

Total Estimated Number of Annual Burden Hours: 2,037,956.

Abstract: This is a request for extension of an approved information collection by the Office of State and Grantee Relations (SGR) in the Office of Elementary and Secondary Education (OESE) at the U.S. Department of Education (ED) for the interim final requirements for the American Rescue Plan Elementary and Secondary School Emergency Relief (''ARP ESSER'') Fund, under section 2001 of the American Rescue Plan (''ARP'') Act of 2021, Public Law 117–2 (ARP). The interim final requirements create information collection requirements for SEAs and LEAs such as the requirement for an SEA to meaningfully consult with various stakeholder groups on its ARP ESSER plan and to give the public an opportunity to provide input on the development of the plan. The interim final requirements also require an LEA receiving ARP ESSER funds to develop and make publicly available a plan for the use of those funds; meaningfully consult with stakeholders and consider public input in developing its plan; and make its plan accessible, including to parents with limited English proficiency and individuals with disability. Finally, with respect to the LEA plan for the safe return to in-person instruction and continuity of services required under section 2001(i) of the ARP Act, this action specifies what the plan must address; requires periodic review and, when needed, revision of the plan, with consideration of public input in each case, to ensure it meets statutory and regulatory requirements and remains relevant to the needs of schools; and requires that the plan be accessible, including to parents with limited English proficiency and individuals with disabilities.

Dated: August 23, 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. 2021–18392 Filed 8–25–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case Number 2020–024; EERE–2020–BT–WAV–0040]

Energy Conservation Program: Notification of Petition for Waiver of LRC Coil From the Department of Energy Walk-In Coolers and Walk-In Freezers Test Procedure and Notification of Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of petition for waiver and grant of an interim waiver; request for comments.

SUMMARY: This document announces receipt of and publishes a petition for waiver and interim waiver from LRC Coil Company (''LRC Coil''), which seeks a waiver for specified walk-in unit cooler basic models from the U.S. Department of Energy (''DOE'') test procedure used to determine the efficiency and energy consumption of walk-in coolers and walk-in freezers. DOE also gives notice of an Interim Waiver Order that requires LRC Coil to test and rate the specified walk-in unit cooler basic models in accordance with the alternate test procedure set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning LRC Coil's petition and the alternate test procedure specified in the Interim Waiver Order so as to inform DOE's final decision on LRC Coil's waiver request.

DATES: The Interim Waiver Order is effective on August 26, 2021. Written comments and information are requested and will be accepted on or before September 27, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–WAV–0040, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *LRCWICF2020WAV0040@ee.doe.gov.* Include docket number EERE–2020–BT–WAV–0040 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE-2020-BT-WAV-0040.* The docket web page contains instruction on how to access all documents, including public comments, in the docket. See the **SUPPLEMENTARY INFORMATION** section for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Request@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is publishing LRC Coil's petition for waiver in its entirety,[1] pursuant to 10 CFR 431.401(b)(1)(iv).[2] DOE invites all interested parties to submit in writing by September 27, 2021, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 431.401(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Mike Williams, *mwilliams@lrccoil.com,* 3861 E 42nd Place, Yuma, AZ 85365.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the

[1] On December 11, 2020, DOE published an amendment to 10 CFR 431.401 regarding the processing of petitions for an interim waiver, which became effective beginning January 11, 2021. 85 FR 79802. The subject petition was received prior to the effective date of that amendment and therefore is being processed pursuant to the regulation in effect at the time of receipt, *i.e.,* the disposition of the petition for an interim waiver is pursuant to 10 CFR 431.401(e) and (h) in the 10 CFR parts 200 to 499 edition revised as of January 1, 2021.

[2] The petition did not identify any of the information contained therein as confidential business information.

website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Case Number 2020–024

Interim Waiver Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[3] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[4] of EPCA, added by the National Energy Conservation Policy Act, Public Law 95–619, sec. 441 (Nov. 9, 1978), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for certain types of industrial equipment. Through amendments brought about by the Energy Independence and Security Act of 2007, Public Law 110–140, sec. 312 (Dec. 19, 2007), this equipment includes walk-in coolers and walk-in freezers, the focus of this document. (42 U.S.C. 6311(1)(G))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316(a); 42 U.S.C. 6299).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)).

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of covered products and equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C.6314(a)(2)) The test procedure used to determine the net capacity and annual walk-in energy factor (''AWEF'') of walk-in cooler and walk-in freezer refrigeration systems is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 431, subpart R, appendix C, *Uniform Test Method for the Measurement of Net Capacity and AWEF of Walk-in Cooler and Walk-in Freezer Refrigeration Systems* (''Appendix C'').

Under 10 CFR 431.401,[5] any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the performance of the product type in a manner representative of the energy consumption characteristics of the basic model. 10 CFR 431.401(b)(1)(iii). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(2).

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its

[3] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[4] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

[5] On December 11, 2020, DOE amended 10 CFR 431.401 regarding the processing of petitions for an interim waiver that became effective on January 11, 2021. The subject petition was received prior to the effective date of that amendment and therefore is being processed pursuant to the regulation in effect at the time of receipt. Accordingly, all references to 10 CFR 431.401 refer to the version in place as of the date of LRC Coil's December 1, 2020 petition for interim waiver and waiver.

regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l) As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. 10 CFR 431.401(e)(2) (10 CFR parts 200 to 499 edition revised as of January 1, 2021). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 431.401(h)(1) (10 CFR parts 200 to 499 edition revised as of January 1, 2021).

If DOE ultimately denies the petition for waiver, or if the alternate test procedure specified in the interim waiver differs from the alternate test procedure specified by DOE in a subsequent decision and order, DOE will provide a period of 180 days before the manufacturer is required to use the DOE test procedure or the alternate test procedure specified in the decision and order to make representations of energy efficiency. 10 CFR 431.401(i).[6] When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 431.401(h)(2) (10 CFR parts 200 to 499 edition revised as of January 1, 2021).

II. LRC Coil's Petition for Waiver and Interim Waiver

In a letter docketed on December 1, 2020, LRC Coil filed a petition for waiver and interim waiver from the test procedure for walk-in cooler and walk-in freezer refrigeration systems set forth at Appendix C. (LRC Coil, No. 1 at pp. 1–4 [7]) In response to questions from DOE, LRC submitted an updated petition for waiver and interim waiver, docketed on August 6, 2021. (LRC Coil, No. 11 at pp. 1–3).

The primary assertion in the petition is that absent an interim waiver the prescribed test procedure would evaluate the specified basic models in a manner so unrepresentative of their true energy consumption as to provide materially inaccurate comparative data. As presented in LRC Coil's petition, the specified basic models of walk-in unit coolers operate at a temperature range of 45 °F to 65 °F; higher than that of a typical walk-in cooler refrigeration system. Thus, the 35 °F temperature specified in the DOE test procedure for medium-temperature walk-in refrigeration systems would result in the prescribed test procedures evaluating the specified basic models in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data. LRC Coil also states that the specified basic models are ''split cooling systems for walk-in wine cellars'' that operate at temperature and relative humidity ranges optimized for the long-term storage of wine and are usually located in air-conditioned spaces. LRC Coil contends that because of these characteristics, wine cellar walk-in unit cooler systems differ from other walk-in cooler refrigeration systems in their walk-in box temperature setpoint, walk-in box relative humidity, low/high load split,[8] and compressor efficiency.

LRC Coil states that the specified basic models are designed to provide a cold environment at a temperature range between 45 °F to 65 °F with 50–70 percent relative humidity (''RH''), and typically are kept at 55 °F and 55 percent RH rather than the 35 °F and <50 percent RH test condition prescribed by the DOE test procedure. LRC Coil states that the refrigeration systems are designed solely for the purpose of long-term wine storage to mimic the temperature and humidity of natural caves. LRC Coil also asserts that wine cellars optimally operate between 45 °F to 65 °F, and notes that the design of their units prohibits their operation at room/entering air temperatures of less than 45 °F. Although not specifically addressed in LRC Coil's request for waiver, DOE understands that operating the subject walk-in cooler refrigeration systems at the 35 °F condition would adversely mechanically alter the intended performance of the system, which would include icing of the evaporator coil that could potentially damage the compressor, and would not result in an accurate representation of the performance of the cooling unit.

The basic models listed in LRC Coil's petition include ''Evaporator Only Models'' which are not sold with a matched condensing unit (*i.e.,* the unit cooler and condensing unit are not sold together as a pair). Although not explicitly identified by LRC in its petition, DOE notes that unit coolers that are not part of a matched pair must be tested according to the provisions in AHRI 1250–2020 for unit coolers tested alone.

DOE has received multiple requests from wine cellar manufacturers for waiver and interim waiver from Appendix C. In light of these requests, DOE met with both AHRI and wine cellar walk-in cooler refrigeration system manufacturers to develop a consistent and representative alternate test procedure that would be relevant to each waiver request. Ultimately, AHRI sent a letter to DOE on August 18, 2020, summarizing the industry's position on several issues (''AHRI August 2020 Letter'').[9] This letter documents industry support for specific wine cellar walk-in cooler refrigeration system test procedure requirements, allowing the provisions to apply only to refrigeration systems with a minimum operating temperature of 45 °F, since wine cellar system controls and unit design specifications prevent these walk-ins from reaching a temperature below 45 °F. A provision for testing wine cellar walk-in cooler refrigeration systems at

[6] In proposing an amendment to 10 CFR 431.401(i), DOE stated that—''The 180-day duration was proposed because that time frame is consistent with the EPCA provision that provides manufacturers 180 days from issuance of a new or amended test procedure to begin using that test procedure for representation of energy efficiency.'' 84 FR 18414, 18416 (May 1, 2019); (*See* 42 U.S.C. 6293(c)(2)). In the final rule published December 11, 2020, stated that it was maintaining the 180-day grace period as proposed. 85 FR 79802, 79813. As such, were a Decision and Order issued with an alternate test procedure that differed from that required under this interim waiver, beginning 180 days following publication of the Decision and Order any representations made by the petitioner must fairly disclose the results of testing in accordance with the alternate test procedure specified by the final Order and the applicable requirements of 10 CFR part 429.

[7] A notation in this form provides a reference for information that is in the docket for this test procedure waiver (Docket No. EERE–2020–BT–WAV–0040) (available at *www.regulations.gov/docket/EERE-2020-BT-WAV-0040*). This notation indicates that the statement preceding the reference is document number 1 in the docket and appears at pages 1–4 of that document.

[8] The DOE test procedure incorporates by reference Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Test Standard 1250–2009, ''Standard for Performance Rating of Walk-in Coolers and Freezers'' (including Errata sheet dated December 2015) (''AHRI 1250–2009''). Section 6 of that standard defines walk-in box thermal loads as a function of refrigeration system net capacity for both high-load and low-load periods. The waiver petition asserts that wine cellars do not have distinct high and low load periods, and that the box load levels in the test standard are not representative for wine cellar refrigeration systems.

[9] DOE's meetings with wine cellar refrigeration systems manufacturers were conducted consistent with the Department's *ex parte* meeting guidance (74 FR 52795; October 14, 2009). The AHRI August 2020 letter memorializes this communication and is provided in Docket No. EERE–2020–BT–WAV–0040–0010.

an external static pressure (''ESP'') [10] of 50 percent of the maximum ESP to be specified by manufacturers for each basic model (AHRI August 2020 Letter) is also included. LRC Coil's petition states that all basic models listed in the petition for waiver and interim waiver cannot be operated at a temperature less than 45 °F and provides DOE with maximum ESP values for all ducted basic models specified in its petition.

LRC Coil also requests an interim waiver from the existing DOE test procedure. DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 431.401(e)(2).

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of covered equipment. (42 U.S.C. 6314(d)) Consistency is important when making representations about the energy efficiency of covered products and equipment, including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to 10 CFR 431.401, and after consideration of public comments on the petition, DOE may establish in a subsequent Decision and Order an alternate test procedure for the basic models addressed by the Interim Waiver Order.

LRC Coil seeks to use an approach that would test and rate specific wine cellar walk-in unit cooler basic models. The company's suggested approach specifies using an air-return temperature of 55 °F, as opposed to the 35 °F requirement prescribed in the current DOE test procedure. LRC Coil also suggests using an air-return relative humidity of 55 percent, as opposed to <50 percent RH as prescribed in the current DOE test procedure. LRC Coil stated that wine cellar walk-in cooler refrigeration systems do not experience high- and low- temperature conditions, but rather operate at steady state in a predominantly air-conditioned environment, supporting the use of the correction factor to adjust for average usage. LRC Coil requested that a correction factor of 0.55 be applied to the final AWEF calculation to adjust for average usage.[11] Finally, LRC Coil states that the external static pressure for testing systems with ducted evaporator air would be set to half of the reported maximum external static pressure.

IV. Interim Waiver Order

DOE has reviewed LRC Coil's application, its suggested testing approach, representations of the specified basic models on the website for the LRC Coil brand, related product catalogs, and information provided by LRC Coil and other wine cellar walk-in cooler refrigeration system manufacturers as discussed. Based on the assertions in the petition, absent an interim waiver, the DOE test procedure for walk-in cooler refrigeration systems would evaluate the subject basic models in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Therefore, based on its review, DOE is granting an interim waiver that requires testing with a modified version of the testing approach suggested by LRC Coil.

The modified testing approach would apply to unit cooler (evaporator) only models specified in LRC Coil's waiver petition Specified ducted basic models (RMD and VAH) and specified ductless basic models (SLA, SLPA, DQ, LPAQ, Q, CE, HS, RM, VRM, BK, CTIH, CTE, and WM) are unit coolers (evaporator units) designed to be paired with a remote condensing unit that is provided by a different manufacturer, in which refrigerant circulates between the ''evaporator unit'' (unit cooler) portion of the system and the ''remote condensing unit''. The refrigerant cools the wine cellar air in the evaporator unit, while the condensing unit rejects heat from the refrigeration system in a remote location, often outside. The evaporator unit of the ducted unit cooler system circulates air through ducts from the wine cellar to the evaporator unit and back to provide cooling, while the evaporator unit of the ductless unit cooler system may be ceiling-mounted, installed through-the-wall, or installed inside of the wine cellar for direct cooling. The capacity range of the specified basic models is from 1,500 Btu/h to 36,000 Btu/h for the specified operating conditions for each of the models.[12]

DOE considers the operating temperature range of the specified basic models to be integral to its analysis of whether such models require a test procedure waiver. Grant of the interim waiver and its alternative test procedure to the specified basic models listed in the petition is based upon the representation by LRC Coil that the operating range for the basic models listed in the interim waiver does not extend below 45 °F.

The alternate test procedure specified in the Interim Waiver Order requires testing the specified basic models according to Appendix C with the following changes. The required alternate test procedure specifies an air entering dry-bulb temperature of 55 °F and a relative humidity of 55 percent.

Although not addressed by LRC Coil in its petition, the DOE test procedure for unit coolers tested alone requires use of an energy efficiency ratio (''EER'') value,[13] which is necessary to calculate the compressor energy use that would be expended to handle the walk-in unit cooler load. Appendix C, Section 3.3.1. AHRI 1250–2020 section 7.8 provides an EER table to calculate AWEF for low- and medium-temperature unit coolers tested alone—the table provides varying EER values, dependent on the adjusted dew point [14] condition at the compressor inlet. However, LRC indicated that its walk-in unit coolers operate with a 38 °F evaporating temperature, which exceeds the maximum temperature in the AHRI 1250–2020 table. Furthermore, the EER table represents efficiency of parallel rack systems (see the title of section 7.9 of AHRI 1250–2009, ''Walk-in Unit Cooler Match to Parallel Rack System''), which are typically used in supermarket

[10] External static pressure is the sum of all the pressure resisting the fans. In this case, this is chiefly the resistance generated by the air moving through ductwork.

[11] DOE notes that in petitions for waiver received from other manufacturers, petitioners suggested that the correction factor would account for the different use and load patterns of the specified basic models as compared to walk-in cooler refrigeration systems generally. See Notifications of Petition for Waiver and Grant of Interim Waiver for Air Innovations (86 FR 2403, 2407; Jan. 12, 2021), CellarPro (86 FR 11972, 11976; Mar. 1, 2021), and Vinotheque (86 FR 11961, 11964; Mar. 1, 2021).

[12] The specified operating conditions are 55 °F room temperature (cold-side air entering), 38 °F suction temperature (refrigerant saturation temperature), and 17 °F TD (difference between the saturation temperature of the refrigerant inside the coil and the cold-side air entering temperature). The relative humidity of the cold-side air entering is not specified. An example series of specified models with capacity and condition information can be found at Docket No. EERE– 2020–BT–WAV–0040–0007.

[13] EER in this case represents the refrigeration load (in British thermal units (''Btu'')/hour (''h'')) required by the unit cooler divided by the compressor power (in watts (''W'')) required to provide that load.

[14] Adjusted dew point represents the pressure level at the unit cooler exit converted to its corresponding dew point temperature and adjusted for pressure loss in the suction line returning the refrigerant to the compressor. Dew point is the warmest temperature at which a refrigerant can exist in equilibrium in a two-phase liquid-vapor state at a given pressure—the dew point represents the two-phase evaporating refrigerant temperature in the unit cooler.

refrigeration systems.[15] The EER values for parallel rack systems are not expected to be representative of the compressors used in the condensing units paired with wine cellar walk-in unit coolers.

Therefore, DOE developed EER values appropriate to wine cellar walk-in cooler refrigeration systems. DOE obtained compressor performance data from Emerson and Tecumseh product websites (EERE–2020–BT–WAV–0040, No. 0002 and No. 0008, respectively) for high-temperature refrigeration compressor models within the applicable capacity range (2,900 Btu/h to 36,000 Btu/h). DOE expects that the condensing units paired with wine cellar walk-in unit coolers will use either hermetic reciprocating or hermetic scroll compressors designed for use with HFC–134a, R404A, or R407C refrigerants. Based on the compressor performance data, DOE calculated representative compressor EER levels for wine cellar walk-in unit coolers using the following parameters:

- 38 °F unit cooler exit dew point condition, as suggested by LRC (LRC Coil, No. 1 at pp. 3).
- 2 °F equivalent suction line dew point pressure drop, consistent with AHRI 1250–2009 section 7.9.1.
- 7 °F evaporator exit superheat, rounding to whole number values of the 6.5 °F superheat test condition prescribed in the footnote to Table 15 of Appendix C in case a value is not provided in an installation manual.
- 55 °F refrigerant temperature entering the compressor, representing a 10 °F refrigerant vapor temperature rise in the suction line, consistent with the temperature rise implied for medium-temperature refrigeration system test conditions.[16]
- 90 °F annual average condensing temperature. This assumes that the condensing unit serving the unit cooler would be located outdoors and that head pressure control would prevent excessively cold condensing operation at cold outdoor temperatures.[17]

DOE plotted the calculated compressor EER values versus calculated unit cooler capacity and noted that the EER can significantly vary with capacity (EERE–2020–BT–WAV–0040, No. 0009). EER is generally low for low-capacity compressors and high for high-capacity compressors, with a transition region in between. Based on the plotted calculations, DOE determined for the purpose of the interim waiver that a representative value for EER should depend on capacity. As such, DOE developed different functions of EER for three distinct capacity ranges. Table 1 summarizes these capacity ranges and EER functions for high-temperature compressors.

TABLE 1—EER VALUES FOR HIGH TEMPERATURE COMPRESSORS AS A FUNCTION OF CAPACITY FOR WINE CELLAR WALK-IN COOLER REFRIGERATION SYSTEMS

Capacity (Btu/hr)	EER (Btu/Wh)
<10,000	11.
10,000–19,999	(0.0007 × Capacity) + 4.
20,000–36,000	18.

Section 3.3.7 of Appendix C specifies section 7.9 of AHRI 1250–2009 for calculation of AWEF and net capacity for unit coolers tested alone. The alternate test procedure required under this interim waiver modifies section 3.3.7 of Appendix C to use the EER values provided in Table 1 for determining AWEF.

The alternate test procedure required under the interim waiver also includes the following modifications to LRC Coil's suggested approach: For systems that can be installed with ducted evaporator air or without ducted evaporator air, testing would be conducted at 50 percent of the maximum ESP, consistent with the AHRI August 2020 Letter recommendations, subject to a tolerance of −0.00/+0.05 in. wc.[18] DOE understands that maximum ESP is generally not published in available literature such as installation instructions, but manufacturers do generally specify the size and maximum length of ductwork that is acceptable for any given unit in such literature. The duct specifications determine the ESP that the unit would experience in the field.[19] The provision of allowable duct dimensions is more convenient for installers than maximum ESP, since it relieves the installer from having to perform duct pressure drop calculations to determine ESP. DOE independently calculated the maximum pressure drop over a range of common duct roughness values[20] using duct lengths and diameters published in LRC Coil's installation manuals.[21] DOE's calculations show reasonable agreement with the maximum ESP values provided by LRC Coil for the specified basic models. Given that the number and degree of duct bends and duct type will vary by installation, DOE found the maximum ESP values provided by LRC Coil to be sufficiently representative.

Selection of a representative ESP equal to half the maximum ESP is based on the expectation that most installations will require less than the maximum allowable duct length. In the absence of field data, DOE expects that a range of duct lengths from the minimal length to the maximum allowable length would be used; thus, DOE believes that half of the maximum ESP would be representative of most installations. For unit cooler basic models that are not designed for the ducting of air, this design characteristic must be clearly stated.

Additionally, if there are multiple evaporator fan speed settings, the speed setting in the unit's installation instructions would be used for testing. However, if the installation instructions do not specify a fan speed setting for ducted installation, systems that can be installed with ducts would be tested with the highest available fan speed. The ESP would be set for testing by

[15] See for example, ''Hussmann Parallel Rack Systems'', *www.hussmann.com/ns/Technical-Documents/0427598_D_Rack_IO_EN.pdf*.

[16] AHRI 1250–2009 Table 11 prescribes a return gas temperature (measured at the condensing unit inlet location) equal to 41 °F for testing medium temperature condensing units. Also, Table 15 and Section 3.3.1 of Appendix C prescribe testing medium-temperature unit coolers using 25 °F saturated suction temperature (this is the same as unit cooler exit dew point temperature), and 6.5 °F superheat (in case the installation manual doesn't provide superheat requirements). Thus, the unit cooler exit temperature would be 25 °F + 6.5 °F = 31.5 °F, and the implied suction line temperature rise is 41 °F − 31.5 °F = 9.5 °F. The analysis conducted for wine cellars rounds this to 10 °F.

[17] Head pressure control refers to reduction of condenser heat transfer performance using fan cycling or other means when it is cold outside in order to avoid unusually low condensing temperature. Such low condensing temperatures are undesirable because they can reduce refrigeration system performance and/or increase risk of compressor damage. A typical minimum condensing temperature is 70 °F, which may apply whenever outdoor temperature is lower than 50 °F. DOE selected the 90 °F annual average to be representative of operation that would involve condensing temperature ranging from 70 °F to 120 °F, since outdoor temperature varies.

[18] Inches of water column (''in. wc'') is a unit of pressure conventionally used for measurement of pressure differentials.

[19] The duct material, length, diameter, shape, and configuration are used to calculate the ESP generated in the duct, along with the temperature and flow rate of the air passing through the duct. The conditions during normal operation that result in a maximum ESP are used to calculate the reported maximum ESP values, which are dependent on individual unit design and represent manufacturer-recommended installation and use.

[20] Calculations were conducted over an absolute roughness range of 1.0–4.6 mm for flexible duct as defined in pages 1–2 of an OSTI Journal Article on pressure loss in flexible HVAC ducts at *www.osti.gov/servlets/purl/836654* (Docket No. EERE–2020–BT–WAV–0040–0006) and available at *www.regulations.gov*.

[21] Duct lengths and diameters can be found in LRC Coil's installation manuals at *www.regulations.gov* Docket No. EERE–2020–BT–WAV–0040–0005, and EERE–2020–BT–WAV–0040–0004.

symmetrically restricting the outlet duct.[22]

The alternate test procedure also describes the requirements for measurement of ESP consistent with provisions provided in section C9.1.1.2 of AHRI 1250–2020 when using the indoor air enthalpy method with unit coolers.

DOE notes that, despite the request from LRC Coil, it is not including a 0.55 correction factor in the alternate test procedure required by the Interim Waiver Order. The company sought to include a 0.55 correction factor to adjust for average use, stating that wine cellars do not experience high- and low-load conditions, but rather operate at steady state conditions in a predominately air-conditioned environment, but did not provide any additional support for this recommendation. While not specifically addressed in the request for waiver submitted by LRC Coil, waivers submitted by other manufacturers have stated that the suggested 0.55 correction factor addresses the differences in run time and compressor inefficiency of wine cellar walk-in cooler refrigeration systems as compared to walk-in cooler refrigeration systems more generally and have suggested that the run time for wine cellar walk-in cooler refrigeration systems ranges from 50 to 75 percent.[23] AHRI 1250–2009 accounts for percent run time in the AWEF calculation by setting walk-in box load equal to specific fractions of refrigeration system net capacity—the fractions are defined based on whether the refrigeration system is for cooler or freezer applications, and whether it is designed for indoor or outdoor installation (see sections 6.2 (applicable to coolers) and 6.3 (applicable to freezers) of AHRI 1250–2009). The alternate test procedure provided by this interim waiver requires calculating AWEF based on setting the walk-in box load equal to half of the refrigeration system net capacity, without variation according to high- and low-load periods and without variation with outdoor air temperature for outdoor refrigeration systems. Setting the walk-in box load equal to half the refrigeration system net capacity results in a refrigeration system run time fraction slightly above 50 percent, which is within the range suggested by other manufacturers of wine cellar walk-in cooler refrigeration systems as being representative for the specified basic models. As previously discussed, DOE regulates walk-in energy consumption at the component level, with separate test procedures for walk-in refrigeration systems, doors, and panels. Section 6 of AHRI 1250–2009 provides equations for determining refrigeration box load as a function of refrigeration system capacity. Using these equations with an assumed load factor of 50 percent maintains consistency with Appendix C while providing an appropriate load fraction for wine cellar walk-in cooler refrigeration systems. Accordingly, DOE has declined to adopt a correction factor for the equipment at issue.

Based on DOE's review of LRC Coil's petition, the required alternate test procedure specified in the Interim Waiver Order appears to allow for the accurate measurement of energy efficiency of the specified basic models, while alleviating the testing issues associated with LRC Coil's implementation of wine cellar walk-in unit cooler testing for these basic models. Consequently, DOE has determined that LRC Coil's petition for waiver will likely be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant LRC Coil immediate relief pending a determination of the petition for waiver.

For the reasons stated, it is *ordered* that:

LRC Coil must test and rate the following LRC branded wine cellar walk-in unit cooler basic models with the alternate test procedure set forth in paragraph (2).

BASIC MODELS

SLA18–54Q	SLPA–26–62Q	DQ–207
SLA28–108Q	SLPA36–95Q	DQ–207C
SLA38–163Q	SLPA46–128Q	DQ–275
SLA48–217Q	SLPA56–162Q	DQ–275C
SLA58–270Q	SLPA66–200Q	DQ–345
SLA68–322Q		DQ–345C
		DQ–432
		DQ–541
		DQ–650
LPA17–10Q	Q–500W	CE1–28Q
LPA17–13Q	Q–750W	CE2–89Q
LPA27–18Q	Q–1000W	CD3–129Q
LPA27–23Q	Q–1350W	
LPA37–32Q	Q–1640W	
LPA47–42Q	Q–2000W	
LPA57–55Q	Q–2600W	
HS–25CLEC	RM–25EC	RMD–25EC
HS–31CLEC	RM–35EC	RMD–35EC
HS–47CLEC	RM–50EC	RMD–50EC
HS–66CLEC	RM–65EC	RMD–65EC
HS–87CLEC	RM–80EC	RMD–80EC
HS–120CLEC		
HS–25EC		
HS–31EC		
HS–47EC		
HS–66EC		
HS–87EC		
HS–120EC		
HS–180EC		
VAH–25EC	VRM–25EC	BK17–40
VAH–31EC	VRM–35EC	BK27–60

[22] This approach is used for testing of furnace fans, as described in section 8.6.1.1 of 10 CFR part 430, appendix AA to subpart B.

[23] This runtime range was suggested by two other wine cellar walk-in refrigeration system manufacturers: Air Innovations and CellarPro. See 86 FR 2403, 2408 (Jan. 12, 2021) and 86 FR 11972, 11977 (Mar. 1, 2021), respectively.

BASIC MODELS—Continued

VAH–47EC	VRM–50EC	
VAH–66EC	VRM–65EC [24]	
VAH–87EC	VRM–80EC	
VAH–120EC		
VAH–180EC		
CTIH–15	CTE–15EC	WM–15
CTIH–25	CTE–25EC	WM–25
CTIH–35	CTE–35EC	WM–35
CTIH–50	CTE–50EC	WM–50
CTIH–70		

(2) The alternate test procedure for the LRC Coil basic models identified in paragraph (1) of this Interim Waiver Order is the test procedure for Walk-in Cooler Refrigeration Systems prescribed by DOE at 10 CFR part 431, subpart R, appendix C (''Appendix C to Subpart R''), except as detailed below. All other requirements of Appendix C and DOE's regulations remain applicable.

In Appendix C to Subpart R, revise section 3.1.1 (which specifies modifications to AHRI 1250–2009 (incorporated by reference; see § 431.303)) to read:

3.1.1. In Table 1, Instrumentation Accuracy, refrigerant temperature measurements shall have an accuracy of ±0.5 °F for unit cooler in/out. Measurements used to determine temperature or water vapor content of the air (*i.e.* wet bulb or dew point) shall be accurate to within ±0.25 °F; all other temperature measurements shall be accurate to within ±1.0 °F.

In Appendix C to Subpart R, revise section 3.1.5 (which specifies modifications to AHRI 1250–2009) and revise modifications to AHRI 1250–2009 Table 15:

3.1.5. Table 15 shall be modified to read:

TABLE 15—REFRIGERATOR UNIT COOLER

Test description	Unit cooler air entering dry-bulb temperature, °F	Unit cooler air entering relative humidity, %	Saturation temperature, °F	Liquid inlet saturation temperature, °F	Liquid inlet subcooling temperature, °F	Compressor capacity	Test objective
Off Cycle Fan Power	55	55	.....	.....	.....	Compressor Off	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	55	55	38	105	9	Compressor On	Determine Net Refrigeration Capacity of Unit Cooler.

Notes: Superheat to be set according to equipment specification in equipment or installation manual. If no superheat specification is given, a default superheat value of 6.5 °F is shall be used. The superheat setting used in the test shall be reported as part of the standard rating.

In Appendix C to Subpart R, revise section 3.3.1 (which specifies modifications to AHRI 1250–2009) to read:

3.3.1. For unit coolers tested alone, use test procedures described in AHRI 1250–2009 (incorporated by reference; see § 431.303) for testing unit coolers for use in mix-match system ratings, except that for the test conditions in Tables 15 and 16, use the Suction A saturation condition test points only. Determine AWEF as described in section 3.3.7.

In Appendix C to Subpart R, revise section 3.3.3, and add sections 3.3.3.1 and 3.3.3.2 to read:

3.3.3 *Evaporator fan power.*

3.3.3.1 The unit cooler fan power consumption shall be measured in accordance with the requirements in Section C3.5 of AHRI 1250–2009. This measurement shall be made with the fan operating at full speed, either measuring unit cooler or total system power input upon the completion of the steady state test when the compressor and the condenser fan of the walk-in system are turned off, or by submetered measurement of the evaporator fan power during the steady state test.

Section C3.5 of AHRI 1250–2009 is revised to read:

Unit Cooler Fan Power Measurement. The following shall be measured and recorded during a fan power test.

$EF_{comp,on}$ Total electrical power input to fan motor(s) of Unit Cooler, W
FS Fan speed (s), rpm
N Number of motors
P_b Barometric pressure, in. Hg
T_{db} Dry-bulb temperature of air at inlet, °F
T_{wb} Wet-bulb temperature of air at inlet, °F
V Voltage of each phase, V

For a given motor winding configuration, the total power input shall be measured at the highest nameplated voltage. For three-phase power, voltage imbalance shall be no more than 2%.

3.3.3.2 Evaporator fan power for the off cycle is equal to the on-cycle evaporator fan power with a run time of ten percent of the off-cycle time.

$$EF_{comp,off} = 0.1 \times EF_{comp,on}$$

In Appendix C to Subpart R, add new section 3.3.11 to read:

3.3.11. For unit cooler systems tested alone with ducted evaporator air, or that can be installed with or without ducted evaporator air: Connect ductwork on both the inlet and outlet connections and determine external static pressure as described in ASHRAE 37–2009, sections 6.4 and 6.5. Use pressure measurement instrumentation as described in ASHRAE 37–2009 section 5.3.2. Test at the fan speed specified in manufacturer installation instructions—if there is more than one fan speed setting and the installation instructions do not specify which speed to use, test at the highest speed. Conduct tests with the external static pressure equal to 50 percent of the maximum external static pressure allowed by the manufacturer for system installation within a tolerance of −0.00/+0.05 in. wc. Set the external static pressure by symmetrically restricting the outlet of the test duct. In case of conflict, these requirements for setting evaporator

[24] LRC Coil lists VRM–65 in their petition for waiver and interim waiver (EERE–2020–BT–WAV–0040–0011). The basic model number has been modified since LRC Coil's product literature lists 'VRM–65EC' and all other VRM models have an 'EC' appended to the end of the model number. Additionally, in a July 27, 2021 email, LRC Coil confirmed that all VAH series models should in in 'EC'.

airflow take precedence over airflow values specified in manufacturer installation instructions or product literature.

In Appendix C to Subpart R, revise section 3.3.7 (which specifies modifications to AHRI 1250–2009) to read:

3.3.7. For unit coolers tested alone, calculate AWEF on the basis that walk-in box load is equal to half of the system net capacity, without variation according to high and low load periods, and with EER set according to tested evaporator capacity, as follows:

For Unit Coolers Tested Alone:

$$\dot{B}L = 0.5 \times \dot{q}_{mix,evap}$$

$$\dot{E}_{mix,rack} = \frac{\left(\dot{q}_{mix,evap} + 3.412 \times \dot{E}F_{comp,on}\right)}{EER} + \dot{E}F_{comp,on}$$

Where:

$$EER = \begin{cases} 11 & \text{if } \dot{q}_{mix,evap} < 10{,}000 \text{ Btu/h} \\ 0.0007 \cdot \dot{q}_{mix,evap} + 4 & \text{if } 10{,}000 \leq \dot{q}_{mix,evap} < 20{,}000 \text{ Btu/h} \\ 18 & \text{if } 20{,}000 \leq \dot{q}_{mix,evap} < 36{,}000 \text{ Btu/h} \end{cases}$$

$$LF = \frac{\dot{B}L + 3.412 \times \dot{E}F_{comp,off}}{\dot{q}_{mix,evap} + 3.412 \times \dot{E}F_{comp,off}}$$

$$AWEF = \frac{\dot{B}L}{\dot{E}_{mix,rack} \times LF + \dot{E}F_{comp,off} \times (1\text{-}LF)}$$

Where: $\dot{B}L$ is the non-equipment-related box load

LF is the load factor

And other symbols are as defined in Section 8 of AHRI 1250-2009.

The net capacity, $\dot{q}_{mix,evap}$, is determined from the test data for the unit cooler at the 38 °F suction dewpoint.

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(3) Representations. LRC Coil may not make representations about the efficiency of a basic model listed in paragraph (1) for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions set forth in this alternate test procedure and such representations fairly disclose the results of such testing.

(4) This Interim Waiver Order shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This Interim Waiver Order is issued on the condition that the statements and representations provided by LRC Coil are valid. If LRC Coil makes any modifications to the controls or configurations of a basic model subject to this Interim Waiver Order, such modifications will render the waiver invalid with respect to that basic model, and LRC Coil will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for the Interim Waiver Order is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, LRC Coil may request that DOE rescind or modify the Interim Waiver Order if LRC Coil discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Issuance of this Interim Waiver Order does not release LRC Coil from the applicable requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. LRC Coil may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of Walk-in Cooler Refrigeration Systems. Alternatively, if appropriate, LRC Coil may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original

petition consistent with 10 CFR 431.401(g).

Signing Authority

This document of the Department of Energy was signed on August 20, 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 August 20, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

APPLICATION FOR WAIVER PER 10 CFR 431.401

WINE CELLAR COOLING EQUPIMENT

LRC coil is requesting an interim and a permanent waiver from a DOE test procedure pursuant to provisions described in 10 CFR 431.401 for the following products on the grounds that either the basic model contains one or more design characteristics that prevent testing of the basic model according to the prescribed test procerus or the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics has to provide materially inaccurate comparative data. DOE uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezer described in 10 CFR 431.304 adopts the test standard set forth an AHRI 1250–2020. Our walk-in wine cellar cooling systems meet the definition of Walkin Cooler Refrigeration Systems.

The design characteristics constituting the ground for the interim waiver application:

Split cooling systems for walk-in wine cellars. Split cooling systems are designed to provide cold environments between 45 and 65 degrees Fahrenheit and maintain a relative humidity range within 50 to 7-% for properly insulated wine cellars.

- *These temperature and relative humidity ranges are optimized for long-term storage of wine mimicking that of natural caves.*
- *Cooling systems consist of a remote condensing unit and an evaporator unit which are connected by liquid line and an insulated suction line.*
- *These systems must be charged properly with refrigerant in the field by a licensed contractor.*
- *These systems are available as indoor or outdoor uses with automatic off-cycle air defrost.*
- *Wine cellars are usually located in air conditioned environments so the load is predominately steady state with out high and low load conditions.*
- *Wine cellar cooling systems typically employ fractional compressors and automatic expansion valves to maintain the desired relative humidity in comparison to larger systems used in commercial WICF's.*

AHRI 1250–2019 defines the test conditions of walkin cooler refrigeration systems at 35 degree Fahrenheit air temperature with less than 50% relative humidity. However wine cellar cooling systems are designed to maintain environments of 55°–65 degree and maintain 50 to 70% relative humidity. Wine cellar can cooling systems are optimized to operate within such temperature and relative humidity ranges that they can't operate at a 35 degree air temperature with a less than freezing suction temperature.

Wine Cellars don't have high and low load conditions and operate at steady state conditions during operation in a predominately air conditioned environment. So the AWEF calculation described in 10 CFR 431.304 and AHRI 1250–2019 does not match the application of the such a system.

Due to the design of the coils used in the units they cannot be operated at room/entering air temperatures of less than 45 deg F.

The compressors used in wine cellar cooling systems are predominantly fractional horsepower which are inherently less efficient than larger compressors used in walkin cooler refrigeration systems. Therefore we do not believe there is technology on the market that will provide the needed energy efficiency and wine cellar cooling system to meet the minimum AWEF value for commercial walk-in cooler refrigeration systems set forth and 10 CFR 431.306.

LRC brand basic models on which the waiver is being requested:

Evaporator Only Models:

- LRC brand SLA series—(consisting of SLA18–54Q, SLA28–108Q, SLA38–163Q, SLA48–217Q, SLA58–270Q, SLA68–322Q)
- LRC brand SLPA—(consisting of SLPA–26–62Q, SLPA36–95Q, SLPA46–128Q, SLPA56–162Q, SLPA–66–200Q)
- LRC brand DQ—(consisting of DQ–207, DQ–207C, DQ–275, DQ–275C, DQ–345, DQ–345C, DQ–432, DQ–541, DQ–650)
- LRC brand LPAQ—(consisting of LPA17–10Q, LPA17–13Q, LPA27–18Q, LPA27–23Q, LPA37–32Q, LPA47–42Q, LPA57–55Q)
- LRC brand Q—(consisting of Q–500W, Q–750W, Q–1000W, Q–1350W, Q–1640W, Q–2000W, Q–2600W)
- LRC brand CE—(consisting of CE1–28Q, CE2–89Q, CE3–129Q)
- LRC brand HS—(consisting of HS–25CLEC, HS–31CLEC, HS–47CLEC, HS–66CLEC, HS–87CLEC, HS–120CLEC, HS–25EC, HS–31EC, HS–47EC, HS–66EC, HS–87EC, HS–120EC, HS–180EC)
- LRC brand RM—(consisting of RM–25EC, RM–35EC, RM–50EC, RM–65EC, RM–80EC)
- LRC brand RMD—(consisting of RMD–25EC, RMD–35EC, RMD–50EC, RMD–65EC, RMD–80EC)—Ducted (max .1 in H2O external static)
- LRC brand VAH—(consisting of VAH–25EC, VAH–31EC, VAH–47EC, VAH–66EC, VAH–87EC, VAH–120EC, VAH–180EC)—Ducted (max .25 in H2O external static)
- LRC brand VRM—(consisting of VRM–25EC, VRM–35EC, VRM–50EC, VRM–65, VRM–80EC)—not ducted, located in room.
- LRC brand BK—(consisting of BK17–40, BK27–60)
- LRC brand CTIH—(consisting of CTIH–15, CTIH–25, CTIH–35, CTIH–50, CTIH–70)
- LRC brand CTE—(consisting of CTE–15EC, CTE–25EC, CTE–35EC, CTE–50 EC)
- LRC brand WM—(consisting of WM–15, WM–25, WM–35, WM–50)

Specific requirements sought to be waived: LRC Coil is petitioning for a waiver to exempt split walk-in wine cellar cooling systems from being tested to the current test procedure. The prescribed test procedure is not appropriate for these products for the reasons stated previously.

List of manufacturers of all other basic models marketing in the United States and known to the petitioner to incorporate similar design characteristics.

- Air Innovations
- CellarPro
- Whisperkool
- Vinotemp/Winemate

Proposed alternate test procedure:

• Use a correction factor of 0.55 to calculate the AWEF to adjust for average usage.

• One load used to calculate AWEF.

• Evaporator air entering temperature dry bulb of 55 °F for split cooling systems.

• Evaporator air entering relative humidity 55% for split systems.

• Setting airflow and static pressure for systems with ducted evaporator. Fan speed would be in accordance with manufacturers specifications. The external static pressure for testing would be set to ½ of the rated maximum external static with a tolerance of −0/+.05 in H2O.

• For unit cooler style units for wine use above 45 degree F the same SST of 38 deg F coil temperature, entering air temperature of 55 deg F and relative humidity of 55% will be used. Duty cycle and operating characteristics are the same as the other wine units.

Success of the application for interim waiver and waiver:

It will ensure that manufacturers of wine cellar cooling systems can continue to participate in the market.

What economic hardship and/or competitive disadvantage are likely to absent a favorable determination on the application for interim waiver.

Economic hardship will be loss of sales due to not meeting the DOE energy conservation standards set forth and 10 CFR 431.306 if the existing products were altered in order to test for current requirements set forth in 10 CFR 431.204 and AHRI 1250–2020, would add significant costs and increase energy consumption.

Conclusion:

LRC Coil requests an interim waiver and waiver from DOE's current test method for the measurement of energy consumption of walk-in wine cellar split cooling systems.

Respectfully submitted,

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2715–000]

Fairbanks Solar Energy Center LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Fairbanks Solar Energy Center LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 9, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 20, 2021.

Kimberly D. Bose,

Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2716–000]

Fairbanks Solar Holdings LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Fairbanks Solar Energy Center LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

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listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 20, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–18374 Filed 8–25–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2714–000]

SE Athos II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SE Athos II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 9, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 20, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–18381 Filed 8–25–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2713–000]

SE Athos I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SE Athos I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 9, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number

field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 20, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–18382 Filed 8–25–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP21–1039–000.
Applicants: B–R Pipeline, LLC.
Description: § 4(d) Rate Filing: B–R Pipeline, LLC Tariff Update—Name Change to be effective 8/20/2021.
Filed Date: 8/19/21.
Accession Number: 20210819–5108.
Comment Date: 5 p.m. ET 8/31/21.

Docket Numbers: RP21–1040–000.
Applicants: PPG Shawville Pipeline, LLC.
Description: § 4(d) Rate Filing: Normal Change in Rates and Forms 2021 to be effective 9/1/2020.
Filed Date: 8/19/21.
Accession Number: 20210819–5115.
Comment Date: 5 p.m. ET 8/31/21.

Docket Numbers: RP21–1041–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas submits report of the penalty and daily delivery variance charge (DDVC) revenues that have been credited to shippers.
Filed Date: 8/19/21.
Accession Number: 20210819–5120.
Comment Date: 5 p.m. ET 8/31/21.

Docket Numbers: RP21–1042–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Revise Flow Through of Excess Cash Out Revenues or Costs to be effective 9/20/2021.
Filed Date: 8/20/21.
Accession Number: 20210820–5050.
Comment Date: 5 p.m. ET 9/1/21.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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: August 20, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–18373 Filed 8–25–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2722–000]

E. BarreCo Corp LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of E. BarreCo Corp LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 9, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 20, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–18375 Filed 8–25–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2712–000]

Heartland Generation Ltd.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Heartland Generation Ltd.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR

part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 9, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 20, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–18377 Filed 8–25–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–118–000.
Applicants: Twin Eagle Resource Management, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Twin Eagle Resource Management, LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5057.
Comment Date: 5 pm ET 9/10/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3125–015.
Applicants: AL Sandersville, LLC.
Description: Notice of Non-Material Change in Status of AL Sandersville, LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5155.
Comment Date: 5 pm ET 9/10/21.

Docket Numbers: ER20–1837–004.
Applicants: Duke Energy Carolinas, LLC, Duke Energy Florida, LLC, Duke Energy Progress, LLC.
Description: Compliance filing: Duke Energy Florida, LLC submits tariff filing per 35: Third Amendment to Joint OATT Order 864 Compliance Filing to be effective 1/27/2020.
Filed Date: 8/20/21.
Accession Number: 20210820–5140.
Comment Date: 5 pm ET 9/10/21.

Docket Numbers: ER20–2108–005.
Applicants: Great Bay Solar II, LLC.
Description: Great Bay Solar II, LLC submits tariff filing per 35.19a(b): Reactive Refund Report to be effective N/A.
Filed Date: 8/18/21.
Accession Number: 20210818–5172.
Comment Date: 5 pm ET 9/8/21.

Docket Numbers: ER20–2926–001.
Applicants: Altamont Winds LLC.
Description: Notice of Non-Material Change in Status of Altamont Winds LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5169.
Comment Date: 5 pm ET 9/10/21.

Docket Numbers: ER21–1191–008; ER21–1191–002; ER21–1191–003; ER21–1191–004; ER21–1191–005; ER21–1191–007.
Applicants: Southwestern Electric Power Company.
Description: Answer of Southwestern Electric Power Company.
Filed Date: 8/19/21.
Accession Number: 20210819–5151.
Comment Date: 5 pm ET 9/9/21.

Docket Numbers: ER21–2305–002.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: Compliance Filing: TO20 Motion for Interim Rates—Standby Cost Allocation to be effective 8/1/2021.
Filed Date: 8/20/21.
Accession Number: 20210820–5102.
Comment Date: 5 pm ET 9/10/21.

Docket Numbers: ER21–2718–000.
Applicants: California Independent System Operator Corporation, Pacific Gas and Electric Company, Southern California Edison Company.
Description: Petition for Approval of Uncontested Settlement Agreement of California Independent System Operator Corporation, et al.
Filed Date: 8/13/21.
Accession Number: 20210813–5244.
Comment Date: 5 pm ET 9/3/21.

Docket Numbers: ER21–2722–000.
Applicants: E. BarreCo Corp LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 10/20/2021.
Filed Date: 8/20/21.
Accession Number: 20210820–5007.
Comment Date: 5 pm ET 9/10/21.

Docket Numbers: ER21–2723–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2021–08–20_SA 3691 ATC–WPL E&P (J1305) to be effective 8/18/2021.
Filed Date: 8/20/21.
Accession Number: 20210820–5053.
Comment Date: 5 pm ET 9/10/21.

Docket Numbers: ER21–2725–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–08–20_SA 3370 ATC-Red Barn Energy 1st Rev GIA (J855) to be effective 8/6/2021.
Filed Date: 8/20/21.
Accession Number: 20210820–5106.
Comment Date: 5 pm ET 9/10/21.

Docket Numbers: ER21–2727–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Average System Cost Filing for Sales of Electric Power to the Bonneville Power Administration, FY 2022–2023.

Filed Date: 8/19/21.
Accession Number: 20210819–5211.
Comment Date: 5 pm ET 9/9/21.

Docket Numbers: ER21–2728–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2021–08–20 PLA No. 4 Time Ext—CDWR to be effective 11/1/2021.
Filed Date: 8/20/21.
Accession Number: 20210820–5120.
Comment Date: 5 pm ET 9/10/21.

Docket Numbers: ER21–2729–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: Update to Schedule 2 of the Joint Open Access Transmission Tariff to be effective 10/19/2021.
Filed Date: 8/20/21.
Accession Number: 20210820–5130.
Comment Date: 5 pm ET 9/10/21.

Docket Numbers: ER21–2730–000.
Applicants: Unitil Energy Systems, Inc.
Description: § 205(d) Rate Filing: Interim Distribution Wheeling Agreement with Briar Hydro to be effective 8/23/2021.
Filed Date: 8/20/21.
Accession Number: 20210820–5132.
Comment Date: 5 pm ET 9/10/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–65–000.
Applicants: Interstate Power and Light Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Interstate Power and Light Company.
Filed Date: 8/18/21.
Accession Number: 20210818–5170.
Comment Date: 5 pm ET 9/8/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 20, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–18376 Filed 8–25–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of five AHRQ subcommittee meetings.

SUMMARY: The subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at these meetings. Each subcommittee meeting will be closed to the public.

DATES: See below for dates of meetings:

1. *Healthcare Effectiveness and Outcomes Research (HEOR)*
   Date: October 13–14, 2021
2. *Healthcare Safety and Quality Improvement Research (HSQR)*
   Date: October 13–14, 2021
3. *Health Care Research and Training (HCRT)*
   Date: October 14–15, 2021
4. *Health System and Value Research (HSVR)*
   Date: October 14–15, 2021
5. *Healthcare Information Technology Research (HITR)*
   Date: October 21–22, 2021

ADDRESSES: Agency for Healthcare Research and Quality (Virtual Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: (To obtain a roster of members, agenda or minutes of the non-confidential portions of the meetings.)

Jenny Griffith, Committee Management Officer, Office of Extramural Research Education and Priority Populations, Agency for Healthcare Research and Quality (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 427–1557.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), AHRQ announces meetings of the above-listed scientific peer review groups, which are subcommittees of AHRQ's Health Services Research Initial Review Group Committee. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. app. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). 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.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: August 18, 2021.

Marquita Cullom,

Associate Director.

[FR Doc. 2021–18428 Filed 8–25–21; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2021–0089]

Advisory Committee on Immunization Practices (ACIP); Amended Notice of Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public. Time will be available for public comment. The meeting will be webcast live via the World Wide Web; for more information on ACIP please visit the ACIP website: *http://www.cdc.gov/vaccines/acip/index.html.*

DATES: The meeting will be held on August 30, 2021 and August 31, 2021, from 10:00 a.m. to 4:00 p.m., EDT (times subject to change). The docket is currently open to receive written comments. Written comments must be received on or before August 31, 2021.

A notice of this ACIP meeting has also been posted on CDC's ACIP website at: *http://www.cdc.gov/vaccines/acip/index.html.* In addition, CDC has sent notice of this ACIP meeting by email to those who subscribe to receive email updates about ACIP.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0089 by any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H24–8, Atlanta, Georgia 30329–4027, Attn: August 30–31, 2021 ACIP Meeting.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the *https://www.regulations.gov* suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, MS–H24–8, Atlanta, GA 30329–4027; Telephone: 404–639–8367; Email: *ACIP@cdc.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Advisory Committee on Immunization Practices (ACIP); August 24, 2021, 10:00 a.m.–5:00 p.m., EDT (times subject to change), in the original FRN.

The virtual meeting was published in the **Federal Register** on Wednesday, August 18, 2021, Volume 86, Number 157, pages 46256–46257.

The virtual meeting is being amended to change the dates to August 30, 2021 and August 31, 2021, update meeting times and supplemental information.

In accordance with 41 CFR 102–3.150(b), less than 15 calendar days' notice is being given for this meeting due to the exceptional circumstances of the COVID–19 pandemic and rapidly evolving COVID–19 vaccine development and regulatory processes. A notice of this ACIP meeting has also been posted on CDC's ACIP website at: *http://www.cdc.gov/vaccines/acip/index.html*. In addition, CDC has sent notice of this ACIP meeting by email to those who subscribe to receive email updates about ACIP.

Purpose: The committee is charged with advising the Director, CDC, on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under provisions of the Affordable Care Act, section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been approved by the Director of the Centers for Disease Control and Prevention and appear on CDC immunization schedules must be covered by applicable health plans.

Matters To Be Considered: The agenda will include discussions on Pfizer's COVID–19 vaccine, and additional discussions on mRNA booster doses. A recommendation vote on Pfizer's COVID–19 vaccine is planned. No Vaccines for Children (VFC) votes are scheduled. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda visit *https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html*.

Meeting Information: The meeting will be webcast live via the World Wide Web; for more information on ACIP please visit the ACIP website: *http://www.cdc.gov/vaccines/acip/index.html*.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov*. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes including all votes relevant to the ACIP's Affordable Care Act and Vaccines for Children Program roles. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the August 30, 2021, ACIP meeting must submit a request at *http://www.cdc.gov/vaccines/acip/meetings/* no later than 11:59 p.m., EDT, August 28, 2021, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by August 29, 2021. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to 3 minutes, and each speaker may only speak once per meeting.

Written Public Comment: The docket is currently open to receive written comments. Written comments must be received on or before August 31, 2021.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–18453 Filed 8–24–21; 11:15 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0008]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will take place virtually on October 20, 2021, from 9 a.m. Eastern Time to 6 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions including information regarding special accommodations due to a disability may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Candace Nalls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, *candace.nalls@fda.hhs.gov,* 301–636–0510, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at: *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On October 20, 2021, the committee will discuss, make recommendations, and vote on information regarding the premarket approval application (PMA) for the SurgiMend PRS Acellular Bovine Dermal Matrix (SurgiMend PRS ABDM) by Integra LifeSciences Corporation. The proposed Indication for Use, as stated in the PMA, is as follows: SurgiMend PRS Acellular Bovine Dermal Matrix is intended for use as soft tissue support in post-mastectomy breast reconstruction. SurgiMend PRS Acellular Bovine Dermal Matrix is specifically indicated for immediate, two-stage, submuscular, alloplastic breast reconstruction.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/advisory-committees/medical-devices-advisory-committee/general-and-plastic-surgery-devices-panel.* Select the link for the 2021 Meeting Materials. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Written submissions may be made to the contact person on or before October 6, 2021. Oral presentations from the public will be scheduled on October 20, 2021, between approximately 2 p.m. Eastern Time and 3 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person (see **FOR FURTHER INFORMATION CONTACT**). The notification should include a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 28, 2021. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing sessions. The contact person will notify interested persons regarding their request to speak by September 29, 2021.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Ann Marie Williams at *annmarie.williams@fda.hhs.gov* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–18394 Filed 8–25–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0806]

Advisory Committee; Nonprescription Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the renewal of the Nonprescription Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Nonprescription Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the August 27, 2023, expiration date.

DATES: Authority for the Nonprescription Drugs Advisory Committee will expire on August 27, 2021, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Moon Hee V. Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301 837–7126, *NDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Nonprescription Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and

effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases and advises the Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee serves as a forum for the exchange of views regarding the prescription and nonprescription status, including switches from one status to another, of these various drug products and combinations thereof. The Committee may also conduct peer review of Agency sponsored intramural and extramural scientific biomedical programs in support of FDA's mission and regulatory responsibilities.

The Committee shall consist of 10 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of internal medicine, family practice, clinical toxicology, clinical pharmacology, pharmacy, dentistry, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/human-drug-advisory-committees/nonprescription-drugs-advisory-committee* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/advisory-committees.*

Dated: August 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–18396 Filed 8–25–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2319]

Evaluation of Study Data Exchange Standards for Submission of Study Data to the Center for Veterinary Medicine; Request for Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending the comment period for the request for comments that appeared in the **Federal Register** of June 15, 2021. In that notice, FDA requested comments on the use of study data exchange standards from persons involved in study conduct, data collection, data management, and submission of animal study data intended to support the approval of new animal drug applications (NDAs), abbreviated new animal drug applications (ANDAs), or applications for conditional approval. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the request for comments published on June 15, 2021 (86 FR 31720). Submit either electronic or written comments by November 12, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 12, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 12, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–2319 for ''Evaluation of Study Data Exchange Standards for Submission of Study Data to the Center for Veterinary Medicine.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be

made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Charles Andres, Center for Veterinary Medicine (HFV–180), Food and Drug Administration, 7500 Standish Pl, Rockville, MD 20855, 240–402–0653, *charles.andres@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 15, 2021, FDA published a request for comments with a 90-day comment period to request comments on the use of study data exchange standards from persons involved in study conduct, data collection, data management, and submission of animal study data intended to support the approval of NDAs, ANDAs, or applications for conditional approval. Comments on the use of study data exchange standards will help us evaluate the potential use of study data exchange standards for animal studies submitted as part of the new animal drug approval process

Interested persons were originally given until September 13, 2021, to comment on document. The Agency has received a request for a 60-day extension of the comment period. The request conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the request for comments. FDA has considered the request and is extending the comment period for the request for comments for 60 days, until November 12, 2021. The Agency believes that a 60-day extension allows adequate time for interested persons to submit comments.

Dated: August 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–18395 Filed 8–25–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0008]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Circulatory System Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will take place virtually on November 2 and 3, 2021, from 9 a.m. to 6 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions including information regarding special accommodations due to a disability may be accessed at: *https://www.fda.gov/advisory-committees/about-advisory-committees/common-questions-and-answers-about-fda-advisory-committee-meetings.*

FOR FURTHER INFORMATION CONTACT: Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, *Akinola.Awojope@fda.hhs.gov,* 301–636–0512, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On November 2, 2021, the committee will discuss and make recommendations on information about the benefit-risk profile of the Endologix AFX endovascular graft system with regards to the risk of Type III endoleaks. FDA requests panel input regarding the totality of data collected on AFX devices and whether further actions are necessary.

On November 3, 2021, the committee will discuss and make recommendations on the continued safety and effectiveness of endovascular stent grafts and how to strengthen real-world data collection on long-term performance of the devices, both for currently marketed devices and for future technologies. FDA intends to request panel input on the clinical outcomes that are most relevant to capture in the real world, along with their frequency and duration. Additionally, FDA intends to seek input on data collection platforms, and how to incentivize and optimize real world data collection.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/advisory-committees/circulatory-system-devices-panel/2021-meeting-materials-*

circulatory-system-devices-panel. Select the link for the 2021 Meeting Materials. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 21, 2021. Oral presentations from the public will be scheduled on November 2 and November 3, 2021, between approximately 1 p.m. and 2 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person (see **FOR FURTHER INFORMATION CONTACT**). The notification should include a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, the date which they want to present, and an indication of the approximate time requested to make their presentation on or before October 13, 2021. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 14, 2021.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Artair Mallett at *Artair.Mallett@fda.hhs.gov* or 301–796–9638 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/advisory-committees/about-advisory-committees/public-conduct-during-fda-advisory-committee-meetings* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 20, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–18403 Filed 8–25–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0691]

Pharmacokinetic-Based Criteria for Supporting Alternative Dosing Regimens of Programmed Cell Death Receptor-1 or Programmed Cell Death-Ligand 1 Blocking Antibodies for Treatment of Patients With Cancer; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Pharmacokinetic-Based Criteria for Supporting Alternative Dosing Regimens of Programmed Cell Death Receptor-1 (PD–1) or Programmed Cell Death-Ligand 1 (PD–L1) Blocking Antibodies for Treatment of Patients with Cancer.'' This draft guidance provides recommendations for sponsors of investigational new drug applications (INDs) and biologics license applications (BLAs) on the use of pharmacokinetic (PK)-based criteria to support the approval of alternative dosing regimens for programmed cell death receptor-1 (PD–1) or programmed cell death-ligand 1 (PD–L1) blocking antibodies. This draft guidance is based on accumulated scientific and regulatory experience for PD–1 and PD–L1 drugs, and as such, does not address development of alternative dosing regimens for any other drugs or biologics, changes in route of administration, or novel formulations of previously approved PD–1/PD–L1 products.

DATES: Submit either electronic or written comments on the draft guidance by October 25, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0691 for ''Pharmacokinetic-Based Criteria for Supporting Alternative Dosing Regimens of Programmed Cell Death Receptor-1 (PD–1) or Programmed Cell Death-Ligand 1 (PD–L1) Blocking Antibodies for Treatment of Patients with Cancer.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential

with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Brian Booth, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2186, Silver Spring, MD 20993, 301–796–1508.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Pharmacokinetic-Based Criteria for Supporting Alternative Dosing Regimens of Programmed Cell Death Receptor-1 (PD–1) or Programmed Cell Death-Ligand 1 (PD–L1) Blocking Antibodies for Treatment of Patients with Cancer.'' This draft guidance provides recommendations for sponsors of INDs and BLAs on the use of PK-based criteria to support the approval of alternative dosing regimens for PD–1 or PD–L1 blocking antibodies. The draft guidance is based on accumulated scientific and regulatory experience for PD–1 and PD–L1 drugs and, as such, does not address development of alternative dosing regimens for any other drugs or biologics, changes in route of administration, or novel formulations of previously approved PD–1/PD–L1 products.

Sponsors may seek approval of alternative intravenous (IV) dosing regimens that are different from those tested in clinical efficacy and safety trials. These alternative IV dosing regimens are typically designed to change doses (*e.g.,* body weight adjusted doses to flat doses) and/or dosing intervals (*e.g.,* once every 3 weeks to once every 6 weeks). Longer dosing interval periods can minimize patient burden and reduce risks associated with more frequent administration (*e.g.,* infusion reactions), as well as exposure to communicable diseases (*e.g.,* SARS–CoV–2) associated with visits to hospitals or infusion centers. The draft guidance describes the criteria for using the PK-based approach and the documents that should be included in the submissions seeking approval.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Pharmacokinetic-Based Criteria for Supporting Alternative Dosing Regimens of Programmed Cell Death Receptor-1 (PD–1) or Programmed Cell Death-Ligand 1 (PD–L1) Blocking Antibodies for Treatment of Patients with Cancer.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014 and the collections of information in 21 CFR part 601 have been approved under 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov.*

Dated: August 17, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–18317 Filed 8–25–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Infant Mortality

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Infant Mortality (ACIM or Committee) has scheduled a public meeting. Information about ACIM and the agenda for this meeting can be found on the ACIM website at *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

DATES: September 21, 2021, 12:00 p.m.–4:00 p.m. Eastern Time and September 22, 2021, 12:00 p.m.–4:00 p.m. Eastern Time.

ADDRESSES: This meeting will be held via webinar. *The webinar link and log-in information will be available at ACIM's website before the meeting: https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

FOR FURTHER INFORMATION CONTACT: Vanessa Lee, MPH, Designated Federal Official, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18N84, Rockville, Maryland 20857; (301) 443–0543; or *SACIM@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACIM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. The Committee is governed

by provisions of Public Law 92–463, as amended, (5 U.S.C. app. 2), which sets forth standards for the formation and use of Advisory Committees.

ACIM advises the Secretary of Health and Human Services on department activities and programs directed at reducing infant mortality and improving the health status of pregnant women and infants. ACIM represents a public-private partnership at the highest level to provide guidance and focus attention on the policies and resources required to address the reduction of infant mortality and the improvement of the health status of pregnant women and infants. With a focus on life course, the ACIM addresses disparities in maternal health to improve maternal health outcomes, including preventing and reducing maternal mortality and severe maternal morbidity. ACIM provides advice on how best to coordinate myriad federal, state, local, and private programs and efforts that are designed to deal with the health and social problems impacting infant mortality and maternal health, including implementation of the Healthy Start program and maternal and infant health objectives from the National Health Promotion and Disease Prevention Objectives (*i.e.,* Healthy People 2030).

The agenda for the September 21–22, 2021, meeting is being finalized and may include the following topics: Federal program updates; discussion of recommendations by ACIM to the Secretary; fatality review programs; health of indigenous mothers and infants; financing of care; and patient-physician racial concordance in health care. Refer to the ACIM website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide written or oral comments. Requests to submit a written statement or make oral comments to the ACIM should be sent to Vanessa Lee, using the email address above at least three business days prior to the meeting. Public participants may submit written statements in advance of the scheduled meeting by emailing *SACIM@hrsa.gov.* Oral comments will be honored in the order they are requested and may be limited as time allows.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Vanessa Lee at the contact information listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–18378 Filed 8–25–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Dental and Craniofacial Research Council, September 9, 2021, 10:00 a.m. to September 9, 2021, 4:00 p.m., National Institutes of Health, National Institute of Dental and Craniofacial Res., 6701 Democracy Blvd., Bethesda, MD 20892 which was published in the **Federal Register** on August 13, 2021, FR Doc. 2021–17302, 86 FR 44736.

This meeting is being amended to change the times of the Open and Closed sessions. The Open session will be from 9:00 a.m. to 2:30 p.m. and will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*). The Closed session will be from 2:45 p.m. to 3:30 p.m. The meeting is partially Closed to the public.

Dated: August 23, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–18401 Filed 8–25–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Electronic Individual Development Plan (eIDP) (National Eye Institute)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Cesar E. Perez-Gonzalez, Training Director, Office of the Scientific Director, National Eye Institute, NIH, Building 31, Room 6A22, MSC 0250, Bethesda, Maryland 20892 or call non-toll-free number (301) 451–6763 or Email your request, including your address to: *cesarp@nei.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on May 24, 2021, page 27856–27857 (86 FR 27856) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Eye Institute (NEI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Electronic Individual Development Plans, 0925–NEW, XX/XX/XXXX, National Eye Institute (NEI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Eye Institute's (NEI) Office of the Scientific Director (OSD) goal is to train the next generation of vision researchers and ophthalmologists. Trainees who participate in NEI research come with different levels of education (student, postbaccalaureate, predoctoral including graduate and medical students, postdoctoral fellows) and for different amounts of time (6 months to 5 years). Training at the NEI focuses on scientific and professional skill development. To enhance their chances of obtaining their ideal career, completing an annual Individual

Development Plan (IDP) is an important step in helping a trainee's career and professional development and is standard practice in graduate and postdoctoral education. An IDP is an effective tool for trainees to think about their career goals and skills needed to achieve them during their time at the NEI. Trainees work together with their research mentor to organize and summarize their research projects, consider career goals, and set training goals and expectations, both for the mentee and mentor.

This information collection request is to implement an electronic Individual Development Plan (eIDP). The data collected comes from a detailed questionnaire focused on responses to professional goals and expectations while they are at the NEI. It is expected that the trainees will complete the eIDP annually and by doing so, it will help enhance the effectiveness of their training by setting clear goals that can be monitored not only by the trainee themselves but also by their mentor, the Training Director, and their Administrative Officer. In addition to this eIDP, the system will also implement an electronic exit survey. The data collected comes from a detailed questionnaire focused on responses to questions focused on trainee mentoring and professional experiences at the NEI as well as their plans after they depart. It is expected that the trainees will complete at the end of their tenure and that by doing so, the NEI Training Program can learn about ways to improve career development opportunities for future trainees as well as learn more about trainee job choices to better advise fellows. Additionally, we can use the survey to help determine mentor effectiveness and help identify problems in mentoring at the NEI.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 213.

ESTIMATED ANNUALIZED BURDEN HOURS

	Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
eIDP (Attachment 1)	Individuals	150	1	1	150
Exit Survey Part 1 (Attachment 2)	Individuals	150	1	5/60	13
Exit Survey Part 2 (Attachment 3)	Individuals	150	1	20/60	50
Total		150	150		213

Dated: August 19, 2021.

Cesar E. Perez-Gonzalez,

Training Director, National Eye Institute, National Institutes of Health.

[FR Doc. 2021–18393 Filed 8–25–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–6: NCI Clinical and Translational Cancer Research.

Date: October 12, 2021.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850, 240–276–5122, *hasan.siddiqui@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–1: NCI Clinical and Translational Cancer Research.

Date: October 28, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850, 240–276–6372, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Metastasis Research Network (U54).

Date: October 28–29, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240–276–7755, *byeong-chel.lee@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Proteogenomic Tumor Analysis.

Date: November 3, 2021.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W114, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W114, Rockville, Maryland 20850, 240–276–6371, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; R03 Omnibus and R21 Clinical and Translational Research.

Date: November 3, 2021.

Time: 10:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W556, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Kamal Datta, M.D., Scientific Review Officer, Program

Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W556, Rockville, Maryland 20850, 240–276–6526, *kamal.datta@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Research Projects in Cancer Systems Biology (U01).

Date: November 4, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850, 240–276–6372, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Institutional Training and Education Special Emphasis Panel.

Date: November 4, 2021.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850, 240–276–6368, *Stoicaa2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 23, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–18399 Filed 8–25–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–[USCG–2021–0042]]

Revisions to Maritime Security Directive 104–6; Guidelines for U.S. Vessels Operating in High Risk Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of Revision 8 to Maritime Security (MARSEC) Directive 104–6, which provides guidelines for U.S. vessels operating in high-risk waters (HRW) where acts of terrorism, piracy, and armed robbery against ships are prevalent. The directive contains security-sensitive information and, therefore, cannot be made available to the general public. U.S. vessel owners and operators who have needed to take action under previous versions of MARSEC Directive 104–6 should immediately contact their local Coast Guard Captain of the Port or District Commander for a copy of Revision 8. This revision contains important updates to HRW locations and organizational responsibilities regarding addressing security risks in those waters.

DATES: MARSEC Directive 104–6 (Revision 8) has been available since August 11, 2021. MARSEC Directive 104–6 (Revision 7) is no longer valid after that date.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LCDR Michael Metz; U.S. Coast Guard, Office of Commercial Vessel Compliance; telephone 202–372–1236, email *cvc.uscg@uscg.mil.*

SUPPLEMENTARY INFORMATION: Maritime Security (MARSEC) Directive 104–6 Revision 8 replaces Revision 7, previously signed on March 4, 2014. The new directive provides direction to U.S. flagged vessels operating in High Risk Waters (HRW) where acts of terrorism, piracy, and armed robbery against ships are prevalent. This revision reflects a change in organizational responsibilities and updates the list of regions identified as HRW.

U.S. vessel owners and operators who have needed to take action under previous versions of MARSEC Directive 104–6 should immediately contact their local Coast Guard Captain of the Port or District Commander for a copy of Revision 8, which contains important updates to the locations of HRW and to the guidelines for addressing security risks in those waters. The Coast Guard advises owners and operators that, under Revision 8, they may need to take specific actions in accordance with MARSEC Directive 104–6 before their vessel enters HRW.

This notice is issued under authority of 33 CFR 101.405(a)(2) and 5 U.S.C. 552(a).

Dated: August 23, 2021.

W.R. Arguin,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2021–18391 Filed 8–25–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: Baseline Assessment for Security Enhancement (BASE) Program

AGENCY: Transportation Security Administration, Homeland Security (DHS).

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0062, abstracted below, to OMB for review and approval of a revision to the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection allows TSA to conduct transportation security-related assessments during site visits with surface transportation security and operating officials.

DATES: Send your comments by September 27, 2021. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on June 4, 2021, 86 FR 30065.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Baseline Assessment for Security Enhancement (BASE) Program.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0062.

Form(s): BASE electronic checklist.

Affected Public: Highway transportation asset owners and operators; and, public transportation agencies, including mass transit bus, rail transit, and less common types of service (such as cable cars, inclined planes, funiculars, and automated guideway systems).

Abstract: TSA's BASE program works with existing (and new) transportation asset and system owner/operators by asking established questions to identify their current security posture, identify security gaps, and encourage implementation of countermeasures applicable to the specific surface mode of transportation. Data and results collected through the BASE program will inform TSA's policy and program initiatives and allow TSA to provide focused resources and tools to enhance the overall security posture within these sectors of the surface transportation community.

The Government Accountability Office, audit GAO–20–404, ''Passenger Rail Security: TSA Engages with Stakeholders but Could Better Identify and Share Standards and Key Practices (April 2020),'' recommended TSA update the BASE cybersecurity questions to ensure they reflect key practices.[1] TSA concurred with this recommendation and is requesting to revise the collection to include questions that cover all five core functions of the National Institute of Standards and Technology cybersecurity framework. All core functions and a majority of the subcategories are integrated with Cybersecurity and Infrastructure Security Agency guidelines and established industry best practices in the newly-developed cybersecurity questions and cybersecurity annex questions, strengthening the cybersecurity health for the transportation sector.

Number of Respondents: 182.

Estimated Annual Burden Hours: 1,698 hours annually.[2]

Dated: August 20, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–18358 Filed 8–25–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Military Severely Injured Joint Support Operations Center (MSIJSOC) and Travel Protocol Office (TPO) Programs

AGENCY: Transportation Security Administration, Homeland Security (DHS).

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0069, abstracted below, to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of travel information to TSA to provide wounded warriors, severely injured military personnel, and certain other travelers with assistance through the airport security screening process.

DATES: Send your comments by September 27, 2021. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The ICR describes the nature of the information collection and its expected burden. On April 8, 2021, TSA published a **Federal Register** notice (86 FR 18291), with a 60-day comment period soliciting comments, of the following collection of information.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be made available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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[1] Additional information regarding this audit and the GAO's recommendations are available on the GAO's website using the audit number (GAO–20–0404) or at the following link: *https://www.gao.gov/products/gao-20-404.*

[2] The annual burden has decreased since the publication of the 60-day notice, which reported 1,708 annual hour burden (MT/PR BASE 1,196 hours annually + HWY BASE 512 hours annually).

Information Collection Requirement

Title: Military Severely Injured Joint Support Operations Center (MSIJSOC) and Travel Protocol Office (TPO) Programs.

Type of Request: Extension.

OMB Control Number: 1652–0069.

Form(s): TSA Form 412, Travel Support Request and TSA Form 417 Screening Assistance Notification.

Affected Public: Wounded warriors, severely injured military personnel, foreign dignitaries, accredited Ambassadors to the United States, and other travelers requiring an escort through the airport security screening process.

Abstract: The Helping Heroes Fly Act directs TSA to develop and implement a process to support and facilitate the ease of travel and, to the extent possible, provide expedited passenger screening services for severely injured or disabled members of the Armed Forces and severely injured or disabled veterans through passenger screening. *See* sec. 2 of the Helping Heroes Fly Act, Public Law 113–27 (127 Stat. 503; Aug. 9, 2013) as amended and codified at 49 U.S.C. 44927. Consistent with these requirements, TSA established the MSIJSOC program to support and facilitate the movement of wounded warriors, severely injured military personnel, and severely injured or disabled veterans. Under the Aviation and Transportation Security Act (ATSA), TSA is responsible for security in all modes of transportation including screening operations for passenger air transportation and for carrying out such other duties relating to the transportation security as it considers appropriate. *See* sec. 101(a) of the ATSA, Public Law 107–71 (115 Stat. 597; Nov. 19, 2001) as codified at 49 U.S.C. 114. Under ATSA, TSA established the Travel Protocol Office (TPO) Programs to assist foreign dignitaries, accredited Ambassadors to the United States, and other travelers requiring an escort through the airport security screening process.

To implement the MSIJSCO and TPO programs, TSA must collect the passenger's name, flight itinerary (scheduled flight departure and arrival information), and contact information to successfully facilitate movements through the screening process at U.S. airports and its territories. TSA shares this information with airports on the passenger's itinerary to coordinate efforts, to synchronize seamless transitions with the affected parties, and protect security operations.

Number of Respondents: 8,456.

Estimated Annual Burden Hours: An estimated 705 hours annually.

Dated: August 20, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–18362 Filed 8–25–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–WSFR–2021–N179; FVWF97820900000–XXX–FF09W13000 and FVWF54200900000–XXX–FFO9W13000; OMB Control Number 1018–0088]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR) Contests

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), we, the U.S. Fish and Wildlife Service (Service), are proposing to reinstate a previously approved information collection with revisions.

DATES: Interested persons are invited to submit comments on or before September 27, 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 clicking on the link ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0088 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the information collection request (ICR) at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On May 14, 2020, we published in the **Federal Register** (85 FR 28972) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on July 13, 2020. We received the following comments in response to that notice:

Comment 1: Email comment received on May 15, 2020, from Jean Public; however, her comment did not address the information collection requirements.

Agency Response to Comment 1: No response required.

Comment 2: Email comment received on July 9, 2020, from Holly Huchko, Endangered Species Act Program Specialist/Sport Fish Restoration Coordinator, on behalf of the Oregon Department of Fish and Wildlife (ODFW):

Ms. Huchko emphasized that the national data generated by the FHWAR are invaluable for assessing engagement in and spending on outdoor recreation in Oregon. She stated that the FHWAR survey is also essential to USFWS WSFR program and ODFW, since coastal States must obligate Sport Fish Restoration program grant funds so that the ratio is equal to the resident marine and freshwater anglers (50 CFR 80.65–66). Ms. Huchko shared the understanding that for the 2022 and future FHWAR surveys, States will need to pay for State level data if desired, though USFWS will continue to provide the freshwater/saltwater percent of resident anglers in coastal States at no cost. This information may be used for determining the Sport Fish Restoration saltwater/freshwater split. Ms. Huchko's understanding is accurate. Finally, Ms. Huchko urged that the FHWAR continue to be administered in both mail and digital (web) modes, so as to reduce barriers to participation.

Agency Response to Comment 2: The methodology for the 2022 FHWAR, described above, is responsive to the needs identified in Ms. Huchko's comments. Oregon and other coastal States will continue to receive data on the number of freshwater/saltwater

anglers within their respective State, free of cost. The 2022 FHWAR will also be fielded in both mail and web modes.

Comment 3: Email comment received on July 10, 2020, from Adam Kreger, Martha C. Nussbaum Fellow—Wildlife Law Program, on behalf of Friends of Animals:

On behalf of Friends of Animals, Mr. Kreger endorsed the FHWAR data collection. He pointed to trends in decreasing participation in hunting, evolving views on hunting and fishing among Americans, and the need to gather reliable data on these topics. Kreger argues that FWS and State agencies should use the FHWAR and other surveys to assess ''future needs and demands''—namely, in the areas of wildlife observation and photography.

Agency Response to Comment 3: The FHWAR questionnaires will systematically collect information about three major activities: Fishing, hunting, and wildlife watching. Our processes and questionnaires devote equal emphasis to each of these three major activities.

The survey defines wildlife watching as taking a special interest in observing or viewing wildlife through any of the following activities:

- Closely observing wildlife or trying to identify types of wildlife you did not know;
- Photographing wildlife;
- Feeding birds or other wildlife;
- Maintaining natural areas such as wooded lots, hedgerows, or open fields of at least one-quarter acre for the benefit of wildlife, not including farmland;
- Maintaining plantings such as shrubs or agricultural crops for the benefit of wildlife; and
- Visiting parks and natural areas to observe, photograph, or feed wildlife.

The data from these items will allow for analyses of trends in wildlife watching among Americans, including but not limited to wildlife observation and photography. Similarly, detailed questions about hunting and fishing will allow for trend analysis surrounding those major activities.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The information collected for the National Survey of Fishing, Hunting and Wildlife-Associated Recreation (FHWAR) assists the Fish and Wildlife Service in administering the Wildlife and Sport Fish Restoration grant programs. The 2022 FHWAR survey will provide up-to-date information on the uses and demands for wildlife-related recreation resources and a basis for developing and evaluating programs and projects to meet existing and future needs.

We collect the information in conjunction with carrying out our responsibilities under the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777–777m) and the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669–669i). Under these acts, as amended, we provide approximately $1 billion in grants annually to States for projects that support sport fish and wildlife management and restoration, including:

- Improvement of fish and wildlife habitats,
- Fishing and boating access,
- Fish stocking, and
- Hunting and fishing opportunities.

We also provide grants for aquatic education and hunter education, maintenance of completed projects, and research into problems affecting fish and wildlife resources. These projects help to ensure that the American people have adequate opportunities for fish and wildlife recreation. We conduct the survey about every 5 years. The 2022 FHWAR survey will be the 14th conducted since 1955. We sponsor the survey at the States' request, which is made through the Association of Fish and Wildlife Agencies. We contract with the National Opinion Research Center (NORC) at the University of Chicago, which collects the information using internet, telephone, or mail-in paper-and-pencil instrument (PAPI).

Respondents are invited to take the survey with a mailed letter. NORC will select a sample of sportspersons and wildlife watchers from a household screen and conduct three detailed interviews during the survey year. The survey collects information on the number of days of participation, species of animals sought, and expenditures for trips and equipment. Information on the characteristics of participants includes age, income, sex, education, race, and State of residence. The Wave 3 Freshwater/Saltwater Ratio Questionnaire is designed to get freshwater and saltwater fishing data for coastal states. The Wildlife and Sportfish Restoration Program is required to divide fishing management funds according to the ratio of freshwater and saltwater anglers in each coastal state.

Federal and State agencies use information from the survey to make policy decisions related to fish and wildlife restoration and management. Participation patterns and trend information help identify present and future needs and demands. Land management agencies use the data on expenditures and participation to assess the value of wildlife-related recreational uses of natural resources. Wildlife-related recreation expenditure information is used to estimate the impact on the economy and to support the dedication of tax revenues for fish and wildlife restoration programs.

Title of Collection: National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR).

OMB Control Number: 1018–0088.

Form Number: None.

Type of Review: Reinstatement of a previously approved collection.

Respondents/Affected Public: Individuals/households.

Respondent's Obligation: Voluntary.

Frequency of Collection: Screener data collection will be conducted from January through March 2022. The first detailed sportsperson and wildlife-watcher interviews will be conducted in May 2022. The second detailed interviews will be conducted in September 2022. The third and final detailed interviews will be conducted in January 2023.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Estimated number of household responses	Median completion time per response (minutes)	Estimated burden hours *
2022 Screener Survey:			
Screener: Web	27,639	9	4,146
Screener: Phone	1,000	15	250
Screener: PAPI	31,361	10	5,227
2022 Wave 1 Survey:			
Wave Questionnaires: Web	43,068	13	9,331
Wave Questionnaires: Phone	833	22	305
Wave Questionnaires: PAPI	6,972	14	1,627
2022 Wave 2 Survey:			
Wave Questionnaires: Web	32,173	13	6,971
Wave Questionnaires: Phone	833	22	305
Wave Questionnaires: PAPI	3,645	14	851
2022 Wave 3 Survey:			
Wave Questionnaires: Web	46,773	13	10,134
Wave Questionnaires: Phone	950	22	348
Wave Questionnaires: PAPI	11,811	14	2,756
Wave 3 Fishing Only Questionnaire	13,500	3	675
Grand Total	220,558	.....	42,926

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021–18359 Filed 8–25–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–31812; PPNEGATEB0, PPMVSCS1Z.Y00000]

Request for Nominations for the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service (NPS), U.S. Department of the Interior, is requesting nominations for qualified persons to serve as members of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (Committee).

DATES: Written nominations must be received by October 25, 2021.

ADDRESSES: Nominations should be sent to Daphne Yun, U.S. Department of the Interior, National Park Service, Gateway National Recreation Area, Office of the Superintendent, 210 New York Avenue, Staten Island, New York 10305, or email *daphne_yun@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Daphne Yun, U.S. Department of the Interior, National Park Service, Gateway National Recreation Area, Sandy Hook Unit, 26 Hudson Road, Highlands, New Jersey 07732, or email at *daphne_yun@nps.gov,* or telephone at (732) 872–5908.

SUPPLEMENTARY INFORMATION: The Committee was established by authority of the Secretary of the Interior under 54 U.S.C. 100906, and in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 2). The purpose of the Committee is to advise the Secretary of the Interior, through the Director of the NPS, on the development of a reuse plan and on matters relating to future uses of certain buildings at the Fort Hancock Historic District, located within the Sandy Hook Unit of Gateway National Recreation Area in New Jersey.

The Committee consists of representatives from among, but not limited to, the following interest groups to represent a range of interests concerned with the management of Fort Hancock within the park and its impact on the local area: The natural resource community, the business community, the cultural resource community, the real estate community, the recreation community, the education community, the scientific community, and hospitality organizations. The Committee will also include representatives from the following municipalities: Borough of Highlands, Borough of Sea Bright, Borough of Rumson, Middletown Township, Monmouth County Freeholders, and Borough of Monmouth Beach.

We are currently seeking members to represent all categories.

Nominations should be typed and 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 to contact a potential member. All documentation, including letters of recommendation, must be compiled and submitted in one complete package. All those interested in membership, including current members whose terms are expiring, must follow the same nomination process. Members may not appoint deputies or alternates.

Members of the Committee serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Committee as approved by the NPS, members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under section 5703 of title 5 of the United States Code.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2021–18329 Filed 8–25–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Number 337–TA–1264]

Certain High-Potency Sweeteners, Processes for Making Same, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Granting Leave To Amend the Complaint and Notice of Investigation To Add Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 14) of the presiding administrative law judge (''ALJ''), granting leave to amend the complaint and notice of investigation to add as respondents Amerisweet Co., Ltd.; Batory Foods; DMH Ingredients Inc.; Fortway Chemicals Co.; Ingredient Supply Corporation; Nutravative Ingredients; Nutrisprinter Limited; Polestar Development Limited; Qingdao Samin Chemical Co.; Rochem International Inc.; and V-Chem Trading Ltd. (collectively, the ''Proposed Respondents'').

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 14, 2021. 86 FR 26544 (May 14, 2021). The complaint, as supplemented, was filed by complainants Celanese International Corporation of Irving, Texas; Celanese (Malta) Company 2 Limited of Qormi, Malta; and Celanese Sales U.S. Ltd. of Irving, Texas (collectively, ''Celanese''), and alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-potency sweeteners, processes for making same, and products containing same by reason of infringement of certain claims of United States Patent Nos. 10,023,546; 10,208,004; 10,590,098; 10,233,163; and 10,590,095. *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission's notice of investigation named twelve respondents, including respondents Anhui Jinhe Industrial Co., Ltd., and Jinhe USA LLC (collectively, ''Jinhe'') and Prinova US LLC (''Prinova''). *Id.* The Office of Unfair Import Investigations (''OUII'') is also participating in this investigation. *Id.*

On July 9, 2021, Celanese moved for leave to add the Proposed Respondents to the complaint and notice of investigation. On July 21, 2021, Jinhe filed a brief opposing Celanese's motion on the grounds that certain of the Proposed Respondents could have been identified by Celanese in its original complaint, and that the current respondents, OUII, and the Proposed Respondents will be prejudiced by the addition of respondents at this stage of the investigation. The same day, Prinova filed a notice indicating that it joined Jinhe's opposition. Also, on the same day, OUII filed a brief supporting Celanese's motion.

On August 6, 2021, the ALJ issued the subject ID granting Celanese's motion. The subject ID is based on the ALJ's subsidiary findings that Celanese has shown good cause to add allegations to the complaint that the Proposed Respondents have violated section 337 and that the current parties are unlikely to suffer prejudice due to the addition of the Proposed Respondents to the investigation. No petitions for review of the ID were received.

The Commission has determined not to review the subject ID. The notice of investigation is hereby amended to add the following as respondents to the investigation:

1. Amerisweet Co., Ltd.;
2. Batory Foods;
3. DMH Ingredients Inc.;
4. Fortway Chemicals Co.;
5. Ingredient Supply Corporation;
6. Nutravative Ingredients;
7. Nutrisprinter Limited;
8. Polestar Development Limited;
9. Qingdao Samin Chemical Co.;
10. Rochem International Inc.; and
11. V-Chem Trading Ltd.

The Commission vote for this determination took place on August 23, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 23, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–18431 Filed 8–25–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On August 19, 2021, the U.S. Department of Justice (DOJ) lodged a proposed Amended Consent Decree with the United States District Court for the Northern District of Indiana in *United States of America and State of Indiana* v. *City of South Bend, Indiana,* No. 3:11CV505. The proposed Amended Consent Decree supersedes and replaces the original Consent Decree that the Court entered on May 2, 2012.

The 2012 Consent Decree resolved claims for civil penalties, and injunctive relief in the form of a Long Term Control Plan for violations of the Clean Water Act and related State law claims regarding the City of South Bend's operation of its municipal wastewater and sewer system. In the proposed Amended Consent Decree, South Bend agrees to construct and operate a sewage conveyance and treatment system that, once fully implemented by 2038, would significantly increase the level of control of pollutant discharges required under the 2012 Consent Decree by, among other things, treating sewage and wastewater discharges to meet Indiana's water quality standard for *E. coli.*

The publication of this notice opens a period for public comment on the proposed Amended Consent Decree. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and State of Indiana* v. *City of South Bend, Indiana,* D.J. Ref. No. 90–5–1–1–08182. All comments must be submitted no later than thirty (30) days after the publication date of

this notice. Comments may be submitted by email or mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of the reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $23.25 (25 cents per page reproduction cost), payable to the United States Treasury.

Karen S. Dworkin,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–18415 Filed 8–25–21; 8:45 am]

BILLING CODE 4410–15–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Sequestration Update Report to the President and Congress for the Current Fiscal Year

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability.

SUMMARY: OMB is issuing the *OMB Sequestration Update Report to the President and Congress for the Current Fiscal Year* to report on the status of the discretionary caps in 2021 and on the compliance of enacted discretionary appropriations legislation with those caps.

DATES: August 20, 2021.

ADDRESSES: The OMB Sequestration Reports to the President and Congress are available on-line on the OMB home page at: *https://www.whitehouse.gov/omb/legislative/sequestration-reports-orders/.*

FOR FURTHER INFORMATION CONTACT: Thomas Tobasko, 6202 New Executive Office Building, Washington, DC 20503, Email address: *ttobasko@omb.eop.gov,* telephone number: (202) 395–5745. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 requires the Office of Management and Budget (OMB) to issue a Sequestration Update Report by August 20th of each year. For fiscal year 2021, the report finds enacted appropriations to be at or below the caps after accounting for enacted supplemental appropriations.

Shalanda Young,

Acting Director.

[FR Doc. 2021–18349 Filed 8–25–21; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Science Foundation-Managed Honorary Awards

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew, with a revision, this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by October 25, 2021 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation-Managed Honorary Awards.

OMB Approval Number: 3145–0035.

Expiration Date of Approval: January 31, 2024.

Type of Request: Intent to seek approval to revise an information collection for three years.

Abstract: The National Science Foundation (NSF) administers several external awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the National Science Board (NSB) Vannevar Bush Award, the NSB Public Service Award, the Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) program, and the Presidential Awards for Excellence in Mathematics and Science Teaching (PAEMST) program. The full descriptions for these programs, including nominating requirements, may be found at the following website: *https://www.nsf.gov/awards/presidential.jsp.*

Use of the Information: Following are brief outlines of the honorary award programs:

- *President's National Medal of Science.* Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 (Pub. L. 86–209), which established the award and stated that ''(t)he President shall . . . award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as . . . appropriate.''
- *Alan T. Waterman Award.* Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (Pub. L. 94–86)) and authorized NSF to ''establish the Alan T. Waterman Award for research or advanced study in any of the sciences or engineering'' to mark the 25th anniversary of the National Science Foundation and to honor its first Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of $1,000,000 over a five-year period for scientific research or advanced study in any field of science or engineering.
- *Vannevar Bush Award.* The Vannevar Bush Award honors truly exceptional lifelong leaders in science and technology who have made substantial contributions to the welfare of the Nation through public service activities in science, technology, and public policy. The National Science Board established this award in 1980 in the memory of Vannevar Bush, who served as a science advisor to President Franklin Roosevelt during World War II, helped to establish Federal funding for science and engineering as a national priority during peacetime, and was behind the creation of the National Science Foundation.

• *NSB Public Service Award.* The National Science Board established the Public Service Award in November 1996 to honor individuals and groups that have made substantial contributions to increasing public understanding of science and engineering in the United States. These contributions may be in a wide variety of areas that have the potential of contributing to public understanding of and appreciation for science and engineering—including mass media, education and/or training programs, and entertainment.

• *Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) program.* In 1996, the White House, through the National Science and Technology Council (NSTC) and the Office of Science and Technology Policy (OSTP), established the Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) program. The program, administered on behalf of the White House by the National Science Foundation, seeks to identify outstanding mentoring efforts or programs designed to enhance the participation of groups (women, minorities and persons with disabilities as well as groups from low socioeconomic regions) underrepresented in science, mathematics and engineering. The awardees will serve as exemplars to their colleagues and will be leaders in the national effort to more fully develop the Nation's human resources in science, mathematics and engineering. This award is managed at NSF by the Directorate for Education and Human Resources (EHR).

• *Presidential Award for Excellence in Mathematics and Science Teaching.* The Presidential Award for Excellence in Mathematics and Science Teaching (PAEMST) is the highest recognition that a kindergarten through 12th-grade mathematics or science teacher may receive for outstanding teaching in the United States. Enacted by Congress in 1983, this program authorizes the President to bestow 108 awards with two per state or jurisdiction, assuming there are qualified applicants. Awards are given in the science category, which includes science and engineering, and the mathematics category, which includes mathematics, technology and computer science. In even-numbered years, nominations are accepted for elementary teachers (grades K–6); in odd-numbered years, secondary teachers (grades 7–12) are nominated. This award is managed at NSF by the Directorate for Education and Human Resources (EHR).

Estimate of Burden: These are annual award programs with application deadlines varying according to the program. Public burden also may vary according to program; however, across all the programs, it is estimated that each submission will average 23 hours per respondent. If the nominator is thoroughly familiar with the disciplinary background of the nominee, time spent to complete the nomination may be considerably reduced. Once provisionally selected, on behalf of OSTP, NSF may collect information from the potential Presidential award honorees necessary for OSTP to complete a background check. The estimated time for completion is ten minutes per respondent, including reviewing the instructions.

Respondents: Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

Estimated Number of Responses per Award: 1,800 responses, broken down as follows: For the President's National Medal of Science, 80; background check form, 15; for the Alan T. Waterman Award, 70; for the Vannevar Bush Award, 20; for the Public Service Award, 30; for the PAESMEM, 200; and 1,400 for the PAEMST.

Estimated Total Annual Burden on Respondents: 41,974 hours, broken down by 1,600 hours for the President's National Medal of Science nominations (20 hours per 80 respondents) and three hours for the background check information for approximately 15–20 honorees; 2,000 hours for the Alan T. Waterman Award (20 hours per 100 respondents); 300 hours for the Vannevar Bush Award (15 hours per 20 respondents); 450 hours for the Public Service Award (15 hours per 30 respondents); 4,000 hours for the PAESMEM (20 hours per 200 respondents) and three hours for the background check information for approximately 15 honorees; and 33,600 hours for the PAEMST (24 hours per 1400 respondents) and 18 hours for the background check information for approximately 108 honorees.

Frequency of Responses: Annually.

Comments: Comments are invited 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) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; (d) 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.

Dated: August 23, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–18406 Filed 8–25–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Week of August 30, 2021.

PLACE: Via Teleconference.

STATUS: Open.

Week of August 30, 2021

Tuesday, August 31, 2021

11:30 a.m. Affirmation Session (Public Meeting) (Tentative), FirstEnergy Companies and TMI–2 Solutions, LLC (Three Mile Island Nuclear Station, Unit 2), Petition for Reconsideration of CLI–21–8 (Tentative), (Contact: Wesley Held: 301–287–3591)

Additional Information: Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live; via teleconference. Details for joining the teleconference in listen only mode at *https://www.nrc.gov/pmns/mtg*.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov*. The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne

Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@@nrc.gov*.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: August 23, 2021.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2021–18445 Filed 8–24–21; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0145]

Information Collection: NRC Form 7, Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s)

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled NRC Form 7, ''Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s).''

DATES: Submit comments by October 25, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

Federal Rulemaking Website: Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0145. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Mail comments to: David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0145 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

Federal Rulemaking Website: Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0145. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2021–0145 on this website.

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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML21160A214. The draft supporting statement is available in ADAMS under Accession No. ML21160A211.

Attention: The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0145 in your comment submission.

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

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

Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 7, ''Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s).''
2. *OMB approval number:* 3150–0027.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 7.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* Persons or businesses seeking an authorization to export or import nuclear equipment and material listed in Part 110 of title 10 of the Code of Federal Regulations.
7. *The estimated number of annual responses:* 64.
8. *The estimated number of annual respondents:* 64.
9. *The estimated number of hours needed annually to comply with the*

information collection requirement or request: 153.6.

10. *Abstract:* Persons in the U.S. wishing to export or import nuclear material or equipment, or byproduct material requiring a specific authorization, amend or renew a license, or wishing to request consent to export Category 1 quantities of byproduct material must file an NRC Form 7 application. The NRC Form 7 application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue an export, import, amendment or renewal license or notice of consent.

Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: August 23, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021–18363 Filed 8–25–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Notice of Availability of Draft Environmental Impact Statement for Purchase of Next Generation Delivery Vehicles

AGENCY: Postal Service.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), its implementing procedures at 39 CFR 775, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the U.S. Postal Service announces availability of the Draft Environmental Impact Statement (DEIS) to purchase over 10 years 50,000 to 165,000 purpose-built, right-hand-drive vehicles—the Next Generation Delivery Vehicle (NGDV)—to replace existing delivery vehicles nationwide that are approaching the end of their service life. While the Postal Service has not yet determined the precise mix of the powertrains in the new vehicles to be purchased, under the Proposed Action, at least ten percent of the NGDVs would have battery electric (BEV) powertrains, with the remainder being internal combustion (ICE). The DEIS evaluates the environmental impacts of the Proposed Action, as well as two BEV and ICE commercial off-the-shelf (COTS) vehicle alternatives and the ''no action'' alternative. The Postal Service is soliciting comments on the DEIS during a 45-day public comment period.

DATES: Comments should be received no later than October 12, 2021. The Postal Service will also publish a Notice of Availability to announce the availability of the Final EIS.

ADDRESSES: Interested parties may view the DEIS at *http://uspsngdveis.com/.* Interested parties may mail or deliver written comments, containing the name and address of the commenter, to: Mr. Davon Collins, Environmental Counsel, United States Postal Service, 475 L'Enfant Plaza SW, Office 6606, Washington, DC 20260–6201, or at *NEPA@usps.gov.* Note that comments sent by mail may be subject to delay due to federal security screening. Faxed comments are not accepted. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260 by calling 202–268–2906.

Joshua J. Hofer,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2021–18302 Filed 8–25–21; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92714; File No. SR–NYSEArca–2021–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E

August 20, 2021.

On May 6, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the First Trust SkyBridge Bitcoin ETF Trust (''Trust'') under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on May 27, 2021.[3]

On July 7, 2021, pursuant 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] This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust would be for the Shares to reflect the performance of the value of bitcoin, less

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91962 (May 21, 2021), 86 FR 28646 (May 27, 2021) (''Notice''). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nysearca-2021-37/srnysearca202137.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92333 (July 7, 2021), 86 FR 36826 (July 13, 2021). The Commission designated August 25, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

the Trust's liabilities and expenses.[8] The Trust will not seek to reflect the performance of any benchmark or index. In order to pursue its investment objective, the Trust will seek to purchase and sell such number of bitcoin so that the total value of the bitcoin held by the Trust is as close to 100% of the net assets of the Trust as is reasonably practicable to achieve.[9]

The Shares represent units of fractional undivided beneficial interest in, and ownership of, the Trust. The Trust will hold only bitcoins, which the Bitcoin Custodian will custody on behalf of the Trust. The Trust generally will not hold cash or cash equivalents; however, the Trust may hold cash and cash equivalents on a temporary basis to pay extraordinary expenses.[10]

The net asset value (''NAV'') of the Trust will be determined in accordance with Generally Accepted Accounting Principles as the total value of bitcoin held by the Trust, plus any cash or other assets, less any liabilities including accrued but unpaid expenses. The NAV of the Trust will be determined as of 4:00 p.m., E.T. on each day that the Shares trade on the Exchange (''Business Day'').[11] The Trust will use the CF Bitcoin US Settlement Price (''Reference Rate'') to calculate the Trust's NAV.[12] The Reference Rate serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m., E.T. The Reference Rate aggregates the trade flow of several bitcoin platforms during an observation window between 3:00 p.m. and 4:00 p.m., E.T., into the U.S. dollar price of one bitcoin at 4:00 p.m., E.T. The current constituent bitcoin platforms of the Reference Rate are Bitstamp, Coinbase, Gemini, itBit, and Kraken (''Constituent Platforms''). In calculating the Reference Rate, the methodology creates a joint list of certain trade prices and sizes from the Constituent Platforms between 3:00 p.m. and 4:00 p.m., E.T. The methodology then divides this list into a number of equally sized time intervals, and it calculates the volume-weighted median trade price for each of those time intervals. The Reference Rate is the equally weighted average of the volume-weighted median trade prices of all intervals.[13]

The Trust's website, as well as one or more major market data vendors, will provide an intra-day indicative value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Core Trading Session to reflect changes in the value of the Trust's NAV during the trading day.[14]

The Trust will issue and redeem Shares to Authorized Participants on an ongoing basis in blocks of 50,000 Shares (''Creation Units''). The creation and redemption of Creation Units will be effected in ''in-kind'' transactions based on the quantity of bitcoin attributable to each Share. The creation and redemption of Creation Units require the delivery to the Trust, or the distribution by the Trust, of the number of bitcoins represented by the Creation Units being created or redeemed.[15]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2021–37 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[16] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[17] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.''[18]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[19] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin markets, the bitcoin markets' susceptibility to manipulation, and thus the suitability of bitcoin as an underlying asset for an exchange-traded product?

2. What are commenters' views of the Exchange's assertions that the regulatory and financial landscape relating to bitcoin and other digital assets have changed significantly since 2016?[20] Are the changes that the Exchange identifies sufficient to support the determination that the proposal to list and trade the Shares is designed to protect investors and the public interest and is consistent with the other applicable requirements of Section 6(b)(5) of the Act?

3. The Exchange states that the listing and trading of the Shares would provide ''an opportunity for U.S. investors to gain exposure to bitcoin in a regulated and transparent exchange-traded vehicle that limits risks'' and asserts that concerns regarding potential manipulation of a bitcoin exchange-traded product ''have been sufficiently mitigated and may be outweighed by growing and quantifiable investor protection concerns related to [over-the-counter bitcoin funds].''[21] What are

[8] *See id.* at 28652. First Trust Advisors L.P. is the sponsor of the Trust, and Delaware Trust Company is the trustee. The sub-adviser for the Trust is SkyBridge Capital II, LLC. The Bank of New York Mellon (''Administrator'') is the transfer agent and the administrator of the Trust. The bitcoin custodian for the Trust is NYDIG Trust Company LLC (''Bitcoin Custodian''). *See id.* at 28646.

[9] *See id.* at 28652.

[10] *See id.* at 28652, 28654. The Administrator acts as custodian of the Trust's cash and cash equivalents. *See id.* at 28654. While the Trust may from time to time incur certain extraordinary, non-recurring expenses that must be paid in U.S. dollars or other fiat currency, such events would only impact the amount of bitcoin represented by a Share of the Trust. *See id.* at 28655.

[11] The Trust's daily activities will generally not be reflected in the NAV determined for the Business Day on which the transactions are effected (the trade date), but rather on the following Business Day. *See id.* at 28654.

[12] The Reference Rate is not affiliated with the Sponsor and is administered by CF Benchmarks Ltd. *See id.* at 28654.

[13] *See id.* at 28654–55.

[14] *See id.* at 28659.

[15] *See id.* at 28658–59.

[16] 15 U.S.C. 78s(b)(2)(B).

[17] *Id.*

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Notice, *supra* note 3.

[20] *See id.* at 28647–48.

[21] *See id.* at 28649.

commenters' views regarding such assertions?

4. The Exchange asserts that the Chicago Mercantile Exchange (''CME''), either alone as the sole market for bitcoin futures or as a group of markets together with the Constituent Platforms, represents a regulated market of significant size.[22] Further, the Exchange states that CME is ''the primary market for bitcoin futures, and compares favorably with other markets that were deemed to be markets of significant size in precedents.'' [23] Do commenters agree? What of the Exchange's assertion that, through CME CF Bitcoin Reference Rate, ''the CME and the Exchange would be able, in the case of any suspicious trades, to discover all material trade information, including the identities of the customers placing the trades''? [24]

5. The Exchange states that any would-be manipulator of bitcoin prices would be reasonably likely to do so through the Commodity Futures Trading Commission-regulated bitcoin futures (''Bitcoin Futures'') market, *i.e.,* CME.[25] Among other things, the Exchange asserts that, ''because the Bitcoin Futures market is in effect the 'cheapest' route to manipulate bitcoin, it is highly likely such manipulators would attempt to do so there rather than any spot market.'' [26] Do commenters agree with this assertion?

6. What are commenters' views on the Exchange's assertion that (a) Bitcoin Futures' important role in price discovery; (b) the overall size of the bitcoin market; (c) the ability for market participants to buy or sell large amounts of bitcoin without significant market impact; and (d) the results from a study conducted by CF Benchmarks regarding ''slippage'' help demonstrate that the Shares would not become the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets? [27]

7. What are commenters' views on the Exchange's statement that significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is increasingly expensive? [28] What are commenters' views on whether ''offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares'' and that the price the Sponsor uses to value the Trust's bitcoin ''is not particularly important''? [29] What are commenters' views on the assertion that because the Reference Rate is determined exclusively based on its Constituent Platforms, ''use of the Reference Rate would mitigate the effects of potential manipulation of the bitcoin market''? [30]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[31]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by September 16, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal September 30, 2021.

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–2021–37 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–2021–37. 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–2021–37 and should be submitted by September 16, 2021. Rebuttal comments should be submitted by September 30, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–18348 Filed 8–25–21; 8:45 am]

BILLING CODE 8011–01–P

[22] *See id.* at 28656, 28661.

[23] *See id.* at 28656.

[24] *See id.* at 28657.

[25] *See id.* at 28656–57.

[26] *See id.* at 28657.

[27] *See id.* at 28658.

[28] *See id.*

[29] *See id.*

[30] *See id.* at 28661.

[31] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[32] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92713; File No. SR–FINRA–2021–010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc., Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036

August 20, 2021.

I. Introduction

On May 7, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FINRA–2021–010 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder, to amend the margin requirements for covered agency transactions under FINRA Rule 4210.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on May 25, 2021.[4] On June 30, 2021, FINRA consented to an extension of the time period in which the Commission must approve the Proposed Rule Change, disapprove the Proposed Rule Change, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change to August 23, 2021.[5] On August 9, 2021, FINRA responded to the comment letters received in response to the Notice and filed an amendment to modify the Proposed Rule Change (''Amendment No. 1'').[6] The Commission is publishing this notice and order to solicit comment on the Proposed Rule Change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [7] to determine whether to approve or disapprove the Proposed Rule Change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

FINRA is proposing revisions to the margin requirements for Covered Agency Transactions in FINRA Rule 4210 as approved pursuant to SR–FINRA–2015–036.[8] Broadly, the Proposed Rule Change, as modified by Amendment No. 1 would: (1) Eliminate the two percent maintenance margin requirement that applies to non-exempt accounts under FINRA Rule 4210; (2) subject to specified conditions and limitations, permit FINRA members to take a capital charge in lieu of collecting margin for excess net mark to market losses on Covered Agency Transactions; and (3) make revisions designed to streamline, consolidate and clarify the Covered Agency Transaction rule language.[9]

Amendment No. 1 would make the following changes to the Proposed Rule Change: (1) Modify the definition of ''non-margin counterparty'' to exclude small cash counterparties and other exempted counterparties; and (2) define a FINRA member's ''specified net capital deductions'' as the net capital deductions required by paragraph (e)(2)(H)(ii)d.1 of FINRA Rule 4210 with respect to all unmargined excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close of business on the fifth business day after they arose.[10] In addition, Amendment No. 1 states that, if the Commission approves the Proposed Rule Change, as modified by Amendment No. 1, FINRA will announce the effective date of the Proposed Rule Change, as modified by Amendment No. 1, in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date would be between nine and ten months following the Commission's approval.

III. Proceedings To Determine Whether To Approve or Disapprove SR–FINRA–2021–010 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change, as modified by Amendment No. 1, should be approved or disapproved.[11] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the Proposed Rule Change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[12] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the Proposed Rule Change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Exchange Act,[13] any request for an opportunity to make an oral presentation.[14]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28161 (May 25, 2021) (File No. SR–FINRA–2021–010) (''Notice'').

[4] *See id.*

[5] *See* letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Sheila Swartz, Division of Trading and Markets, Commission, dated June 30, 2021.

[6] *See* Amendment No. 1. The comment letters received in response to the Notice and the full text of Amendment No. 1 are available on the Commission's website at: *https://www.sec.gov/comments/sr-finra-2021-010/srfinra2021010.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036). FINRA has extended the implementation date of the margin requirements (other than the risk limit determination requirements that became effective on December 15, 2016) pursuant to SR–FINRA–2015–036 on several occasions, most recently to October 26, 2021. *See* Notice, 86 FR at 28162.

[9] *See* Notice, 86 FR at 28163.

[10] Amendment No. 1 also contains some conforming changes to paragraph numbering to accommodate the proposed modifications to the rule text. *See* Exhibit 4 to Amendment No. 1.

[11] 15 U.S.C. 78s(b)(2)(B).

[12] *Id.*

[13] 17 CFR 240.19b–4.

[14] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission

Continued

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change, as modified by Amendment No. 1, should be approved or disapproved by September 10, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 16, 2021.

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–2021–010 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–2021–010. 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, as modified by Amendment No. 1, that are filed with the Commission, and all written communications relating to the Proposed Rule Change, as modified by Amendment No. 1, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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–2021–010, and should be submitted on or before September 10, 2021. Rebuttal comments should be submitted by September 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–18346 Filed 8–25–21; 8:45 am]

BILLING CODE 8011–01–P

flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[15] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92719; File No. SR–CboeBZX–2021–036]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Exclude a National Best Bid or Offer From the Calculation of the BZX Official Closing Price, as Provided in Rule 11.23(c)(2)(B)(ii)(b), That Is Outside the Bands Provided Under the Plan To Address Extraordinary Market Volatility

August 20, 2021.

On April 29, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to exclude a National Best Bid or Offer [3] (''NBBO'') from the calculation of the BZX Official Closing Price, as provided in Rule 11.23(c)(2)(B)(ii)(b), that is outside the bands provided under the National Market System Plan to Address Extraordinary Market Volatility (''Limit Up-Limit Down Plan'' or ''LULD Plan'').[4]

The proposed rule change was published for comment in the **Federal Register** on May 18, 2021.[5] On June 25, 2021, pursuant to Section 19(b)(2) of the Act,[6] the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to August 16, 2021.[7] The Commission has received no comment letters on the proposed rule change. On August 12, 2021, the Exchange withdrew the proposed rule change (SR–CboeBZX–2021–036).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–18345 Filed 8–25–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BZX Rule 1.5(o).

[4] *See* Securities Exchange Act Release No. 88704 (April 21, 2020), 85 FR 23383 (April 27, 2020) (File No. 4–634) (Amendment No. 20 Approval Order).

[5] *See* Securities Exchange Act Release No. 91875 (May 12, 2021), 86 FR 26982 (May 18, 2021) (SR–CboeBZX–2021–036) (''Notice'').

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 92268 (June 25, 2021), 86 FR 35143 (July 1, 2021).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92712; File No. SR–CBOE–2021–049]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule With Respect to Its Strategy Fee Cap

August 20, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 17, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule with respect to its strategy fee cap. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Footnote 13 of its Fees Schedule in relation to its strategy order fee cap, effective August 17, 2021.

Footnote 13 provides that Market-Maker, Clearing Trading Permit Holder, JBO participant, broker-dealer and non-Trading Permit Holder market-maker transaction fees are capped at $0.00 for all merger, short stock interest, reversal, conversion and jelly roll strategies executed in open outcry on the same trading day in the same option class across all symbols in equities, ETFs and ETNs. Footnote 13 also provides that strategy orders must be marked with a code approved by the Exchange identifying the orders as eligible for fee cap, and that strategy orders executed during September 2020 will be eligible for the fee cap notwithstanding not being marked, provided that a TPH submits a rebate request with supporting documentation for such orders to the Exchange within 3 business days of September 30, 2020 (*i.e.,* October 5, 2020). Beginning August 17, 2021, the Exchange's billing system will be able to automatically identify strategy orders for purposes of the strategy order fee cap, thereby eliminating the need for TPHs to manually mark their strategy orders with a code approved the Exchange. Accordingly, the Exchange proposes to update Footnote 13 by removing the language in connection with the marking requirements for strategy orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[3] in general, and furthers the objectives of Section 6(b)(4),[4] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that removing language from its Fees Schedule in connection with manual marking requirements for strategy orders in order for TPHs to receive the fee cap is reasonable as the Exchange's billing system will now be able to automatically identify strategy orders for purposes of the strategy order fee cap. The proposed rule change makes no changes to the fee cap but merely eliminates the need for TPHs to mark orders to receive the fee cap. The proposed rule change is reasonable as it provides transparency in the Fees Schedule and alleviates potential investor confusion in connection with marking strategy orders as eligible to receive the fee cap, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest. The Exchange also believes the proposed rule change is equitable and not unfairly discriminatory as it applies uniformly to all TPHs, in that, all strategy orders submitted will be automatically identified as eligible for the fee cap by the Exchange's billing system.

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. Specifically, the Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate as the proposed rule change applies uniformly to all TPHs, in that, all strategy orders submitted will be automatically identified as eligible for the fee cap by the Exchange's billing system. The proposed rule change makes no changes to the fee cap but merely eliminates the need for TPHs to mark orders to receive the fee cap. Further, the Exchange believes the proposed rule change will not cause an unnecessary burden on intermarket competition because it only applies to trading on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[8] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f.(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2021–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2021–049. 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–CBOE–2021–049 and should be submitted on or before September 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–18347 Filed 8–25–21; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92716; S7–09–21]

Notice of Substituted Compliance Application Submitted by the Spanish Financial Conduct Authority in Connection With Certain Requirements Applicable to Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Kingdom of Spain; Proposed Order

August 20, 2021.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of application for substituted compliance determination; proposed order.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is soliciting public comment on an application by the Spanish Comisión Nacional del Mercado de Valores (''CNMV'') requesting that, pursuant to rule 3a71–6 under the Securities Exchange Act of 1934 (''Exchange Act''), the Commission determine that registered security-based swap dealers and registered major security-based swap participants (together, ''SBS Entities'') that are not U.S. persons and that are subject to certain regulation in the Kingdom of Spain (''Spain'') may comply with certain requirements under the Exchange Act via compliance with corresponding requirements of Spain and the European Union (''EU''). The Commission also is soliciting comment on a proposed Order providing for conditional substituted compliance in connection with the application.

DATES: Submit comments on or before September 20, 2021.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–09–21 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–09–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/proposed.shtml*). Typically, comments are also 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. Due to pandemic conditions, however, access to the Commission's public reference room is not permitted at this time. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Carol M. McGee, Assistant Director, Laura Compton, Senior Special Counsel, or James Curley, Special Counsel, at 202–551–5870, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is soliciting public comment on an application by the CNMV requesting that the Commission determine that SBS Entities that are not U.S. persons and that are subject to certain regulation in Spain may satisfy certain requirements under the Exchange Act by complying with comparable requirements in Spain, including relevant EU requirements. The Commission also is soliciting comment on a proposed Order, set forth in Attachment A, providing for conditional substituted compliance in connection with the CNMV application.

I. Background

On August 6, 2021, market participants began to count security-based swap positions toward the thresholds for registration with the Commission as an SBS Entity.[1] Exchange Act rule 3a71–6 [2] conditionally provides that non-U.S. SBS Entities may satisfy certain requirements under Exchange Act section 15F [3] by complying with comparable regulatory requirements of a

[1] *See* Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872, 53954 (Aug. 22, 2019) (''Capital and Margin Adopting Release''); *see also* Exchange Act Release No. 87780 (Dec. 18, 2019), 85 FR 6270, 6345–49 (Feb. 4, 2020).

[2] 17 CFR 240.3a71–6.

[3] 15 U.S.C. 78o–10.

foreign jurisdiction.[4] Substituted compliance potentially is available in connection with requirements regarding business conduct and supervision;[5] chief compliance officers;[6] trade acknowledgment and verification;[7] non-prudentially regulated capital and margin;[8] recordkeeping and reporting;[9] portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation.[10]

Substituted compliance in part is predicated on the Commission determining the analogous foreign requirements are ''comparable'' to the applicable requirements under the Exchange Act, after accounting for factors such as the ''scope and objectives'' of the relevant foreign regulatory requirements and the effectiveness of the relevant foreign authority's or authorities' supervisory and enforcement frameworks.[11] Substituted compliance further requires that the Commission and the relevant foreign financial regulatory authorities have entered into an effective supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation and other matters related to substituted compliance.[12] A foreign financial regulatory authority may submit a substituted compliance application only if the authority provides ''adequate assurances'' that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission ''to provide prompt access to the Commission to such entity's books and records or to submit to onsite inspection or examination by the Commission.''[13]

Commission rule 0–13[14] addresses procedures for filing substituted compliance applications. The rule provides that the Commission will publish a notice when a completed application has been submitted and that any person may submit to the Commission ''any information that relates to the Commission action requested in the application.''[15]

II. The CNMV's Substituted Compliance Request

The CNMV has submitted a complete substituted compliance application to the Commission (''CNMV Application'').[16] Pursuant to rule 0–13, the Commission is publishing notice of the CNMV Application together with a proposed Order to conditionally grant substituted compliance to an entity that (1) is a security-based swap dealer or major security-based swap participant registered with the Commission; (2) is not a ''U.S. person,'' as that term is defined in rule 3a71–3(a)(4) under the Exchange Act;[17] (3) is an investment firm authorized by the CNMV or a credit institution authorized by the ECB to provide investment services or perform investment activities in Spain; and (4) is a significant institution supervised by the CNMV and the ECB (with the participation of the Bank of Spain) (each, a ''Covered Entity'').[18] In making its substituted compliance determination, the Commission will consider public comments on the CNMV Application and the proposed Order.

The CNMV seeks substituted compliance for Covered Entities in connection with a number of requirements under Exchange Act section 15F.

A. Relevant Market Participants and General Conditions

The Commission will consider whether to allow substituted compliance to be used by any Covered Entity.

B. Relevant Section 15F Requirements

The CNMV requests that the Commission issue an order determining

[4] The Commission also has discussed the parameters of substituted compliance in connection with substituted compliance requests for other jurisdictions. *See, e.g.* , Exchange Act Release No. 90378 (Nov. 9, 2020), 85 FR 72726 (Nov. 13, 2020) (''German Substituted Compliance Notice and Proposed Order''); Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686 (Dec. 29, 2020) (''German Substituted Compliance Order''); Exchange Act Release No. 92647 (Aug. 12, 2021), 86 FR 46500 (Aug. 18, 2021) (''German Substituted Compliance Notice and Proposed Amended Order''); Exchange Act Release No. 90766 (Dec. 22, 2020), 85 FR 85720 (Dec. 29, 2020) (''French Substituted Compliance Notice and Proposed Order''); Exchange Act Release No. 91477 (Apr. 5, 2021), 86 FR 18341 (Apr. 8, 2021) (''French Substituted Compliance Re-Opening Release''); Exchange Act Release No. 92494 (July 23, 2021), 86 FR 41612 (Aug. 2, 2021) (''French Substituted Compliance Order''); Exchange Act Release No. 91476 (Apr. 5, 2021), 86 FR 18378 (Apr. 8, 2021) (''UK Substituted Compliance Notice and Proposed Order''); Exchange Act Release No. 92529 (July 30, 2021), 86 FR 43318 (August 6, 2021) (''UK Substituted Compliance Order''); Exchange Act Release No. 92632 (Aug. 10, 2021), 86 FR 45770 (Aug. 16, 2021) (''Swiss Substituted Compliance Notice and Proposed Order'').

[5] *See* Exchange Act rule 3a71–6(d)(1) (requirements regarding business conduct and supervision, including internal risk management, internal supervision, antitrust considerations, disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications, daily mark disclosure, disclosure of clearing rights, eligible contract participant verification, special entities, and political contributions).

[6] *See* Exchange Act rule 3a71–6(d)(2).

[7] *See* Exchange Act rule 3a71–6(d)(3).

[8] *See* Exchange Act rule 3a71–6(d)(4)–(5).

[9] *See* Exchange Act rule 3a71–6(d)(6) (requirements regarding record creation, record maintenance, reporting, notification, and securities counts).

[10] *See* Exchange Act rule 3a71–6(d)(7). Substituted compliance is not available for antifraud prohibitions and information-related requirements under section 15F. *See* Exchange Act rule 3a71–6(d)(1) (specifying that substituted compliance is not available in connection with the antifraud provisions of Exchange Act section 15F(h)(4)(A) and Exchange Act rule 15Fh–4(a), 17 CFR 240.15Fh–4(a), and the information-related provisions of Exchange Act sections 15F(j)(3) and 15F(j)(4)(B)). Substituted compliance under rule 3a71–6 also does not extend to certain other provisions of the federal securities laws that apply to security-based swaps, such as: (1) Additional antifraud prohibitions (*see* Exchange Act section 10(b), 15 U.S.C. 78j(b), Exchange Act rule 10b–5, 17 CFR 240.10b–5, and Securities Act of 1933 section 17(a), 15 U.S.C. 77q(a)); (2) requirements related to transactions with counterparties that are not eligible contract participants (''ECPs'') (*see* Exchange Act section 6(l), 15 U.S.C. 78f(l); Securities Act of 1933 section 5(e), 15 U.S.C. 77e(e)); (3) segregation of customer assets (*see* Exchange Act section 3E, 15 U.S.C. 78c–5; Exchange Act rule 18a–4, 17 CFR 240.18a–4); (4) required clearing upon counterparty election (*see* Exchange Act section 3C(g)(5), 15 U.S.C. 78c–3(g)(5)); (5) regulatory reporting and public dissemination (*see* generally Regulation SBSR, 17 CFR 242.900 *et seq.*); (6) SBS Entity registration (*see* Exchange Act section 15F(a) and (b)); and (7) registration of offerings (*see* Securities Act of 1933 section 5, 15 U.S.C. 77e).

[11] *See* Exchange Act rule 3a71–6(a)(2)(i).

[12] *See* Exchange Act rule 3a71–6(a)(2)(ii). The Commission, the CNMV and the Bank of Spain are in the process of negotiating a memorandum of understanding to address cooperation matters related to substituted compliance. Because the CNMV, Bank of Spain and European Central Bank (''ECB'') share responsibility for supervising compliance with certain provisions of EU and Spanish law, the Commission and the ECB have entered into a memorandum of understanding to address cooperation matters related to substituted compliance. These memoranda of understanding or other arrangements will need to be in place before the Commission may allow Covered Entities to use substituted compliance to satisfy obligations under the Exchange Act. The memorandum of understanding with the ECB can be found on its website at www.sec.gov under the ''Substituted Compliance'' tab, which is located on the ''Security-Based Swap Markets'' page in the Division of Trading and Markets section of the site. The Commission expects to publish any memorandum of understanding with the CNMV and the Bank of Spain at the same location on the Commission's website.

[13] *See* Exchange Act rule 3a71–6(a)(3). The CNMV has satisfied this prerequisite in the Commission's preliminary view, taking into account information and representations that the CNMV provided regarding certain Spanish and EU requirements that are relevant to the Commission's ability to inspect, and access the books and records of, Covered Entities (as defined in the proposed Order).

[14] 17 CFR 240.0–13.

[15] *See* Commission rule 0–13(h). The Commission may take final action on a substituted compliance application no earlier than 25 days following publication of the notice in the **Federal Register**.

[16] *See* Letter from Rodrigo Buenaventura, Chair, CNMV, dated August 20, 2021 (''CNMV Application''). The CNMV Application is available on the Commission's website at: *https://www.sec.gov/page/exchange-act-substituted-compliance-and-listed-jurisdiction-applications-security-based-swap.*

[17] CFR 240.3a71–3(a)(4).

[18] *See* para. (f)(1) of the proposed Order.

that—for substituted compliance purposes—applicable requirements in Spain are comparable with the following requirements under Exchange Act section 15F:

- *Risk control requirements*—Requirements related to internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute resolution, portfolio compression, and trading relationship documentation.[19]
- *Internal supervision, chief compliance officer and antitrust requirements*—Requirements related to diligent supervision, conflicts of interest, information gathering, chief compliance officers, and antitrust considerations.[20]
- *Counterparty protection requirements*—Requirements related to disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability of recommendations, fair and balanced communications, disclosure of daily marks, and disclosure of clearing rights.[21]
- *Recordkeeping, reporting, and notification requirements*—Requirements related to making and keeping current certain prescribed records, preservation of records, reporting, and notification.[22]

C. Comparability Considerations and Proposed Order

Because Spain is a member of the European Union, market participants in Spain are subject to Spanish requirements implemented pursuant to EU directives and to applicable EU regulations. Those include requirements related to: Organization, compliance, and conduct;[23] risk mitigation;[24] prudential matters;[25] and certain other matters relevant to the application.[26] In the view of the Spanish Authorities, Spanish and EU requirements taken as a whole produce regulatory outcomes that are comparable to those of the relevant requirements under the Exchange Act.[27]

In the Commission's preliminary view, requirements under the Exchange Act and requirements under Spanish and EU law maintain similar approaches with respect to achieving regulatory goals in several respects, but follow differing approaches or incorporate disparate elements in certain other respects. The Commission has considered those similarities and differences when analyzing comparability and developing preliminary views, while recognizing that differences in approach do not necessarily preclude substituted compliance in light of the Commission's holistic, outcomes-oriented framework for assessing comparability.[28]

Based on the Commission's analysis of the application and review of relevant Spanish and EU requirements, the proposed Order, located at Attachment A, would grant substituted compliance subject to specific conditions and limitations. When Covered Entities seek to rely on substituted compliance to satisfy particular requirements under the Exchange Act, non-compliance with the applicable Spanish requirements would lead to a violation of those Exchange Act requirements and potential enforcement action by the Commission (as opposed to automatic revocation of the substituted compliance order).

III. Scope of and Conditions to Substituted Compliance

A. Covered Entities for Which the Commission Is Proposing a Positive Conditional Substituted Compliance Determination

Under the proposed Order, substituted compliance could be applied by ''Covered Entities''—a term that would limit the scope of the substituted compliance determination to SBS Entities that are subject to applicable Spanish requirements and oversight. Consistent with the parameters of substituted compliance under Exchange Act rule 3a71–6, the proposed ''Covered Entity'' definition provides that the relevant entity must be a security-based swap dealer or major security-based swap participant registered with the Commission, and that the entity cannot be a U.S. person.[29] The proposed ''Covered Entity'' definition further would provide that the entity must be an investment firm or a credit institution authorized by the CNMV and the ECB to provide investment services or perform investment activities in the Kingdom of Spain and also must be a significant institution supervised by the CNMV and the ECB (with the participation of the Bank of Spain).[30] These prongs of the definition are intended to help ensure that Covered Entities are subject to

[19] *See* part IV, *infra.* The CNMV is not requesting substituted compliance in connection with capital and margin requirements applicable to non-prudentially regulated SBS Entities (Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d, 18a–2, and 18a–3, 17 CFR 240.18a–1 through 18a–1d, 240.18a–2, and 240.18a–3).

[20] *See* part V, *infra.*

[21] *See* part VI, *infra.* The CNMV is not requesting substituted compliance in connection with: eligible counterparty verification requirements (Exchange Act section 15F(h)(3)(A) and Exchange Act rule 15Fh–3(a)(1), 17 CFR 240.15Fh–3(a)(1)); ''special entity'' provisions (Exchange Act sections 15F(h)(4) and (5); Exchange Act rule 15Fh–3(a)(2) and (3); and Exchange Act rules 15Fh–4(b) and 15Fh–5, 17 CFR 240.15Fh–4(b) and 240.15Fh–5); and political contribution provisions (Exchange Act rule 15Fh–6, 17 CFR 240.15Fh–6).

[22] *See* part VII, *infra.*

[23] *See* Markets in Financial Instruments Directive, Directive 2014/65/EU (''MiFID'') (implemented in Spain by the Spanish Securities Market Act, Royal Legislative Decree 4/2015, of October 23 (''SSMA''), and Royal Decree 217/2008, of February 15 (''RD 217/2008'')); see also Commission Delegated Regulation (EU) 2017/565 (''MiFID Org Reg''); Markets in Financial Instruments Regulation, Regulation (EU) 648/2012 (''MiFIR''); Commission Delegated Directive (EU) 2017/593 (''MiFID Delegated Directive'') (implemented in Spain in relevant part by the SSMA and RD 217/2008).

[24] *See* European Market Infrastructure Regulation, Regulation (EU) 648/2012 (''EMIR''); see also Regulation (EU) 149/2013 (''EMIR RTS''); Delegated Regulation (EU) 2016/2251 (''EMIR Margin RTS'').

[25] *See* Capital Requirements Directive, Directive 2013/36/EU (''CRD'') (implemented in Spain by the Act on Regulation, Supervision, and Solvency of Credit Institutions, Law 10/2014, of June 26 (''LOSSEC''), Royal Decree 84/2015, of February 13 (''RD 84/2015''), and Circular 2/2016, of February 2, of the Bank of Spain (''BoS Circular 2/2016''), as well as in some portions of the SSMA and RD 217/2008); see also Capital Requirements Regulation, Regulation (EU) 575/2013 (''CRR''); Commission Implementing Regulation (EU) 680/2014 (''CRR Reporting ITS'').

[26] *See* Market Abuse Regulation, Regulation (EU) 596/2014 (''MAR''); Commission Delegated Regulation (EU) 2016/958 (''MAR Investment Recommendations Regulation''); Anti-Money Laundering Directive, Directive (EU) 2015/849 (''MLD'') (implemented in Spain by the Spanish Anti-Money Laundering Act, Law 10/2010, of April 28 (''SMLA'')).

[27] In support, the CNMV Application incorporates and relies on a series of European Commission analyses that compare EU requirements with applicable requirements under the Exchange Act, in addition to analyses specific to Spanish law and practices, in the areas of: risk control (see CNMV Application Appendix B category 1); recordkeeping, reporting, and notification (see the CNMV Application Appendix B category 2), internal supervision, chief compliance officer, and antitrust (see CNMV Application Appendix B category 3); and counterparty protection (see CNMV Application Appendix B category 4).

[28] In this context, the Commission recognizes that other regulatory regimes will have exclusions, exceptions and exemptions that may not align perfectly with the corresponding requirements under the Exchange Act. Where the Commission preliminarily has found that the Spanish regime produces comparable outcomes notwithstanding those particular differences, the Commission proposes to make a positive determination on substituted compliance. Where the Commission preliminarily has found that those exclusions, exemptions, and exceptions lead to outcomes that are not comparable, however, the Commission does not propose to provide for substituted compliance.

[29] *See* paras. (f)(1)(i) and (ii) of the proposed Order.

[30] *See* paras. (f)(1)(iii) and (iv) of the proposed Order.

relevant Spanish and EU requirements and oversight.

B. Conditions to Substituted Compliance

Substituted compliance under the proposed Order would be subject to a number of conditions and other prerequisites, to help ensure that the relevant Spanish requirements that form the basis for substituted compliance in practice will apply to the Covered Entity's security-based swap business and activities, and to promote the Commission's oversight over entities that avail themselves of substituted compliance.

1. ''Subject to and Complies With'' Relevant Spanish and EU Requirements

Each relevant section of the proposed Order would be subject to the condition that the Covered Entity ''is subject to and complies with'' the Spanish and EU requirements that are needed to establish comparability. Accordingly, the proposed Order would not provide substituted compliance when a Covered Entity is excused from compliance with relevant foreign provisions, such as, for example, if relevant Spanish or EU requirements do not apply to the security-based swap activities of a third-country branch of a Spanish SBS Entity. In that event, the Covered Entity would not be ''subject to'' those requirements, and the Covered Entity could not rely on substituted compliance in connection with those activities.[31]

2. Additional General Conditions To Help Ensure Applicability of Relevant Spanish and EU Requirements

Substituted compliance under the proposed Order further would be subject to general conditions intended to help ensure the applicability of relevant Spanish and EU requirements, and to facilitate the Commission's oversight of firms that avail themselves of substituted compliance. In particular:

• *Activities as MiFID ''investment services or activities''*—The Covered Entity's security-based swap activities must constitute ''investment services or activities'' for purposes of applicable provisions under MiFID; Spanish requirements that implement MiFID; and/or other EU and/or Spanish requirements adopted pursuant to those provisions, and must fall within the scope of the firm's authorization from the CNMV and the ECB.[32]

• *Counterparties as MiFID ''clients''*—The Covered Entity's counterparty (or potential counterparty) must be a ''client'' (or potential ''client'') for purposes of applicable provisions under MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions.[33]

• *Security-based swaps as MiFID ''financial instruments''*—The relevant security-based swap must be a ''financial instrument'' for purposes of applicable provisions under MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions.[34]

• *Covered Entity as CRD ''institutions''*—The Covered Entity must be an ''institution'' for purposes of applicable provisions under CRD; provisions of LOSSEC, RD 84/2015, BoS Circular 2/2016, SSMA, and/or RD 217/2008 that implement CRD; CRR; and/or other EU and Spanish requirements adopted pursuant to those provisions.[35]

• *Counterparties as EMIR ''counterparties''*—If an applicable provision under EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions applies only to the Covered Entity's activities with specified types of counterparties, and if the counterparty to the Covered Entity is not any of the specified types of counterparty, the Covered Entity must comply with the applicable provision as if the counterparty were the specified type of counterparty.[36] In addition, the proposed Order would provide that a Covered Entity could not satisfy a condition requiring compliance with those EMIR-based provisions by complying with third country requirements that EU authorities may determine to be equivalent to EMIR.[37]

• *Security-based swap status under EMIR*—The relevant security-based swap must be, for purposes of applicable provisions under EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions, either (i) an ''OTC derivative'' or ''OTC derivative contract,'' as defined in EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of EMIR article 11, EMIR RTS articles 11 through 15, and EMIR Margin RTS article 2; or (ii) cleared by a central counterparty that is authorized or recognized to clear derivatives contracts by a relevant authority in the EU.[38]

• *Memoranda of Understanding*—The Commission and the CNMV and the Bank of Spain must have an applicable memorandum of understanding or other arrangement addressing cooperation with respect to the Order at the time the Covered Entity makes use of substituted compliance.[39] The CNMV, Bank of Spain, and ECB share responsibility for supervising compliance with some of the provisions of EU and Spanish law addressed by the proposed Order.[40] To ensure the Commission's ability to receive information about these Covered Entities that may belong to the ECB, the proposed Order would require that, at the time such a Covered Entity makes use of substituted compliance with respect to those requirements, the Commission and the ECB also must have a memorandum of understanding and/or other arrangement addressing cooperation with respect to the Order as it pertains to this ECB-owned information.[41]

[31] An SBS Entity's ''voluntary'' compliance with the relevant Spanish requirements would not suffice for these purposes. Substituted compliance reflects an alternative means by which an SBS Entity may comply with applicable requirements under the Exchange Act, and thus mandates that the SBS Entity be subject to the requirements needed to establish comparability and face consequences arising from any failure to comply with those requirements. Moreover, the comparability assessment takes into account the effectiveness of the supervisory compliance program administered and the enforcement authority exercised by the CNMV, the Bank of Spain and the ECB, which would not be expected to promote comparable outcomes when compliance merely is ''voluntary.''

[32] *See* para. (a)(1) of the proposed Order. Under this condition, a Covered Entity's relevant security-based swap activities must constitute investment services or activities only to the extent that the relevant part of the proposed Order would require the Covered Entity to be subject to and comply with provisions of MiFID, SSMA, RD 217/2008 or related EU and Spanish requirements. The security-based swap activities need not be ''investment services or activities'' when the relevant part of the proposed Order would not require compliance with one of those provisions (*e.g.,* paragraph (d)(6) of the proposed Order addressing substituted compliance for daily mark disclosure requirements).

[33] *See* para. (a)(2) of the proposed Order.

[34] *See* para. (a)(3) of the proposed Order.

[35] *See* para. (a)(4) of the proposed Order.

[36] *See* para. (a)(5)(i) of the proposed Order. In this regard, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the EU and authorized by an appropriate EU authority (including Member State authorities), it must treat the counterparty as if the counterparty were a financial counterparty.

[37] *See* para. (a)(5)(ii) of the proposed Order.

[38] *See* para. (a)(6) of the proposed Order.

[39] *See* para. (a)(7) of the proposed Order.

[40] For example, the proposed Order would make substituted compliance for Exchange Act internal risk management, internal supervision, chief compliance officer, and ''know your counterparty'' requirements available to Covered Entities that are subject to and comply with, among other requirements, certain provisions of CRD, provisions of Spanish law that implement CRD, and related EU requirements. The CNMV, Bank of Spain, and ECB share responsibility for supervising compliance with each of these requirements. *See* paras. (b)(1), (c)(3), (d)(3) of the proposed Order.

[41] *See* para. (a)(8) of the proposed Order. In accordance with the terms of the proposed Order, this arrangement will need to be in place at the time

Continued

• *Notice of reliance on substituted compliance*—A Covered Entity must notify the Commission of its intent to use substituted compliance.[42] In the notice, the Covered Entity would need to identify each specific substituted compliance determination for which the Covered Entity intends to apply substituted compliance.[43] If a Covered Entity elects not to apply substituted compliance with respect to a specific substituted compliance determination in the proposed Order, it must comply with the Exchange Act requirements subject to that determination. Further, except in the case of the counterparty protection requirements and linked recordkeeping requirements discussed below, the Commission has determined that the Exchange Act requirements subject to substituted compliance determinations in the proposed Order are entity-level requirements. Therefore, if a Covered Entity elects to apply substituted compliance to these entity-level requirements, the Commission is proposing that it must do so at the entity level.[44] Finally, a Covered Entity must promptly update the notice if it intends to modify its reliance on the positive substituted compliance determinations in the proposed Order.[45]

• *Notification related to changes in capital category*—Covered Entities with a prudential regulator would need to apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c). Exchange Act rule 18a–8(c) generally requires every security-based swap dealer with a prudential regulator that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to give notice of this fact to the that same day by transmitting a copy to the Commission of the notice of adjustment of reported capital category in accordance with Exchange Act rule 18a–8(h).[46] Exchange Act rule 18a–8(h) sets forth the manner in which every notice or report required to be given or transmitted pursuant to Exchange Act rule 18a–8 must be made. While Exchange Act rule 18a–8(c) is not linked to an Exchange Act capital requirement, it is linked to capital requirements in the U.S. promulgated by the prudential regulators. In its application, the CNMV cited various Spanish provisions as providing similar outcomes to the notifications requirements of Exchange Act Rule 18a–8.[47] This general condition would be designed to clarify that a prudentially regulated Covered Entity must provide the Commission with copies of any notifications regarding changes in the Covered Entity's capital situation required by Spanish law. The intent is to align the notification requirement with the EU and Spanish capital requirements applicable to the Covered Entity.

3. European Union Cross-Border Matters

The cross-border application of MiFID, MiFIR, MAR and EU and Member State requirements adopted pursuant to MiFID, MiFIR, or MAR raises special issues. For some provisions of MiFID and MiFIR (and other EU and Spanish requirements adopted pursuant to those provisions of MiFID and MiFIR), EU law allocates the responsibility for supervising and enforcing those requirements to authorities of the Member State in whose territory a Covered Entity provides certain services.[48] To help ensure that the prerequisites to substituted compliance with respect to supervision and enforcement are satisfied in fact, when the proposed Order requires a Covered Entity to be subject to or comply with one of those MiFID or MiFIR provisions (or other EU or Spanish requirements adopted pursuant to those provisions of MiFID or MiFIR), the CNMV must be the authority responsible for supervision and enforcement of those requirements in relation to the particular service for which substituted compliance is used.[49] Similarly, for some of the EU requirements under MAR (and other EU requirements adopted pursuant to MAR), EU law allocates the responsibility for supervising and enforcing those requirements to authorities of potentially multiple Member States. To help ensure that the prerequisites to substituted compliance with respect to supervision and enforcement are satisfied in fact, when the proposed Order requires a Covered Entity to be subject to or comply with one of those MAR requirements (or other EU requirements adopted pursuant to MAR), the Covered Entity may use substituted compliance only if one of the authorities responsible for supervision and enforcement of those requirements is the CNMV.[50]

C. Substituted Compliance for Entity-Level and Transaction-Level Requirements

The proposed Order would permit a Covered Entity to use substituted compliance for one or more sets of entity-level Exchange Act requirements.[51] For example, a Covered

a Covered Entity makes use of substituted compliance by complying with any EU or Spanish requirements for which the CNMV, Bank of Spain, and ECB share supervisory responsibility. The Commission and the ECB have entered into a memorandum of understanding to address substituted compliance cooperation, a copy of which is on the Commission's website at *www.sec.gov* under the ''Substituted Compliance'' tab, which is located on the ''Security-Based Swap Markets'' page in the Division of Trading and Markets section of the site.

[42] *See* para. (a)(9) of the proposed Order.

[43] If the Covered Entity intends to rely on all the substituted compliance determinations in a given paragraph of the Order, it can cite that paragraph in the notice. For example, if the Covered Entity intends to rely on the substituted compliance determinations for Exchange Act risk control requirements in paragraph (b) of the proposed Order, it would indicate in the notice that it is relying on the determinations in paragraph (b). However, if the Covered Entity intends to rely on the internal risk management, trade acknowledgement and verification, and portfolio reconciliation and dispute resolution determinations, but not the portfolio compression and trading relationship documentation determinations, it would need to indicate in the notice that it is relying on paragraphs (b)(1) through (3) of the proposed Order. In this case, paragraphs (b)(4) and (b)(5) of the proposed Order (the portfolio compression and trading relationship documentation determinations, respectively) would be excluded from the notice and the Covered Entity would need to comply with Exchange Act portfolio compression and trading relationship documentation requirements. Further, as discussed below in part VII.B, the recordkeeping, reporting, notification, and securities count determinations in the proposed Order have been structured to provide Covered Entities with a high level of flexibility in selecting specific requirements within those requirements for which they want to rely on substituted compliance. For example, paragraph (e)(1)(i) of the proposed Order sets forth the Commission's preliminary substituted compliance determinations with respect to the requirements of Exchange Act rule 18a–5, 17 CFR 240.18a–5. These proposed determinations are set forth in paragraphs (e)(1)(i)(A) through (O). If a Covered Entity intends to rely on some but not all of the determinations, it would need to identify in the notice the specific determinations in this paragraph it intends to rely on (*e.g.,* paragraphs (d)(1)(i)(A), (B), (C), (D), (G), (H), (I), and (O)). For any determinations excluded from the notice, the Covered Entity would need to comply with the Exchange Act rule 18a–5 requirement.

[44] *See* part III.C, *infra*.

[45] A Covered Entity would modify its reliance on the positive substituted compliance determinations in the proposed Order, and thereby trigger the requirement to update its notice, if it adds or subtracts determinations for which it is applying substituted compliance or completely discontinues its reliance on the proposed Order.

[46] 17 CFR 240.18a–8(c).

[47] See LOSSEC articles 116, 119, 121, and 122; and SSMA articles 276bis, 276ter, 276quáter, and 276quinquies.

[48] *See* MiFID article 35(8).

[49] *See* para. (a)(10)(i) of the proposed Order.

[50] *See* para. (a)(10)(ii) of the proposed Order.

[51] The entity-level requirements for which the Commission is proposing to make a positive substituted compliance determination are: Risk control requirements related to internal risk management, trade acknowledgement and verification, portfolio reconciliation and dispute resolution, portfolio compression, and trading relationship documentation; internal supervision

Entity could use substituted compliance for internal risk management requirements but comply directly with Exchange Act trade acknowledgment and verification; portfolio reconciliation and dispute reporting; portfolio compression; trading relationship documentation; internal supervision; chief compliance officer; and recordkeeping, reporting, and notification requirements. For any one set of entity-level requirements for which a Covered Entity uses substituted compliance, however, a Covered Entity must choose either to apply substituted compliance pursuant to the proposed Order with respect to all security-based swap business subject to the relevant Spanish and EU requirements or to comply directly with the Exchange Act with respect to all such business; a Covered Entity may not choose to apply substituted compliance for some of the business subject to the relevant Spanish or EU requirements and comply directly with the Exchange Act for another part of the business that is subject to the relevant Spanish and EU requirements.[52] Additionally, for entity-level Exchange Act requirements, if the Covered Entity also has security-based swap business that is not subject to the relevant Spanish requirements, the Covered Entity must either comply directly with the Exchange Act for that business or comply with the terms of another applicable substituted compliance order.[53] For transaction-level Exchange Act requirements,[54] a Covered Entity may decide to apply substituted compliance for some of its security-based swap business and to comply directly with the Exchange Act (or comply with another applicable substituted compliance order) for other parts of its security-based swap business.

The Commission preliminarily believes that this scope of substituted compliance strikes the right balance between providing Covered Entities flexibility to tailor the application of substituted compliance to their business needs and ensuring that substituted compliance is consistent with the Commission's classification of the relevant Exchange Act requirements as either entity-level or transaction-level requirements.

IV. Substituted Compliance for Risk Control Requirements

A. CNMV Request and Associated Analytic Considerations

The CNMV Application in part requests substituted compliance in connection with risk control requirements under the Exchange Act relating to:

- *Internal risk management*—Internal risk management system requirements pursuant to Exchange Act section 15F(j)(2) and relevant aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I).[55] Those provisions address the obligation of SBS Entities to follow policies and procedures reasonably designed to help manage the risks associated with their business activities.[56]
- *Trade acknowledgment and verification*—Trade acknowledgment and verification requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–2.[57] Those provisions help avoid legal and operational risks by requiring definitive written records of transactions and for procedures to avoid disagreements regarding the meaning of transaction terms.[58]
- *Portfolio reconciliation and dispute reporting*—Portfolio reconciliation and dispute reporting requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–3.[59] Those provisions require that counterparties engage in portfolio reconciliation and resolve discrepancies in connection with uncleared security-based swaps and promptly notify the Commission and applicable prudential regulators regarding certain valuation disputes.[60]
- *Portfolio compression*—Portfolio compression requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–4.[61] Those provisions require that SBS Entities have procedures addressing bilateral offset, bilateral compression and multilateral compression in connection with uncleared security-based swaps.[62]
- *Trading relationship documentation*—Trading relationship documentation requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–5.[63] Those provisions require that SBS Entities have procedures to execute written security-based swap trading relationship documentation with their counterparties prior to, or contemporaneously with, executing certain security-based swaps.[64]

Taken as a whole, these risk control requirements help to promote market stability by mandating that SBS Entities follow practices that are appropriate to manage the market, credit, counterparty, operational, and legal risks associated with their security-based swap businesses. The Commission's comparability assessment accordingly focuses on whether the analogous foreign requirements—taken as a whole—produce comparable outcomes

and chief compliance officer requirements; and recordkeeping, reporting, notification, and securities count requirements (other than those linked to the counterparty protection rules). *See* Exchange Act Release No. 87005 (June 19, 2019) 84 FR 68550, 68596 (Dec. 16, 2019) (''Recordkeeping Adopting Release''); Exchange Act Release No. 78011 (June 8, 2016) 81 FR 39808, 39827 (June 17, 2016) (''Trade Acknowledgment and Verification Adopting Release''); Exchange Act Adopting Release No. 87782 (Dec. 18, 2019) 85 FR 6359, 6378 (Feb. 4, 2020) (''Risk Mitigation Adopting Release''); Business Conduct Adopting Release, 81 FR 30064.

[52] For example, the proposed Order would require a Covered Entity applying substituted compliance for internal risk management requirements to comply with the comparable Spanish requirements with respect to all of its internal risk management systems.

[53] In the context of the EMIR counterparties condition in paragraph (a)(5), a Covered Entity must choose: (1) To apply substituted compliance pursuant to the Order—including compliance with paragraph (a)(5) as applicable—for a particular set of entity-level requirements with respect to all of its business that would be subject to the relevant EMIR-based requirement if the counterparty were the relevant type of counterparty; or (2) to comply directly with the Exchange Act with respect to such business.

[54] The transaction-level requirements for which the Commission is proposing to make a positive substituted compliance determination are: Counterparty protection requirements related to disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability of recommendations, fair and balanced communications, and disclosure of daily marks; and the recordkeeping requirements related to those counterparty protection requirements. *See* Business Conduct Adopting Release, 81 FR 30065.

[55] The CNMV is not requesting substituted compliance in connection with Exchange Act rule 18a–1(f) or Exchange Act rule 18a–2(c), which include additional internal risk management system requirements for non-prudentially regulated SBS Entities subject to the Commission's capital and margin requirements.

[56] *See* Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70214, 70250 (Nov. 23, 2012) (proposing capital and margin requirements for SBS Entities and discussing certain risk management requirements). The CNMV Application discusses Spanish and EU internal risk management requirements. *See* CNMV Application Appendix B category 1 at 2–20.

[57] 17 CFR 240.15Fi–2.

[58] *See* Trade Acknowledgment and Verification Adopting Release, 81 FR 39808, 39809, 39820. The CNMV Application discusses Spanish and EU trade acknowledgment and verification requirements. *See* CNMV Application Appendix B category 1 at 21–34.

[59] 17 CFR 240.15Fi–3.

[60] *See* Risk Mitigation Adopting Release, 85 FR 6359, 6360–61. The CNMV Application discusses Spanish and EU portfolio reconciliation and dispute resolution requirements. *See* CNMV Application Appendix B category 1 at 35–44.

[61] 17 CFR 240.15Fi–4.

[62] *See* Risk Mitigation Adopting Release, 85 FR 6361. The CNMV Application discusses Spanish and EU portfolio compression requirements. *See* CNMV Application Appendix B category 1 at 44–46.

[63] 17 CFR 240.15Fi–5.

[64] *See* Risk Mitigation Adopting Release, 85 FR 6361. The CNMV Application discusses Spanish and EU trading relationship documentation requirements. *See* CNMV Application Appendix B category 1 at 46–51.

with regard to providing that Covered Entities follow risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses.

B. Preliminary Views and Proposed Order

1. General Considerations

In the Commission's preliminary view based on the CNMV Application and the Commission's review of applicable provisions, relevant Spanish and EU requirements would produce regulatory outcomes that are comparable to those associated with the above risk control requirements, by subjecting Covered Entities to risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses. Substituted compliance accordingly would be conditioned on Covered Entities being subject to the Spanish and EU provisions that in the aggregate establish a framework that produces outcomes comparable to those associated with these risk control requirements under the Exchange Act.[65]

While the Commission recognizes these and certain other differences between Spanish and EU requirements and the applicable risk control requirements under the Exchange Act, in the Commission's preliminary view those differences on balance would not preclude substituted compliance for these requirements, particularly as requirement-by-requirement similarity is not needed for substituted compliance.

2. Additional Conditions and Scope Issues

Substituted compliance in connection with these requirements would be subject to certain additional conditions to help ensure the comparability of outcomes:

a. Trading Relationship Documentation—Disclosure Regarding Legal and Bankruptcy Status

Under the proposed Order, substituted compliance in connection with trading relationship documentation requirements would not extend to disclosures regarding legal and bankruptcy status that are required by Exchange Act rule 15Fi–5(b)(5) when the counterparty is a U.S. person.[66] Documentation requirements under applicable Spanish and EU law do not address the disclosure of information related to insolvency procedures under U.S. law. However, the absence of such disclosure would not appear to preclude a comparable regulatory outcome when the counterparty is not a U.S. person, because the insolvency-related consequences that are the subject of the disclosure would not be applicable to non-U.S. counterparties in most cases.[67]

b. Portfolio Reconciliation and Dispute Reporting—EU Law-Required Dispute Reports to the Commission

Under the proposed Order, substituted compliance further would be conditioned on the Covered Entity providing the Commission with reports regarding disputes between counterparties, on the same basis as the Covered Entity provides those reports to competent authorities pursuant to EU law.[68] This condition promotes comparability with the Exchange Act requirements to report significant valuation disputes to the Commission,[69] while leveraging EU reporting provisions to avoid the need for Covered Entities to create additional *de novo* reporting frameworks.[70]

V. Substituted Compliance for Internal Supervision, Chief Compliance Officers and Antitrust Requirements

A. CNMV Request and Associated Analytic Considerations

The CNMV also requests substituted compliance in connection with requirements under the Exchange Act relating to:

- *Internal supervision*—Diligent supervision is required pursuant to Exchange Act rule 15Fh–3(h) and Exchange Act section 15F(j)(5) requires conflict of interest systems and procedures. These provisions generally require that SBS Entities establish, maintain, and enforce supervisory policies and procedures that reasonably are designed to prevent violations of applicable law, and implement certain systems and procedures related to conflicts of interest. Exchange Act section 15F(j)(4)(A) additionally requires systems and procedures to obtain necessary information to perform functions required under section 15F.[71]
- *Chief compliance officers*—Chief compliance officer requirements are set out in Exchange Act section 15F(k) and Exchange Act rule 15Fk–1.[72] These provisions in general require that SBS Entities designate individuals with the responsibility and authority to establish, administer, and review compliance policies and procedures; to resolve conflicts of interest; and to prepare and certify an annual compliance report to the Commission.[73]
- *Antitrust requirements*—Additional requirements related to antitrust prohibitions specified by Exchange Act section 15F(j)(6).[74]

[65] *See* para. (b)(1) of the proposed Order.

[66] Those disclosures address information regarding the status of the SBS Entity or its counterparty as an insured depository institution or financial counterparty, and regarding the possibility that in certain circumstances the SBS Entity or its counterparty may be subject to the insolvency regime set forth under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act, which may affect rights to terminate, liquidate, or net security-based swaps. *See* Risk Mitigation Adopting Release, 85 FR 6374 (discussing potential application of alternatives to the liquidation schemes established under the Securities Investor Protection Act of 1970 or the U.S. Bankruptcy Code). The absence of such disclosure would not appear to preclude a comparable regulatory outcome when the counterparty is not a U.S. person, as the insolvency-related consequences that are the subject of the disclosure would not be applicable to non-U.S. counterparties in most cases. *See also* EMIR Margin RTS (in part addressing procedures providing for or specifying the terms of agreements entered into by counterparties, including applicable governing law for non-cleared derivatives, and further providing that counterparties entering into a netting or collateral exchange agreement must perform an independent legal review regarding enforceability).

[67] *See* also UK EMIR Margin RTS (in part addressing procedures providing for or specifying the terms of agreements entered into by counterparties, including applicable governing law for non-centrally cleared derivatives, and further providing that counterparties which enter into a netting or collateral exchange agreement must perform an independent legal review regarding enforceability).

[68] *See* para. (b)(3)(ii) of the proposed Order.

[69] In proposing this dispute reporting requirement, the Commission recognized that valuation inaccuracies may lead to uncollateralized credit exposure and the potential for loss in the event of default. *See* Exchange Act Release No. 84861 (Dec. 19, 2018), 84 FR 4614, 4621 (Feb. 15, 2019). It is important that the Commission be informed regarding valuation disputes affecting SBS Entities.

[70] The principal difference between the two sets of requirements concerns the timing of notices. Under Exchange Act rule 15Fi–3, SBS Entities must promptly report to the Commission valuation disputes in excess of $20 million that have been outstanding for three or five business days (depending on the counterparty type). Under EMIR RTS article 15(2), firms must report at least monthly, to competent authorities, disputes between counterparties in excess of €15 million and outstanding for at least 15 business days. The Commission is mindful that the EU provision does not provide for notice as quickly as rule 15Fi–3(c), but in the Commission's preliminary view, on balance this difference would not be inconsistent with the conclusion that the two sets of risk control requirements—taken as a whole—produce comparable regulatory outcomes.

[71] The CNMV Application addresses Spanish and EU requirements that address Covered Entities'' obligations related to internal supervision. *See* CNMV Application Appendix B category 3 at 1–59.

[72] 17 CFR 240.15Fk–1.

[73] The CNMV Application discusses Spanish and EU chief compliance officer requirements. *See* CNMV Application Appendix B category 3 at 60–89.

[74] Section 15F(j)(6) prohibits firms from adopting any process or taking any action that results in any unreasonable restraint of trade or imposing any material anticompetitive burden on trading or clearing. The CNMV Application addresses EU antitrust requirements. *See* CNMV Application Appendix B category 3 at 26.

Taken as a whole, these internal supervision, chief compliance officer, and additional Exchange Act section 15F(j) requirements help to promote SBS Entities' use of structures, processes, and responsible personnel reasonably designed to promote compliance with applicable law; to identify and cure instances of non-compliance; and to manage conflicts of interest. The comparability assessment accordingly may focus on whether the analogous foreign requirements—taken as a whole—produce comparable outcomes with regard to providing that Covered Entities have structures and processes reasonably designed to promote compliance with applicable law; identify and cure instances of non-compliance; and to manage conflicts of interest, in part through the designation of an individual with responsibility and authority over compliance matters.

B. Preliminary Views and Proposed Order

1. General Considerations

Based on the CNMV Application and the Commission's review of applicable provisions, in the Commission's preliminary view the relevant Spanish and EU requirements would produce regulatory outcomes that are comparable to those associated with the above-described internal supervision, chief compliance officer, conflict of interest, and information-related requirements by providing that Covered Entities have structures and processes that reasonably are designed to promote compliance with applicable law and to identify and cure instances of non-compliance and manage conflicts of interest.[75] As elsewhere, this part of the proposed Order conditions substituted compliance on Covered Entities being subject to and complying with specified Spanish and EU requirements that are necessary to establish comparability.[76]

The Commission recognizes that certain differences are present between those Spanish requirements and the applicable requirements under the Exchange Act. In the Commission's preliminary view, on balance, however, those differences would not preclude substituted compliance within the relevant outcomes-oriented context.

2. Additional Conditions and Scope Issues

Substituted compliance in connection with these requirements would be subject to certain additional conditions to help ensure the comparability of outcomes:

a. Internal Supervision—Application of Spanish and EU Supervisory and Compliance Requirements to Residual U.S. Requirements and Order Conditions

Under the proposed Order, substituted compliance for internal supervision requirements would be conditioned on Covered Entities complying with applicable Spanish and EU internal supervision requirements *as if* those provisions also require the Covered Entity to comply with applicable requirements under the Exchange Act and the other applicable conditions of the proposed Order.[77]

Even with substituted compliance, Covered Entities still would be subject directly to a number of requirements under the Exchange Act and to the conditions of the proposed Order. In some cases, particular requirements under the Exchange Act are outside the ambit of substituted compliance.[78] In other cases, certain requirements under the Exchange Act may not have comparable Spanish and EU requirements or may be outside the scope of the CNMV Application,[79] or the Covered Entity may decide not to use substituted compliance for certain requirements under the Exchange Act. While the Spanish and EU regulatory framework in general reasonably appears to promote Covered Entities' compliance with applicable Spanish and EU laws, those requirements do not appear to promote Covered Entities' compliance with requirements under the Exchange Act that are not subject to substituted compliance, or to promote Covered Entities' compliance with the applicable conditions to the proposed Order. This condition would address this issue, while still allowing Covered Entities to use their existing internal supervision and compliance frameworks to comply with the relevant Exchange Act requirements and proposed Order conditions, rather than having to establish separate special-purpose supervision and compliance frameworks.

b. Chief Compliance Officers—Compliance Reports

Under the proposed Order, substituted compliance in connection with the compliance report requirements under Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk–1(c) also would be subject to the conditions that the compliance reports required pursuant to MiFID Org Reg article 22(2)(c) must: (1) Be provided to the Commission at least annually and in the English language;[80] (2) include a certification signed by the chief compliance officer or senior officer of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects;[81] (3) address the Covered Entity's compliance with applicable requirements under the Exchange Act and other applicable conditions of the proposed Order;[82] (4)

[75] This portion of the proposed Order accordingly would extend generally to the internal supervision provisions of Exchange Act rule 15Fh–3(h), the requirement in Exchange Act section 15F(j)(4)(A) to have systems and procedures to obtain necessary information to perform functions required under Exchange Act section 15F; and the conflict of interest provisions of Exchange Act section 15F(j)(5). *See* para. (c)(1) of the proposed Order. This portion of the proposed Order does not extend to the portions of rule 15Fh–3(h) that mandate supervisory policies and procedures in connection with: The internal risk management provisions of Exchange Act section 15F(j)(2) (which are addressed by paragraph (b)(1) of the proposed Order in connection with internal risk management); the information-related provisions of Exchange Act sections 15F(j)(3) and (j)(4)(B) (for which substituted compliance is not available); or the antitrust provisions of Exchange Act section 15F(j)(6) (for which the Commission is not proposing to provide substituted compliance). *See* para. (c)(1)(iii) of the proposed Order.

[76] *See* paras. (c)(1)(i), (c)(2)(i), and (c)(3) of the proposed Order.

[77] *See* paras. (c)(1)(ii) and (c)(4) of the proposed Order.

[78] As noted, substituted compliance does not extend to antifraud prohibitions or to certain other requirements under the Exchange Act (*e.g.,* requirements related to transactions with counterparties that are not ECPs and segregation requirements). *See* note 10, *supra.*

[79] For example, the CNMV is not requesting substituted compliance in connection with eligible counterparty verification requirements, ''special entity'' provisions, and political contribution provisions. *See* note 21, *supra.*

[80] *See* para. (c)(2)(ii)(A) of the proposed Order.

[81] *See* para. (c)(2)(ii)(B) of the proposed Order.

[82] *See* para. (d)(2)(ii)(C) of the proposed Order. MiFID Org Reg article 22(2)(c) particularly requires that a Covered Entity's compliance function ''report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken[.]'' Under the proposed condition, those reports, as submitted to the Commission and the Covered Entity's management body, also would address the Covered Entity's compliance with applicable Exchange Act requirements and other applicable conditions of the proposed Order (in addition to addressing the Covered Entity's compliance with applicable Spanish and EU provisions). The Commission believes that this condition is necessary to promote comparable regulatory outcomes, particularly in light of the granular approach to substituted compliance, to ensure that the compliance report covers applicable Exchange Act requirements and proposed Order conditions if the Covered Entity uses substituted compliance for chief compliance officer requirements, whether or not the Covered Entity relies on substituted compliance for internal supervision.

be provided to the Commission no later than 15 days following the earlier of the submission of the report to the Covered Entity's management body or the time the report is required to be submitted to the management body;[83] and (5) together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk–1(c) would be required to cover.[84] Although certain Spanish and EU requirements address a Covered Entity's use of internal compliance reports, those provisions do not require it to submit compliance reports to the Commission. Under this condition, a Covered Entity could leverage the compliance reports that it otherwise must produce, by extending those reports to address compliance with the conditions of the proposed Order.[85]

The Commission recognizes that Covered Entities preparing multiple Spanish compliance reports each year may find it difficult to submit to those reports to the Commission throughout the year, each with a chief compliance officer or senior officer certification and a section addressing the Covered Entity's compliance with U.S. requirements. However, on balance the Commission believes that these elements are necessary to achieve a regulatory outcome comparable to the Exchange Act.

c. No Substituted Compliance in Connection With Antitrust Requirements

Under the proposed Order, substituted compliance would not extend to Exchange Act section 15F(j)(6) (and related internal supervision requirements of Exchange Act rule 15Fh–3(h)(2)(iii)(I)). Allowing an alternative means of compliance would not lead to outcomes comparable to that statutory prohibition.[86]

VI. Substituted Compliance for Counterparty Protection Requirements

A. CNMV Request and Associated Analytic Considerations

The CNMV further requests substituted compliance in connection with provisions under the Exchange Act relating to:

- *Disclosure of material risks and characteristics and material incentives or conflicts of interest*—Exchange Act rule 15Fh–3(b) requires that SBS Entities disclose to certain counterparties to a security-based swap certain information about the material risks and characteristics of the security-based swap, as well as material incentives or conflicts of interest that the SBS Entity may have in connection with the security-based swap. These provisions address the need for security-based swap market participants to have information that is sufficient to make informed decisions regarding potential transactions involving particular counterparties and particular financial instruments.[87]
- *''Know your counterparty''*—Exchange Act rule 15Fh–3(e) requires that SBS Entities establish, maintain, and enforce written policies and procedures to obtain and retain certain information regarding a counterparty that is necessary for conducting business with that counterparty. This provision accounts for the need that SBS Entities obtain essential counterparty information necessary to promote effective compliance and risk management.[88]
- *Suitability*—Exchange Act rule 15Fh–3(f) requires a security-based swap dealer that recommends to certain counterparties a security-based swap or trading strategy involving a security-based swap, to undertake reasonable diligence to understand the potential risks and rewards associated with the recommendation and to have a reasonable basis to believe that the recommendation is suitable for the counterparty.[89] This provision accounts for the need to guard against security-based swap dealers making unsuitable recommendations.[90]
- *Fair and balanced communications*—Exchange Act rule 15Fh–3(g) requires that SBS Entities communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith. These provisions promote complete and honest communications as part of SBS Entities' security-based swap businesses.[91]
- *Daily mark disclosure*—Exchange Act rule 15Fh–3(c) requires that SBS Entities provide daily mark information to certain counterparties. These provisions address t he need for market participants to have effective access to daily mark information necessary to manage their security-based swap positions.[92]
- *Clearing rights disclosure*—Exchange Act rule 15Fh–3(d) requires that SBS Entities provide certain counterparties with information regarding clearing rights under the Exchange Act.[93]

[83] *See* para. (c)(2)(ii)(D) of the proposed Order. The Commission believes that it is appropriate for the Commission to receive compliance reports shortly after their submission to the management body. Providing these reports to the Commission near the times that the Covered Entity submits them to the management body also will better align with the Spanish and EU regulatory framework, which permits a Covered Entity to prepare and submit to the management body multiple compliance reports throughout the year. The Commission views 15 days as providing a reasonable time to translate reports, if needed, and convey them to the Commission. This deadline is intended to promote timely notice of compliance matters in a manner comparable to Exchange Act requirements, while also accounting for the annual deadline required under MiFID Org Reg article 22(2)(c) as well as the possibility that the Covered Entity may submit reports ahead of this annual deadline.

[84] *See* para. (c)(2)(ii)(E) of the proposed Order. This requirement prevents a Covered Entity from notifying the Commission just prior to the due date of its annual Exchange Act compliance report that it will use substituted compliance for chief compliance officer requirements and then providing the Commission a Spanish compliance report that covers only a part of the year that would have been covered in the Exchange Act report.

[85] In practice, a Covered Entity may satisfy this condition by identifying relevant Exchange Act requirements and proposed Order conditions and reporting on the implementation and effectiveness of its controls with regard to compliance with those requirements and conditions.

[86] *See also* German Substituted Compliance Order, 85 FR 85691–92; French Substituted Compliance Order, 86 FR 41642–43. The Commission is not taking any position regarding the applicability of the section 15F(j)(6) antitrust prohibitions in the cross-border context. Non-U.S. SBS Entities should assess the applicability of those prohibitions to their security-based swap businesses.

[87] *See* Business Conduct Adopting Release, 81 FR 29983–86. The CNMV Application discusses Spanish and EU requirements that address disclosure of material risks and characteristics and material incentives or conflicts of interest. *See* CNMV Application Appendix B category 4 at 16–33.

[88] *See* Business Conduct Adopting Release, 81 FR 29993–94. The CNMV Application discusses Spanish and EU ''know your counterparty'' requirements. *See* CNMV Application Appendix B category 4 at 41–48.

[89] *See* Business Conduct Adopting Release, 81 FR 29994–30000.

[90] *See* Business Conduct Adopting Release, 81 FR 29994–30000. The CNMV Application discusses Spanish and EU suitability requirements. *See* CNMV Application Appendix B category 4 at 49–60.

[91] *See* Business Conduct Adopting Release, 81 FR 30000–02. The CNMV Application discusses Spanish and EU fair and balanced communications requirements. *See* CNMV Application Appendix B category 4 at 1–15.

[92] *See* Business Conduct Adopting Release, 81 FR 29986–91. The CNMV Application discusses Spanish and EU daily mark disclosure requirements. *See* CNMV Application Appendix B category 4 at 34–40.

[93] *See* Business Conduct Adopting Release, 81 FR 29991–93. Exchange Act section 3C(g)(5) provides certain rights for counterparties to select the clearing agency at which a security-based swap is cleared. For all security-based swaps that an SBS Entity enters into with certain counterparties, the counterparty has the sole right to select the clearing agency at which the security-based swap is cleared. For security-based swaps that are not subject to

Taken as a whole, the counterparty protection requirements under section 15F of the Exchange Act help to ''bring professional standards of conduct to, and increase transparency in, the security-based swap market and to require [SBS Entities] to treat parties to these transactions fairly.'' [94] The comparability assessment accordingly may focus on whether the analogous foreign requirements—taken as a whole—produce similar outcomes with regard to promoting professional standards of conduct, increasing transparency, and requiring Covered Entities to treat parties fairly.

B. Preliminary Views and Proposed Order

1. General Considerations

Based on the CNMV Application and the Commission's review of applicable provisions, in the Commission's preliminary view, the relevant Spanish and EU requirements produce regulatory outcomes that are comparable to counterparty protection requirements under Exchange Act section 15F(h) related to disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications, and daily mark disclosure, by subjecting Covered Entities to obligations that promote standards of professional conduct, transparency, and the fair treatment of parties. The proposed Order accordingly would provide conditional substituted compliance in connection with those requirements.[95] The proposed Order preliminarily does not provide substituted compliance in connection with requirements related to clearing rights disclosure, however, for reasons addressed below.

In taking this proposed approach, the Commission recognizes that there are certain differences between relevant Spanish and EU requirements, on the one hand, and the relevant disclosure, ''know your counterparty,'' suitability, and communications requirements under the Exchange Act, on the other hand. On balance, however, in the Commission's preliminary view, those differences, when coupled with the conditions in the proposed Order, are not so material as to be inconsistent with substituted compliance within the requisite outcomes-oriented framework. As elsewhere, the counterparty protection provisions of the proposed Order in part condition substituted compliance on Covered Entities being subject to, and complying with, specified Spanish and EU requirements that are necessary to establish comparability.[96] Substituted compliance in connection with these counterparty protection requirements also would be subject to specific conditions and limitations necessary to promote consistency in regulatory outcomes.

2. Additional Conditions and Scope Issues

a. Suitability—Limitation to per se Professional Clients

Under the proposed Order, substituted compliance in connection with the suitability provisions of Exchange Act rule 15Fh–3(f) in part would be conditioned on the requirement that the counterparty be a *per se* ''professional client'' as defined in MiFID and not be a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).[97] Accordingly, the proposed Order would not provide substituted compliance for Exchange Act suitability requirements for a recommendation made to a counterparty that is a ''retail client'' or an elective ''professional client,'' as such terms are defined in MiFID,[98] or for a ''special entity'' as defined in the Exchange Act. In the Commission's preliminary view, absent such a condition the MiFID suitability requirements would not be expected to produce a counterparty protection outcome that is comparable with the outcome produced by the suitability requirements under the Exchange Act.[99]

b. Daily Mark Disclosure—Limitation to Security-Based Swaps in Portfolios Required To Be Reconciled and in Fact Reconciled Each Business day

The proposed Order would provide substituted compliance in connection with daily mark disclosure requirements pursuant to Exchange Act rule 15Fh–3(c) to the extent that the Covered Entity participates in daily portfolio reconciliation exercises that include the relevant security-based swap pursuant to Spanish and EU requirements.[100]

mandatory clearing (pursuant to Exchange Act sections 3C(a) and (b)) and that an SBS Entity enters into with certain counterparties, the counterparty also may elect to require clearing of the security-based swap. Substituted compliance is not available in connection with these provisions. The CNMV Application discusses Spanish and EU clearing rights. *See* CNMV Application Appendix B category 4 at 61–69.

[94] *See* Business Conduct Adopting Release, 81 FR 30065. For non-U.S. SBS Entities, the counterparty protection requirements under Exchange Act section 15F(h) apply only to the SBS Entity's transactions with U.S. counterparties (apart from certain transactions conducted through a foreign branch of the U.S. counterparty), or to transactions arranged, negotiated, or executed by personnel located in a U.S. branch or office. *See* Exchange Act rule 3a71–3(c), 17 CFR 240.3a71–3(c) (exception from business conduct requirements for a security-based swap dealer's ''foreign business''); *see also* Exchange Act rule 3a71–3(a)(3), (8) and (9) (definitions of ''transaction conducted through a foreign branch,'' ''U.S. business'' and ''foreign business'').

[95] *See* para. (d) of the proposed Order.

[96] *See* paras. (d)(1) through (3), (d)(4)(i), and (d)(5) of the proposed Order (requirement to be subject to and comply with relevant Spanish and EU requirements in connection with substituted compliance for Exchange Act disclosure of material risks and characteristics, disclosures of material incentives or conflicts of interest, ''know your counterparty,'' suitability, and fair and balanced communications requirements); para. (d)(6) of the proposed Order (requirement to be required under Spanish and EU requirements to reconcile, and in fact reconcile, the portfolio containing the security-based swap for which substituted compliance is applied, on each business day in connection with substituted compliance for daily mark disclosure requirements).

[97] 17 CFR 240.15Fh–2(d). *See* para. (d)(4)(ii) of the proposed Order.

[98] Annex II of MiFID describes which clients are ''professional clients.'' Section I of Annex II describes the types of clients considered to be professional clients unless the client elects non-professional treatment; these clients are per se professional clients. Section II of Annex II describes the types of clients who may be treated as professional clients on request; these clients are elective professional clients. *See* MiFID Annex II. A retail client is a client who is not a professional client. *See* MiFID article 4(1)(11).

[99] The Commission recognizes that Exchange Act rules permit security-based swap dealers, when making a recommendation to an ''institutional counterparty,'' to satisfy some elements of the suitability requirement if the security-based swap dealer reasonably determines that the counterparty or its agent is capable of independently evaluating relevant investment risks, the counterparty or its agent represents in writing that it is exercising independent judgment in evaluating recommendations, and the security-based swap dealer discloses to the counterparty that it is acting as counterparty and is not undertaking to assess the suitability of the recommendation for the counterparty. *See* Exchange Act rule 15Fh–3(f)(2). However, the institutional counterparties to whom this alternative applies are only a subset of the ''professional clients'' to whom more narrowly tailored suitability requirements apply under MiFID. The institutional counterparty alternative under the Exchange Act would remain available, in accordance with its terms, for recommendations that are not eligible for, or for which a Covered Entity does not rely on, substituted compliance.

[100] *See* para. (d)(6) of the proposed Order. This approach would provide substituted compliance for daily mark requirements based on comparability of outcomes without the need to distinguish between U.S. person counterparties and other counterparties, and would avoid reliance on Spanish and EU trade reporting or mark-to-market (or mark-to-model) requirements. The Spanish and EU mark-to-market (or mark-to-model) requirements direct certain types of derivatives counterparties to mark-to-market (or mark-to-model) uncleared transactions each day but do not require disclosure of those marks to counterparties. Moreover, though Spanish and EU trade reporting requirements direct certain derivatives counterparties to report to a EU trade repository updated daily valuations for each OTC derivative contract, in practice U.S. counterparties may encounter challenges when attempting to access daily marks reported to

Continued

Spanish and EU portfolio reconciliation requirements for uncleared OTC derivative contracts include a requirement to exchange valuations of those contracts directly between counterparties. The required frequency of portfolio reconciliations varies depending on the types of counterparties and the size of the portfolio of OTC derivatives between them, with daily reconciliation required only for the largest portfolios. For security-based swaps to which the EU's daily portfolio reconciliation requirements apply (*i.e.,* security-based swaps of a financial counterparty or non-financial counterparty subject to the clearing obligation in EMIR, if the counterparties have 500 or more OTC derivatives contracts outstanding with each other [101]), the Commission preliminarily views these requirements as comparable to Exchange Act requirements. For all other security-based swaps in portfolios that are not required to be reconciled on each business day, the Commission preliminarily views the EU's portfolio reconciliation requirements as not comparable to Exchange Act requirements and is proposing not to make a positive substituted compliance determination.

c. No Substituted Compliance in Connection With Clearing Rights Disclosure Requirements

The proposed Order would not provide substituted compliance in connection with clearing rights disclosure requirements pursuant to Exchange Act rule 15Fh–3(d). The CNMV Application cites certain provisions related to clearing rights in the EU that are unrelated to, and do not require disclosure of, the clearing rights provided by Exchange Act section 3C(g)(5).[102] Moreover, unlike the rule 15Fh–3(d) disclosure requirements, the section 3C(g)(5) clearing rights themselves are not eligible for substituted compliance. Accordingly, in the Commission's preliminary view, substituted compliance based on EU clearing provisions would not lead to comparable disclosure of a counterparty's Exchange Act clearing rights and is not proposing to make a positive substituted compliance determination for clearing rights disclosure requirements.

VII. Substituted Compliance for Recordkeeping, Reporting, and Notification Requirements

A. CNMV Request and Associated Analytic Considerations

The CNMV Application in part requests substituted compliance for requirements applicable to SBS Entities with a prudential regulator under the Exchange Act relating to:

- *Record Making*—Exchange Act rule 18a–5 requires prescribed records to be made and kept current.[103]
- *Record Preservation*—Exchange Act rule 18a–6 requires preservation of records.[104]
- *Reporting*—Exchange Act rule 18a–7 requires certain reports.[105]
- *Notification*—Exchange Act rule 18a–8 requires notification to the Commission when certain financial or operational problems occur.[106]
- *Daily Trading Records*—Exchange Act section 15F(g) requires SBS Entities to maintain daily trading records.[107]

Taken as a whole, the recordkeeping, reporting, and notification requirements that apply to SBS Entities with a prudential regulator are designed to promote the prudent operation of the firm's security-based swap activities, assist the Commission in conducting compliance examinations of those activities, and alert the Commission to potential financial or operational problems that could impact the firm and its customers. The comparability assessment accordingly may focus on whether the analogous foreign requirements—taken as a whole—produce comparable outcomes with regard to recordkeeping, reporting, notification, and related practices that support the Commission's oversight of these registrants. A foreign jurisdiction need not have analogues to every requirement under Commission rules to receive a positive substituted compliance determination.

B. Preliminary Views and Proposed Order

1. General Considerations

Based on the CNMV Application and the Commission's review of applicable provisions, in the Commission's preliminary view, the relevant EU and Spanish requirements, subject to the conditions and limitations of the proposed Order, would produce regulatory outcomes that are comparable to the outcomes associated with the vast majority of the recordkeeping, reporting, and notification requirements under the Exchange Act applicable to SBS Entities with a prudential regulator pursuant to Exchange Act section 15F(g) and Exchange Act rules 18a–5, 18a–6, 18a–7, and 18a–8.

In reaching this preliminary conclusion, the Commission recognizes that there are certain differences between the EU and Spanish requirements and the Exchange Act requirements. In the Commission's preliminary view, on balance, those differences generally would not be inconsistent with substituted compliance for these requirements. Requirement-by-requirement similarity is not needed for substituted compliance.

However, the Commission is structuring its preliminary substituted compliance determinations in the proposed Order to provide Covered Entities with greater flexibility to select which distinct requirements within the broader rule for which they would apply substituted compliance. This would not preclude a Covered Entity from applying substituted compliance for the entire rule (subject to conditions and limitations). However, it would permit the Covered Entity to apply substituted compliance with respect to certain requirements of a given rule and to comply directly with the remaining requirements. This granular approach to making substituted compliance determinations with respect to discrete requirements within Exchange Act rules 18a–5, 18a–6, 18a–7, and 18a–8 (collectively, the ''recordkeeping, reporting, and notification rules'') is intended to permit Covered Entities to leverage existing recordkeeping and reporting systems that are designed to comply with the broker-dealer recordkeeping and reporting requirements on which the recordkeeping and reporting requirements applicable to SBS Entities

multiple EU trade repositories with which they may not otherwise have business relationships. In addition, the information may be less current, given the time necessary for reporting and for the trade repository to make the information available.

[101] *See* EMIR RTS article 13(3)(a)(i); EMIR article 10.

[102] *See* note 93, *supra.*

[103] 17 CFR 240.18a–5. The CNMV Application discusses Spanish and EU recordmaking requirements. *See* CNMV Application Appendix B category 2 at 3–27, 55–57.

[104] 17 CFR 240.18a–6. The CNMV Application discusses Spanish and EU record preservation requirements. *See* CNMV Application Appendix B category 2 at 28–54, 57–58.

[105] 17 CFR 240.18a–7. The CNMV Application discusses Spanish and EU requirements that address firms'' obligations to make certain reports. *See* CNMV Application Appendix B category 2 at 59–62.

[106] 17 CFR 240.18a–8. The CNMV Application discusses Spanish and EU requirements that address firms'' obligations to make certain notifications. *See* CNMV Application Appendix B category 2 at 62–64.

[107] The CNMV Application discusses Spanish and EU requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. *See* CNMV Application Appendix B category 2 at 2–3.

are based. For example, it may be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given recordkeeping, reporting, or notification rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them. This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.[108]

As applied to Exchange Act rules 18a–5 and 18a–6, this approach of providing greater flexibility results in preliminary substituted compliance determinations with respect to the different categories of records these rules require SBS Entities with a prudential regulator to make, keep current, and/or preserve. The objective of these rules—taken as a whole—is to assist the Commission in monitoring and examining for compliance with substantive Exchange Act requirements applicable to SBS Entities with a prudential regulator (*e.g.,* business conduct requirements) as well as to promote the prudent operation of these firms.[109] The Commission preliminarily believes the comparable EU and Spanish recordkeeping rules achieve these outcomes with respect to compliance with substantive EU and Spanish requirements for which preliminary positive substituted compliance determinations are being made in this proposed Order (*e.g.,* the preliminary positive substituted compliance determinations with respect to the majority of the Exchange Act business conduct requirements). At the same time, the recordkeeping rules address different categories of records through distinct requirements within the rules. Each requirement with respect to a specific category of records (*e.g.,* paragraph (b)(1) of Exchange Act rule 18a–5 addressing trade blotters) can be viewed in isolation as a distinct recordkeeping rule. Therefore, it may be appropriate to make substituted compliance determinations at this level of Exchange Act rules 18a–5 and 18a–6.

As discussed in more detail below, the Commission's preliminary view is that substituted compliance is appropriate for most of the requirements applicable to SBS Entities with a prudential regulator within the recordkeeping, reporting, and notification rules. However, certain of the discrete requirements in these rules are fully or partially linked to substantive Exchange Act requirements for which substituted compliance is not available or for which a positive substituted compliance determination would not be made under the proposed Order. In these cases, a preliminary positive substituted compliance determination is not be made for the requirement that is fully linked to the substantive requirement or to the part of the requirement that is linked to the substantive requirement. In particular, a preliminary positive substituted compliance determination is not being made, in full or in part, for recordkeeping, reporting, or notification requirements linked to the following Exchange Act rules for which substituted compliance is not available or a preliminary positive substituted compliance determination is not being made: (1) Exchange Act rule 15Fh–4 (''Rule 15Fh–4 Exclusion''); (2) Exchange Act rule 15Fh–5 (''Rule 15Fh–5 Exclusion''); (3) Exchange Act rule 15Fh–6 (''Rule 15Fh–6 Exclusion''); (4) Exchange Act rule 18a–4 (''Rule 18a–4 Exclusion''); (5) Regulation SBSR (''Regulation SBSR Exclusion''); (6) Form SBSE and its variations (''Form SBSE Exclusion''); (7) Exchange Act rule 15Fh–1 Exclusion (''Rule 15Fh–1 Exclusion''), and (8) Exchange Act rule 15Fh–2 (''Rule 15Fh–2 Exclusion''). This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.[110]

In addition, certain of the requirements in the recordkeeping, reporting, and notification rules are expressly linked to substantive Exchange Act requirements where a preliminary positive substituted compliance determination is being made under the proposed Order. In these cases, substituted compliance with the linked requirement in the recordkeeping, reporting, or notification rule is conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement. This is the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement. The recordkeeping, reporting, and notification requirements that are linked to a substantive Exchange Act requirement are designed and tailored to assist the Commission in monitoring and examining an SBS Entity's compliance with the substantive Exchange Act requirement. EU and Spanish recordkeeping, reporting, and notification requirements are designed to perform a similar role with respect to the substantive EU and Spanish requirements to which they are linked. Consequently, this condition is designed to ensure that the records, reports, and notifications of a Covered Entity align with the substantive Exchange Act or EU or Spanish requirement to which they are linked. For these reasons, under the proposed Order, substituted compliance for recordkeeping, reporting, and notification requirements linked to the following Exchange Act rules would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh–3, except paragraphs (a) and (d) for which substituted compliance was not requested (''Rule 15Fh–3 Condition''); (2) Exchange Act rule 15Fi–2 (''Rule 15Fi–2 Condition''); (3) Exchange Act rule 15Fi–3 (''Rule 15Fi–3 Condition''); (4) Exchange Act rule 15Fi–4 (''Rule 15Fi–4 Condition''); (5) Exchange Act rule 15Fi–5 (''Rule 15Fi–5 Condition''); and (6) Exchange Act rule 15Fk–1 (''Rule 15Fk–1 Condition''). This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.[111]

2. Exchange Act Rule 18a–5

Exchange Act rule 18a–5 requires SBS Entities to make and keep current various types of records. The requirements for SBS Entities without a prudential regulator are set forth in paragraph (a) of the rule.[112] The requirements for SBS Entities with a prudential regulator are set forth in paragraph (b) of the rule.[113] The Commission is making a preliminary positive substituted compliance determination for many of the requirements of paragraph (b) of Exchange Act rule 18a–5 in the granular manner discussed above.[114]

However, certain of the requirements in these paragraphs are linked to substantive Exchange Act requirements for which substituted compliance is not available or a preliminary positive substituted compliance determination would not be made under the proposed

[108] *See* French Substituted Compliance Order, 86 FR at 41649; UK Substituted Compliance Order, 86 FR at 43360.

[109] *See, e.g.* , Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25199–200 (May 2, 2014).

[110] *See* French Substituted Compliance Order, French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

[111] *See* French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

[112] *See* paras. (a)(1) through (18) of Exchange Act rule 18a–5.

[113] *See* paras. (b)(1) through (14) of Exchange Act rule 18a–6.

[114] *See* para. (e)(1) of the proposed Order.

Order. In these cases, a positive substituted compliance determination would not be made for the linked requirement in Exchange Act rule 18a–5 or the portion of the requirement in Exchange Act rule 18a–5 that is linked to the substantive Exchange Act requirement.[115]

In addition, certain of the requirements in Exchange Act rule 18a–5 are fully or partially linked to substantive Exchange Act requirements where a preliminary positive substituted compliance determination would be made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a–5 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.[116]

In addition, the proposed Order would allow a Covered Entity to apply substituted compliance on a transaction-by-transaction basis for the Commission's recordkeeping requirements that are linked with the counterparty protection requirements in Exchange Act rule 15Fh–3.[117] This approach is intended to be consistent with the Commission preliminarily allowing Covered Entities to apply substituted compliance on a transaction-by-transaction basis for the Commission's counterparty protection requirements.

Under the proposed Order, substituted compliance in connection with the record making requirements of Exchange Act rule 18a–5 would be subject to the condition that the Covered Entity: (1) Preserves all of the data elements necessary to create the records required by Exchange Act rules 18a–5(b)(1), (2), (3), and (7); and (2) upon request furnishes promptly to representatives of the Commission the records required by those rules (''SEC Format Condition'').[118] This proposed condition is modeled on the alternative compliance mechanism in paragraph (c) of Exchange Act rule 18a–5. In effect, a Covered Entity applying substituted compliance with respect to these requirements of Exchange Act rule 18a–5 would need to comply with the comparable EU and Spanish requirements. However, under the SEC Format Condition, the Covered Entity would need to produce a record that is formatted in accordance with the requirements of Exchange Act rule 18a–5 at the request of Commission staff. The objective is to require—on a very limited basis—the production of a record that consolidates the information required by Exchange Act rules 18a–5(b)(1), (2), (3), and (7) in a single record and, as applicable, in a blotter or ledger format. This will assist the Commission staff in reviewing the information on the record.

The following table summarizes the Commission's preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a–5 by listing in each row: (1) The paragraph of the proposed Order that sets forth the preliminary determination; (2) the paragraph(s) of Exchange Act rule 18a–5 to which the preliminary determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance.[119]

EXCHANGE ACT RULE 18a–5

[Record making]

Order paragraph	Rule paragraph	Rule description	Additional conditions and partial exclusions
(e)(1)(i)(A)	(b)(1)	Trade blotters	SEC Format Condition.
(e)(1)(i)(B)	(b)(2)	Account ledgers	SEC Format Condition.
(e)(1)(i)(C)	(b)(3)	Stock record	SEC Format Condition.
(e)(1)(i)(D)	(b)(4)	Memoranda of brokerage orders	N/A.
(e)(1)(i)(E)	(b)(5)	Memoranda of proprietary orders	N/A.
(e)(1)(i)(F)	(b)(6) (b)(11)	Confirmations, trade verification	Rule 15Fi–2 Condition.
(e)(1)(i)(G)	(b)(7)	Accountholder information	SEC Format Condition.
(e)(1)(i)(H)	(b)(8)	Associated person's employment application	N/A.
(e)(1)(i)(I)	(b)(13)	Compliance with business conduct requirements.	(1) Rule 15Fh–3 Condition. (2) Rule 15Fk–1 Condition. (3) Rule 15Fh–1 Exclusion. (4) Rule 15Fh–2 Exclusion. (5) Rule 15Fh–4 Exclusion. (6) Rule 15Fh–5 Exclusion.

[115] A positive preliminary substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a–5 because they are linked to a substantive Exchange Act requirement for which the proposed Order would not provide substituted compliance: (1) Exchange Act rules 18a–5(b)(9) and (10) are fully linked to Exchange Act rule 18a–4 and, therefore, would be subject to the Rule 18a–4 Exclusion; (2) Exchange Act rule 18a–5(b)(12) is fully linked to Exchange Act rule 15Fh–6 and, therefore, would be subject to the Rule 15F–6 Exclusion; (3) the portions of Exchange Act rule 18a–5(b)(13) that relates to Exchange Act rule 15Fh–4 would be subject to the Rule 15Fh–4 Exclusion; (4) the portion of Exchange Act rule 18a–5(b)(13) that relates to Exchange Act rule 15Fh–5 would be subject to the 15Fh–5 Exclusion; (5) the portion of Exchange Act rule 18a–5(b)(13) that relates to Exchange Act rule 15Fh–1 would be subject to the 15Fh–1 Exclusion; and (6) the portion of Exchange Act rule 18a–5(b)(13) that relates to Exchange Act rule 15Fh–2 would be subject to the 15Fh–2 Exclusion.

[116] Substituted compliance with the following requirements of Exchange Act rule 18a–5 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rules 18a–5(b)(6) and (b)(11) are linked to Exchange Act rule 15Fi–2 and, therefore, would be subject to the Rule 15Fi–2 Condition; (2) Exchange Act rule 18a–5(b)(13) is linked to Exchange Act rule 15Fh–3 and, therefore, would be subject to the Rule 15Fh–3 Condition; (3) Exchange Act rule 18a–5(b)(13) is linked to Exchange Act rule 15Fk–1, and therefore, would be subject to the Rule 15Fk–1 Condition; (4) Exchange Act rules 18a–5(b)(14)(i) and (ii) are linked to Exchange Act rule 15Fi–3 and, therefore, would be subject to the Rule 15Fi–3 Condition; and (5) Exchange Act rule 18a–5(b)(14)(iii) is linked to Exchange Act rule 15Fi–4 and, therefore, would be subject to the Rule 15Fi–4 Condition.

[117] See para. (e)(1)(ii)(B) of the proposed Order.

[118] See para. (e)(1)(ii)(A) of the proposed Order.

[119] The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a–5; namely that the Covered Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) as discussed below, must promptly furnish to a representative of the Commission upon request an English translation of a record. See para. (e)(7) of the proposed Order (setting forth the English translation requirement).

EXCHANGE ACT RULE 18a–5—Continued

[Record making]

Order paragraph	Rule paragraph	Rule description	Additional conditions and partial exclusions
(e)(1)(i)(J)	(b)(14)(i) (b)(14)(ii)	Portfolio reconciliation	Rule 15Fi–3 Condition.
(e)(1)(i)(K)	(b)(14)(iii)	Portfolio compression	Rule 15Fi–4 Condition.

The following table summarizes the Commission's preliminary determinations with respect to requirements of Exchange Act rule 18a–5 for which a positive substituted compliance determination would not be made because they are fully linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a–5 to which the determination applies; (3) a brief description of the records required by the paragraph; and (4) a brief description of why the requirement is excluded from substituted compliance.

EXCHANGE ACT RULE 18a–5

[Record making]

Order paragraph	Rule paragraph	Rule description	Exclusion
(e)(1)(ii)(C)	(b)(9)	Possession or control records	Rule 18a–4 Exclusion.
(e)(1)(ii)(C)	(b)(10)	Reserve computations	Rule 18a–4 Exclusion.
(e)(1)(ii)(C)	(b)(12)	Political contribution records	Rule 15Fh–6 Exclusion.

3. Exchange Act Rule 18a–6

Exchange Act rule 18a–6 requires an SBS Entity to preserve certain types of records if it makes or receives them (in addition to the records the SBS Entity is required to make and keep current pursuant to Exchange Act rule 18a–5).[120] Exchange Act rule 18a–6 also prescribes the time period that these additional records and the records required to be made and kept current pursuant to Exchange Act rule 18a–5 must be preserved and the manner in which they must be preserved.

Paragraphs (a) through (d) of Exchange Act rule 18a–6 identify the records that an SBS Entity must retain if it makes or receives them and prescribes the retention periods for these records as well as for the records that must be made and kept current pursuant to Exchange Act rule 18a–5. Certain of these paragraphs prescribe requirements separately for SBS Entities without a prudential regulator and SBS Entities with a prudential regulator.[121] The proposed Order would make substituted compliance available for the requirements of these paragraphs applicable to SBS Entities with a prudential regulator. As discussed below, the Commission is making a preliminary positive substituted compliance determination for many of the requirements of these paragraphs applicable to SBS Entities with a prudential regulator.

However, certain of these requirements are fully or partially linked to substantive Exchange Act requirements for which a preliminary positive substituted compliance determination would not be made under the proposed Order. In these cases, a positive substituted compliance determination would not be made for the linked requirement in Exchange Act rule 18a–6.[122]

In addition, certain of the requirements in Exchange Act rule 18a–6 are fully or partially linked to substantive Exchange Act requirements where a positive substituted compliance determination would be made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-6 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.[123]

Paragraph (e) of Exchange Act rule 18a–6 sets forth the requirements for preserving records electronically. Paragraph (f) sets forth requirements for

[120] See 17 CFR 240.18a–6.

[121] Paras. (a)(1), (b)(1), (d)(2)(i), and (d)(3)(i) of Exchange Act rule 18a–6 apply to SBS Entities without a prudential regulator. Paras. (a)(2), (b)(2), (d)(2)(ii), and (d)(3)(ii) of Exchange Act rule 18a–6 apply to SBS Entities with a prudential regulator. Paras. (c), (d)(1), (d)(4), and (d)(5) of Exchange Act rule 18a–6 apply to SBS Entities irrespective of whether they have a prudential regulator.

[122] A positive substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a–6 because they are linked to a substantive Exchange Act requirement for which the proposed Order would not provide substituted compliance: (1) Exchange Act rule 18a–6(b)(2)(vi) is fully linked to Regulation SBSR and, therefore, would be subject to the Regulation SBSR Exclusion; (2) Exchange Act rule 18a–6(b)(2)(viii) is fully linked to Exchange Act rule 15Fh–4 and, therefore, would be subject to the Rule 15Fh–4 Exclusion; (3) Exchange Act rule 18a–6(b)(2)(viii) is fully linked to Exchange Act rule 15Fh–5 and, therefore, would be subject to the Rule 15Fh–5 Exclusion; (4) Exchange Act rule 18a–6(b)(2)(v) is fully linked to Exchange Act rule 18a–4 and, therefore, would be subject to the Rule 18a–4 Exclusion; (5) the portion of Exchange Act rule 18a–6(c) relating to Form SBSE and its variations would be subject to the Form SBSE Exclusion; (6) the portion of Exchange Act rule 18a–6(b)(2)(vii) that relates to Exchange Act rule 15Fh–1 would be subject to the 15Fh–1 Exclusion; (7) the portion of Exchange Act rule 18a–6(b)(2)(vii) that relates to Exchange Act rule 15Fh–2 would be subject to the 15Fh–2 Exclusion; (8) the portion of Exchange Act rule 18a–6(b)(2)(vii) that relates to Exchange Act rule 15Fh–4 would be subject to the 15Fh–4 Exclusion; (9) the portion of Exchange Act rule 18a–6(b)(2)(vii) that relates to Exchange Act rule 15Fh–5 would be subject to the 15Fh–5 Exclusion; and (10) the portion of Exchange Act rule 18a–6(b)(2)(vii) that relates to Exchange Act rule 15Fh–6 would be subject to the 15Fh–6 Exclusion.

[123] Substituted compliance with the following requirements of Exchange Act rule 18a–6 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rule 18a–6(b)(2)(vii) is linked to Exchange Act rule 15Fh–3 and, therefore, would be subject to the Rule 15Fh–3 Condition; (2) Exchange Act rule 18a–6(b)(2)(vii) is linked to Exchange Act rule 15Fk–1 and, therefore, would be subject to the Rule 15Fk–1 Condition; (3) Exchange Act rules 18a–6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi–3 and, therefore, would be subject to the Rule 15Fi–3 Condition; (4) Exchange Act rules 18a–6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi–4 and, therefore, would be subject to the Rule 15Fi–4 Condition; and (5) Exchange Act rules 18a–6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi–5 and, therefore, would be subject to the Rule 15Fi–5 Condition.

when records are prepared or maintained by a third party. The Order would make substituted compliance available for the requirements of paragraphs (e) and (f) of Exchange Act rule 18a–6 with respect to Covered Entities with a prudential regulator.[124]

Paragraph (g) of Exchange Act rule 18a–6 requires an SBS Entity to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the SBS Entity that are required to be preserved under Exchange Act rule 18a–6, or any other records of the SBS Entity that are subject to examination or required to be made or maintained pursuant to section 15F of the Exchange Act that are requested by a representative of the Commission. The proposed Order would not make substituted compliance available for the requirements of paragraph (g) of Exchange Act rule 18a–6 because there is no comparable requirement in the EU or Spain to produce these records to a representative of the Commission.

The following table summarizes the Commission's preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-6 by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a–6 to which the determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance.[125]

EXCHANGE ACT RULE 18a–6

[Record preservation]

Order paragraph	Rule paragraph	Rule description	Conditions and partial exclusions
(e)(2)(i)(A)	(a)(2)	6 year record preservation	N/A.
(e)(2)(i)(B)	(b)(2)(i)	3 year record preservation	N/A.
(e)(2)(i)(C)	(b)(2)(ii)	Communications	N/A.
(e)(2)(i)(D)	(b)(2)(iii)	Account documents	N/A.
(e)(2)(i)(E)	(b)(2)(iv)	Written agreements	N/A.
(e)(2)(i)(F)	(b)(2)(vii)	Business conduct standard records	(1) Rule 15Fh–3 Condition. (2) Rule 15Fk–1 Condition. (3) Rule 15Fh–1 Exclusion. (4) Rule 15Fh–2 Exclusion. (5) Rule 15Fh–4 Exclusion. (6) Rule 15Fh–5 Exclusion. (7) Rule 15Fh–6 Exclusion.
(e)(2)(i)(G)	(c)	Corporate documents	Form SBSE Exclusion.
(e)(2)(i)(H)	(d)(1)	Associated person's employment application	N/A.
(e)(2)(i)(I)	(d)(2)(ii)	Regulatory authority reports	N/A.
(e)(2)(i)(J)	(d)(3)(ii)	Compliance, supervisory, and procedures manuals.	N/A.
(e)(2)(i)(K)	(d)(4), (d)(5)	Portfolio reconciliation	(1) Rule 15Fi–3 Condition. (2) Rule 15Fi–4 Condition. (3) Rule 15Fi–5 Condition.
(e)(2)(i)(L)	(e)	Electronic storage system	N/A.
(e)(2)(i)(M)	(f)	Third-party recordkeeper	N/A.

The following table summarizes the Commission's preliminary determinations with respect to requirements of Exchange Act rule 18a–6 for which a positive substituted compliance determination would not be made because they are fully linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a–6 to which the determination applies; (3) a brief description of the records required by those paragraph; and (4) a brief description of why the requirement is excluded from substituted compliance.

EXCHANGE ACT RULE 18a–6

[Preservation]

Order paragraph	Rule paragraph	Rule description	Exclusion
(e)(2)(ii)	(b)(2)(v)	Information supporting financial reports	Rule 18a–4 Exclusion.
(e)(2)(ii)	(b)(2)(vi)	Regulation SBSR information	Regulation SBSR Exclusion.
(e)(2)(ii)	(b)(2)(viii)	Special entity documents	(1) Rule 15Fh–4 Exclusion. (2) Rule 15Fh–5 Exclusion.

[124] *See* paras. (e)(2)(i)(L) and (M) of the proposed Order.

[125] The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a–6; namely that the Covered Entity: (1) Must be subject to and complies with the requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English translation of a record. *See* para. (e)(7) of the proposed Order (setting forth the English translation requirement).

4. Exchange Act Rule 18a–7

Exchange Act rule 18a–7 requires SBS Entities, on a monthly basis (if not prudentially regulated) or on a quarterly basis (if prudentially regulated), to file an unaudited financial and operational report on the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated). The Commission will use the FOCUS Reports filed by the SBS Entities to both monitor the financial and operational condition of individual SBS Entities and to perform comparisons across SBS Entities. The FOCUS Report Part IIC elicits less information than the FOCUS Report Part II because the Commission does not have responsibility for overseeing the capital and margin requirements applicable to these entities.

The FOCUS Report Parts II and IIC are standardized forms that elicit specific information through numbered line items. This facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission. Further, the Commission has designated the Financial Industry Regulatory Authority, Inc. (''FINRA'') to receive the FOCUS Reports from SBS Entities.[126] Broker-dealers registered with the Commission currently file their FOCUS Reports with FINRA through the eFOCUS system it administers. Using FINRA's eFOCUS system will enable broker-dealers, security-based swap dealers, and major security-based swap participants to file FOCUS Reports on the same platform using the same preexisting templates, software, and procedures.

Paragraph (a)(2) of Exchange Act rule 18a–7 requires SBS Entities with a prudential regulator to file the FOCUS Report Part IIC on a quarterly basis. The proposed Order would provide substituted compliance for this requirement subject to the condition that the Covered Entity file with the Commission periodic unaudited financial and operational information in the manner and format specified by the Commission by order or rule (''Manner and Format Condition'') and present the financial information in accordance with generally accepted accounting principles (''GAAP'') that the firm uses to prepare general purpose publicly available or available to be issued financial statements in Spain (''Spanish GAAP Condition'').[127] The Commission believes that it would be appropriate to condition substituted compliance with respect to Exchange Act rule 18a–7 on the Covered Entity filing unaudited financial and operational information in a manner and format that facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission.[128] For example, the Commission could by order or rule require Covered Entities with a prudential regulator to file the financial and operational information with FINRA using the FOCUS Report Part IIC but permit the information input into the form to be the same information the SBS Entity reports to the CNMV.

The following table summarizes the Commission's proposed preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a–7 by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a–7 to which the determination applies; (3) a brief description of the report required by the paragraph; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements.[129]

EXCHANGE ACT RULE 18a–7

[Reporting]

Order paragraph	Rule paragraph	Rule description	Conditions
(e)(3)(i)	(a)(2)	File FOCUS Reports	(1) Manner and Format Condition. (2) Spanish GAAP Condition.

5. Exchange Act Rule 18a–8

Exchange Act rule 18a–8 requires SBS Entities to send notifications to the Commission if certain adverse events occur.[130] The proposed Order would provide substituted compliance for the requirements of Exchange Act rule 18a–8 applicable to SBS Entities with a prudential regulator (subject to conditions and limitations). In particular, the requirements of: (1) Paragraph (c) of Exchange Act Rule 18a–8 that an SBS Entity that is a security-based swap dealer and that files a notice of adjustment to its reported capital category with a U.S. prudential regulator must transmit a copy of the notice to the Commission; (2) paragraph (d) of the rule that an SBS Entity provide notification to the Commission if it fails to make and keep current books and records under Exchange Act rule 18a–5 and to transmit a subsequent report on steps being taken to correct the situation; and (3) paragraph (h) of the rule setting forth how to make the notifications required by Exchange Act 18a–8.

Under the proposed Order, substituted compliance in connection with the notification requirements of Exchange Act rule 18a–8 would be subject to the condition that the Covered Entity: (1) Simultaneously sends a copy of any notice required to be sent by EU or Spanish notification laws to the Commission in the manner specified on the Commission's website (*i.e.,* the ''SEC Filing Condition''); and (2) includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice (*i.e.,* the ''Contact Information Condition''). The purpose of this condition is to alert the Commission to financial or operational problems that

[126] *See* Order Designating Financial Industry Regulatory Authority, Inc., to Receive Form X–17A–5 (FOCUS Report) from Certain Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Release No. 88866 (May 14, 2020).

[127] Under the proposed Order, Covered Entities with a prudential regulator would need to present the information reported in the FOCUS Report in accordance with GAAP that the firm uses to prepare publicly available or available to be issued general purpose financial statements in its home jurisdiction instead of U.S. GAAP if other GAAP, such as International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), is used by the Covered Entity in preparing publicly available or available to be issued general purpose financial statements in Spain.

[128] The Manner and Format condition is included in the French and UK Substituted Compliance Orders. *See* French Substituted Compliance Order, 86 FR at 41651; UK Substituted Compliance Order, 83 FR at 43361–62.

[129] The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a–7; namely that the Covered Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English translation of a report. *See* para. (e)(7) of the proposed Order (setting forth the English translation requirement).

[130] *See* 17 CFR 240.18a–8.

could adversely affect the firm—the objective of Exchange Act rule 18a–8.

In addition, the Order does not provide substituted compliance for paragraph (g) of Exchange Act rule 18a–8 that an SBS Entity that is a security-based swap dealer provide notification if it fails to make a required deposit into its special reserve account for the exclusive benefit of security-based swap customers under Exchange Act rule 18a–4. Substituted compliance is not available for Exchange Act rule 18a–4.

In addition, the proposed Order would not provide substituted compliance for paragraph (g) of Exchange Act rule 18a–8 that an SBS Entity that is a security-based swap dealer provide notification if it fails to make a required deposit into its special reserve account for the exclusive benefit of security-based swap customers under Exchange Act rule 18a–4. Substituted compliance is not available for Exchange Act rule 18a–4.

The following table summarizes the Commission's proposed preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a–8 by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a–8 to which the determination applies; (3) a brief description of the notification required by the paragraph; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements.[131]

EXCHANGE ACT RULE 18a–8

[Notification]

Order paragraph	Rule paragraph	Rule description	Conditions
(e)(4)(i)(B)	(c)	Prudential regulator capital category adjustment notices.	(1) SEC Filing Condition. (2) Contact Information Condition.
(e)(4)(i)(C)	(d)	Books and records notices	(1) SEC Filing Condition. (2) Contact Information Condition.

The following table summarizes the Commission's preliminary determinations with respect to requirements of Exchange Act rule 18a–8 for which a positive substituted compliance determination would not be made because they are fully linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a–8 to which the determination applies; (3) a brief description of the notification required by the paragraph; and (4) the exclusion from substituted compliance.

EXCHANGE ACT RULE 18a–8

[Notification]

Order paragraph	Rule paragraph	Rule description	Exclusion
(e)(4)(ii)(C)	(g)	Reserve account notices	Rule 18a–4 Exclusion.

6. Exchange Act Section 15F(g)

Exchange Act Section 15F(g) requires SBS Entities, including SBS Entities with a prudential regulator, to maintain daily trading records.[132] The Commission preliminarily believes EU and Spanish laws produce a comparable result in terms of its daily trading recordkeeping requirements.[133] Accordingly, the Commission preliminarily is making a positive substituted compliance determination for the self-executing requirements in this paragraph.[134]

7. Examination and Production of Records

The proposed Order would not extend to, and Covered Entities would remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a–6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a–6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.[135]

Consequently, every Covered Entity registered with the Commission, whether complying directly with Exchange Act requirements or relying on substituted compliance as a means of complying with the Exchange Act, would be required to satisfy the inspection and production requirements imposed on such entities under the Exchange Act. Covered Entities would be able to make, keep, and preserve records, subject to the proposed conditions described above, in a manner prescribed by applicable EU and Spanish requirements. As an element of its substituted compliance application, the CNMV has provided the Commission with adequate assurances that no law or policy would impede the ability of any entity that is directly supervised by the authority and that

[131] The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a–8; namely that the Covered Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English translation of a notification. *See* para. (e)(7) of the proposed Order (setting forth the English translation requirement).

[132] *See* 15 U.S.C. 78o–10(g).

[133] *See* SSMA Article 194(1); and RD 217/2008 Article 32(1).

[134] *See* para. (e)(5) to the proposed Order.

[135] *See* Exchange Act section 15F(f); Exchange Act rule 18a–6(g). French and UK Substituted Compliance Orders do not extend substituted compliance to these requirements. *See* French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

may register with the Commission to provide prompt access to the Commission to such entity's books and records or to submit to onsite inspection or examination by the Commission. Consistent with those assurances and the requirements that apply to all Covered Entities under the Exchange Act, Covered Entities operating under the proposed Order would need to keep books and records open to inspection by any representative of the Commission and to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the firm that these entities are required to preserve under Exchange Act rule 18a–6 (which would include records for which a positive substituted compliance determination is being made with respect to Exchange Act rule 18a–6 under the Order), or any other records of the firm that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

8. English Translations

The proposed Order provides that to the extent documents are not prepared in the English language, Covered Entities would need to furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F or the proposed Order.[136] This condition would be designed to addresses difficulties that Commission examinations staff would have examining Covered Entities that furnish documents in a foreign language. The English translations would need to be provided promptly. This condition is included in the French and UK Substituted Compliance Orders.[137]

VIII. Additional Considerations Regarding Supervisory and Enforcement Effectiveness in Spain

A. General Considerations

As noted above, Exchange Act rule 3a71–6 provides that the Commission's assessment of the comparability of the requirements of the foreign financial regulatory system must account for ''the effectiveness of the supervisory program administered, and the enforcement authority exercised'' by the foreign financial regulatory authority. This prerequisite accounts for the understanding that substituted compliance determinations should reflect the reality of the foreign regulatory framework, in that rules that appear high-quality on paper nonetheless should not form the basis for substituted compliance if—in practice—market participants are permitted to fall short of their regulatory obligations. This prerequisite, however, also recognizes that differences among the supervisory and enforcement regimes should not be assumed to reflect flaws in one regime or another.[138]

In connection with these considerations, the CNMV Application includes information regarding the Spanish supervisory and enforcement framework applicable to derivatives markets and market participants. This includes information regarding the supervisory and enforcement authority afforded to authorities in Spain to promote compliance with applicable requirements, applicable supervisory and enforcement tools and capabilities, consequences of non-compliance, and the application of supervisory and enforcement practices in the cross-border context. After review of this information, the Commission preliminarily believes that the framework is reasonably designed to promote compliance with the laws where substituted compliance has been requested.

In preliminarily concluding that the relevant supervisory and enforcement considerations are consistent with substituted compliance, the Commission particularly has considered the following factors:

B. Supervisory Framework in Spain

Supervision of Covered Entities located in Spain is conducted by the CNMV and the ECB. The Bank of Spain informed the staff that it does not have supervisory authority over significant credit institutions in the areas where substituted compliance has been requested, although, as explained below, it does play a role in the supervision of anti-money laundering laws. In addition, the CNMV and the Bank of Spain cooperate closely and have frequent communications regarding the supervision of firms to accomplish their respective missions. The ECB, through joint supervisory teams (''JSTs''), supervises firms for compliance with the CRD and CRR, including all capital requirements. The CNMV and the ECB have the ability to request records needed for supervision from firms through the supervisory process. In addition, the CNMV and the ECB set annual priorities and conduct thematic reviews, which are used to enhance supervision in specific regulatory areas. The results of these thematic reviews are made public to provide transparency to the industry.

The CNMV uses a risk-based approach to supervision to determine which firms will receive the most supervisory attention. Under the CNMV's risk framework, the largest banks providing investment services are included in the top tier. The CNMV is in daily contact with the largest firms through phone calls and emails and also conducts meetings with senior management. The CNMV uses a number of tools to supervise Covered Entities. For the largest firms, the CNMV conducts periodic monitoring of the confidential reports submitted by the firms to the CNMV regarding the conduct of business rules. This information is analyzed against existing information at the CNMV and, if red flags are spotted, different actions can be taken. For example, the information in the reports may be used to determine whether the firm should undergo an onsite inspection or a limited review. If red flags are spotted at several firms, a thematic review may be launched to obtain more information from these entities.

The CNMV creates an annual supervision plan based on the information available on each one of the entities under the CNMV's supervision (*e.g.,* systemic and financial risk, complaints received, previous supervisory experience with the firm, etc.) and the time that has passed since the last visit. This plan is based on an analysis of the potential risks in the sector and is shared with the Bank of Spain but is not otherwise made public. The CNMV uses a risk-based process to determine when it will conduct an onsite examination looking at factors such as systemic risks, types of services provided, types of products distributed, complaints, and the time since the last on-site inspection. The CNMV plans its onsite examinations as part of the annual supervision plan but can also decide to conduct a limited review of certain areas if issues or concerns arise during the year. At the end of the onsite portion of the examination, a report is issued and a formal Letter of Findings (''LoF'') is communicated to the firm. The LoF is addressed to the Compliance Officer who must inform the firm's Board of Directors. A copy of the LoF is also sent to the Bank of Spain.

Firms are required to give a formal response to the LoF containing their

[136] See para. (e)(7) to the proposed Order.

[137] *See* French Order, 86 FR at 41651; UK Order, 86 FR at 43361.

[138] *See generally* Business Conduct Adopting Release, 81 FR 30079.

observations, a commitment that the firm will change its procedures and resolve any deficiencies observed, and confirmation that the entity's Board of Directors has been informed of the CNMV LoF and of the response given. Within six months, the firm must provide a compliance report describing how the firm has corrected deficiencies observed during the inspection. The CNMV verifies that changes have been made through desk reviews or in a subsequent onsite visit. If follow-up measures are deemed necessary, the CNMV will launch a supervisory activity to assess the new procedures in place at the firm. If appropriate changes have not been made or the conduct is severe, the CNMV may refer the matter to CNMV's enforcement program.

The coordination of compliance with the anti-money laundering laws is done by the Commission for the Prevention of Money Laundering and Monetary Offenses (''COPBLAC''), through cooperation arrangements with the Bank of Spain and the CNMV. The Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (''SEPBLAC'') works with the Bank of Spain and the CNMV to supervise Covered Entities for compliance with the anti-money laundering laws. The Bank of Spain and CNMV follow a risk-based approach to perform supervisory activities, with their main supervisory task to determine the AML/CFT risk profile of the firm. The Bank of Spain and CNMV also conduct onsite inspections based on an annual supervisory plan, which is approved by COPBLAC. After an inspection, the Bank of Spain and CNMV share a summary of conclusions and, where appropriate, recommendations, with the firm. The firm addresses the recommendations through a remediation plan that is monitored by the Bank of Spain or CNMV. The inspection report is shared with COPBLAC, who ultimately decides on what binding supervisory measures or sanctions to impose.

Supervision of the CRD and CRR is conducted through the ECB's single supervisory mechanism and executed by JSTs comprising of ECB staff, Bank of Spain staff, and staff from other countries in the EU where the significant institution has a subsidiary or branch. The Bank of Spain assigns multiple supervisors to the JST for a significant institution headquartered in Spain. The head of the JST is from the ECB and generally is not from the country where the significant institution is located. As part of its day-to-day supervision, the JST analyzes the supervisory reporting, financial statements, and internal documentation of supervised entities. The JSTs hold regular and ad hoc meetings with the supervised entities at various levels of staff seniority. They conduct ongoing risk analyses of approved risk models, and analyze and assess the recovery plans of supervised entities. The various supervisory activities typically result in supervisory measures addressed to the supervised institution. Supervisory activities and decisions result in a number of routine steps such as the monitoring of compliance by the JST and, if necessary, enforcement measures and sanctions. In addition to ongoing supervision, the JST may conduct in-depth reviews on certain topics by organizing a dedicated onsite mission (*e.g.,* an inspection or an internal model investigation). The onsite inspections are carried out by an independent inspection team, which works in close cooperation with the respective JST.

C. Enforcement Authority in Spain

CNMV is empowered to investigate and sanction very serious, serious, and minor infringements of law. The most common source of information regarding infringements is the supervisory activity of the Supervision Department and the Secondary Markets Department. In addition, CNMV may initiate investigations based on whistleblower complaints. According to CNMV, when a breach is committed by a credit institution, a report from the Bank of Spain is a prerequisite for imposing sanctions for serious or very serious infringements. The Bank of Spain has informed the staff that it does not have enforcement authority over significant credit institutions in the areas where substituted compliance has been requested. As described below, enforcement of the CRD and CRR for violations detected by the joint supervisory teams is conducted by the ECB. In addition, violations related to anti-money laundering are investigated and sanctioned by SEPBLAC, which has sole enforcement decision-making power with regard to the Spanish Money Laundering Act.

CNMV has an array of investigative capacities that enable it to detect and enforce against breaches of relevant laws. It is empowered to perform its enforcement functions with respect to both legal and natural persons, including those persons holding directorships or executive positions in Covered Firms. Among the investigative tools available to CNMV are: The power to inspect on premises of a Covered Firm, the power to compel documents, information, and statements, and the power to obtain electronic communications for third parties with the subject's consent, or pursuant to judicial authorization. Upon receiving and considering a supervisory report containing sound evidence of a possible infringement, CNMV's enforcement unit prepares a legal assessment regarding the findings contained the report, and provides the assessment and the report to CNMV's Executive Committee. The Executive Committee then determines whether to initiate a sanctioning procedure. At the conclusion of such procedures, a wide range of possible sanctions may be imposed including, among others: Public reprimand, pecuniary sanctions up to 30M€, suspension or restriction of the type or volume of transactions the sanctioned party may carry out in the securities markets, disqualification from holding a directorship or executive post a financial institution for up to ten years, or disgorgement of profits made or losses avoided as a result of the infringement. CNMV is not empowered to enter into settlement agreements, but may impose a penalty discounted by 40% where the sanctioned party undertakes early payment, recognizes liabilities and waives the right to appeal within the administrative bodies. In the event the procedure continues, a 20% discount may be granted upon early payment (and waiver of the right to appeal the decision before the administrative body) at any time prior to the adoption of final decision. CNMV publicizes all serious and very serious infringements without undue delay provided publication is proportionate and would not jeopardize financial stability.

Misconduct detected by the JSTs is addressed primarily by the ECB. Under the SSM Regulations, the ECB is empowered to address issues of noncompliance with applicable European Union law by directly imposing enforcement measures on supervised entities or requiring the CNMV to use its national enforcement powers. It also may choose to impose administrative penalties or request that the CNMV open sanctioning proceedings. In particular, the ECB may impose administrative pecuniary penalties, and may impose fines and periodic penalty payments per day of infringement. Where appropriate, the ECB may exercise its enforcement authority in parallel with supervisory measures.

Where infringements of the SMLA occur, the SEPBLAC is empowered to conduct necessary inspections to verify compliance with the obligations relating to the functions assigned to it. In this regard, the obliged persons and their

employees, directors and agents are required to cooperate to the fullest extent possible with the staff of the SEPBLAC, providing unrestricted access to as much information or documentation as is required, including books, accounts, records, software, magnetic files, internal reports, minutes, official statements and any other related matters subject to inspection. However, the SEPBLAC is not competent to accede to obtain third party records (such as internet service providers or telephone records). Various sanctions are available to the SEPBLAC when infringements are determined to have occurred. Among the sanctions that the SEPBLAC may impose are: Public reprimand, a fine of no less than 150,000€ imposed against the Covered Entity, plus additional fines against those individuals in administrative or management positions who were responsible for the Covered Entity's violation, and withdrawal of administrative authorization for the Covered Entity.

IX. Request for Comment

Commenters are invited to address all aspects of the application, the Commission's preliminary views and the proposed Order.

A. General Aspects of the Comparability Assessments and Proposed Order

The Commission requests comment regarding the preliminary views and proposed Order in connection with each of the general ''regulatory outcome'' categories addressed above. Commenters particularly are invited to address, among other issues, whether the relevant Spanish and EU provisions generally are sufficient to produce regulatory outcomes that are comparable to the outcomes associated with requirements under the Exchange Act, and whether the conditions and limitations of the proposed Order would adequately address potential gaps in the relevant regulatory outcomes or would otherwise result in any implementation or other practical issues. Further, the Commission requests comment regarding whether the proposed conditions and limitations guard against comparability gaps arising from the cross-border application of Spanish and EU requirements (including when SBS Entities conduct security-based swap business through branches located in the United States or in third countries). Should the Commission require Covered Entities to be subject to and comply with additional or alternative limitations and/or conditions to achieve a comparable regulatory outcome, or are any of the proposed limitations or conditions unnecessary to achieve a comparable regulatory outcome? Explain why or why not.

With respect to the proposed conditions and limitations, commenters also are invited to address any differences between Spanish regulatory requirements and frameworks and the German, French, or UK requirements and frameworks that formed the basis for the Commission's conditional grant of substituted compliance for Germany, France, and the UK and/or for the Commission's proposal to amend its conditional grant of substituted compliance for Germany.[139] Would the responses to any of the questions that the Commission asked in connection with the German, French, and/or UK notices and proposed orders differ if those questions applied to Spanish regulatory requirements and frameworks?[140]

B. Risk Control Requirements

The Commission further requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to internal risk management, trade acknowledgement and verification, portfolio reconciliation and dispute reporting, portfolio reconciliation, and trading relationship documentation. Commenters particularly are invited to address the basis for substituted compliance in connection with those risk control requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Do Spanish and EU laws taken as a whole produce regulatory outcomes that are comparable to Exchange Act requirements? In this regard, commenters are invited to address the Spanish and EU laws that a Covered Entity would have to be subject to and comply with in connection with each substituted compliance determination for a particular set of risk control requirements. With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) Will the Covered Entity's status being subject to, and its compliance with, the Spanish and EU laws listed in the determination result in a comparable regulatory outcome; (2) are there additional or alternative Spanish and/or EU laws that Covered Entities should be required to be subject to and comply with to achieve a comparable regulatory outcome; and (3) are any of the Spanish and/or EU laws listed in the determination unnecessary to achieve a comparable regulatory outcome? Explain why or why not.

With respect to trading relationship documentation requirements, the Commission invites commenters to address the proposed exclusion of certain legal and bankruptcy status disclosures from the proposed substituted compliance for trading relationship documentation requirements when the counterparty is a U.S. person. Do any additional or alternative Spanish and/or EU requirements require Covered Entities to make the legal and bankruptcy disclosures described in Exchange Act rule 15Fi–5(b)(5)?

With respect to portfolio reconciliation and dispute reporting requirements, the Commission also invites commenters to address the condition requiring a Covered Entity to provide the Commission with reports regarding disputes between counterparties on the same basis as the Covered Entity provides those reports to competent authorities pursuant to Spanish and EU law. Would differences in the timing of dispute reports made pursuant to Exchange Act requirements as compared to reports made pursuant to Spanish and EU law make Spanish and EU portfolio reconciliation and dispute reporting requirements not comparable to Exchange Act requirements?

Commenters further are invited to address any differences between Spanish regulatory requirements and frameworks and the German, French, and UK requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for certain risk control requirements in those countries and/or for the Commission's proposal to amend its conditional grant of substituted compliance for Germany.[141] Would the responses to any of the questions that the Commission asked in connection with the German, French and/or UK notices and proposed orders

[139] *See* German Substituted Compliance Order, 85 FR 85688–89; French Substituted Compliance Order, 86 FR 41616–22; UK Substituted Compliance Order, 86 FR 43321–31; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46501–03.

[140] *See* German Substituted Compliance Notice and Proposed Order, 85 FR 72740–43; French Substituted Compliance Notice and Proposed Order, 85 FR 85736–39; French Substituted Compliance Re-Opening Release, 86 FR 18341–49; UK Substituted Compliance Notice and Proposed Order, 86 FR 18406–11; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46523–27.

[141] *See* German Substituted Compliance Order, 85 FR 85689–91; French Substituted Compliance Order, 86 FR 41622–29; UK Substituted Compliance Order, 86 FR at 43331–37; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46503–04.

differ if those questions applied to Spanish regulatory requirements and frameworks? [142]

C. Internal Supervision, Chief Compliance Officer and Antitrust Requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to internal supervision and chief compliance officer requirements. Commenters particularly are invited to address the basis for substituted compliance in connection with internal supervision and chief compliance officer requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Do Spanish and EU laws taken as a whole produce regulatory outcomes that are comparable to Exchange Act requirements? In this regard, commenters are invited to address the Spanish and EU laws that a Covered Entity would have to be subject to and comply with in connection with the substituted compliance determinations for internal supervision and chief compliance officer requirements. With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) Will the Covered Entity's status being subject to, and its compliance with, the Spanish and EU laws listed in the determination result in a comparable regulatory outcome; (2) are there additional or alternative Spanish and/or EU laws that Covered Entities should be required to be subject to and comply with to achieve a comparable regulatory outcome; and (3) are any of the Spanish and/or EU laws listed in the determination unnecessary to achieve a comparable regulatory outcome? Explain why or why not.

With respect to internal supervision requirements, the Commission invites commenters to address the proposed condition that would require a Covered Entity to comply with applicable Spanish and EU internal supervision requirements *as if* those provisions also require the Covered Entity to comply with applicable requirements under the Exchange Act and the other applicable conditions of the proposed Order. Should the Commission require additional or alternative conditions relating to internal supervision of the Covered Entity's compliance with the Exchange Act and the applicable conditions of the proposed Order? Explain why or why not.

With respect to chief compliance officer requirements, the Commission also invites commenters to address the proposed conditions requiring the Covered Entity to provide the Commission with each of its MiFID Org Reg compliance reports. The Commission seeks comment on the following matters: (1) Would an additional or alternative certification and/or scope of each compliance report produce a more comparable outcome; (2) are the proposed certification and/or scope requirements unnecessary to achieve a comparable regulatory outcome; (3) would an alternative deadline for the Covered Entity to provide these reports to the Commission produce a more comparable regulatory outcome? Explain why or why not.

Commenters further are invited to address the Commission's preliminary determination not to grant substituted compliance for Exchange Act antitrust requirements. The Commission seeks comment on the following matters: (1) Will the Covered Entity's status being subject to, and its compliance with, the Spanish and EU laws listed in the CNMV Application result in a comparable regulatory outcome; and (2) are there additional or alternative Spanish and/or EU laws that Covered Entities could be required to be subject to and comply with to achieve a comparable regulatory outcome? Explain why or why not.

Commenters further are invited to address any differences between Spanish regulatory requirements and frameworks and the German, French, and/or UK requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for certain internal supervision and chief compliance officer requirements in those countries and/or for the Commission's proposal to amend its conditional grant of substituted compliance for Germany.[143] Explain why or why not. Would the responses to any of the questions about internal supervision, chief compliance officer, and antitrust requirements that the Commission asked in connection with the German, French, and/or UK notices and proposed orders differ if those questions applied to Spanish regulatory requirements and frameworks? [144] Explain why or why not.

D. Counterparty Protection Requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with certain counterparty protection requirements under the Exchange Act. Commenters particularly are invited to address the basis for substituted compliance in connection with counterparty protection requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Do Spanish and EU laws taken as a whole produce regulatory outcomes that are comparable to Exchange Act requirements? In this regard, commenters are invited to address the Spanish and EU laws that a Covered Entity would have to be subject to and comply with in connection with each substituted compliance determination for a particular set of counterparty protection requirements. With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) Will the Covered Entity's status being subject to, and its compliance with, the Spanish and EU laws listed in the determination result in a comparable regulatory outcome; (2) are there additional or alternative Spanish and/or EU laws that Covered Entities should be required to be subject to and comply with to achieve a comparable regulatory outcome; and (3) are any of the Spanish and/or EU laws listed in the determination unnecessary to achieve a comparable regulatory outcome? Explain why or why not.

With respect to suitability requirements, the Commission also invites commenters to address the proposed limitation of substituted compliance to recommendations to counterparties that are per se professional clients as defined in MiFID and that are not special entities for purposes of the Exchange Act. Would Spanish and EU suitability requirements for elective professional clients, retail clients and/or special entities produce regulatory outcomes comparable to Exchange Act suitability requirements? Explain why or why not.

With respect to daily mark disclosure requirements, the Commission also invites commenters to address the proposed limitation of substituted compliance to security-based swaps in portfolios that the Covered Entity is required to reconcile, and in fact does reconcile, on each business day. Are there additional or alternative Spanish and/or EU laws that apply to a broader

[142] *See* note 140, *supra*.

[143] *See* German Substituted Compliance Order, 85 FR 85691–92; French Substituted Compliance Order, 86 FR 41639–43; UK Substituted Compliance Order, 86 FR 43347–53; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46503–04, 46511.

[144] *See* note 140, *supra*.

range of security-based swaps? Explain why or why not.

Commenters further are invited to address the Commission's preliminary determination not to grant substituted compliance for Exchange Act clearing rights disclosure requirements. The Commission seeks comment on the following matters: (1) Will the Covered Entity's status being subject to, and its compliance with, the Spanish and EU laws listed in the CNMV Application result in a comparable regulatory outcome; and (2) are there additional or alternative Spanish and/or EU laws that Covered Entities could be required to be subject to and comply with to achieve a comparable regulatory outcome? Explain why or why not.

Commenters further are invited to address any differences between Spanish regulatory requirements and frameworks and the German, French, and/or UK requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for certain of those counterparty protection requirements in those countries and/or for the Commission's proposal to amend its conditional grant of substituted compliance for Germany.[145] Explain why or why not. Would the responses to any of the questions about counterparty protection requirements that the Commission asked in connection with the German, French, and/or UK notices and proposed orders differ if those questions applied to Spanish regulatory requirements and frameworks?[146] Explain why or why not.

E. Recordkeeping, Reporting, and Notification

The Commission requests comment regarding the proposed grants of substituted compliance in connection with requirements under the Exchange Act related to recordkeeping, reporting, and notification, as well as the requirement of Exchange Act section 15F(g). Commenters particularly are invited to address the basis for substituted compliance in connection with those requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Do EU and Spanish law taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act section 15F(g) and Exchange Act rules 18a–5, 18a–6, 18a–7, and 18a–8? In this regard, commenters are invited to address the EU and Spanish laws cited for each substituted compliance determination with respect to the distinct requirements within the recordkeeping, reporting, and notification rules (*i.e.,* the rules for which a more granular approach to substituted compliance is being taken). With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) Will the EU and Spanish laws cited for the determination result in a comparable regulatory outcome; (2) are there additional or alternative EU or Spanish laws that should be cited to achieve a comparable regulatory outcome; and (3) are any of the EU or Spanish laws cited for the determination unnecessary to achieve a comparable regulatory outcome?

Commenters particularly are invited to address the proposed condition with respect to Exchange Act rule 18a–5 that the Covered Entity: (1) Preserve all of the data elements necessary to create the records required by Exchange Act rules 18a–5(b)(1), (2), (3), and (7); and (2) upon request furnish promptly to representatives of the Commission the records required by those rules. Do the relevant EU and Spanish laws require Covered Entities to retain the data elements necessary to create the records required by these rules? If not, please identify which data elements are not preserved pursuant to the relevant EU and Spanish laws. Further, how burdensome would it be for a Covered Entity to format the data elements into the records required by these rules (*e.g.,* a blotter, ledger, or securities record, as applicable) if the firm was requested to do so? In what formats do Covered Entities in Spain produce this information to the CNMV or other EU or Spanish authorities? How do those formats differ from the formats required by Exchange Act rules 18a–5(b)(1), (2), (3), and (7)?

Is it appropriate to structure the Commission's substituted compliance determinations in the proposed Order to provide Covered Entities with greater flexibility to select which distinct requirements within the broader recordkeeping, reporting, and notification rules for which they want to apply substituted compliance? Explain why or why not. For example, would it be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them? If so, explain why. If not, explain why not. Is it appropriate to permit Covered Entities to take a more granular approach to the requirements within the recordkeeping rules? For example, would this approach make it more difficult for the Commission to get a comprehensive understanding of the Covered Entity's security-based swap activities and financial condition? Explain why or why not. Would it be overly complex for the Covered Entity to administer a firm-wide recordkeeping system under this approach? Explain why or why not.

Certain of the Commission's recordkeeping and notification requirements are fully or partially linked to substantive Exchange Act requirements for which a positive substituted compliance determination preliminarily would not be made under the proposed Order. In these cases, should the Commission not make a positive substituted compliance determination for the fully linked requirement in the recordkeeping or notification rules or to the portion of the requirement that is linked to a substantive Exchange Act requirement? In particular, should the Commission not make a positive substituted compliance determination for recordkeeping or notification requirements linked to the following Exchange Act rules for which a positive substituted compliance determination is preliminarily not being made: (1) Exchange Act rule 15Fh–4; (2) Exchange Act rule 15Fh–5; (3) Exchange Act rule 15Fh–6; (4) Exchange Act rule 18a–4; (5) Regulation SBSR; (6) Form SBSE and its variations; (7) Exchange Act rule 15Fh–1; and (8) Exchange Act rule 15Fh–2? If not, explain why.

Certain of the requirements in the Commission's recordkeeping rules are linked to substantive Exchange Act requirements where a positive substituted compliance determination is being made under the proposed Order. In these cases, should a positive substituted compliance determination for the linked requirement in the recordkeeping rule be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement? If not, explain why. Should this be the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement? If not, explain why. In particular, should substituted compliance for recordkeeping, reporting, and notification requirements linked to the following Exchange Act rules be conditioned on the Covered Entity

[145] *See* German Substituted Compliance Order, 85 FR 85692–95; French Substituted Compliance Order, 86 FR 41643–48; UK Substituted Compliance Order, 86 FR 43353–59; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46511–12.

[146] *See* note 140, *supra.*

applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh–3; (2) Exchange Act rule 15Fi–2; (3) Exchange Act rule 15Fi–3; (4) Exchange Act rule 15Fi–4; (5) Exchange Act rule 15Fi–5; and (6) Exchange Act rule 15Fk–1? If not, explain why.

Commenters also are invited to address the preliminary positive substituted compliance determination with respect to Exchange Act rule 18a–7, which would be conditioned on the Covered Entity filing financial and operational information with the Commission in the manner and format specified by the Commission by order or rule. Should the Commission require Covered Entities to file the financial and operational information using the FOCUS Report Part IIC? Are there line items on the FOCUS Report Part IIC that elicit information that is not included in the reports Covered Entities with a prudential regulator file with the CNMV or other EU or Spanish authorities? If so, do Covered Entities with a prudential regulator record that information in their required books and records? Please identify any information that is elicited in the FOCUS Report Part IIC that is not: (1) Included in the financial reports filed by Covered Entities with the CNMV; or (2) recorded in the books and records required of Covered Entities. Would the answer to these questions change if references to FFIEC Form 031 were not included in the FOCUS Report Part IIC? If so, how? As a preliminary matter, as a condition of substituted compliance should Covered Entities file a limited amount of financial and operational information on the FOCUS Report Part IIC for a period of two years to further evaluate the burden of requiring all applicable line items to be filled out? If so, which line items should be required? To the extent that Covered Entities otherwise report or record information that is responsive to the FOCUS Report Part IIC, how could the information on this report be integrated into a database of filings the Commission or its designee will maintain for filers of the FOCUS Report Parts IIC (*e.g.,* the eFOCUS system) to achieve the objective of being able to perform cross-form analysis of information entered into the uniquely numbered line items on the forms?

Commenters further are invited to address any differences between Spanish regulatory requirements and frameworks and the German, French, and/or UK requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for recordkeeping, reporting, and notification requirements in those countries and/or for the Commission's proposal to amend its conditional grant of substituted compliance for Germany.[147] Would the responses to any of the questions about those requirements that the Commission asked in connection with the German, French, and/or UK notices and proposed orders differ if those questions applied to Spanish regulatory requirements and frameworks?

F. Supervisory and Enforcement Issues

The Commission further requests comment regarding how to weigh considerations regarding supervisory and enforcement effectiveness in Spain as part of the comparability assessments. Commenters particularly are invited to address relevant issues regarding the effectiveness of Spanish supervision and enforcement over firms that may register with the Commission as SBS Entities, including but not limited to issues regarding:

- The relevant Spanish authorities for the supervision and enforcement of the areas of law where substituted compliance has been requested and the supervision and enforcement role played by each authority;
- Spanish supervisory and enforcement authority, supervisory inspection practices, and the use of alternative supervisory and/or enforcement tools and practices;
- Spanish supervisory and enforcement effectiveness with respect to derivatives such as security-based swaps; and
- Spanish supervision and enforcement in the cross-border context (*e.g.,* any differences between the oversight of firms' businesses within Spain and the oversight of activities and branches outside of Spain, including within the United States).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[148]

Jill M. Peterson,

Assistant Secretary.

Attachment A

It is hereby determined and ordered, pursuant to rule 3a71–6 under the Exchange Act, that a Covered Entity (as defined in paragraph (g)(1) of this Order) may satisfy the requirements under the Exchange Act that are addressed in paragraphs (b) through (e) of this Order so long as the Covered Entity is subject to and complies with relevant requirements of the Kingdom of Spain and the European Union and with the conditions of this Order, as amended or superseded from time to time.

(a) General Conditions

This Order is subject to the following general conditions, in addition to the conditions specified in paragraphs (b) through (e):

(1) *Activities as MiFID ''investment services or activities.''* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions, the Covered Entity's relevant security-based swap activities constitute ''investment services'' or ''investment activities,'' as defined in MiFID article 4(1)(2) and in SSMA article 140, and fall within the scope of the Covered Entity's authorization from the CNMV and the ECB to provide investment services and/or perform investment activities in the Kingdom of Spain.

(2) *Counterparties as MiFID ''clients.''* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions, the relevant counterparty (or potential counterparty) to the Covered Entity is a ''client'' (or potential ''client''), as defined in MiFID article 4(1)(9) and in the First Additional Provision of Royal Decree Law 14/2018, of 28 September.

(3) *Security-based swaps as MiFID ''financial instruments.''* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions, the relevant security-based swap is a ''financial instrument,'' as defined in MiFID article 4(1)(15) and in the Annex to SSMA.

(4) *Covered Entity as CRD/CRR ''institution.''* For each condition in paragraph (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, the provisions of CRD; provisions of LOSSEC, RD 84/2015, BoS Circular 2/

[147] *See* German Substituted Compliance Order, 85 FR 85695–97; French Substituted Compliance Order, 86 FR 41648–57; UK Substituted Compliance Order, 86 FR 43359–69; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46512–22.

[148] 17 CFR 200.30–3(a)(89).

2016, SSMA, and/or RD 217/2008 that implement CRD; CRR; and/or other EU and Spanish requirements adopted pursuant to those provisions, the Covered Entity is an ''institution,'' as defined in CRD article 3(1)(3) and CRR article 4(1)(3), and either a credit institution, as defined in LOSSEC article 1 (in the case of a provision of LOSSEC, RD 84/2015, and/or BoS Circular 2/2016), or an investment firm, as defined in SSMA article 138 (in the case of a provision of SSMA and/or RD 217/2008 that implements CRD).

(5) *Counterparties as EMIR ''counterparties.''* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions, if the relevant provision applies only to the Covered Entity's activities with specified types of counterparties, and if the counterparty to the Covered Entity is not any of the specified types of counterparty, the Covered Entity complies with the applicable condition of this Order:

(i) As if the counterparty were the specified type of counterparty; in this regard, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the EU and authorized by an appropriate EU authority, it must treat the counterparty as if the counterparty were a financial counterparty; and

(ii) Without regard to the application of EMIR article 13.

(6) *Security-based swap status under EMIR.* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions, either:

(i) The relevant security-based swap is an ''OTC derivative'' or ''OTC derivative contract,'' as defined in EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of EMIR article 11, EMIR RTS articles 11 through 15, and EMIR Margin RTS article 2; or

(ii) The relevant security-based swap has been cleared by a central counterparty that is authorized or recognized to clear derivatives contracts by a relevant authority in the EU.

(7) *Memorandum of Understanding with the Spanish Authorities.* The Commission and the CNMV and the Bank of Spain have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(8) *Memorandum of Understanding Regarding ECB-Owned Information.* The Commission and the ECB have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order as it pertains to information owned by the ECB at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(9) *Notice to Commission.* A Covered Entity relying on this Order must provide notice of its intent to rely on this Order by notifying the Commission in writing. Such notice must be sent to the Commission in the manner specified on the Commission's website. The notice must include the contact information of an individual who can provide further information about the matter that is the subject of the notice. The notice must also identify each specific substituted compliance determination within paragraphs (b) through (e) of this Order for which the Covered Entity intends to apply substituted compliance. A Covered Entity must promptly provide an amended notice if it modifies its reliance on the substituted compliance determinations in this Order.

(10) *European Union Cross-Border Matters.*

(i) If, in relation to a particular service provided by a Covered Entity, responsibility for ensuring compliance with any provision of MiFID or MiFIR or any other EU or Spanish requirement adopted pursuant to MiFID or MiFIR listed in paragraphs (b) through (e) of this Order is allocated to an authority of the Member State of the European Union in whose territory a Covered Entity provides the service, the CNMV must be the authority responsible for supervision and enforcement of that provision or requirement in relation to the particular service.

(ii) If responsibility for ensuring compliance with any provision of MAR or any other EU requirement adopted pursuant to MAR listed in paragraphs (b) through (e) of this Order is allocated to one or more authorities of a Member State of the European Union, one of such authorities must be the CNMV.

(11) *Notification Requirements Related to Changes in Capital.* A Covered Entity that is prudentially regulated relying on this Order must apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c).

(b) Substituted Compliance in Connection With Risk Control Requirements

This Order extends to the following provisions related to risk control:

(1) *Internal risk management.* The requirements of Exchange Act section 15F(j)(2) and related aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I), provided that

(i) The Covered Entity is subject to and complies with the requirements of:

(A) MiFID articles 16 and 23; SSMA articles 193, 194, 208bis, 220bis, 221, 222, 223, and 224; and RD 217/2008 articles 30, 30bis, 30ter, 30quáter, 30quinqies, 30sexies, 32, 41, 42, 43, 44, 45, 46, 47, 48, 61, 66, 67, 68, 69, 70, 71, 72, 72bis, 72ter, 73, 74, 74bis, 74ter, 75, 75bis, 76, 76bis, and 79; and, if the Covered Entity is a credit institution, also BoS Circular 2/2016 article 43 and RD 84/2015 article 22;

(B) MiFID Org Reg articles 21 through 37, 72 through 76 and Annex IV;

(C) CRD articles 74, 76, 79 through 87, 88(1), 91(1) and (2), 91(7) through (9), 92, 94, and 95; SSMA articles 182(1) and (2) and 183(1) and (2); and RD 217/2008 article 35; and, if the Covered Entity is a credit institution, also LOSSEC articles 24, 25, 26, 27, 28, 29, 32, 33, 34, 36, 37, and 38; RD 84/2015 articles 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, and 54; and BoS Circular 2/2016 articles 26, 27, 28, 29, 30, 31, 32, 33(4), 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, 48, 49, 50, 51, 52, and 60; and, if the Covered Entity is an investment firm, also SSMA articles 183(3), 184, 184bis, 185, 185bis, 186, 188, 189(1) through (3) and (5), 189bis, 189ter, and 192bis; and RD 217/2008 articles 14(1)(f), 20, 20bis, 21, 22, 24, 31, 31bis, 36, 38, 39(1) and (2), 40, 88, 90, 91, 92, 93, 94, 95, 96, 97(1)–(3), and 98;

(D) CRR articles 286 through 288 and 293; and

(E) EMIR Margin RTS article 2;

(ii) If the Covered Entity is an investment firm, the Covered Entity is not exempt from certain provisions of RD 217/2008 pursuant to RD 217/2008 article 87(2) and/or (3) and/or exempt from SSMA article 189 pursuant to SSMA article 189(6) and/or (7); and

(iii) If the Covered Entity is an investment firm, the Covered Entity establishes, maintains, and implements policies and procedures for management of residual risk associated with the use

of recognized credit risk mitigation techniques described in RD 217/2008 article 103(1)(c).

(2) *Trade acknowledgement and verification.* The requirements of Exchange Act rule 15Fi–2, provided that the Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(a) and EMIR RTS article 12.

(3) *Portfolio reconciliation and dispute reporting.* The requirements of Exchange Act rule 15Fi–3, provided that:

(i) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b) and EMIR RTS articles 13 and 15; and

(ii) The Covered Entity provides the Commission with reports regarding disputes between counterparties on the same basis as it provides those reports to competent authorities pursuant to EMIR RTS article 15(2).

(4) *Portfolio compression.* The requirements of Exchange Act rule 15Fi–4, provided that the Covered Entity is subject to and complies with the requirements of EMIR RTS article 14.

(5) *Trading relationship documentation.* The requirements of Exchange Act rule 15Fi–5, other than paragraph (b)(5) to that rule when the counterparty is a U.S. person, provided that the Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(a), EMIR RTS article 12, and EMIR Margin RTS article 2.

(c) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements

This Order extends to the following provisions related to internal supervision and compliance and Exchange Act section 15F(j) requirements:

(1) *Internal supervision.* The requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5), provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) of this Order and complies with the other conditions in that paragraph;

(ii) The Covered Entity complies with paragraph (c)(4) of this Order; and

(iii) This paragraph (c) does not extend to the requirements of paragraph (h)(2)(iii)(I) to rule 15Fh–3 to the extent those requirements pertain to compliance with Exchange Act sections 15F(j)(2), (j)(3), (j)(4)(B) and (j)(6), or to the general and supporting provisions of paragraph (h) to rule 15Fh–3 in connection with those Exchange Act sections.

(2) *Chief compliance officers.* The requirements of Exchange Act section 15F(k) and Exchange Act rule 15Fk–1, provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (c)(3) of this Order and complies with the other conditions in that paragraph;

(ii) All reports required pursuant to MiFID Org Reg article 22(2)(c) must also:

(A) Be provided to the Commission at least annually, and in the English language;

(B) Include a certification signed by the chief compliance officer or senior officer (as defined in Exchange Act rule 15Fk–1(e)(2)) of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects;

(C) Address the Covered Entity's compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions of this Order in connection with requirements for which the Covered Entity is relying on this Order;

(D) Be provided to the Commission no later than 15 days following the earlier of:

(i) The submission of the report to the Covered Entity's management body; or

(ii) The time the report is required to be submitted to the management body; and

(E) Together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk–1(c) would be required to cover.

(3) *Applicable supervisory and compliance requirements.* (i) Paragraphs (c)(1) and (c)(2) are conditioned on the Covered Entity being subject to and complying with the following requirements:

(A) MiFID articles 16 and 23; SSMA articles 193, 194, 208bis, 220bis, 221, 222, 223, and 224; and RD 217/2008 articles 30, 30bis, 30ter, 30quáter, 30quinqies, 30sexies, 32, 41, 42, 43, 44, 45, 46, 47, 48, 61, 66, 67, 68, 69, 70, 71, 72, 72bis, 72ter, 73, 74, 74bis, 74ter, 75, 75bis, 76, 76bis, and 79; and, if the Covered Entity is a credit institution, also BoS Circular 2/2016 article 43 and RD 84/2015 article 22;

(B) MiFID Org Reg articles 21 through 37, 72 through 76 and Annex IV;

(C) CRD articles 74, 76, 79 through 87, 88(1), 91(1) and (2), 91(7) through (9), 92, 94, and 95; SSMA articles 182(1) and (2) and 183(1) and (2); and RD 217/2008 article 35; and, if the Covered Entity is a credit institution, also LOSSEC articles 24, 25, 26, 27, 28, 29, 32, 33, 34, 36, 37, and 38; RD 84/2015 articles 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, and 54; and BoS Circular 2/2016 articles 26, 27, 28, 29, 30, 31, 32, 33(4), 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, 48, 49, 50, 51, 52, and 60; and, if the Covered Entity is an investment firm, also SSMA articles 183(3), 184, 184bis, 185, 185bis, 186, 188, 189(1) through (3) and (5), 189bis, 189ter, and 192bis; and RD 217/2008 articles 14(1)(f), 20, 20bis, 21, 22, 24, 30, 31, 31bis, 36, 38, 39(1) and (2), 40, 88, 90, 91, 92, 93, 94, 95, 96, 97(1)–(3), and 98;

(D) CRR articles 286 through 288 and 293; and

(E) EMIR Margin RTS article 2.

(ii) Paragraphs (c)(1) and (c)(2) also are conditioned on the Covered Entity's compliance with the following conditions:

(A) If the Covered Entity is an investment firm, the Covered Entity is not exempt from certain provisions of RD 217/2008 pursuant to RD 217/2008 article 87(2) and/or (3) and/or exempt from SSMA article 189 pursuant to SSMA article 189(6) and/or (7); and

(B) If the Covered Entity is an investment firm, the Covered Entity establishes, maintains, and implements policies and procedures for management of residual risk associated with the use of recognized credit risk mitigation techniques described in RD 217/2008 article 103(1)(c).

(4) *Additional condition to paragraph (c)(1).* Paragraph (c)(1) further is conditioned on the requirement that the Covered Entity complies with the provisions specified in paragraph (c)(3) as if those provisions also require compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions of this Order in connection with requirements for which the Covered Entity is relying on this Order.

(d) Substituted Compliance in Connection With Counterparty Protection Requirements

This Order extends to the following provisions related to counterparty protection:

(1) *Disclosure of information regarding material risks and characteristics.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material risks and characteristics of one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to

that security-based swap, is subject to and complies with the requirements of MiFID article 24(4); SSMA articles 209(1) and (3) and 210(1); RD 217/2008 articles 65 and 77(1); and MiFID Org Reg articles 48–50.

(2) *Disclosure of information regarding material incentives or conflicts of interest.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material incentives or conflicts of interest that a Covered Entity may have in connection with one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of either:

(i) MiFID article 23(2) and (3); RD 217/2008 article 61(2) and (3); and MiFID Org Reg articles 33–35;

(ii) MiFID article 24(9); MiFID Delegated Directive article 11(5); and SSMA articles 220ter, 220quáter, and 220quinquies; RD 217/2008 articles 62, 63, and 64; or

(iii) MAR article 20(1) and MAR Investment Recommendations Regulation articles 5 and 6.

(3) ''*Know your counterparty.*'' The requirements of Exchange Act rule 15Fh–3(e), as applied to one or more security-based swap counterparties subject thereto, provided that the Covered Entity, in relation to the relevant security-based swap counterparty, is subject to and complies with the requirements of MiFID article 16(2); SSMA article 193(2)(a); RD 217/2008 article 30; MiFID Org Reg articles 21, 22, 25, and 26 and applicable parts of Annex I; CRD articles 74(1) and 85(1); SSMA articles 182(1) and 193(3)(b); RD 217/2008 article 35; MLD articles 11 and 13; SMLA articles 3(1)–(2), 4, 5, 6, 7(1) through (4), 7(7), 7(8), and 8; MLD articles 8(3) and 8(4)(a) as applied to internal policies, controls and procedures regarding recordkeeping of customer due diligence activities; and SMLA article 26 as applied to policies and procedures regarding recordkeeping of customer due diligence activities; and, if the Covered Entity is a credit institution, also LOSSEC article 29(1); RD 84/2015 articles 43 and 52(1); BoS Circular 2/2016 article 28; and, if the Covered Entity is an investment firm, also SSMA article 189bis and RD 217/2008 article 96(1).

(4) *Suitability.* The requirements of Exchange Act rule 15Fh–3(f), as applied to one or more recommendations of a security-based swap or trading strategy involving a security-based swap subject thereto, provided that:

(i) The Covered Entity, in relation to the relevant recommendation, is subject to and complies with the requirements of MiFID articles 24(2) and (3) and 25(1) and (2); SSMA articles 208ter(1) and (2), 209(2), 212, 213, and 220sexies; RD 217/2008 articles 66, 71, 72, 72bis, 72ter, 73, 74, 74bis, 74ter, 75, 75bis, 76bis, and 80; CNMV Technical Guide 4/2017; and MiFID Org Reg articles 21(1)(b) and (d), 54, and 55; and

(ii) The counterparty to which the Covered Entity makes the recommendation is a ''professional client'' mentioned in MiFID Annex II section I and in SSMA article 205 and RD 217/2008 article 58 and is not a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).

(5) *Fair and balanced communications.* The requirements of Exchange Act rule 15Fh–3(g), as applied to one or more communications subject thereto, provided that the Covered Entity, in relation to the relevant communication, is subject to and complies with the requirements of:

(i) Either MiFID articles 24(1) and (3) and SSMA articles 208 and 209(2) or MiFID article 30(1) and SSMA article 207(4); and

(ii) MiFID articles 24(4) and (5); SSMA articles 209(1) and (3) and 210(1); RD 217/2008 article 77; MiFID Org Reg articles 46–48; MAR articles 12(1)(c), 15 and 20(1); and MAR Investment Recommendations Regulation articles 3 and 4.

(6) *Daily mark disclosure.* The requirements of Exchange Act rule 15Fh–3(c), as applied to one or more security-based swaps subject thereto, provided that the Covered Entity is required to reconcile, and does reconcile, the portfolio containing the relevant security-based swap on each business day pursuant to EMIR articles 11(1)(b) and 11(2) and EMIR RTS article 13.

(e) Substituted Compliance in Connection With Recordkeeping, Reporting, and Notification Requirements

This Order extends to the following provisions that apply to a Covered Entity related to recordkeeping, reporting, and notification:

(1)(i) *Make and keep current certain records.* The requirements of the following provisions of Exchange Act rule 18a–5, provided that the Covered Entity complies with the relevant conditions in this paragraph (e)(1)(i) and with the applicable conditions in paragraph (e)(1)(ii):

(A) The requirements of Exchange Act rule 18a–5(b)(1), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 74, 75, and Annex IV; MiFIR article 25(1);

(B) The requirements of Exchange Act rule 18a–5(b)(2), provided that the Covered Entity is subject to and complies with the requirements of MiFID Delegated Directive article 2; MiFID Org Reg articles 72, 74 and 75; EMIR article 39(4); RD 217/2008 article 41;

(C) The requirements of Exchange Act rule 18a–5(b)(3), provided that the Covered Entity is subject to and complies with the requirements of CRR article 103; MiFID articles 16(6), 25(5), and 25(6); MiFID Org Reg articles 59, 74, 75 and Annex IV; MiFIR article 25(1); EMIR articles 9(2) and 11(1)(a); SSMA articles 194(1), 218, and 211; and RD 217/2008 articles 3, 32(1), and 82;

(D) The requirements of Exchange Act rule 18a–5(b)(4), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 59; EMIR articles 9(2) and 11(1)(a); MiFID articles 16(6), 25(5), and 25(6); SSMA articles 194(1), 218, and 211; and RD 217/2008 articles 3, 32(1), and 82;

(E) The requirements of Exchange Act rule 18a–5(b)(5), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 74, 75, and Annex IV; and MiFIR article 25(1);

(F) The requirements of Exchange Act rules 18a–5(b)(6) and (b)(11), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3), and 105(10); CRD article 73; MiFID articles 16(6), 25(5), 25(6); MiFID Delegated Directive article 2; MiFID Org Reg articles 59, 74, 75, and Annex IV; MiFIR article 25(1); EMIR articles 9(2), 11(1)(a), and 39(4); SSMA articles 194(1), 218, 211, 276bis, 276ter, 276quáter, and 276quinquies; and RD 217/2008 articles 3, 32(1), 41, and 82; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 15Fi–2 pursuant to this Order;

(G) The requirements of Exchange Act rule 18a–5(b)(7), provided that the Covered Entity is subject to and complies with the requirements of MiFIR article 25(1); MLD4 articles 11 and 13; MiFID article 25(2); SMLA articles 3 through 7; and SSMA article 213;

(H) The requirements of Exchange Act rule 18a–5(b)(8), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(d), 35; CRD articles 88, 91(1), 91(8); MiFID articles 9(1) and 16(3); SSMA articles 193(2)(b)

and 208bis; LOSSEC articles 24(1) and 29(2); and BoS Circular 2/2016 Rule 32(1);

(I) The requirements of Exchange Act rule 18a–5(b)(13), regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 73, and Annex I; MiFID articles 16(6) and 25(2); MLD articles 11 and 13; EMIR article 39(5); SSMA articles 194(1) and 213; RD 217/2008 article 32(1); and SMLA articles 3 through 7, in each case with respect to the relevant security-based swap or activity;

(*2*) With respect to the portion of Exchange Act rule 18a–5(b)(13) that relates to one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(*3*) With respect to the portion of Exchange Act rule 18a–5(b)(13) that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;

(J) The requirements of Exchange Act rule 18a–5(b)(14)(i) and (ii), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b) and EMIR RTS article 15(1)(a); and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–3 pursuant to this Order; and

(K) The requirements of Exchange Act rule 18a–5(b)(14)(iii), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b) and EMIR RTS article 15(1)(a), in each case with respect to such security-based swap portfolio(s); and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–4 pursuant to this Order.

(ii) Paragraph (e)(1)(i) is subject to the following further conditions:

(A) Paragraphs (e)(1)(i)(A) through (C) and (G) are subject to the condition that the Covered Entity preserves all of the data elements necessary to create the records required by the applicable Exchange Act rules cited in such paragraphs and upon request furnishes promptly to representatives of the Commission the records required by those rules;

(B) A Covered Entity may apply the substituted compliance determination in paragraph (e)(1)(i)(I) to records of compliance with Exchange Act rule 15Fh–3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(C) This Order does not extend to the requirements of Exchange Act rule 18a–5(b)(9), (b)(10) or (b)(12).

(2)(i) *Preserve certain records.* The requirements of the following provisions of Exchange Act rule 18a–6, provided that the Covered Entity complies with the relevant conditions in this paragraph (e)(2)(i) and with the applicable conditions in paragraph (e)(2)(ii):

(A) The requirements of Exchange Act rule 18a–6(a)(2), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74, 75, and Annex IV; CRR article 103; MiFIR article 25(1); EMIR article 9(2); MiFID articles 16(6) and 69(2); CRD article 73; MiFID Delegated Directive article 2; SSMA articles 194(1), 234, 276bis, 276ter, 276quáter, and 276quinquies; and RD 217/2008 articles 32(1) and 41;

(B) The requirements of Exchange Act rule 18a–6(b)(2)(i), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74, 75, and Annex IV; CRR article 103; MiFIR article 25(1); EMIR article 9(2); MiFID articles 16(6) and 69(2); CRD article 73; MiFID Delegated Directive article 2; SSMA articles 194(1), 234, 276bis, 276ter, 276quáter, and 276quinquies; and RD 217/2008 articles 32(1) and 41;

(C) The requirements of Exchange Act rule 18a–6(b)(2)(ii), provided that the Covered Entity is subject to and complies with the requirements of CRR article 103; MiFID Org Reg articles 72, 73, 74, 75, 76, Annex I and Annex IV; MiFIR article 25(1); EMIR article 9(2); CRD article 73; MiFID articles 16(6), 16(7); MiFID Delegated Directive article 2; SSMA articles 194(1) through (3), 276bis, 276ter, 276quáter, and 276quinquies; and RD 217/2008 articles 32(1) through (8) and 41;

(D) The requirements of Exchange Act rule 18a–6(b)(2)(iii), provided that the Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 72(1) and 73; MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

(E) The requirements of Exchange Act rule 18a–6(b)(2)(iv), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72(1) and 73; MiFIR article 25(1); EMIR article 9(2); MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

(F) The requirements of Exchange Act rule 18a–6(b)(2)(vii), regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MLD articles 11 and 13; MiFID Org Reg article 72(1); MiFID article 16(6); SMLA articles 3 through 7; SSMA articles 194(1); and RD 217/2008 article 32(1), in each case with respect to the relevant security–based swap or activity;

(*2*) With respect to the portion of Exchange Act rule 18a–6(b)(2)(vii) that relates to one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security–based swap or activity; and

(*3*) With respect to the portion of Exchange Act rule 18a–6(b)(2)(vii) that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;

(G) The requirements of Exchange Act rule 18a–6(c), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(f) and 72(1); MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1); and

(*2*) This Order does not extend to the requirements of Exchange act rule 18a–6(c) relating to Forms SBSE, SBSE–A, SBSE–C, SBSE–W, all amendments to these forms, and all other licenses or other documentation showing the registration of the Covered Entity with any securities regulatory authority or the U.S. Commodity Futures Trading Commission;

(H) The requirements of Exchange Act rule 18a–6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 35 and 72(1); CRD articles 88, 91(1), 91(8); MiFID article 9(1), 16(3), 16(6); LOSSEC articles 24(1) and 29(1)–(2); SSMA articles 193(2)(b), 194(1), and 208bis; RD 217/2008 articles 30, 31, and 32(1); and BoS Circular 2/2016 Rule 32(1);

(I) The requirements of Exchange Act rule 18a–6(d)(2)(ii), provided that the Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 72(1) and 72(3); MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

(J) The requirements of Exchange Act rule 18a–6(d)(3)(ii), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(f), 72, 73, and Annex I; MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

(K) The requirements of Exchange Act rule 18a–6(d)(4) and (d)(5), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 24, 25(2), 72(1) and 73; MiFID articles 16(2), 16(6), and 25(5); SSMA articles 193(2)(a), 194(1), and 218; and RD 217/2008 articles 30(2), 32(1), and 82; and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rules 15Fi–3, 15Fi–4, and 15Fi–5 pursuant to this Order;

(L) The requirements of Exchange Act rule 18a–6(e), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(2), 58, 72(1) and 72(3); MiFID articles 16(5), 16(6); SSMA articles 193(3) and 194(1); and RD 217/2008 article 32(1); and

(M) The requirements of Exchange Act rule 18a–6(f), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 31(1); MiFID article 16(5); and SSMA article 193(3).

(ii) Paragraph (e)(2)(i) is subject to the following further conditions:

(A) A Covered Entity may apply the substituted compliance determination in paragraph (e)(2)(i)(F) to records related to Exchange Act rule 15Fh–3(b), (c), (e), (f) and (g) in respect of one or more security–based swaps or activities related to security–based swaps; and

(B) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(2)(v), (b)(2)(vi), or (b)(2)(viii).

(3) *File Reports.* The requirements of the following provisions of Exchange Act rule 18a–7, provided that the Covered Entity complies with the relevant conditions in this paragraph (e)(3):

(i) The requirements of Exchange Act rule 18a–7(a)(2) and the requirements of Exchange Act rule 18a–7(j) as applied to the requirements of Exchange Act rule 18a–7(a)(2), provided that:

(A) The Covered Entity is subject to and complies with the requirements of CRR articles 99, 394, 430 and Part Six: Title II and Title III; CRR Reporting ITS annexes I, II, III, IV, V, VIII, IX, X, XI, XII and XIII, as applicable; and

(B) The Covered Entity files periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order and presents the financial information in the filing in accordance with generally accepted accounting principles that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in Spain.

(4)(i) *Provide Notification.* The requirements of the following provisions of Exchange Act rule 18a–8, provided that the Covered Entity complies with the relevant conditions in this paragraph (e)(4)(i) and with the applicable conditions in paragraph (e)(4)(ii):

(A) The requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(c), provided that the Covered Entity is subject to and complies with the requirements of LOSSEC articles 116, 119, 121, and 122; and SSMA articles 276bis, 276ter, 276quáter, and 276quinquies;

(B) The requirements of Exchange Act rule 18a–8(d) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(d), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of LOSSEC articles 116, 119, 121, and 122; and SSMA articles 276bis, 276ter, 276quáter, and 276quinquies; and

(*2*) This Order does not extend to the requirements of Exchange Act rule 18a–8(d) to give notice with respect to books and records required by Exchange Act rule 18a–5 for which the Covered Entity does not apply substituted compliance pursuant to this Order;

(ii) Paragraph (e)(4)(i) is subject to the following further conditions:

(A) The Covered Entity:

(*1*) Simultaneously sends a copy of any notice required to be sent by Spanish law cited in this paragraph of the Order to the Commission in the manner specified on the Commission's website; and

(*2*) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice; and

(B) This Order does not extend to the requirements of paragraph (g) of rule 18a–8 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements.

(5) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that the Covered Entity is subject to and complies with the requirements of SSMA Article 194(1); and RD 217/2008 Article 32(1).

(6) *Examination and Production of Records.* Notwithstanding the forgoing provisions of paragraph (e) of this Order, this Order does not extend to, and Covered Entities remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a–6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a–6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

(7) *English Translations.* Notwithstanding the forgoing provisions of paragraph (e) of this Order, to the extent documents are not prepared in the English language, Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.

(f) Definitions

(1) ''Covered Entity'' means an entity that:

(i) Is a security–based swap dealer or major security–based swap participant registered with the Commission;

(ii) Is not a ''U.S. person,'' as that term is defined in rule 3a71–3(a)(4) under the Exchange Act; and

(iii) Is an investment firm or a credit institution authorized by the CNMV and the ECB to provide investment services and/or perform investment activities in the Kingdom of Spain; and

(iv) Is a significant institution supervised by the CNMV and the ECB (with the participation of the BoS).

(2) ''MiFID'' means the ''Markets in Financial Instruments Directive,'' Directive 2014/65/EU, as amended from time to time.

(3) ''MiFID Org Reg'' means Commission Delegated Regulation (EU) 2017/565, as amended from time to time.

(4) ''MiFID Delegated Directive'' means Commission Delegated Directive (EU) 2017/593, as amended from time to time.

(5) ''MiFIR'' means Regulation (EU) 600/2014, as amended from time to time.

(6) ''EMIR'' means the ''European Market Infrastructure Regulation,'' Regulation (EU) 648/2012, as amended from time to time.

(7) ''EMIR RTS'' means Commission Delegated Regulation (EU) 149/2013, as amended from time to time.

(8) ''EMIR Margin RTS'' means Commission Delegated Regulation (EU) 2016/2251, as amended from time to time.

(9) ''CRD'' means Directive 2013/36/EU, as amended from time to time.

(10) ''CRR'' means Regulation (EU) 575/2013, as amended from time to time.

(11) ''CRR Reporting ITS'' means Commission Implementing Regulation (EU) 680/2014, as amended from time to time.

(12) ''MLD'' means Directive (EU) 2015/849, as amended from time to time.

(13) ''MAR'' means the ''Market Abuse Regulation,'' Regulation (EU) 596/2014, as amended from time to time.

(14) ''MAR Investment Recommendations Regulation'' means Commission Delegated Regulation (EU) 2016/958, as amended from time to time.

(15) ''CNMV'' means the Spanish Comisión Nacional del Mercado de Valores.

(16) ''BoS'' means the Spanish Banco de España.

(17) ''ECB'' means the European Central Bank.

(18) ''Accounting Directive'' means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013, as amended from time to time.

(19) ''BRRD'' means Bank Recovery and Resolution Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, as amended from time to time.

(20) ''SSMA'' means the Spanish Securities Market Act, Royal Legislative Decree 4/2015, of October 23, as amended from time to time.

(21) ''RD 217/2008'' means Royal Decree 217/2008, of February 15, as amended from time to time.

(22) ''LOSSEC'' means the Act on Regulation, Supervision, and Solvency of Credit Institutions, Law 10/2014, of June 26, as amended from time to time.

(23) ''RD 84/2015'' means Royal Decree 84/2015, of February 13, as amended from time to time.

(24) ''BoS Circular 2/2016'' means Circular 2/2016, of February 2, of the Bank of Spain, as amended from time to time.

(25) ''SMLA'' means the Spanish Anti-Money Laundering Act, Law 10/2010, of April 28, as amended from time to time.

(26) ''Prudentially regulated'' means a Covered Entity that has a ''prudential regulator'' as that term is defined in Exchange Act section 3(a)(74).

[FR Doc. 2021–18335 Filed 8–25–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10965; 34–92720/August 23, 2021]

Order Making Fiscal Year 2022 Annual Adjustments to Registration Fee Rates

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 (''Securities Act'') requires the Commission to collect fees from issuers on the registration of securities.[1] Section 13(e) of the Securities Exchange Act of 1934 (''Exchange Act'') requires the Commission to collect fees on specified repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on specified proxy solicitations and statements in corporate control transactions.[3] These provisions require the Commission to make annual adjustments to the applicable fee rates.

II. Fiscal Year 2022 Annual Adjustment to Fee Rates

Section 6(b)(2) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b).[4] The annual adjustment to the fee rate under Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.[5]

Section 6(b)(2) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2022. Specifically, the Commission must adjust the fee rate under Section 6(b) to a ''rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2022], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target fee collection amount for [fiscal year 2022].'' That is, the adjusted rate is determined by dividing the ''target fee collection amount'' for fiscal year 2022 by the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2022.

III. Target Fee Collection Amount for FY 2022

The statutory ''target fee collection amount'' for fiscal year 2021 and ''each fiscal year thereafter'' is ''an amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.''[6] The target fee collection amount for fiscal year 2021 was $709,554,300. To adjust the fiscal year 2021 target fee collection amount by the rate of inflation to determine the fiscal year 2022 target fee collection amount, the Commission has determined that it will use an approach similar to one that it uses to annually adjust civil monetary penalties by the rate of inflation.[7] Under this approach, the Commission will use the year-over-year change, rounded to five decimal places, in the Consumer Price Index for All Urban Consumers (''CPI–U''), not seasonally adjusted, in calculating the target fee collection amount, which is then rounded to the nearest whole dollar. The calculation for the fiscal year 2022 target fee collection amount is described in more detail below.

The most recent CPI–U index value, not seasonally adjusted, available for use by the Commission at the time this fee rate update was prepared was for June 2021. This value is 271.696.[8] The CPI–U index value, not seasonally adjusted, for June 2020 is 257.797.[9]

[1] 15 U.S.C. 77f(b).

[2] 15 U.S.C. 78m(e).

[3] 15 U.S.C. 78n(g).

[4] 15 U.S.C. 77f(b)(2). The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering prices at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the ''target fee collection amount'' required by Section 6(b)(6)(A) for that fiscal year.

[5] 15 U.S.C. 78m(e)(4) and 15 U.S.C. 78n(g)(4).

[6] 15 U.S.C. 77f(b)(6)(A).

[7] The Commission annually adjusts for inflation the civil monetary penalties that can be imposed under the statutes administered by Commission, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, pursuant to guidance from the Office of Management and Budget (''OMB''). See OMB December 16, 2019, Memorandum for the Heads of Executive Departments and Agencies, M–20–05, on ''Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.''

[8] This value was announced on July 13, 2021. See *https://www.bls.gov/news.release/archives/cpi_07132021.htm*.

[9] See Supplemental Tables, ''CPI–U News Release Companion File'' from the July 13, 2021, press release.

Dividing the June 2021 value by the June 2020 value and rounding to five decimal places yields a multiplier value of 1.05391. Multiplying the fiscal year 2021 target fee collection amount of $709,554,300 by the multiplier value of 1.05391 and rounding to the nearest whole dollar yields a fiscal year 2022 target fee collection amount of $747,806,372.

Section 6(b)(6)(B) defines the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2022 as ''the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2022] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget . . . .''

To make the baseline estimate of the aggregate maximum offering prices for fiscal year 2022, the Commission is using the methodology it has used in prior fiscal years and that was developed in consultation with the Congressional Budget Office and OMB.[10] Using this methodology, the Commission determines the ''baseline estimate of the aggregate maximum offering price'' for fiscal year 2022 to be $8,066,357,647,394. Based on this estimate and the fiscal year 2022 target fee collection amount, the Commission calculates the fee rate for fiscal 2022 to be $92.70 per million. This adjusted fee rate applies to Section 6(b) of the Securities Act, as well as to Sections 13(e) and 14(g) of the Exchange Act.

IV. Effective Dates of the Annual Adjustments

The fiscal year 2022 annual adjustments to the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act will be effective on October 1, 2021.[11]

V. Conclusion

Accordingly, pursuant to Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act,[12]

It is hereby ordered that the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act shall be $92.70 per million effective on October 1, 2021.

By the Commission.

Vanessa Countryman,

Secretary.

Appendix A

Congress has established a target amount of monies to be collected from fees charged to issuers based on the value of their registrations. This appendix provides the formula for determining such fees, which the Commission adjusts annually. Congress has mandated that the Commission determine these fees based on the ''aggregate maximum offering prices,'' which measures the aggregate dollar amount of securities registered with the Commission over the course of the year. In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected aggregate maximum offering prices. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected aggregate maximum offering prices.

For 2022, the Commission has estimated the aggregate maximum offering prices by projecting forward the trend established in the previous decade. More specifically, an auto-regressive integrated moving average (''ARIMA'') model was used to forecast the value of the aggregate maximum offering prices for months subsequent to July 2021, the last month for which the Commission has data on the aggregate maximum offering prices.

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Maximum Offering Prices for Fiscal Year 2022

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (July 2011–July 2021). Next, calculate the percentage change in the AMOP from month to month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach allows one to model the effect that an exceptionally high (or low) observation of AMOP tends to be followed by a more ''typical'' value of AMOP.

Use the [estimated moving average] [ARIMA] model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the total dollar value of registrations. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years, from July 2011 to July 2021.

2. Divide each month's AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t, the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in log(AAMOP) from the previous month as $\Delta_t = \log(AAMOP_t) - \log(AAMOP_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where e_t denotes the forecast error for month t. The forecast error is simply the difference between the one-month ahead forecast and the actual realization of Δ_t. The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta e_{t-1}$. The model can be estimated using standard commercially available software. Using least squares, the estimated parameter values are $\alpha = 0.0079933991$ and $\beta = 0.9007307577$.

6. For the month of August 2021 forecast $\Delta_{t = 8/2021} = \alpha + \beta e_{t = 7/2021}$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for October 2021 is given by $FLAAMOP_{t = 10/2021} = \log(AAMOP_{t = 7/2021}) + \Delta_{t = 8/2021} + \Delta_{t = 9/2021} + \Delta_{t = 10/2021}$.

8. Under the assumption that e_t is normally distributed, the n-step ahead forecast of AAMOP is given by $\exp(FLAAMOP_t + \sigma_n^2/2)$, where σ_n denotes the standard error of the n-step ahead forecast.

9. For October 2021, this gives a forecast AAMOP of $30.399 billion (Column I), and a forecast AMOP of $638.385 billion (Column J).

10. Iterate this process through September 2022 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2022 of $8,066,357,647,394.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Using the data from Table A, estimate the aggregate maximum offering prices between 10/01/21 and 9/30/22 to be $8,066,357,647,394.

2. The rate necessary to collect the target $747,806,372 in fee revenues required by Section 6(b) of the Securities Act is then calculated as: $747,806,372 ÷ $8,066,357,647,394 = 0.0000927068.

[10] Appendix A explains how we determined the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2022 using our methodology, and then shows the arithmetical process of calculating the fiscal year 2022 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2022.

[11] 15 U.S.C. 77f(b)(4), 15 U.S.C. 78m(e)(6), and 15 U.S.C. 78n(g)(6).

[12] 15 U.S.C. 77f(b), 78m(e), and 78n(g).

3. Round the result to the seventh decimal point, yielding a rate of 0.0000927 (or $92.70 per million).

TABLE A—ESTIMATION OF BASELINE OF AGGREGATE MAXIMUM OFFERING PRICES

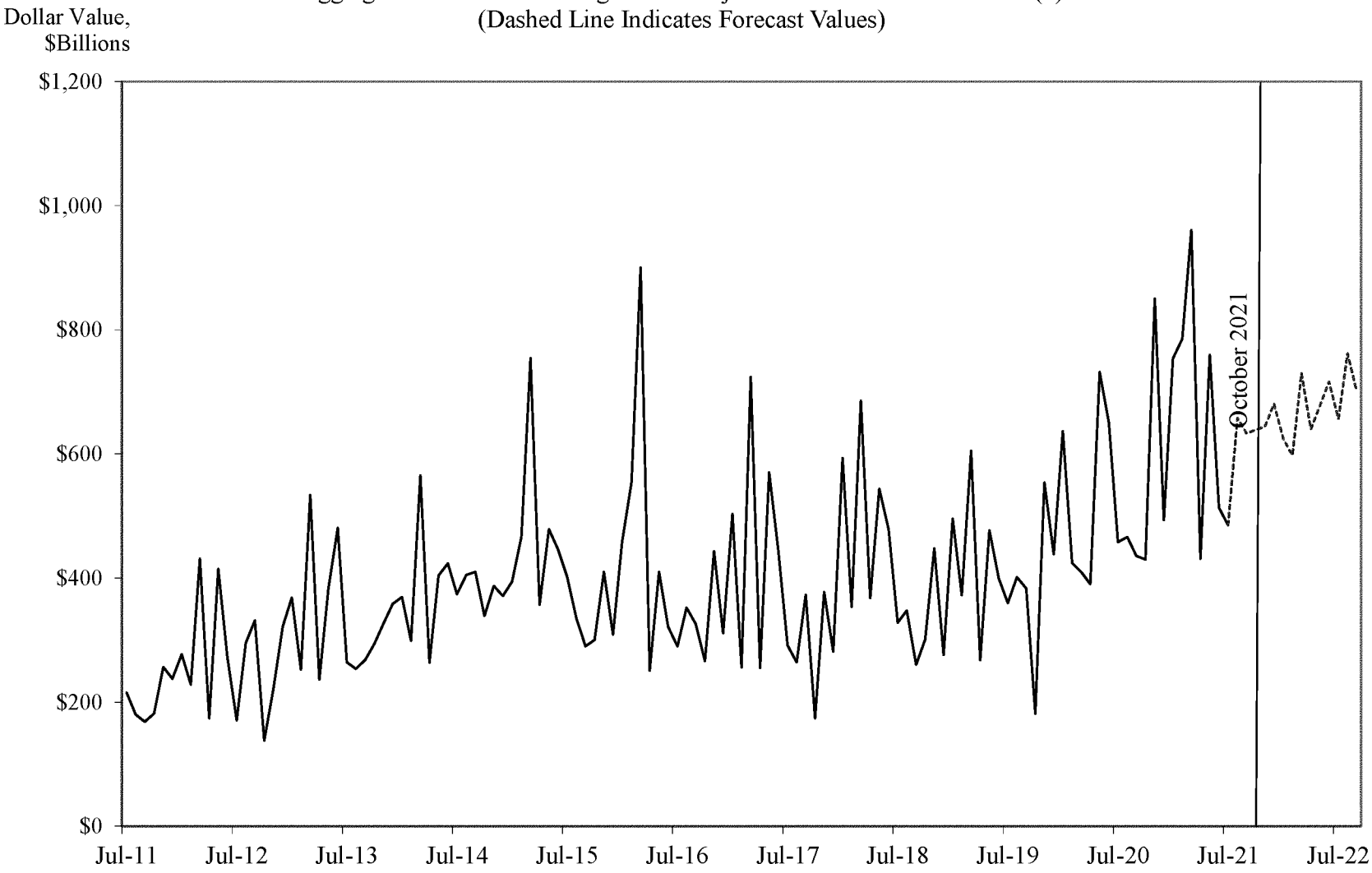
[Fee rate calculation]

a. Baseline estimate of the aggregate maximum offering prices, 10/01/21 to 09/30/22 ($Millions)	8,066,358
b. Implied fee rate ($747,806,372 / a)	$92.70

Month (A)	No. of trading days in month (B)	Aggregate maximum offering prices, in $Millions (C)	Average daily aggregate max. offering prices (AAMOP) in $Millions (D)	log (AAMOP) (E)	Log (Change in AAMOP) (F)	Forecast log(AAMOP) (G)	Standard error (H)	Forecast AAMOP, in $Millions (I)	Forecast aggregate maximum offering prices, in $Millions (J)
Jul–11	20	215,391	10,770	23.100					
Aug–11	23	179,870	7,820	22.780	−0.320				
Sep–11	21	168,005	8,000	22.803	0.023				
Oct–11	21	181,452	8,641	22.880	0.077				
Nov–11	21	256,418	12,210	23.226	0.346				
Dec–11	21	237,652	11,317	23.150	−0.076				
Jan–12	20	276,965	13,848	23.351	0.202				
Feb–12	20	228,419	11,421	23.159	−0.193				
Mar–12	22	430,806	19,582	23.698	0.539				
Apr–12	20	173,626	8,681	22.884	−0.813				
May–12	22	414,122	18,824	23.658	0.774				
Jun–12	21	272,218	12,963	23.285	−0.373				
Jul–12	21	170,462	8,117	22.817	−0.468				
Aug–12	23	295,472	12,847	23.276	0.459				
Sep–12	19	331,295	17,437	23.582	0.305				
Oct–12	21	137,562	6,551	22.603	−0.979				
Nov–12	21	221,521	10,549	23.079	0.476				
Dec–12	20	321,602	16,080	23.501	0.422				
Jan–13	21	368,488	17,547	23.588	0.087				
Feb–13	19	252,148	13,271	23.309	−0.279				
Mar–13	20	533,440	26,672	24.007	0.698				
Apr–13	22	235,779	10,717	23.095	−0.912				
May–13	22	382,950	17,407	23.580	0.485				
Jun–13	20	480,624	24,031	23.903	0.322				
Jul–13	22	263,869	11,994	23.208	−0.695				
Aug–13	22	253,305	11,514	23.167	−0.041				
Sep–13	20	267,923	13,396	23.318	0.151				
Oct–13	23	293,847	12,776	23.271	−0.047				
Nov–13	20	326,257	16,313	23.515	0.244				
Dec–13	21	358,169	17,056	23.560	0.045				
Jan–14	21	369,067	17,575	23.590	0.030				
Feb–14	19	298,376	15,704	23.477	−0.113				
Mar–14	21	564,840	26,897	24.015	0.538				
Apr–14	21	263,401	12,543	23.252	−0.763				
May–14	21	403,700	19,224	23.679	0.427				
Jun–14	21	423,075	20,146	23.726	0.047				
Jul–14	22	373,811	16,991	23.556	−0.170				
Aug–14	21	405,017	19,287	23.683	0.127				
Sep–14	21	409,349	19,493	23.693	0.011				
Oct–14	23	338,832	14,732	23.413	−0.280				
Nov–14	19	386,898	20,363	23.737	0.324				
Dec–14	22	370,760	16,853	23.548	−0.189				
Jan–15	20	394,127	19,706	23.704	0.156				
Feb–15	19	466,138	24,534	23.923	0.219				
Mar–15	22	753,747	34,261	24.257	0.334				
Apr–15	21	356,560	16,979	23.555	−0.702				
May–15	20	478,591	23,930	23.898	0.343				
Jun–15	22	446,102	20,277	23.733	−0.166				
Jul–15	22	402,062	18,276	23.629	−0.104				
Aug–15	21	334,746	15,940	23.492	−0.137				
Sep–15	21	289,872	13,803	23.348	−0.144				
Oct–15	22	300,276	13,649	23.337	−0.011				
Nov–15	20	409,690	20,485	23.743	0.406				
Dec–15	22	308,569	14,026	23.364	−0.379				
Jan–16	19	457,411	24,074	23.904	0.540				
Feb–16	20	554,343	27,717	24.045	0.141				
Mar–16	22	900,301	40,923	24.435	0.390				
Apr–16	21	250,716	11,939	23.203	−1.232				
May–16	21	409,992	19,523	23.695	0.492				
Jun–16	22	321,219	14,601	23.404	−0.291				
Jul–16	20	289,671	14,484	23.396	−0.008				
Aug–16	23	352,068	15,307	23.452	0.055				
Sep–16	21	326,116	15,529	23.466	0.014				
Oct–16	21	266,115	12,672	23.263	−0.203				

Month (A)	No. of trading days in month (B)	Aggregate maximum offering prices, in $Millions (C)	Average daily aggregate max. offering prices (AAMOP) in $Millions (D)	log (AAMOP) (E)	Log (Change in AAMOP) (F)	Forecast log(AAMOP) (G)	Standard error (H)	Forecast AAMOP, in $Millions (I)	Forecast aggregate maximum offering prices, in $Millions (J)
Nov–16	21	443,034	21,097	23.772	0.510				
Dec–16	21	310,614	14,791	23.417	−0.355				
Jan–17	20	503,030	25,152	23.948	0.531				
Feb–17	19	255,815	13,464	23.323	−0.625				
Mar–17	23	723,870	31,473	24.172	0.849				
Apr–17	19	255,275	13,436	23.321	−0.851				
May–17	22	569,965	25,908	23.978	0.657				
Jun–17	22	445,081	20,231	23.730	−0.247				
Jul–17	20	291,167	14,558	23.401	−0.329				
Aug–17	23	263,981	11,477	23.164	−0.238				
Sep–17	20	372,705	18,635	23.648	0.485				
Oct–17	22	173,749	7,898	22.790	−0.858				
Nov–17	21	377,262	17,965	23.612	0.822				
Dec–17	20	281,126	14,056	23.366	−0.245				
Jan–18	21	593,025	28,239	24.064	0.698				
Feb–18	19	353,182	18,589	23.646	−0.418				
Mar–18	21	685,784	32,656	24.209	0.563				
Apr–18	21	367,569	17,503	23.586	−0.624				
May–18	22	543,840	24,720	23.931	0.345				
Jun–18	21	477,967	22,760	23.848	−0.083				
Jul–18	21	327,710	15,605	23.471	−0.377				
Aug–18	23	347,239	15,097	23.438	−0.033				
Sep–18	19	259,874	13,678	23.339	−0.099				
Oct–18	23	300,814	13,079	23.294	−0.045				
Nov–18	21	447,767	21,322	23.783	0.489				
Dec–18	19	276,130	14,533	23.400	−0.383				
Jan–19	21	495,624	23,601	23.885	0.485				
Feb–19	19	372,166	19,588	23.698	−0.186				
Mar–19	21	604,813	28,801	24.084	0.385				
Apr–19	21	267,737	12,749	23.269	−0.815				
May–19	22	476,892	21,677	23.800	0.531				
Jun–19	20	399,178	19,959	23.717	−0.083				
Jul–19	22	359,438	16,338	23.517	−0.200				
Aug–19	22	401,391	18,245	23.627	0.110				
Sep–19	20	382,876	19,144	23.675	0.048				
Oct–19	23	181,113	7,874	22.787	−0.888				
Nov–19	20	553,889	27,694	24.044	1.258				
Dec–19	21	438,062	20,860	23.761	−0.283				
Jan–20	21	636,403	30,305	24.135	0.373				
Feb–20	19	424,133	22,323	23.829	−0.306				
Mar–20	22	409,403	18,609	23.647	−0.182				
Apr–20	21	389,821	18,563	23.644	−0.002				
May–20	20	731,835	36,592	24.323	0.679				
Jun–20	22	650,219	29,555	24.110	−0.214				
Jul–20	22	457,871	20,812	23.759	−0.351				
Aug–20	21	465,953	22,188	23.823	0.064				
Sep–20	21	435,323	20,730	23.755	−0.068				
Oct–20	22	429,638	19,529	23.695	−0.060				
Nov–20	20	849,894	42,495	24.473	0.777				
Dec–20	22	493,133	22,415	23.833	−0.640				
Jan–21	19	753,590	39,663	24.404	0.571				
Feb–21	19	785,163	41,324	24.445	0.041				
Mar–21	23	960,806	41,774	24.456	0.011				
Apr–21	21	430,803	20,514	23.744	−0.711				
May–21	20	759,512	37,976	24.360	0.616				
Jun–21	22	512,966	23,317	23.872	−0.488				
Jul–21	21	485,097	23,100	23.863	−0.009				
Aug–21	22					24.066	0.331	29,885	657,469
Sep–21	21					24.074	0.332	30,141	632,962
Oct–21	21					24.082	0.334	30,399	638,385
Nov–21	21					24.090	0.335	30,660	643,855
Dec–21	22					24.098	0.337	30,922	680,294
Jan–22	20					24.106	0.339	31,187	623,748
Feb–22	19					24.114	0.340	31,455	597,638
Mar–22	23					24.122	0.342	31,724	729,655
Apr–22	20					24.130	0.343	31,996	639,919
May–22	21					24.138	0.345	32,270	677,673
Jun–22	22					24.146	0.346	32,547	716,026
Jul–22	20					24.154	0.348	32,825	656,510
Aug–22	23					24.162	0.350	33,107	761,455
Sep–22	21					24.170	0.351	33,390	701,199

Figure A
Aggregate Maximum Offering Prices Subject to Securities Act Section 6(b)
(Dashed Line Indicates Forecast Values)



[FR Doc. 2021–18402 Filed 8–25–21; 8:45 am]
BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before September 27, 2021.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The information collected is used by SBA to monitor the Agents, fees charged by Agents, and the relationship between Agents and lenders. The information helps SBA to determine among other things whether borrowers are paying unnecessary, unreasonable or prohibitive fees.

Solicitation of Public Comments: Comments may be submitted on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control 3245–0201.

Title: Compensation Agreement.

Description of Respondents: SBA Borrowers.

Form Number's: 159(7a), 159(504), 159D.

Estimated Number of Respondents: 9,210.

Estimated Annual Responses: 9,210.

Estimated Annual Hour Burden: 1,385.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–18417 Filed 8–25–21; 8:45 am]
BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before September 27, 2021.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION:

Solicitation of Public Comments

This form facilitates online registration for the Boots to Business course for eligible service members and their spouses. The collected data will be used to report course statistics, manage course operations more efficiently, tailor individual classes based on the experience and interests of the participants, and ultimately contact Boots to Business alumni.

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control: 3245–0384.

Title: Boots to Business,

Description of Respondents: Transitioning Service Members.

Estimated Number of Respondents: 18,000.

Estimated Annual Responses: 18,000.

Estimated Annual Hour Burden: 1,500.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–18411 Filed 8–25–21; 8:45 am]
BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before September 27, 2021.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at

Curtis.Rich@sba.gov; (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) Surety Bond Guarantee Program was created to encourage surety companies to provide bonding for small contractors. The information collected on this form from small businesses and surety companies will be used to evaluate the eligibility of applicants for contracts up to $400,000.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control: 3245–0378.

Title: Quick Bond Guarantee Application and Agreement.

Description of Respondents: Surety Companies.

Estimated Number of Respondents: 3,278.

Estimated Annual Responses: 3,278.

Estimated Annual Hour Burden: 546.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–18416 Filed 8–25–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before September 27, 2021.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/*PRAMain. Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION:

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information. SBA proposes to revise the application form to collect information regarding race, ethnicity, and veteran status. Submission of this information is entirely voluntary and would not be a factor in processing the loan. The sole purpose for collecting this information is to help SBA determine the extent to which businesses owned and operated by veterans or members of racial and ethnic groups are benefitting from this disaster assistance program, and develop strategies and policies that could fill any perceived gaps and expand the program's reach.

OMB Control 3245–0017

Title: Disaster Business Loan Application.

Description of Respondents: Disaster victims seeking disaster assistance.

Form Number: SBA Form 5.

Estimated Number of Respondents: 2,970.

Estimated Annual Responses: 2,970.

Estimated Annual Hour Burden: 6,295.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–18424 Filed 8–25–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 11500]

60-Day Notice of Proposed Information Collection: Employment Application for Locally Employed Staff or Family Member

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 25, 2021.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2021–0024'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: amadouae@state.gov.*
- *Regular Mail:* Send written comments to: GTM/OE, 1800 G Street NW, Suite 3100, Washington, DC 20006.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Anne Amadou, who may be reached at *amadouae@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Employment Application for Locally Employed Staff or Family member.
- *OMB Control Number:* 1405–0189.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Global Talent Management, Office of Overseas Employment (GTM/OE).
- *Form Number:* DS–0174.
- *Respondents:* The respondents are locals who live in 175 countries abroad and who are applying for a position at the U.S. Embassy, Consulate or Mission in their country. In addition, Family

members who are accompanying their partners to assignments in the U.S. Embassies, Consulates or Mission abroad.

- *Estimated Number of Respondents:* 1,000,000.
- *Estimated Number of Responses:* 1.000.000.
- *Average Time per Response:* 15 minutes.
- *Total Estimated Burden Time:* 250,000.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- 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.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information solicited is used to establish eligibility and qualifications at U.S. Embassies, Consulates, and Missions abroad. The respondents are locals who live in the 175 countries abroad and who are applying for a position at the U.S. Embassy, Consulate or Mission in their country. In addition, Family members who are accompanying their partners to assignments in the U.S. Embassies, Consulates or Mission abroad. The authority is the Foreign Service Act of 1980, as amended, and 22 U.S.C 2669(c).

Methodology

Candidates for employment use the DS–0174 to apply for Mission-advertised positions around the world. Mission recruitments generate approximately 1 million applications per year, the majority of which are collected electronically using an applicant management system, Electronic Recruitment Application (ERA). Data that HR and hiring officials extract from the DS–0174 determine employment eligibility and qualifications for the position, and selections according to Federal Policies.

Michael B. Phillips,

Director, EX, Global Talent Management, Department of State.

[FR Doc. 2021–18361 Filed 8–25–21; 8:45 am]

BILLING CODE 4710–15–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2021 Allocation of Additional Tariff-Rate Quota Volume for Raw Cane Sugar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the allocations of additional fiscal year (FY) 2021 in-quota quantities of the World Trade Organization (WTO) tariff-rate quota (TRQ) for imported raw cane sugar as announced by the Secretary of Agriculture on August 24, 2021.

DATES: The changes made by this notice are applicable as of August 26, 2021.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at 202–395–9419 or *erin.h.nicholson@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the United States maintains WTO TRQs for imports of raw cane and refined sugar. Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the U.S. Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

On August 24, 2021, the Secretary of Agriculture announced an additional in-quota quantity of the TRQ for raw cane sugar for the remainder of FY 2021 (ending September 30, 2021) in the amount of 90,100 metric tons raw value (MTRV). The conversion factor is 1 metric ton equals 1.10231125 short tons. This quantity is in addition to the minimum amount to which the United States is committed under the WTO Uruguay Round Agreements (1,117,195 MTRV).

The Secretary of Agriculture also has determined that all sugar entering the United States under the FY 2021 raw sugar TRQ will be permitted to enter U.S. Customs territory through October 31, 2021, a month later than the usual last entry date. The U.S. Trade Representative is allocating this additional quantity of 90,100 MTRV to the following countries in the amounts specified below:

Country	FY 2021 raw sugar TRQ increase allocations (MTRV)
Argentina	4,662
Australia	8,999
Belize	1,193
Bolivia	867
Brazil	15,722
Colombia	2,602
Costa Rica	1,626
Dominican Republic	19,083
Ecuador	1,193
El Salvador	2,819
Eswatini (Swaziland)	1,735
Fiji	976
Guatemala	5,204
Guyana	1,301
Honduras	1,084
India	867
Jamaica	1,193
Malawi	1,084
Mauritius	1,301
Mozambique	1,410
Nicaragua	2,277
Panama	3,144
Peru	4,445
South Africa	2,494
Thailand	1,518
Zimbabwe	1,301

These allocations are based on the countries' historical shipments to the United States. The allocations of the raw cane sugar WTO TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin. Certificates for quota eligibility must accompany imports from any country for which an allocation has been provided.

Greta M. Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2021–18379 Filed 8–25–21; 8:45 am]

BILLING CODE 3290–F1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No.—2022–2114]

Petition for Exemption; Summary of Petition Received; UPS Flight Forward, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 15, 2021.

ADDRESSES: Send comments identified by docket number FAA–2019–0652 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Angela O. Anderson,

Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0652.

Petitioner: UPS Flight Forward, Inc.

Sections of 14 CFR Affected: 91.205(c)(2) and (3).

Description of Relief Sought: UPS Flight Forward, Inc. (UPS FF) seeks an amendment to its current exemption from Title 14 Code of Federal Regulations to include an exemption from § 91.205(c)(2) and (3), equipment requirements for visual flight rules night operations with regard to position lights. UPS Flight Forward asserts that during operations between periods of civil twilight the aircraft will utilize lighted anti-collision lighting visible for at least 3 statute miles having a flash rate sufficient to avoid a collision and that these lights are sufficient to provide the same or greater level of safety for flights under 400 ft.

[FR Doc. 2021–18389 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0993]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: General Aviation and Part 135 Activity Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval renewal information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on Feb 2, 2021. The collection involves FAA's primary requirement for annual hours flown, optimal determination of sample size is based on flight time variation by state and aircraft type, and a sampling fraction is determined for each cell with a no-zero population. Sample units are selected randomly within each stratum. Respondents to this survey are owners of general aviation aircraft. This information is used by FAA, NTSB, and other government agencies, the aviation industry, and others for safety assessment, planning, forecasting, cost/benefit analysis, and to target areas for research.

DATES: Written comments should be submitted by Sep 22, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Parasha Vincent Flowers by email at: *Parasha.flowers@faa.gov;* phone: 202–267–8757.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–6160.

Title: General Aviation and Part 135 Activity Survey.

Form Numbers: 1800–54.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on Feb 2, 2021 (85 FR 71710). Title 49, United States Code, empowers the Secretary of Transportation to collect and disseminate information relative to civil aeronautics, to study the possibilities for development of air commerce and the aeronautical industries, and to make long-range plans for, and formulate policy with respect to, the orderly development and use of the navigable airspace, radar installations and all other aids for air navigation. These data are necessary to assess performance of the Department of Transportation in meeting the strategic goal for General Aviation safety as

described in the Destination 2025 Strategic Plan.

The agency and the National Transportation Safety Board (NTSB) use the exposure data, both by itself and in conjunction with aircraft age, to calculate accident rates, which are used to compare safety over time and safety performance among different aircraft types and configurations.

The agency and the NTSB will use the exposure data for public use aircraft to calculate accident rates for those aircraft. The NTSB is now required to investigate accidents involving public use aircraft. This is a responsibility assigned by Public Law 103–411.

Respondents: Owners of General Aviation Aircraft.

Frequency: Annual.

Estimated Average Burden per Response: 20 minutes.

Estimated Total Annual Burden: (36,000 × 20/60) = 12,000 hours.

Issued in Washington, DC, on August, 23, 2021.

Parasha Vincent Flowers,

Program Manager, Program Management & Development Branch, AVP–220, Office of Accident Investigation & Prevention.

[FR Doc. 2021–18412 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0010]

Re-Designation of the Primary Highway Freight System (PHFS)

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; request for information (RFI).

SUMMARY: The FHWA is re-designating the PHFS to meet the statutory requirements of the authorizing law. The Fixing America's Surface Transportation (FAST) Act designated the PHFS and provided for an update to the PHFS every 5 years. Beginning five years after the date of the enactment of the FAST Act, and every 5 years thereafter, using the designation factors described in FAST Act, the FHWA Administrator shall re-designate the primary highway freight system. Each re-designation may increase the mileage on the PHFS by not more than 3 percent of the total mileage of the system. The current PHFS consists of 41,518 centerline miles of roadway and is a component of the National Highway Freight Network (NHFN). The re-designation initiated through this RFI may add up to 1,246 miles of additional mileage to the current PHFS. State Freight Advisory Committees, represented by their States, are invited to submit comments. Other entities are encouraged to engage directly with their State Freight Advisory Committee or the State department of transportation (State DOT). Comments submitted by entities other than a State Freight Advisory Committee will be considered for general input into the process.

DATES: Comments must be received on or before October 25, 2021. Late comments will be considered to the extent practicable.

ADDRESSES: Interested parties are invited to submit comments identified by DOT Docket ID FHWA–2020–0010 by any of the following methods:

Website: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Birat Pandey, *birat.pandey@dot.gov*, 202–366–2842, Office of Freight Management & Operations (HOFM–1), Office of Operations, FHWA, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Congress established a National Highway Freight Program (NHFP) in 23 U.S.C. 167 to improve the efficient movement of freight on the NHFN and support several goals. The NHFP required the FHWA Administrator to establish a NHFN to strategically direct Federal resources and policies toward improved performance of the network. The definition of the NHFN is established under 23 U.S.C. 167(c) and consists of four separate highway network components: The PHFS; Critical Rural Freight Corridors (CRFCs); Critical Urban Freight Corridors (CUFCs); and those portions of the Interstate System that are not part of the PHFS. The initial designation of the PHFS was identified during the designation process for the primary freight network under section 23 U.S.C. 167(d), as in effect on the day before the date of enactment of the FAST Act.

The FHWA Administrator is required to re-designate the PHFS every 5 years. Each re-designation is limited to a maximum 3 percent increase in total mileage of the system per 23 U.S.C. 167(d)(2)(B).

PHFS

Congress established the PHFS as a network of highways intended to reflect the most critical highway portions of the U.S. freight transportation system, determined by measurable and objective national data. The network consists of 41,518 centerline miles, including 37,436 centerline miles of Interstate and 4,082 centerline miles of non-Interstate roads. Maps and tables exhibiting roads currently included in the PHFS of the NHFN are available by State here: *https://ops.fhwa.dot.gov/freight/infrastructure/ismt/nhfn_states_list.htm.*

PHFS and Use of NHFP Funds

Congress established a NHFP in 23 U.S.C. 167 to improve the efficient movement of freight on the NHFN and support several goals. Additional details on the NHFP are available at: *https://www.fhwa.dot.gov/fastact/factsheets/nhfpfs.cfm.* A State shall obligate funds apportioned to the State under section 104(b)(5) to improve the movement of freight on the NHFN pursuant to 23 U.S.C. 167. A State with PHFS mileage of less than 2 percent of the national total PHFS mileage may obligate NHFP funds for projects on all portions of the NHFN. A State with PHFS mileage greater than or equal to 2 percent of the national PHFS total may use its NHFP funds for projects on the PHFS, CRFCs, and CUFCs.

PHFS and Use of INFRA Grants

Congress established 23 U.S.C. 117, the Nationally Significant Freight and Highway Projects program, currently known as Infrastructure for Rebuilding America (INFRA). This discretionary grant program provides Federal financial assistance to highway and freight projects of national or regional significance. Eligibility for INFRA grant funding for highway projects is limited to those existing or planned roads that are or will become part of the NHFN or the National Highway System (NHS). Additional details on INFRA Grants are available at: *https://*

www.transportation.gov/buildamerica/infragrants.

Progression of PHFS

Section 1116 of the FAST Act (Pub. L. 114–94) repealed both the Primary Freight Network (PFN) and National Freight Network from Moving Ahead for Progress in the 21st Century Act (MAP–21), and directed the FHWA Administrator to establish an NHFN to strategically direct Federal resources and policies toward improved performance of highway portions of the U.S. freight transportation system.

The initial creation of the PHFS occurred during the designation process for the MAP–21 highway-only PFN under 23 U.S.C. 167(d). The MAP–21 limited the highway PFN to not more than 27,000 centerline miles of existing roadways that are most critical to the movement of freight. In addition, MAP–21 allowed an additional 3,000 centerline miles (existing or planned roads) critical to the future efficient movement of goods on the highway PFN. The MAP–21 instructed DOT to base the highway-only PFN on an inventory of national freight volumes conducted by the FHWA Administrator, in consultation with stakeholders, including system users, transport providers, and States. The FHWA released a larger ''Comprehensive PFN'' of 41,518 miles for consideration, to accompany the designation of the PFN. This Comprehensive PFN was used by Congress to establish the PHFS, and the PFN was sunset. Information on the methodology and data used for these networks is described in the October 23, 2015, **Federal Register** Notice Final Designation of the Highway PFN at 80 FR 64477.

Methodology Used for the Designation of the Highway PFN

The FHWA developed the following methodology for generating a network that could include as many of the MAP–21 criteria as practicable. The FHWA undertook extensive research and numerous approaches to better understand and model the criteria. This research informed the finding that compliance with the mileage cap yields a network that does not sufficiently accommodate the full set of criteria. To comply with the mileage cap while still accommodating the statutory criteria, FHWA developed a methodology that prioritized the application of the criteria and set thresholds within the data sets. The FHWA used the following methodology to develop the highway-only PFN:

(1) Used the Freight Analysis Framework (FAF) and Highway Performance Monitoring System (HPMS) data sets to generate the top 20,000 miles of road segments that qualified in at least two of the following four factors: Value of freight moved by highway; tonnage of freight moved by highway; Average Annual Daily Truck Traffic (AADTT) on principal arterials; and percentage of AADTT in the annual average daily traffic on principal arterials.

(2) Analyzed the segments identified in Step 1 and gaps between segments for network connectivity. Created the network by connecting segments if the gap between segments was equal to or less than 440 miles (440 miles being the distance a truck could reasonably travel in 1 day). Eliminated a segment if it was less than one-tenth of the length of the nearest qualifying segment on the highway-only PFN.

(3) Identified land ports of entry with truck traffic higher than 75,000 trucks per year. Connected these land ports of entry to the network created in Steps 1 and 2.

(4) Identified the NHS Freight Intermodal Connectors within urban areas with a population of 200,000 or more.[1] The NHS Freight Intermodal Connectors included any connectors categorized as connecting to a freight rail terminal, port, river terminal, or pipeline. In addition, these NHS Freight Intermodal Connectors included routes to the top 50 airports by landed weight of all cargo operations (representing 89 percent of the landed weight of all cargo operations in the United States). Connected the NHS Freight Intermodal Connectors back to the network created in Steps 1 and 2 along the route with the highest AADTT using HPMS data.

(5) Identified road segments within urban areas with a population of 200,000 or more that have an AADTT of 8,500 trucks/day or more. Connected segments to the network established in Steps 1 and 2 if they were equal to or greater than one-tenth of the length of the nearest qualifying segment on the highway-only PFN. Removed segments not meeting this rule as they were more likely to represent discrete local truck movement unrelated to the national system.

(6) Analyzed the network to determine the relationship to population centers, origins and destinations, ports, river terminals, airports, and rail yards and added minor network connectivity adjustments.

(7) Analyzed the road systems in Alaska, Hawaii, and Puerto Rico using HPMS data. These routes would not otherwise qualify under a connected network model but play a critical role in the movement of products from the agriculture and energy sectors, as well as international import/export functions for their States and urban areas and added roads connecting key ports to population centers.

(8) Analyzed the network to determine the relationship to energy exploration, development, installation, or production areas. Since the data points for the energy sector are scattered around the United States, often in rural areas, and because some of the related freight may move by barge or other maritime vessel, rail, or even pipeline, FHWA did not presume a truck freight correlation.

(9) Steps 1 through 8 resulted in a network of 41,518 centerline miles, including 37,436 centerline miles of Interstate and 4,082 centerline miles of non-Interstate roads.[2] In order to obtain the 27,000 centerline miles, FHWA identified those connected segments with the highest AADTT. These road segments represented on the final highway-only PFN map comprise 26,966 miles of centerline roads.

Criteria for PHFS Re-Designation

In re-designating the PHFS, to the maximum extent practicable the FHWA Administrator must use measurable data to assess the significance of goods movement, including consideration of points of origin, destinations, and linking components of the United States global and domestic supply chains. 23 U.S.C. 167(d)(2)(C). In re-designating the PHFS, the Administrator shall provide an opportunity for State freight advisory committees, as applicable, to submit additional miles for consideration. 23 U.S.C. 167(d)(2)(D). In re-designating the PHFS the Administrator shall consider the factors outlined in 23 U.S.C. 167(d)(2)(E). Those factors include: Changes in the origins and destinations of U.S. freight movement; changes in the percentage of annual daily truck traffic on principal arterials; changes in the location of key facilities; land and water ports of entry; access to energy exploration, development, installation, or production areas; access to other freight intermodal facilities, including rail, air, water, and pipeline

[1] The Census defined urban areas (UZA) were used rather than the adjusted UZAs since these were not available at the time of the analysis.

[2] The 2011 HPMS database and the current FAF database differ in the delineation and exact geo-location of the NHS. This may result in 1–2 percent plus or minus variation on the total mileage because the mileage is based on the geospatial network and actual mileage reported by States may vary due to vertical and horizontal curves that are not always accurate in the geographic information system databases.

facilities; the total freight tonnage and value moved on highways; significant freight bottlenecks; the significance of goods movement on principal arterials, including consideration of global and domestic supply chains; critical emerging freight corridors and critical commerce corridors; and network connectivity. 23 U.S.C. 167(d)(2)(E).

Preliminary Analysis for PHFS Re-Designation

As calculated according to the statutory allowance, this re-designation may include up to 1,246 miles of additional PHFS mileage. The FHWA does not recommend removing previously designated routes from the PHFS unless they are no longer eligible for use by trucks. The rationale for retaining the existing routes is to ensure continued alignment with the State Freight Plans completed by all States and the District of Columbia pursuant to 49 U.S.C. 70202, which were based in part on the existing PHFS network and funding eligibilities of PHFS routes. Consideration for re-designation, therefore, focuses on technical corrections and the assignment of the additional 1,246 miles.

An assessment of changes in HPMS [3] data for the PHFS resulted in an increase of approximately 286 centerline miles from years 2012 to 2017. The FHWA proposes to add these miles to improve the accuracy of the network. This addition reduces the miles available for the re-designation, leaving 960 miles for consideration. Several options for designating these 960 miles have been considered.

One option would be to provide an equal allocation of these 960 miles to each State; however, this would yield only 18 miles of potential new PHFS for each State, the District of Columbia, and Puerto Rico. This additional mileage might be useful for CUFC or CRFC designation but may be too short to yield meaningful additions when one of the core features of the existing PHFS is that the components comprise a connected network—one of the statutory criteria for consideration.

Another potential option would be to accommodate States that have greater restrictions on the use of Interstate Highway System routes to gain eligibility for funding under the NHFP and INFRA. Currently, there are 18 States (AK, AZ, CA, FL, GA, IL, IN, MO, MT, NM, NY, NC, OH, PA, TN, TX, UT, VA) with PHFS mileage greater than or equal to 2 percent of the total PHFS mileage in all States. These States may obligate funds for projects on the PHFS, the CRFCs, and the CUFCs. Remaining States with the PHFS mileage of less than 2 percent may obligate funds for projects on all portions of the NHFN, including any portion of the Interstate Highway System in that State. Equal allocation of 960 miles of PHFS to these 18 high-mileage States would result in 53 miles of new PHFS for these States.

A third option for consideration would be to add to the PHFS any routes newly flagged as Interstate Highway System since the development of the Comprehensive PFN (built in 2015 from 2011 data). That concept, however, would not fit within the constraints of the 1,246 miles available, as 1,500 miles of new Interstate have been designated between 2011 and 2018.

This network is intended to provide the foundation for the United States' domestic supply chain and global economic competitiveness. Road projects using NHFP funds must be located on the NHFN (which includes the PHFS). The routing of freight is not static, however, and it changes in response to the factors previously listed. In light of this, the network of routes with eligibility for investment should include components that support flexibility and resilience in the freight system.

State Freight Plans provide insight into the impact of 23 U.S.C. 167(d)(2)(E), and future freight system needs. States with a State Freight Advisory Committee (SFAC) have insights into the planning, investment, and operations priorities for the public and private sector. For this reason and in response to the statutory requirement, FHWA is particularly interested in the input of SFACs regarding the routes to be considered in this re-designation.

Data Submission Criteria for Modification to PHFS Re-Designation

The FHWA seeks comments from interested parties, and in particular from SFACs, on suggestions for the PHFS re-designation, including comments on the potential options identified above. A State submitting routes or feedback for consideration in the PHFS re-designation should provide a letter of support from or on behalf of their SFAC. States that have not yet convened a SFAC could do so for the purpose of responding to this RFI.

Guidance on State Freight Plans and SFACs can be found at: *https://www.federalregister.gov/documents/2016/10/14/2016-24862/guidance-on-state-freight-plans-and-state-freight-advisory-committees*.

Submissions should specifically address at least one of the statutory criteria of 23 U.S.C. 167(d)(2)(E) as justification for inclusion, data to support the justification, and the mileage needed to address the requirement. Any additions or deletions proposed for PHFS re-designation regarding a specific roadway facility should include location details and roadway attribute data of the proposed segments for updating the existing PHFS geospatial network. Maps and tables showing roads currently included in the PHFS of the NHFN are available by State at: *https://ops.fhwa.dot.gov/freight/infrastructure/ismt/nhfn_states_list.htm*. Roadway facility specific data should be submitted using either of the options listed below: Option 1: Tabulate proposed PHFS changes by including roadway specific information listed on Table 1 as a part of comments to this RFI through **Federal Register** comments procedures listed above in Addresses section (website, hand delivered, or courier); or Option 2: Upload geospatial data of proposed PHFS changes utilizing the State's linear referenced network data set consistent with spatial route information in HPMS 2018 with attributes listed in Table 2.

The FHWA encourages respondents to provide only that portion of geospatial data needed to identify proposed PHFS changes compatible with the State's linear referenced network data set submitted as the spatial route information in HPMS 2018 8.0 software. The FHWA will receive geospatial data only through FHWA Secure Large File Transfer Service (SLFTS). Please contact Birat Pandey (*birat.pandey@dot.gov*) to request access to the SLFTS. Further details on HPMS can be found in the HPMS Field Manual at *https://www.fhwa.dot.gov/policyinformation/hpms.cfm*.

[3] The HPMS is a national-level highway information system that includes data on the extent, condition, performance, use, and operating characteristics of the Nation's highways.

Table 1: Roadway Attributes for PHFS Consideration for Data Submission Option 1

Attribute	Attribute Type	Attribute Definition	Attribute Code	Remarks	Data Type
Proposed Type	Integer	Type of Changes Proposed to Roadway	1= Modify 2= Add 3= Delete		Required
SFIP	Integer	Included in State Freight Investment Plan	1 = Yes 2 = No	Identify if proposed road is included in current State Freight Investment	Required
MILES	Real Number	Geometric Mileage			Required
Start Point	Character	Crossing Roadway Name at Starting Point			Required
End Point	Character	Crossing Roadway Name at Terminus Point			Required
State	Integer	State Fips Code			Required
County	Integer	County Fips Code			Required
Route_Id	Character	Location reference ID for		Refer HPMS Manual	Required
BEGMP	Real Number	Beginning Milepost of a Given Segment		Refer HPMS Manual	Required
ENDMP	Real Number	Ending Milepost to a Given Segment		Refer HPMS Manual	Required
SIGN1	Character	Route Sign Number		Refer HPMS Manual	Required
SIGNT1	Character	Route Designation (I, U or S)	I=Interstate; U= US Route; S = State Route		Required
LNAME	Character	alternate road name when SIGN1 is missing			Required
F_SYSTEM	Integer	HPMS Functional System	1 = Interstate 2 = Principal Arterial – Other Freeways and Expressways 3 = Principal Arterial – Other 4 = Minor Arterial 5 = Major Collector 6 = Minor Collector 7 = Local	(HPMS Manual) Refer HPMS data document https://www.fhwa.dot.gov/policyinformation/hpms/fieldmanual/	Required
Facility_Type	Integer	HPMS Facility Type	1= One-Way Roadway. 2=Two-Way Roadway. 4=Ramp. 5=Non-Mainline. 6=Non-Inventory Direction.	Refer HPMS Manual	Required

Table 2: Roadway Attributes for PHFS Consideration for Data Submission Option 2

Attribute	Attribute Type	Attribute Definition	Attribute Code	Remarks	Data Type
ProposedType	Integer(1)	Type of Changes Proposed to Roadway	1= Modify 2= Add 3= Delete	Identify type of proposed changes	Required
SFIP	Integer(1)	Included in State Freight Investment Plan	1 = Yes 2 = No	Identify if proposed road is included in current State Freight Investment Plan.	Required
Route_Id	Character (120)	Location reference ID for	Not Applicable	Up to 120 alpha-numeric digits that identify the route. This ID must be unique within the State.	Required
Begin_Point	Decimal(8,3)	Beginning Milepoint	Not Applicable	Decimal value in thousandths of a mile.	Required
End_Point	Decimal(8,3)	Ending Milepoint	Not Applicable	Decimal value in thousandths of a mile.	Required

Respondents are requested to provide a narrative description of how the proposed changes support goods movement by addressing applicable re-designation factors as found in of 23 U.S.C. 167(d)(2)(E).

Other entities wishing to provide comment are encouraged to engage with a State Freight Advisory Committee. Comments submitted by entities separate from the input of a State Freight Advisory Committee will be considered for general input into the process.

Authority: 23 U.S.C. 167(d).

Stephanie Pollack,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2021–18350 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0050]

Hours of Service of Drivers; Parts and Accessories: Application for an Exemption From Cleveland-Cliffs Steel, LLC.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comment on an application for exemption submitted by Cleveland-Cliffs Steel, LLC (Cliffs), formerly known as ArcelorMittal Indiana Harbor, LLC, to allow its employee-drivers with commercial driver's licenses (CDLs) who transport scrap metal on two trucks between their production and shipping locations on public roads to work up to 16 hours per day and to return to work with less than the mandatory 10 consecutive hours off duty. The exemption is similar to the exemption that allows Cliffs' drivers transporting steel coils to work the same hours of services (HOS). Unlike the steel coil exemption, the scrap metal trucks would comply with the heavy hauler trailer definition, height of rear side marker lights restrictions, tire loading restrictions, and the coil securement requirements in the FMCSRs.

DATES: Comments must be received on or before *September 27, 2021.*

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2016–0050 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2016-0050.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA 2016–0050), indicate the specific section of this document to which the comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/#!docketDetail;D=FMCSA-2016-0050,* click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2016-0050* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act

DOT solicits comments from the public to better inform its regulatory process, in accordance with 5 U.S.C. 553(c). DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL 14—Federal Docket Management System), which can be reviewed at *www.transportation.gov/privacy.*

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request. The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Background

Under 49 CFR 381.315(a), FMCSA must publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption

is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

III. Cliff's Application for Exemption

Cliffs, formerly known as ArcelorMittal, requests an exemption to allow its employee-drivers with CDLs who transport scrap metal on two trucks between their production and shipping locations to work up to 16 hours per day and return to work with less than the mandatory 10 consecutive hours off duty. The request is similar to the exemption previously granted that allows Cliffs' drivers transporting steel coils to work the same HOS, and travel the same distances and routes between their production and shipping locations. Unlike the steel coil exemption, the scrap trucks would comply with the definition of a ''heavy hauler trailer'' in 49 CFR 393.5; the required ''height of rear side marker lights restrictions'' in 49 CFR 393.11 Table1—Footnote 4; the ''tire loading restrictions'' in 49 CFR 393.75(f); and the ''coil securement requirements'' in 49 CFR 393.120.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on Cliffs' exemption request. The request was submitted as part of Cliffs' exemption renewal application mentioned above. As a new request, however, it is subject to the separate notice and comment provided by this document. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–18330 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7165; FMCSA–2001–9561; FMCSA–2003–14504; FMCSA–2003–15892; FMCSA–2004–18885; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2008–0021; FMCSA–2008–0398; FMCSA–2009–0086; FMCSA–2009–0121; FMCSA–2010–0082; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2010–0201; FMCSA–2010–0327; FMCSA–2010–0372; FMCSA–2010–0385; FMCSA–2011–0010; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2011–0141; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2012–0040; FMCSA–2012–0279; FMCSA–2012–0280; FMCSA–2013–0021; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2014–0010; FMCSA–2014–0300; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0350; FMCSA–2016–0028; FMCSA–2016–0033; FMCSA–2016–0210; FMCSA–2016–0213; FMCSA–2016–0214; FMCSA–2017–0016; FMCSA–2017–0018; FMCSA–2017–0019; FMCSA–2017–0022; FMCSA–2017–0023; FMCSA–2019–0006; FMCSA–2019–0008; FMCSA–2019–0011; FMCSA–2019–0013]

Qualification of Drivers; Exemption Applications; Vision

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 102 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

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 September 27, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1998–4334, Docket No. FMCSA–2000–7165, Docket No. FMCSA–2001–9561, Docket No. FMCSA–2003–14504, Docket No. FMCSA–2003–15892, Docket No. FMCSA–2004–18885, Docket No. FMCSA–2005–20027, Docket No. FMCSA–2005–20560, Docket No. FMCSA–2005–21254, Docket No. FMCSA–2005–21711, Docket No. FMCSA–2006–24783, Docket No. FMCSA–2006–25246, Docket No. FMCSA–2006–26066, Docket No. FMCSA–2007–27333, Docket No. FMCSA–2007–27515, Docket No. FMCSA–2007–27897, Docket No. FMCSA–2007–28695, Docket No. FMCSA–2008–0021, Docket No. FMCSA–2008–0398, Docket No. FMCSA–2009–0086, Docket No. FMCSA–2009–0121, Docket No. FMCSA–2010–0082, Docket No. FMCSA–2010–0161, Docket No. FMCSA–2010–0187, Docket No. FMCSA–2010–0201, Docket No. FMCSA–2010–0327, Docket No. FMCSA–2010–0372, Docket No. FMCSA–2010–0385, Docket No. FMCSA–2011–0010, Docket No. FMCSA–2011–0057, Docket No. FMCSA–2011–0092, Docket No. FMCSA–2011–0102, Docket No. FMCSA–2011–0141, Docket No. FMCSA–2011–0142, Docket No. FMCSA–2011–0189, Docket No. FMCSA–2012–0040, Docket No. FMCSA–2012–0279, Docket No. FMCSA–2012–0280, Docket No. FMCSA–2013–0021, Docket No. FMCSA–2013–0025, Docket No. FMCSA–2013–0027, Docket No. FMCSA–2013–0029, Docket No. FMCSA–2013–0030, Docket No. FMCSA–2013–0165, Docket No. FMCSA–2014–0010, Docket No. FMCSA–2014–0300, Docket No. FMCSA–2014–0304, Docket No. FMCSA–2014–0305, Docket No. FMCSA–2015–0048, Docket No. FMCSA–2015–0049, Docket No. FMCSA–2015–0052, Docket No. FMCSA–2015–0053, Docket No. FMCSA–2015–0350, Docket No. FMCSA–2016–0028, Docket No. FMCSA–2016–0033, Docket No. FMCSA–2016–0210, Docket No. FMCSA–2016–0213, Docket No. FMCSA–2016–0214, Docket No. FMCSA–2017–0016, Docket No. FMCSA–2017–0018, Docket No. FMCSA–2017–0019, Docket No. FMCSA–2017–0022, Docket No. FMCSA–2017–0023, Docket No. FMCSA–2019–0006, Docket No. FMCSA–2019–0008, Docket No. FMCSA–2019–0011, or Docket No. FMCSA–2019–0013 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–1998–4334, FMCSA–2000–7165, FMCSA–2001–9561,

FMCSA–2003–14504, FMCSA–2003–15892, FMCSA–2004–18885, FMCSA–2005–20027, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2006–24783, FMCSA–2006–25246, FMCSA–2006–26066, FMCSA–2007–27333, FMCSA–2007–27515, FMCSA–2007–27897, FMCSA–2007–28695, FMCSA–2008–0021, FMCSA–2008–0398, FMCSA–2009–0086, FMCSA–2009–0121, FMCSA–2010–0082, FMCSA–2010–0161, FMCSA–2010–0187, FMCSA–2010–0201, FMCSA–2010–0327, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0010, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0102, FMCSA–2011–0141, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2012–0040, FMCSA–2012–0279, FMCSA–2012–0280, FMCSA–2013–0021, FMCSA–2013–0025, FMCSA–2013–0027, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0010, FMCSA–2014–0300, FMCSA–2014–0304, FMCSA–2014–0305, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0053, FMCSA–2015–0350, FMCSA–2016–0028, FMCSA–2016–0033, FMCSA–2016–0210, FMCSA–2016–0213, FMCSA–2016–0214, FMCSA–2017–0016, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2019–0006, FMCSA–2019–0008, FMCSA–2019–0011, or FMCSA–2019–0013 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–1998–4334; FMCSA–2000–7165; FMCSA–2001–9561; FMCSA–2003–14504; FMCSA–2003–15892; FMCSA–2004–18885; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2008–0021; FMCSA–2008–0398; FMCSA–2009–0086; FMCSA–2009–0121; FMCSA–2010–0082; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2010–0201; FMCSA–2010–0327; FMCSA–2010–0372; FMCSA–2010–0385; FMCSA–2011–0010; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2011–0141; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2012–0040; FMCSA–2012–0279; FMCSA–2012–0280; FMCSA–2013–0021; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2014–0010; FMCSA–2014–0300; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0350; FMCSA–2016–0028; FMCSA–2016–0033; FMCSA–2016–0210; FMCSA–2016–0213; FMCSA–2016–0214; FMCSA–2017–0016; FMCSA–2017–0018; FMCSA–2017–0019; FMCSA–2017–0022; FMCSA–2017–0023; FMCSA–2019–0006; FMCSA–2019–0008; FMCSA–2019–0011; FMCSA–2019–0013), 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–1998–4334, FMCSA–2000–7165, FMCSA–2001–9561, FMCSA–2003–14504, FMCSA–2003–15892, FMCSA–2004–18885, FMCSA–2005–20027, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2006–24783, FMCSA–2006–25246, FMCSA–2006–26066, FMCSA–2007–27333, FMCSA–2007–27515, FMCSA–2007–27897, FMCSA–2007–28695, FMCSA–2008–0021, FMCSA–2008–0398, FMCSA–2009–0086, FMCSA–2009–0121, FMCSA–2010–0082, FMCSA–2010–0161, FMCSA–2010–0187, FMCSA–2010–0201, FMCSA–2010–0327, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0010, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0102, FMCSA–2011–0141, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2012–0040, FMCSA–2012–0279, FMCSA–2012–0280, FMCSA–2013–0021, FMCSA–2013–0025, FMCSA–2013–0027, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0010, FMCSA–2014–0300, FMCSA–2014–0304, FMCSA–2014–0305, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0053, FMCSA–2015–0350, FMCSA–2016–0028, FMCSA–2016–0033, FMCSA–2016–0210, FMCSA–2016–0213, FMCSA–2016–0214, FMCSA–2017–0016, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2019–0006, FMCSA–2019–0008, FMCSA–2019–0011, or FMCSA–2019–0013 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–1998–4334, FMCSA–2000–7165, FMCSA–2001–9561, FMCSA–2003–14504, FMCSA–2003–15892, FMCSA–2004–18885, FMCSA–

2005–20027, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2006–24783, FMCSA–2006–25246, FMCSA–2006–26066, FMCSA–2007–27333, FMCSA–2007–27515, FMCSA–2007–27897, FMCSA–2007–28695, FMCSA–2008–0021, FMCSA–2008–0398, FMCSA–2009–0086, FMCSA–2009–0121, FMCSA–2010–0082, FMCSA–2010–0161, FMCSA–2010–0187, FMCSA–2010–0201, FMCSA–2010–0327, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0010, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0102, FMCSA–2011–0141, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2012–0040, FMCSA–2012–0279, FMCSA–2012–0280, FMCSA–2013–0021, FMCSA–2013–0025, FMCSA–2013–0027, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0010, FMCSA–2014–0300, FMCSA–2014–0304, FMCSA–2014–0305, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0053, FMCSA–2015–0350, FMCSA–2016–0028, FMCSA–2016–0033, FMCSA–2016–0210, FMCSA–2016–0213, FMCSA–2016–0214, FMCSA–2017–0016, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2019–0006, FMCSA–2019–0008, FMCSA–2019–0011, or FMCSA–2019–0013 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 regulatory 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 vision found in 49 CFR 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 a 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 red, green, and amber.

The 102 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), 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 102 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 63 FR 66226, 64 FR 16517, 65 FR 33406, 65 FR 57234, 66 FR 17994, 66 FR 30502, 66 FR 41654, 67 FR 57266, 68 FR 19598, 68 FR 33570, 68 FR 35772, 68 FR 44837, 68 FR 52811, 68 FR 61860, 69 FR 52741, 69 FR 53493, 69 FR 62742, 70 FR 2701, 70 FR 16887, 70 FR 17504, 70 FR 25878, 70 FR 30997, 70 FR 30999, 70 FR 33937, 70 FR 41811, 70 FR 46567, 70 FR 48797, 70 FR 61165, 70 FR 61493, 71 FR 32183, 71 FR 41310, 71 FR 53489, 71 FR 62148, 71 FR 63379, 72 FR 180, 72 FR 1051, 72 FR 9397, 72 FR 11425, 72 FR 12666, 72 FR 21313, 72 FR 25831, 72 FR 28093, 72 FR 32703, 72 FR 32705, 72 FR 39879, 72 FR 40359, 72 FR 40362, 72 FR 46261, 72 FR 52419, 72 FR 54971, 72 FR 54972, 73 FR 15567, 73 FR 27015, 73 FR 36955, 73 FR 51336, 73 FR 61925, 73 FR 78423, 74 FR 7097, 74 FR 8302, 74 FR 8842, 74 FR 15584, 74 FR 15586, 74 FR 19267, 74 FR 20253, 74 FR 26461, 74 FR 26464, 74 FR 28094, 74 FR 34074, 74 FR 34395, 74 FR 34630, 74 FR 41971, 74 FR 43221, 74 FR 43223, 74 FR 49069, 74 FR 53581, 75 FR 19674, 75 FR 25919, 75 FR 36779, 75 FR 39725, 75 FR 39729, 75 FR 47883, 75 FR 52062, 75 FR 54958, 75 FR 59327, 75 FR 61833, 75 FR 63257, 75 FR 65057, 75 FR 70078, 75 FR 77492, 75 FR 79081, 75 FR 79083, 76 FR 5425, 76 FR 7894, 76 FR 9856, 76 FR 11215, 76 FR 12216, 76 FR 15361, 76 FR 18824, 76 FR 20076, 76 FR 20078, 76 FR 21796, 76 FR 25766, 76 FR 29022, 76 FR 29024, 76 FR 29026, 76 FR 34135, 76 FR 37168, 76 FR 37173, 76 FR 37885, 76 FR 40445, 76 FR 44082, 76 FR 44652, 76 FR 44653, 76 FR 49528, 76 FR 53708, 76 FR 53710, 76 FR 54530, 76 FR 55465, 76 FR 55469, 76 FR 61143, 76 FR 62143, 76 FR 64171, 76 FR 67246, 77 FR 23797, 77 FR 23799, 77 FR 33558, 77 FR 40945, 77 FR 40946, 77 FR 52389, 77 FR 56262, 77 FR 60008, 77 FR 60010, 77 FR 64583, 77 FR 64839, 77 FR 68200, 77 FR 71671, 77 FR 74734, 77 FR 75494, 77 FR 75496, 78 FR 800, 78 FR 10251, 78 FR 12822, 78 FR 14410, 78 FR 16761, 78 FR 16762, 78 FR 18667, 78 FR 20376, 78 FR 20379, 78 FR 24798, 78 FR 30954, 78 FR 34140, 78 FR 34141, 78 FR 34143, 78 FR 37270, 78 FR 41975, 78 FR 46407, 78 FR 47818, 78 FR 51268, 78 FR 51269, 78 FR 52602, 78 FR 56986, 78 FR 56993, 78 FR 57679, 78 FR 63307, 78 FR 68137, 78 FR 77782, 78 FR 78477, 79 FR 4531, 79 FR 14328, 79 FR 23797, 79 FR 24298, 79 FR 27365, 79 FR 46300, 79 FR 51643, 79 FR 56117, 79 FR 64001, 79 FR 65760, 79 FR 73393, 79 FR 73686, 79 FR 74169, 80 FR 603, 80 FR 2473, 80 FR 12254, 80 FR 12547, 80 FR 14223, 80 FR 15859, 80 FR 15863, 80 FR 16500, 80 FR 18693, 80 FR 20558, 80 FR 22773, 80 FR 25766, 80 FR 26139, 80 FR 29149, 80 FR 31636, 80 FR 31640, 80 FR 33009, 80 FR 33011, 80 FR 35699, 80 FR 36395, 80 FR 36398, 80 FR 37718, 80 FR 40122, 80 FR 41547, 80 FR 45573, 80 FR 48402, 80 FR 48404, 80 FR 48409, 80 FR 48411, 80 FR 48413, 80 FR 50917, 80 FR 53383, 80 FR 59225, 80 FR 62163, 80 FR 63869, 81 FR 14190, 81 FR 15401, 81 FR 20435, 81 FR 39100, 81 FR 39320, 81 FR 59266, 81 FR 66720, 81 FR 71173, 81 FR 72664, 81 FR 74494, 81 FR 80161, 81 FR 81230, 81 FR 91239, 81 FR 94013, 81 FR 96165, 81 FR 96180, 82 FR 12678, 82 FR 13043,

82 FR 13048, 82 FR 13187, 82 FR 15277, 82 FR 18818, 82 FR 18949, 82 FR 18954, 82 FR 22379, 82 FR 23712, 82 FR 24430, 82 FR 28734, 82 FR 32919, 82 FR 33542, 82 FR 35043, 82 FR 35050, 82 FR 37499, 82 FR 37504, 82 FR 43647, 82 FR 47295, 82 FR 47309, 82 FR 47312, 83 FR 2289, 83 FR 4537, 83 FR 15195, 83 FR 24146, 83 FR 28325, 83 FR 34661, 83 FR 40638, 83 FR 53724, 84 FR 2311, 84 FR 2314, 84 FR 2326, 84 FR 11859, 84 FR 12665, 84 FR 16320, 84 FR 16333, 84 FR 21397, 84 FR 21401, 84 FR 27685, 84 FR 27688, 84 FR 33801, 84 FR 46088, 84 FR 47038, 84 FR 47045, 84 FR 47052, 84 FR 47057, 84 FR 52166, 84 FR 58437). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely 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 October and are discussed below. As of October 3, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 85 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (63 FR 66226, 64 FR 16517, 65 FR 33406, 65 FR 57234, 66 FR 17994, 66 FR 30502, 66 FR 41654, 67 FR 57266, 68 FR 19598, 68 FR 33570, 68 FR 35772, 68 FR 44837, 69 FR 52741, 69 FR 53493, 69 FR 62742, 70 FR 2701, 70 FR 16887, 70 FR 17504, 70 FR 25878, 70 FR 30997, 70 FR 33937, 70 FR 41811, 71 FR 32183, 71 FR 41310, 71 FR 53489, 71 FR 62148, 71 FR 63379, 72 FR 180, 72 FR 1051, 72 FR 9397, 72 FR 11425, 72 FR 12666, 72 FR 21313, 72 FR 25831, 72 FR 28093, 72 FR 32703, 72 FR 32705, 72 FR 39879, 72 FR 40362, 72 FR 46261, 72 FR 52419, 72 FR 54972, 73 FR 15567, 73 FR 27015, 73 FR 36955, 73 FR 51336, 73 FR 61925, 73 FR 78423, 74 FR 7097, 74 FR 8302, 74 FR 8842, 74 FR 15584, 74 FR 15586, 74 FR 19267, 74 FR 20253, 74 FR 26461, 74 FR 26464, 74 FR 28094, 74 FR 34395, 74 FR 34630, 74 FR 41971, 74 FR 43221, 74 FR 43223, 75 FR 19674, 75 FR 25919, 75 FR 36779, 75 FR 39725, 75 FR 39729, 75 FR 47883, 75 FR 52062, 75 FR 54958, 75 FR 59327, 75 FR 61833, 75 FR 63257, 75 FR 65057, 75 FR 70078, 75 FR 77492, 75 FR 79081, 75 FR 79083, 76 FR 5425, 76 FR 7894, 76 FR 9856, 76 FR 11215, 76 FR 12216, 76 FR 15361, 76 FR 18824, 76 FR 20076, 76 FR 20078, 76 FR 21796, 76 FR 25766, 76 FR 29022, 76 FR 29024, 76 FR 29026, 76 FR 34135, 76 FR 37168, 76 FR 37173, 76 FR 37885, 76 FR 40445, 76 FR 44082, 76 FR 44652, 76 FR 44653, 76 FR 49528, 76 FR 53708, 76 FR 53710, 76 FR 54530, 76 FR 55469, 76 FR 61143, 77 FR 23797, 77 FR 23799, 77 FR 33558, 77 FR 40945, 77 FR 40946, 77 FR 52389, 77 FR 56262, 77 FR 60008, 77 FR 60010, 77 FR 64583, 77 FR 64839, 77 FR 68200, 77 FR 71671, 77 FR 74734, 77 FR 75494, 77 FR 75496, 78 FR 800, 78 FR 10251, 78 FR 12822, 78 FR 14410, 78 FR 16761, 78 FR 16762, 78 FR 18667, 78 FR 20376, 78 FR 20379, 78 FR 24798, 78 FR 30954, 78 FR 34140, 78 FR 34141, 78 FR 34143, 78 FR 37270, 78 FR 41975, 78 FR 46407, 78 FR 47818, 78 FR 51268, 78 FR 51269, 78 FR 52602, 78 FR 56986, 78 FR 56993, 78 FR 57679, 78 FR 63307, 78 FR 77782, 78 FR 78477, 79 FR 4531, 79 FR 14328, 79 FR 23797, 79 FR 24298, 79 FR 27365, 79 FR 46300, 79 FR 51643, 79 FR 56117, 79 FR 64001, 79 FR 65760, 79 FR 73393, 79 FR 73686, 79 FR 74169, 80 FR 603, 80 FR 2473, 80 FR 12254, 80 FR 12547, 80 FR 14223, 80 FR 15859, 80 FR 15863, 80 FR 16500, 80 FR 18693, 80 FR 20558, 80 FR 22773, 80 FR 25766, 80 FR 26139, 80 FR 29149, 80 FR 31636, 80 FR 31640, 80 FR 33009, 80 FR 33011, 80 FR 35699, 80 FR 36395, 80 FR 36398, 80 FR 37718, 80 FR 40122, 80 FR 41547, 80 FR 45573, 80 FR 48402, 80 FR 48404, 80 FR 48409, 80 FR 48411, 80 FR 48413, 80 FR 50917, 80 FR 53383, 80 FR 59225, 80 FR 62163, 80 FR 63869, 81 FR 14190, 81 FR 15401, 81 FR 20435, 81 FR 39100, 81 FR 39320, 81 FR 59266, 81 FR 66720, 81 FR 71173, 81 FR 72664, 81 FR 74494, 81 FR 80161, 81 FR 81230, 81 FR 91239, 81 FR 94013, 81 FR 96165, 81 FR 96180, 82 FR 12678, 82 FR 13043, 82 FR 13048, 82 FR 13187, 82 FR 15277, 82 FR 18818, 82 FR 18949, 82 FR 18954, 82 FR 22379, 82 FR 23712, 82 FR 24430, 82 FR 28734, 82 FR 32919, 82 FR 33542, 82 FR 35043, 82 FR 35050, 82 FR 37499, 82 FR 37504, 82 FR 47295, 82 FR 47309, 82 FR 47312, 83 FR 4537, 83 FR 15195, 83 FR 24146, 83 FR 28325, 83 FR 34661, 83 FR 40638, 83 FR 53724, 84 FR 2311, 84 FR 2314, 84 FR 2326, 84 FR 11859, 84 FR 12665, 84 FR 16320, 84 FR 16333, 84 FR 21397, 84 FR 21401, 84 FR 27685, 84 FR 27688, 84 FR 33801, 84 FR 47038, 84 FR 47045, 84 FR 47052, 84 FR 47057, 84 FR 52166):

Charles L. Alsager, Jr. (IA), Thomas A. Barber (NC), Ronald J. Bergman (OH), Jan M. Bernath (OH), Johnny A. Beutler (SD), John A. Bridges (GA), John P. Brooks (IL), Shaun E. Burnett (IA), Juan R. Cano (TX), Jonathan E. Carriaga (NM), Anthony J. Cesternino (VA), David E. Crane (OH), Christopher A. Deadman (MI), Kenneth Dionisi (MI), Russell R. Dixon (VA), Arthur Dolengewicz (NY), Tracy A. Doty (TN), Glenn E. Dowell (IN), Verlin L. Driskell (NE), Robin C. Duckett (SC), Edward Dugue III (NC), Dominick P. Fittipaldi (PA), Joe M. Flores (NM), Ricky J. Franklin (OR), Hugo A. Galvis Barrera (GA), Steven G. Garrett (CA), Steven A. Garrity (MA), Ricky L. Gillum (KY),Bret S. Graham (ME), Mark A. Grenier (CT), Kevin S. Haas (PA), David A. Hayes (GA), Melvin L. Hipsley (MD), Steven C. Holland (OK), Wade J. Jandreau (ME), Joseph E. Jones (GA), Clyde H. Kitzan (ND), Gerald D. Larson (WI), Jason C. Laub (OH), Edward J. Lavin (CT), Gregory K. Lilly (WV), Pedro G. Limon (TX), Craig R. Martin (TX), Michael L. Martin (OH), David McKinney (OR), Brian S. Metheny (PA), David A. Miller (NE), James J. Mitchell (NC), Johnny Montemayor (TX), Earl R. Neugerbauer (CO), Thomas G. Normington (WY), Frank L. O'Rourke (NY), Joseph B. Peacock (NC), Kenneth D. Perkins (NC), Mark A. Pirl (NC), Reginald I. Powell (IL), John J. Pribanic (TX), Shannon L. Puckett (KY), William A. Ramirez Vasquez (CA), John C. Rodriguez (PA), Vincent Rubino (NJ), Benito Saldana (TX), Daniel Salinas (OR), Bobby W. Sanders (TN), Scott W. Schilling (ND), Tim M. Seavy (IN), John M. Sexton (CA), Randal J. Shabloski (PA), Phillip Shelburne (TX), Rick J. Smart (NH), David C. Snellings (MD), Scott C. Starr (NJ), Artis Suitt (NC), Rodney W. Sukalski (MN), Lee F. Taylor (NJ), Thomas L. Terrell (IA), Bill J. Thierolf (NE), Larry A. Tidwell (MO), Malcolm J. Tilghman, Sr. (DE), Larry D. Warneke (WA), Harry S. Warren (FL), Ricky L. Watts (FL), Paul C. Weiss (PA), Mark B. Wilmer (VA), Norman G. Wooten (TX)

The drivers were included in docket numbers FMCSA–1998–4334, FMCSA–2000–7165, FMCSA–2001–9561, FMCSA–2003–14504, FMCSA–2004–18885, FMCSA–2005–20027, FMCSA–2005–20560, FMCSA–2006–24783, FMCSA–2006–25246, FMCSA–2006–26066, FMCSA–2007–27333, FMCSA–2007–27515, FMCSA–2007–27897, FMCSA–2007–28695, FMCSA–2008–0021, FMCSA–2008–0398, FMCSA–2009–0086, FMCSA–2009–0121, FMCSA–2010–0082, FMCSA–2010–

0161, FMCSA–2010–0187, FMCSA–2010–0201, FMCSA–2010–0327, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0010, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0102, FMCSA–2011–0141, FMCSA–2011–0142, FMCSA–2012–0040, FMCSA–2012–0279, FMCSA–2012–0280, FMCSA–2013–0021, FMCSA–2013–0025, FMCSA–2013–0027, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0010, FMCSA–2014–0300, FMCSA–2014–0304, FMCSA–2014–0305, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0053, FMCSA–2015–0350, FMCSA–2016–0028, FMCSA–2016–0033, FMCSA–2016–0210, FMCSA–2016–0213, FMCSA–2016–0214, FMCSA–2017–0016, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0022, FMCSA–2019–0006, FMCSA–2019–0008, and FMCSA–2019–0011. Their exemptions are applicable as of October 3, 2021 and will expire on October 3, 2023.

As of October 4, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (84 FR 46088, 84 FR 58437):

Calvin B. Jones (MD), Robert E. Nichols (NV), and Karol Stankiewicz (IL).

The drivers were included in docket number FMCSA–2019–0013. Their exemptions are applicable as of October 4, 2021 and will expire on October 4, 2023.

As of October 19, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (82 FR 43647, 83 FR 2289, 84 FR 47052):

Charles C. Berns (IA), Jeremiah E. Casey (MO), Carlos Marquez (WI), Daniel D. Woodworth (FL)

The drivers were included in docket number FMCSA–2017–0023. Their exemptions are applicable as of October 19, 2021 and will expire on October 19, 2023.

As of October 23, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 47818, 78 FR 63307, 80 FR 59225, 82 FR 47312, 84 FR 47052):

Larry E. Blakely (GA), Arlene S. Kent (NH), Willie L. Murphy (IN), Brian C. Tate (VA)

The drivers were included in docket number FMCSA–2013–0165. Their exemptions are applicable as of October 23, 2021 and will expire on October 23, 2023.

As of October 24, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (70 FR 30999, 70 FR 46567, 70 FR 48797, 70 FR 61493, 72 FR 40359, 72 FR 54971, 74 FR 34074, 74 FR 49069, 76 FR 62143, 78 FR 77782, 80 FR 59225, 82 FR 47312, 84 FR 47052):

Andrew B. Clayton (TN), William P. Doolittle (MO), Jonathan M. Gentry (TN), Robert W. Healey, Jr. (NJ)

The drivers were included in docket numbers FMCSA–2005–21254 and FMCSA–2005–21711. Their exemptions are applicable as of October 24, 2021 and will expire on October 24, 2023.

As of October 30, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 52811, 68 FR 61860, 70 FR 61165, 74 FR 53581, 76 FR 64171, 78 FR 68137, 80 FR 59225, 82 FR 47312, 84 FR 47052):

Michael E. Yount (ID)

The driver was included in docket number FMCSA–2003–15892. The exemption is applicable as of October 30, 2021 and will expire on October 30, 2023.

As of October 31, 2021 and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 55465, 76 FR 67246, 78 FR 77782, 80 FR 59225, 82 FR 47312, 84 FR 47052):

Gerald D. Stidham (CO)

The driver was included in docket number FMCSA–2011–0189. The exemption is applicable as of October 31, 2021 and will expire on October 31, 2023.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41, (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination, and (3) 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 if he/her 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.

VI. Conclusion

Based upon its evaluation of the 102 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–18337 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0119]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Complete Innovations, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from Complete Innovations, Inc. (Complete Innovations) to allow its Vision 2.0 device to be mounted lower in the windshield on commercial motor vehicles than is currently permitted.

DATES: Comments must be received on or before September 27, 2021.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2021–0119 using any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday–Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public participation: The *http://www.regulations.gov* website is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* website as well as the DOT's *http://docketsinfo.dot.gov* website. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Jose R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2021–0119), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2021–0119'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in 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 and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Under 49 CFR 381.315(a), FMCSA must publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and

conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

IV. Complete Innovations' Application for Exemption

The Federal Motor Carrier Safety Regulations require devices meeting the definition of ''vehicle safety technology,'' including Complete Innovations' Vision 2.0 device, to be mounted (1) not more than 4 inches below the upper edge of the area swept by the windshield wipers, or (2) not more than 7 inches above the lower edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. Complete Innovations has applied for an exemption from 49 CFR 393.60(e)(1) to allow its Vision 2.0 device to be mounted lower in the windshield than is currently permitted. A copy of the application is included in the docket referenced at the beginning of this notice.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on Complete Innovations' application for an exemption from 49 CFR 393.60(e)(1). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–18343 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2021–0006–N–11]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On May 17, 2021, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before September 27, 2021.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer at email: *Hodan.Wells@dot.gov* or telephone: (202) 493–0440.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On May 17, 2021, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 86 FR 26770. FRA received no comments in response to this 60-day notice.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.10(b); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Inspection and Maintenance of Steam Locomotives.[1]

OMB Control Number: 2130–0505.

Abstract: The Boiler Inspection Act of 1911 required each railroad carrier subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original Act was expanded to cover all steam locomotives and tenders, and all their parts and appurtenances. As amended, this Act requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. Currently, the collection of information is used primarily by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. The collection of information is also used by FRA and State rail safety inspectors to verify that necessary safety inspections and tests have been completed and to ensure that steam locomotives are indeed ''safe and suitable'' for service and are properly operated and maintained.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA–1, FRA–2, FRA–3, FRA–4, FRA–5, and FRA–19.

Respondent Universe: 82 steam locomotive owners/operators.

Frequency of Submission: On occasion; annually.

Total Estimated Annual Responses: 9,362.

Total Estimated Annual Burden: 1,357 hours.

[1] Previously titled ''Inspection and Maintenance of Steam Locomotives (Formerly Steam Locomotive Inspection).''

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $104,082.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct, or sponsor a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2021–18398 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Ford Motor Company

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Ford Motor Company (Ford) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its confidential vehicle line beginning in model year (MY) 2022. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. Ford also requested confidential treatment for specific information in its petition. Therefore, no confidential information provided for purposes of this notice has been disclosed.

DATES: The exemption granted by this notice is effective beginning with the 2022 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. NHTSA promulgated regulations at 49 CFR part 541 (theft prevention standard) to require parts-marking for specified passenger motor vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition the Secretary of Transportation for an exemption for a line of passenger motor vehicles equipped with an antitheft device as standard equipment that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the theft prevention standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an ''immobilizer'') as standard equipment that complies with one of the standards specified in that section.

Section 543.8 establishes requirements for processing petitions for exemption from the theft prevention standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will notify the petitioner of the deficiencies. Once NHTSA receives a complete petition the agency will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.[1] Exemptions granted under part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the **Federal Register** and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers Ford Motor Corporation's (Ford) petition for its confidential vehicle line beginning in MY 2022.

I. Specific Petition Content Requirements Under 49 CFR 543.6

Pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention,* Ford petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the theft prevention standard, beginning in MY 2022. Ford petitioned under 49 CFR 543.6, *Petition: Specific content requirements,* which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements.

More specifically, section 543.6(a)(1) requires petitions to include a statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which the exemption is sought. Under section 543.6(a)(2), each petition must list each component in the antitheft system, and include a diagram showing the location of each of those components within the vehicle. As required by section 543.6(a)(3), each petition must include an explanation of the means and process by which the

[1] 49 U.S.C. 33106(d).

device is activated and functions, including any aspect of the device designed to: (1) Facilitate or encourage its activation by motorists; (2) attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; (3) prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key; (4) prevent the operation of a vehicle which an unauthorized person has entered using means other than a key; and (5) ensure the reliability and durability of the device.[2]

In addition to providing information about the antitheft device and its functionality, petitioners must also submit the reasons for their belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief,[3] and the reasons for their belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of part 541 in reducing and deterring motor vehicle theft. In support of this belief, the petitioners should include any statistical data that are available to the petitioner and form the basis for the petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar, line which have parts marked in compliance with part 541.[4]

The following sections describe Ford's petition information provided pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention.* To the extent that specific information in Ford's petition is subject to a properly filed confidentiality request, that information was not disclosed as part of this notice.[5]

II. Ford's Petition for Exemption

In a petition dated November 26, 2020 and updated on April 30, 2021,[6] Ford requested an exemption from the parts-marking requirements of the theft prevention standard for its confidential vehicle line beginning with MY 2022.

In its petition, Ford provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the confidential vehicle line. Ford stated that its MY 2022 confidential vehicle line will be installed with a passive, transponder based, electronic engine immobilizer antitheft device as standard equipment. Specifically, Ford stated that its vehicle line will be installed with the SecuriLock Passive Antitheft Engine Immobilizer System (PATS). Key components of its SecuriLock antitheft device will include a key, powertrain control module (PCM) or hybrid powertrain control module (HPCM), body control module (BCM), radio transceiver module and an anti-lock braking system module (ABS). Ford also stated that its vehicle line will be equipped with a hood release, counterfeit resistant VIN label, secondary VINs inscribed on the body and a cabin accessible with a valid keycode as standard antitheft features.

Ford also stated that it will offer its intelligent access with push button start (IAwPB) system as optional equipment. For purposes of the theft prevention standard, NHTSA generally only considers the antitheft device equipped on the vehicle as standard equipment. However in this case, while the SecuriLock PATS and IAwPB systems are mutually exclusive antitheft systems, NHTSA has previously approved the IAwPB antitheft system as standard equipment for the Ford Bronco Sport vehicle line. The IAwPB system is described in the grant of petition for exemption published in the **Federal Register** on August 12, 2020.[7]

Pursuant to section 543.6(a)(3), Ford explained that its SecuriLock system is activated when the ignition key is turned to the start position allowing the transceiver module to read the ignition key code and transmit an encrypted message from the key code to the instrument cluster, this encrypted message will then determine that the key is valid and will authorize the engine to start by sending a separate encrypted message to the PCM or the HPCM. Ford also stated that the powertrain will only function if the key code matches the unique identification key code that was previously programmed into the PCM/HPCM. If the codes do not match, the engine starter, ignition spark and the fuel will be disabled, once active, no other action from the operator is required. Ford further stated that the integration of the transponder into the normal operation of the ignition key assures activation of the system. Deactivation of the immobilizer system occurs automatically each time an engine start occurs.

As required in section 543.6(a)(3)(v), Ford provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Ford conducted tests based on its own specified standards. Ford provided a detailed list of the tests conducted. Additionally, Ford stated that its device is extremely reliable and durable because several features make it difficult to defeat with communications between the SecuriLock transponder and the PCM/HPCM that are encrypted because there are 18 quintillion (1.8×10^{19}) different possible codes making a successful key duplication by chance virtually impossible. Also, the SecuriLock system and the PCM/HPCM share security data immediately when first installed during vehicle assembly, forming matched modules. Ford further stated that mechanically overriding the system is not possible; for example, slam-pulling the ignition lock cylinder will not allow unauthorized start of the vehicle without the correct code being transmitted to the electronic control module. Ford stated that the system is extremely reliable and durable because there are no moving parts. Ford further stated that its sophisticated design and operation of the SecuriLock's electronic engine immobilizer system makes conventional theft methods ineffective (*e.g.,* hot-wiring or attacking the ignition lock cylinder) and drive away thefts are virtually eliminated with this system.

Ford referenced National Insurance Crime Bureau (NICB) data for the Ford EcoSport (a vehicle size and segment comparable to the line covered by this petition), which showed 2 thefts per thousand vehicles since the EcoSport's production start. The Ford EcoSport was granted an exemption for its MY 2018 vehicles (See 82 FR 22060, May 11, 2017). Ford also stated that its SecuriLock system installed on its confidential vehicle line is similar in design and implementation to the system offered on the MY 2021 Ford Bronco Sport vehicle line, which is detailed in the August 2020 notice discussed above. Ford further stated that its sophisticated design and operation of its SecuriLock immobilizer system renders ineffective conventional theft methods, such as hot-wiring the ignition cylinder and drive away thefts are virtually eliminated with this antitheft system. Ford concluded that they believed the vehicle line covered by the petition will have a very low theft rate based on the theft rate of the Ford EcoSport, a vehicle of a similar size with similar equipment.

[2] 49 CFR 543.6(a)(3).

[3] 49 CFR 543.6(a)(4).

[4] 49 CFR 543.6(a)(5).

[5] 49 CFR 512.20(a).

[6] As discussed above, per 49 CFR 543.8(a), NHTSA processes the petition once the manufacturer submits all the information required by 49 CFR part 543.

[7] 85 FR 48759 (Aug. 12, 2020).

III. Decision To Grant the Petition

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Ford has provided adequate reasons for its belief that the antitheft device for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. This conclusion is based on the information Ford provided about its antitheft device. NHTSA believes, based on Ford's supporting evidence, that the antitheft device described for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

The agency concludes that Ford's antitheft device will provide four types of performance features listed in section 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the theft prevention standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the theft prevention standard.

If Ford decides not to use the exemption for its requested vehicle line, the manufacturer must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Ford wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption.''

The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if Ford contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Ford's petition for exemption for the confidential vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2022 vehicles.

Issued under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2021–18421 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2021–0058]

Agency Information Collection Activities; Notice and Request for Comments; Event Data Recorders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval.

SUMMARY: NHTSA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for an information collection currently in use. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes a collection of information on event data recorders (EDRs) for which NHTSA intends to seek OMB approval. The information collection currently does not have an OMB control number.

DATES: Written comments should be submitted by October 25, 2021.

ADDRESSES: You may submit comments [identified by Docket No. NHTSA–2021–0058] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sue someone is there to help you, please call 202–366–9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Carla Rush, NHTSA, 1200 New Jersey Avenue SE, West Building, Room W43–417, NRM–100, Washington, DC 20590. Telephone number: 202–366–1810.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of

information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Event Data Recorders.

OMB Control Number: New.

Type of Request: Approval of an existing collection in use without an OMB Control Number.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information: 49 CFR part 563, Event Data Recorders, specifies uniform, national requirements for vehicles voluntarily equipped with EDRs concerning the collection, storage, and retrievability of onboard motor vehicle crash event data. More specifically it requires voluntarily installed EDRs in vehicles with a gross vehicle weight rating (GVWR) of 3,855 kilograms (8,500 pounds) or less to:

- Record 15 essential data elements;
- Record up to 30 additional data elements if the vehicle is equipped to record these elements;
- Record these data elements in a standardized format, with specifications for range, accuracy, resolution, sampling rate, recording duration, and filter class;
- Function after full-scale vehicle crash tests specified in FMVSS Nos. 208 and 214; and
- Have the capacity to record two events in a multi-event crash.

In addition, Part 563 requires vehicle manufacturers to make a retrieval tool for the EDR information commercially available, and include a standardized statement in the owner's manual indicating that the vehicle is equipped with an EDR and describing its purpose. Part 563 helps ensure that EDRs record, in a readily usable manner, data valuable for effective crash investigations and for analysis of safety equipment performance (*e.g.,* advanced restraint systems).

Description of the Need for the Information and Use of the Information: Under 49 U.S.C. 322(a), the Secretary of Transportation (the ''Secretary'') is authorized to prescribe regulations to carry out the duties and powers of the Secretary. One of the duties of the Secretary is to administer the National Traffic and Motor Vehicle Safety Act, as amended. The Secretary has delegated the responsibility for carrying out the National Traffic and Motor Vehicle Safety Act to NHTSA.[1] Two statutory provisions, 49 U.S.C. 30182 and 23 U.S.C. 403, authorize NHTSA to collect motor vehicle crash data to support its safety mission. NHTSA collects motor vehicle crash information under these authorities to support its statutory mandate to establish motor vehicle safety standards and reduce the occurrence and cost of traffic crashes.[2] NHTSA also utilizes crash data in the enforcement of motor vehicle safety recalls and other motor vehicle highway safety programs that reduce fatalities, injuries, and property damage caused by motor vehicle crashes. In 2006, NHTSA exercised its general authority to issue such rules and regulations as deemed necessary to carry out Chapter 301 of Title 49, United States Code to promulgate 49 CFR part 563.[3]

NHTSA issued part 563 to improve crash data collection by standardizing data recorded on EDRs to help provide a better understanding of the circumstances in which crashes and injuries occur, which will in turn lead to the development of safer vehicle designs. EDR data are used to improve the quality of crash data collection to assist safety researchers, vehicle manufacturers, and the agency in crash investigations to understand vehicle crashes better and more precisely. Similarly, vehicle manufacturers are able to utilize EDRs in improving vehicle designs and developing more effective vehicle safety countermeasures, and EDR data may be used by Advanced Automatic Crash Notification (AACN) systems to aid emergency response teams in assessing the severity of a crash and estimating the probability of serious injury.

Additionally, the agency's experience in handling unintended acceleration and pedal entrapment allegations has demonstrated that, if a vehicle is equipped with an EDR, the data from that EDR can improve the ability of both the agency and the vehicle's manufacturer to identify and address safety concerns associated with possible defects in the design or performance of the vehicle.

Description of the Likely Respondents: The respondents are manufacturers that voluntarily equip passenger cars, multipurpose passenger vehicles, trucks, and buses having a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) with EDRs. The agency estimates that there are approximately 18 such manufacturers.

Estimate Total Annual Burden Hours: NHTSA estimates that there are no annual reporting or recordkeeping burdens associated with Part 563, except for the owner's manual statement requirement which will be incorporated into the consolidated owner's manual requirements information collection (OMB Control Number 2127–0541). Vehicle manufacturers are not required to retain or report information gathered by EDRs because the devices themselves continuously monitor vehicle systems and determine when to record, retain, and/or overwrite information. The information is collected automatically by electronic means. Data are only required to be locked and cannot be overwritten when a recordable event occurs (*e.g.,* an air bag deploys in a crash event). When recordable events do occur, EDRs only capture data for a few seconds. NHTSA estimates that there is no annual hourly burden associated with the information standardization requirements of part 563.

Estimated Total Annual Burden Cost: In the August 2006 final rule, the agency estimated that the costs associated with the final rule were negligible. Several factors contributed to this determination. First, NHTSA estimated that about 64 percent of new light vehicles in 2005 already added the EDR capability to the vehicles' existing air bag control systems. Thus, the EDRs were simply capturing information that was already being processed by the vehicle. Additionally, in the final rule the agency sought to limit the number of EDR data elements and associated

[1] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.95.

[2] See 49 U.S.C. 30101 and 30111.

[3] 71 FR 50997, August 28, 2006.

requirements to the minimum necessary to achieve our stated purposes. At that time, NHTSA determined that the industry's current state-of-the-art EDRs largely met the purposes of part 563. Thus, it was unnecessary to specify requirements for additional sensors or other hardware that would increase EDR costs appreciably. NHTSA stated in the final rule that the most significant technology cost could result from the need to upgrade data storage.

The cost of data storage, long-term or short-term, has drastically reduced over the years.[4] Regardless of the storage type, costs are now a fraction of what they were even 10 years ago.[5] A recent study from NHTSA looking at EDR technologies reported that information provided by industry indicated that a typical recorded event requires about 2 kilobytes (Kb) of memory depending on the manufacturer.[6] Information from manufacturers also indicated that the typical microprocessor used in vehicle applications, in approximately the 2013 timeframe, had 32 Kb or 64 Kb of flash data as part of the air bag control module (ACM) and that only a fraction of the memory is dedicated to the EDR data. This study also estimated the total memory usage for all Table I and Table II data elements, listed at 49 CFR 563.7, recorded for the minimum required duration and frequency requirements in part 563. It reported that to record Table I and II data elements would require 0.072 Kb and 0.858 Kb of memory storage, respectively.

In addition, NHTSA now estimates that 99.5 percent of model year 2021 light vehicles have a compliant EDR, meaning manufacturers have largely already incurred the cost of meeting the part 563 requirements. Given that EDRs are installed on nearly all new light vehicles, the large amount of storage that is part of the air bag control module (32 kb or 64 kb), the small fraction required for EDR data (<1 kb), and the negligible costs for data storage, NHTSA continues to believe that there would be no additional costs or negligible costs associated with the Part 563 requirements. Therefore, the cost burden for this collection of information is discussed qualitatively.

Part 563 only applies to vehicles voluntarily-equipped with EDRs. Therefore, any burden is based on the differences in cost between a compliant and non-compliant EDR. In considering additional burden for compliant EDRs, NHTSA considered: (1) The additional burden of meeting the 10-day data crash survivability requirement; and (2) the additional burden of meeting the data format requirements. Part 563 requires that an EDR must function during and after the compliance tests specified in FMVSS Nos. 208 and 214. The EDR's stored data is required to be downloadable 10 days after the crash tests. This requirement provides a basic functioning and survivability level for EDRs, but does not ensure that EDRs survive extremely severe crashes, fire, or fluid immersion. The burden for data survivability can include costs for an additional power supply and enhancements for computer area network (CAN) such as wiring, data bus, and harness. However, before part 563 was established the agency had not documented an EDR survivability problem except in rare and extremely severe events such as fire and submergence. Thus, the agency does not believe vehicle manufacturers incur additional costs to comply with the ability to retrieve the essential data elements 10 days after the crash test.

With regard to the memory capacity required to meet the part 563 data requirements, due to proprietary concerns, the adequacy of existing memory capacity of part 563 non-compliant vehicles is not known. However, we believe that the part 563 requirements are comparable to the current industry EDR practices. In terms of the burden associated with software algorithm changes to meet the data format requirements, the agency believes that, in the event a vehicle manufacturer needs to redesign their software algorithm, the redesign would be minor (*e.g.,* changing the specifications in their codes). The agency estimates that the cost of algorithm redesign would be negligible on a per vehicle basis and it would be an upfront cost (*i.e.,* not a recurring burden).

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

R. Ryan Posten,

Associate Administrator for Rulemaking, National Highway Traffic Safety Administration.

[FR Doc. 2021–18420 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–59–P

[4] *https://www.computerworld.com/article/3182207/cw50-data-storage-goes-from-1m-to-2-cents-per-gigabyte.html*

[5] *https://hblok.net/blog/posts/2017/12/17/historical-cost-of-computer-memory-and-storage-4/*

[6] DOT HS 812 929, *https://www.nhtsa.gov/document/light-vehicle-event-data-recorder-technologies*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0107; Notice 2]

Notice of Denial of Petition for Decision That Nonconforming Model Year 2014–2018 Chevrolet Cheyenne Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for determination of import eligibility.

SUMMARY: Diversified Vehicle Services, Inc. (DVS or Petitioner) has petitioned NHTSA for a decision that model year (MY) 2014–2018 Chevrolet Cheyenne Trucks (TKs), which were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States. In its petition, DVS claims that these vehicles are eligible for import because they are substantially similar to Chevrolet Silverado TKs originally manufactured for sale in the United States and certified by their manufacturer as complying with all applicable FMVSS, and because they are capable of being readily altered to conform to the standards. This document announces the denial of DVS's petition.

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202–366–1012).

SUPPLEMENTARY INFORMATION:

I. Background

A motor vehicle that was not originally manufactured to conform to all applicable FMVSS may be eligible for import into the United States if NHTSA determines that the motor vehicle is: (1) Substantially similar to a motor vehicle originally manufactured for importation into and certified for sale in the United States, (2) of the same model year as the model of the motor

vehicle to which it is being compared, and (3) capable of being readily altered to conform to all applicable FMVSS. *See* 49 U.S.C. 30141(a)(1)(A).[1] If NHTSA determines that a nonconforming vehicle is import eligible, any such nonconforming vehicle imported into the United States must be modified into conformance and certified as conforming by a registered importer before it is sold or otherwise released from the custody of the registered importer. 49 U.S.C. 30146(a)(1); 49 CFR 592.6.[2]

Petitions for import eligibility decisions may be submitted by either manufacturers or registered importers and must comply with the requirements set forth in 49 CFR 593.6. A petition based on the existence of a substantially similar conforming vehicle manufactured for import and certified for sale in the United States must include, among other things, ''[d]ata, views and arguments demonstrating that the vehicle [which is the subject of the petition] is substantially similar to the vehicle identified by the petitioner'' as a comparison vehicle. *Id.* § 593.6(a)(4). The petition also must include, with respect to each of the FMVSS applicable to the comparison vehicle, ''data, views, and arguments demonstrating that the vehicle [which is the subject of the petition] either was originally manufactured to conform to such standard, or is capable of being readily modified to conform to such standard.'' *Id.* § 593.6(a)(4).

As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register** and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides whether the vehicle is eligible for importation based on the petition, its review of any comments received, and the agency's own analysis. NHTSA will grant a petition for import eligibility if it ''determines that the petition clearly demonstrates that the vehicle model is eligible for importation'' and will deny the petition if it ''determines that the petition does not clearly demonstrate that the vehicle model is eligible for importation.'' 49 CFR 593.7(e)–(f). NHTSA then publishes its decision and the reasons for it in the **Federal Register**. *Id.*

[1] This provision was codified at 15 U.S.C. 1397(c)(3)(A) prior to the 1994 recodification of the transportation laws.

[2] A registered importer is an importer that has registered with NHTSA under 49 CFR part 592 and is therefore authorized to modify and then certify imported vehicles as compliant with all applicable FMVSS.

II. Summary of Petition

DVS, a registered importer located in Indianapolis, Indiana, has petitioned NHTSA to decide whether nonconforming MY 2014–2018 Chevrolet Cheyenne TKs (the Subject Vehicles) are eligible for importation into the United States. Petitioner contends the Subject Vehicles are substantially similar to MY 2014–2018 Chevrolet Silverado TKs (the Comparison Vehicles) sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS. The Chevrolet Cheyenne is a pick-up truck manufactured by General Motors (GM) for sale in Mexico. GM does not sell Cheyenne pick-up trucks in the United States.

DVS's petition requests an import eligibility decision for five separate model years (MY 2014–2018) of the Subject Vehicles, but it does not distinguish between these different model years, does not state that it included a vehicle from each of these five model years in its analysis, and does not state that it compared each model year of the Subject Vehicles to the same model year of the Comparison vehicles.[3] The petition includes no representations and states no factual basis for any representations regarding the similarity of the different model years of either the Subject Vehicles or the Comparison Vehicles.

Petitioner nonetheless asserts it compared the Subject Vehicles to the Comparison Vehicles and ''believe[s]'' they are substantially similar in that the Subject Vehicles comply with ''the great majority of the standards'' to which the Comparison Vehicles are certified. Petitioner states that it further ''believe[s]'' that the Subject Vehicles are capable of being readily modified to conform to all remaining standards.'' Petitioner states that these beliefs are ''based on information obtained during a detailed inspection of the [Subject Vehicles] for which this determination is sought'' and that it ''reviewed all available parts, service, and sales literature in order to thoroughly compare the two vehicles.'' Petitioner provides no details regarding its ''detailed inspection'' and does not identify any of the ''parts, service, and sales literature'' it reviewed.

Specifically, Petitioner claims that, based on this comparison, it determined that the Subject Vehicles, as originally manufactured, conform to: FMVSS Nos. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*; 103, *Windshield Defrosting and Defogging Systems*; 104, *Windshield Wiping and Washing Systems*; 106, *Brake Hoses*; FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment*; FMVSS No. 110, *Tire Selection and Rims*; 111, *Rearview Mirrors*; 113, *Hood Latch System*; 114, *Theft Protection and Rollaway Prevention*; 116, *Motor Vehicle Brake Fluids*; 118, *Power-Operated Window, Partition, and Roof Panel System*; 119, *New Pneumatic Tires*; 124, *Accelerator Control Systems*; 126, *Electronic Stability Control Systems*; 135, *Light Vehicle Brake Systems*; 138, *Tire Pressure Monitoring Systems*; 201, *Occupant Protection in Interior Impact*; 202, *Head Restraints*; 203, *Impact Protection for Driver from Steering Control*; 204, *Steering Control Rearward Displacement*; 205, *Glazing Materials*; 206, *Door Locks and Door Retention Components*; 207, *Seating Systems*; 208, *Occupant Crash Protection*; 209, *Seat Belt Assemblies*; 210, *Seat Belt Assembly Anchorages*; 212, *Windshield Mounting*; 213, *Child Restraint Systems*; 214, *Side Impact Resistance*; 216, *Roof Crush Resistance*; 219, *Windshield Zone Intrusion*; 301, *Fuel System Integrity*; and 302, *Flammability of Interior Materials*. Petitioner also states the Subject Vehicles comply with 49 CFR part 541, *Anti-Theft/Parts Marking Requirements*; and 49 CFR part 565, *VIN Requirements*.

Petitioner states that the Subject Vehicles, as built, are noncompliant with FMVSS No. 101, *Controls and Displays,* but contends that they can readily be conformed to this standard with replacing the faceplate for the instrument cluster with one that includes the word ''BRAKE.'' Petitioner additionally states that a reference and certification label will be added to the left front door post area to meet the requirements of 49 CFR part 567, *Certification Requirements.* Petitioner states that the Subject Vehicles have a gross vehicle weight rating ''GVWR range of 6,800–7,200 lbs.,'' but provides no information regarding the GVWR of the Comparison Vehicles, as required by the applicable regulations. *See* 49 CFR 593.6(a)(1).

III. Public Comments

A Notice of Receipt of DVS's Petition was published in the **Federal Register** for public comment for a period of 30 days. 85 FR 81268 (Dec. 15, 2020). One public comment was submitted in response to the Notice of Receipt. GM,

[3] NHTSA previously granted DVS permission to temporarily import multiple 2015 Chevrolet Cheyenne vehicles for purposes of preparing its petition. *See* 49 CFR 571.5(l). Nothing in DVS's petition suggests that its analysis involves any model year of the Subject Vehicles other than these 2015 Chevrolet Cheyenne vehicles.

the manufacturer of both the Subject Vehicles and the Comparison Vehicles, commented that;

> GM does not recommend that these vehicles be granted eligibility for importation into the United States. The owners of these vehicles will find it very difficult or impossible to get safety-critical repairs in the US.

GM further explained in its comment that its dealers in the US are only authorized to service US-designated vehicles under the terms of their existing franchise agreements, and that the Vehicle Identification Number (VIN) will not be recognized by the GM Multiple Diagnostic Interface (MDI) tool used at a US GM dealership.[4]

IV. NHTSA's Analysis

A petition to determine import eligibility must include all information required under the applicable authorities and must also include data, views, and arguments demonstrating the conclusions advanced by the petition. DVS's petition fails to meet these requirements because it does not include sufficient supporting information and relies almost exclusively on unsupported conclusory allegations. The petition fails to distinguish between five different model years of the Subject Vehicles and Comparison Vehicles or even confirm that DVS compared vehicles of the same model year. *See* 49 U.S.C. 30141(a)(1)(A)(iii). The petition also fails to provide ''the gross vehicle weight rating (GVWR) of'' the Comparison Vehicles. 49 CFR 593.6(a)(1). The petition does not provide adequate ''[d]ata, views and arguments demonstrating'' that the Comparison Vehicles are ''substantially similar'' to the Subject Vehicles. *Id.* § 593.6(a)(4). The petition also fails to provide, ''[w]ith respect to each Federal motor vehicle safety standard'' applicable to the Comparison Vehicles, ''data, views, and arguments demonstrating'' that the Subject Vehicles either were ''originally manufactured to conform to such standard, or [are] capable of being readily modified to conform to such standard.'' *Id.* § 593.6(a)(5).

As the basis for its assertion that the Subject Vehicles are compliant with the FMVSS identified above, Petitioner simply repeats the statement that the ''MX-Cheyenne complies with the requirements of this standard and is identical to the U.S.-vehicle with respect to those requirements'' following a reference to each of these standards. Petitioner offers no factual or analytical support for any of these conclusory assertions. For two of the standards (FMVSS No. 138 (tire pressure monitoring systems) and FMVSS No. 208 (occupant crash protection)), Petitioner identifies various components by part number and states that the Subject Vehicles and the Comparison Vehicles employ identical components. Petitioner did not submit any parts catalogs or any other technical resource for any model year of either the Subject Vehicles or the Comparison Vehicles to verify these assertions and fails to explain why the usage of identical parts would demonstrate that the Subject Vehicles, as built, were compliant with these standards. For FMVSS No. 214 (side impact resistance), Petitioner states that it ''removed the interior trim on a door of [a Subject Vehicle] and confirm[ed] that the vehicle is originally equipped with door beams to comply with the requirements of this standard.'' This level of examination and analysis does not demonstrate compliance for the Subject Vehicles because meeting the performance requirements of FMVSS No. 214 requires far more than the existence of door beams. *See* 49 CFR 571.214.

As part of its analysis of DVS's petition, NHTSA requested additional information from GM, the manufacturer of both the Subject Vehicles and the Comparison Vehicles.[5] In response to NHTSA's question regarding the compliance of the Subject Vehicles with FMVSS requirements, GM explained that the Subject Vehicles, as built, fail to conform with the speedometer and odometer display requirements in FMVSS No. 101 (controls and displays), the tire placard requirements in FMVSS No. 110 (tires and rims), the language visibility requirements of FMVSS No. 135 (brake systems), and the passenger air bag telltale and visor warning requirements in FMVSS No. 208 (occupant crash protection). This information directly contradicts Petitioner's assertion that the Subject Vehicles, as built, were compliant with these requirements.

In regard to the Subject Vehicles, GM also explained that tire pressure monitoring systems (TPMS) are not required in Mexico, and each imported vehicle would therefore have to be checked to verify that it had an optional FMVSS No. 138 compliant TPMS installed at the time of manufacture. This information directly contradicts Petitioner's assertion that all Subject Vehicles, as built, are equipped with a FMVSS No. 138 compliant TPMS. Finally, GM explained that there is a unique engine and manual transmission combination available for the Subject Vehicles in Mexico, and that GM has no documentation demonstrating compliance of vehicles so equipped with FMVSS No. 102 (transmission shift position sequence), FMVSS No. 114 (rollaway prevention), and FMVSS No. 124 (accelerator control). Petitioner provided no information regarding this particular engine and transmission combination, no basis for identifying its presence or absence in the Subject Vehicles, and no information regarding whether Subject Vehicles with this unique engine and transmission combination could be modified to conform with the relevant FMVSS.

V. NHTSA's Decision

Petitioner has failed to demonstrate that the Subject Vehicles are substantially similar to the Comparison Vehicles, failed to demonstrate that its comparison of the Subject Vehicles to the Comparison Vehicles involved vehicles of the same model year, and failed to demonstrate that the Subject Vehicles are either compliant with or capable of being readily altered to comply with all applicable FMVSS. The petition is therefore denied. Pursuant to 49 CFR 593.7(e), NHTSA will not consider a new petition covering the models that are the subject of this decision until at least three months from the date of this notice of denial.

(Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Joseph Kolly,

Acting Associate Administrator for Enforcement.

[FR Doc. 2021–18357 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–59–P

[4] A copy of the comment submitted by GM may be found at docket ID: NHTSA–2020–0107–0002.

[5] A copy of GM's response may be found at docket ID: NHTSA–2020–0107–0003.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0025; Notice 2]

Combi USA, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Combi USA (Combi), has determined that certain Combi USA BabyRide rear-facing child restraint

systems manufactured between May 1, 2016, and August 31, 2019, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems.* Combi filed an original noncompliance report dated March 8, 2021, and later amended it on March 10, 2021, March 11, 2021, May 25, 2021, and July 22, 2021. Subsequently, Combi petitioned NHTSA on March 30, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of Combi's petition.

FOR FURTHER INFORMATION CONTACT: Kelley Adams-Campos, Safety Compliance Engineer, NHTSA, Office of Vehicle Safety Compliance, *kelley.adamscampos@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

Combi has determined that certain Combi USA BabyRide rear-facing child restraint systems manufactured between May 1, 2016, and August 31, 2019, do not fully comply with the requirements of paragraph S5.4.1.2(a) of FMVSS No. 213, *Child Restraint Systems* (49 CFR 571.213). Combi filed an original noncompliance report dated March 8, 2021, and later amended it on March 10, 2021, March 11, 2021, May 25, 2021, and July 22, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Combi subsequently petitioned NHTSA on March 30, 2021 for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Combi's petition was published with a 30-day public comment period, on April 22, 2021, in the **Federal Register** (86 FR 21435). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2021–0025.''

II. Child Restraint Systems Involved

Approximately 13,880 Combi USA BabyRide rear-facing child restraint systems with model number 378099, manufactured between May 1, 2016, and August 31, 2019, are potentially involved.

III. Noncompliance

Combi explains that the noncompliance is that the subject rear-facing child restraint systems are equipped with 25-mm-wide webbing used in the center front harness adjuster that does not comply with the minimum breaking strength requirements as required in paragraph S5.4.1.2(a) of FMVSS No. 213. Specifically, the subject child restraint systems have an initial breaking strength of between 9,622 N and 10,136 N (median load 9,871 N), which is less than the required minimum breaking strength of 11,000 N.

IV. Rule Requirements

Paragraph S5.4.1.2(a) of FMVSS No. 213 includes the requirements relevant to this petition. The webbing of belts provided with a child restraint system and used to secure a child to a child restraint system shall have a minimum breaking strength for new webbing of not less than 11,000 N when tested in accordance with paragraph S5.1 of FMVSS No. 209. Each value shall be not less than 11,000 N. ''New webbing'' means webbing that has not been exposed to abrasion, light, or micro-organisms as specified elsewhere in FMVSS No. 213.

V. Summary of Combi's Petition

The following views and arguments presented in this section, ''V. Summary of Combi's Petition,'' are the views and arguments provided by Combi and do not reflect the views of the Agency. Combi describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Combi submitted the following reasoning:

1. Combi has not received any reports from consumers related to the strength of the 25-mm-wide webbing in the BabyRide infant car seat.

2. The BabyRide with the 25-mm-wide webbing at issue complies with dynamic testing requirements of FMVSS No. 213, paragraph S5.1, in testing conducted by both NHTSA and Combi between 2016 and 2019. This includes testing with the 12-month-old CRABI ATD that represents the heaviest child that the BabyRide infant car seat is used with.

3. The actual webbing strength of the 25-mm-wide webbing far exceeds the strength needed for the application of an infant car seat used with children 10 kg (22 lbs.) or less. When tested with the 12-month-old CRABI ATD that weighs 22 lbs., representing the maximum weight occupant for the car seat, the maximum load that the 25-mm-wide webbing is subjected to during an FMVSS No. 213 compliance crash test is 302.9 N. Combi believes that this peak loading represents the maximum load applied to the 25-mm-wide webbing in all Combi USA BabyRide infant car seats. Combi bases that belief on the total belt load applied to the vehicle lap belt and LATCH belt recorded in the 2016 UMTRI and 2021 UMTRI testing with the 12-month-old ATD. The total vehicle lap belt load recorded in the 2021 test (AG2101) of 4206 N (945.6 lbs.) is consistent with the total vehicle lap belt and LATCH belt loading recorded in the 2016 tests conducted by UMTRI with the 12-month-old ATD of 4,067.2 N (851.4 lbs.) in Test TT1603 and 3,989.1 N (896.8 lbs.) in Test TT1604. The maximum load measured in the 25-mm-wide webbing in the BabyRide infant car seat is much lower than the total load applied to the vehicle lap belt and LATCH belt as the car seat is for rear-facing use only and for use with a child weighing 10 kg (22 lb.) or less. In a rear-facing car seat, a significant portion of the load from the ATD during the dynamic test is transferred and supported by the seatback, thus reducing the maximum load applied to the harness system including the 25-mm-wide webbing. Combi has reviewed the harness webbing specifications defined in FMVSS No. 213 and notes the webbing specified is for use with children up to 80 lbs. (36 kg), and sufficiently strong to restrain an 80 lb occupant when forward facing. Combi states that the loads carried by the seatback support surface significantly reduce the loading experienced by the harness webbing and center front adjuster webbing as shown in the UMTRI test AG2101, and that this load is significantly lower than the load applied to the harness and center front adjuster webbing when used in a forward-facing restraint system that is used up to 80 lbs. Combi asserts that rear-facing use of the BabyRide car seat with children 22 lbs. or less will subject the harness belts and adjuster belt to only a small percentage of the load applied when forward-facing with an occupant weighing 80 lbs. Combi believes that the initial minimum breaking strength of 11,000 N is much higher than the strength needed for a rear-facing car seat like the BabyRide even when occupied by a child at the maximum weight and that the 25-mm-wide webbing used in the BabyRide exceeds the forces applied in a crash.

4. Combi cites the webbing requirements in FMVSS No. 213 for new webbing breaking strength, S5.4.1.2(a), webbing strength after abrasion,

S5.4.1.2(b)(1), and webbing strength after exposure to light, S5.4.1.2(c)(1) and summarizes results for testing based on these requirements performed by Combi and/or NHTSA. In Combi's summation, they explain that the initial breaking strength of the 25-mm-wide webbing in NHTSA's and Combi's [1] testing is between 9,266 N and 10,136 N [2] which they recognize does not comply. Combi notes that based on the required 11,000 N minimum strength for new webbing, the median breaking strength requirement after abrasion of not less than 75 percent of the new webbing strength must be at least 8,250 N. In spite of this, Combi believes from their testing that the average breaking strength after abrasion of 8,047 N or 86.7 percent of the original breaking strength of the 25-mm-wide webbing complies. The median [3] breaking strength of the 25-mm-wide webbing after exposure to light in NHTSA's testing measured 9,752 N or 98.8 percent of the original breaking strength, which Combi believes complies.

Combi concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[4] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[5] In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''The absence of a complaint does not mean there have not been any problems or failures, and it does not mean that there will not be failures in the future.'' [6] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [7]

Combi identifies no receipt of any reports from consumers related to the strength of the 25-mm-wide webbing. As discussed above, the Agency finds the absence of consumer complaints (or reports as Combi noted) insufficient evidence of an inconsequential effect on the safety of the webbing.

Next, Combi argues that, based on measured forces acting on the 25-mm-wide webbing when subjected to the dynamic testing requirements of FMVSS No. 213 using the 22 lbs. 12-month-old CRABI ATD, the maximum weight occupant for the car seat, the subject child restraints present no motor vehicle safety risk since the measured forces acting on the 25-mm-wide webbing were no higher than 320.9 N. Combi also believes that this represents the maximum load applied to 25-mm-wide webbing in all Combi USA BabyRide Infant Car Seats, based on the total belt load applied to the vehicle lap belt and LATCH belt recorded in 2016 and 2021 UMTRI testing with the 12-month-old ATD.

Consistent with the Agency's decision to deny Combi's 2013 petition [8] for inconsequential noncompliance for failure to comply with the initial webbing breaking strength requirements, NHTSA is not persuaded by these arguments. NHTSA does not simply have one performance test, a dynamic test. NHTSA has multiple performance tests because a single test does not address the range of safety concerns with child restraints. The webbing breaking strength test and the child restraint system dynamic test do not test for the same conditions and serve distinct purposes. The webbing breaking strength test conditions are necessarily more severe than those for dynamic testing to help ensure that the webbing will afford effective protection for severe crashes, even after the webbing degrades due to abrasion in use and exposure to sunlight. In addressing past similar arguments raised by Combi, who submitted webbing load force data generated in dynamic testing to demonstrate apparent safety margins in comparison to webbing breaking strength test results, the Agency stated that ''[a] 30 mile per hour test is not indicative of the upper limit of safety. The test conditions in FMVSS No. 213 reflect the concern that child restraints will withstand even the most severe crashes. These are well above 30 mph.'' *Id.*

Combi asserts that in a rear-facing car seat, a significant portion of the load from the ATD during the dynamic test is transferred and supported by the seat back, thus reducing the maximum load applied to the harness system including the 25-mm-wide webbing. The petitioner's reasoning is unpersuasive. The minimum initial webbing strength requirements apply to the component level, *i.e.,* child restraint webbing must comply as required in paragraph S5.4.1.2(a) of FMVSS No. 213 when tested independently from the child restraint system, and are not uniquely specified according to rear-facing or forward-facing child restraint systems. The breaking strength requirements ensure that the performance of webbing over the lifetime of a child restraint system is sufficient to provide the necessary protection. Requirements that apply to new child restraints only, such as the dynamic sled test conducted on the child restraint as a system, do not provide comparable assurances, particularly for components such as webbing that are likely to experience extraordinary ''wear and tear'' and exposure to elements that can degrade the webbing strength in the course of normal use.

Combi cites the webbing requirements in FMVSS No. 213 for new webbing breaking strength, S5.4.1.2(a), webbing strength after abrasion, S5.4.1.2(b)(1), and webbing strength after exposure to light, S5.4.1.2(c)(1) and summarizes results for testing based on these requirements performed by Combi and/

[1] Test Report No. 4737580AL–1R–21, (March 16, 2021 revised).

[2] In their petition, Combi mistakenly refers to 10,136 N as 10,126 N.

[3] In their petition, Combi mistakenly referred to the median breaking strength after exposure to light as the average breaking strength after exposure to light.

[4] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[5] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[6] *See Dorel Juvenile Group, Denial of Petition for Decision of Inconsequential Noncompliance,* 78 FR 53189, 53190 (August 28, 2013).

[7] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[8] *Combi USA, Inc., Denial of Petition for Decision of Inconsequential Noncompliance,* 78 FR 71028 (and decisions cited therein) (Nov. 27, 2013).

or NHTSA. In NHTSA's compliance tests of the Combi BabyRide 25-mm-wide webbing for new webbing breaking strength, three samples were tested and each sample failed to meet the minimum requirement of 11,000 N.[9] Combi submitted test data for a single sample of the 25-mm-wide webbing measuring 9,278 N initial breaking strength, also less than the required minimum value of 11,000 N and consistent with their submitted 2016–2019 production data which measured between 9,600 N and 9,900 N.

Combi also submitted test data for two samples of the 25-mm-wide webbing after being subjected to abrasion and referenced a 98.8 percent retention of the original breaking strength in NHTSA's testing of the 25-mm-wide webbing after exposure to light. The Agency is not opining on the compliance of these results as they are not germane to the subject noncompliance, thus not dispositive of the inconsequentiality analysis.

Combi believes that the initial minimum breaking strength of 11,000 N is much higher than the strength needed for a rear-facing car seat like the BabyRide, even when occupied by a child at the maximum weight, and that the 25-mm-wide webbing used in the BabyRide exceeds the forces applied in a crash. FMVSS No. 213 requires an absolute minimum initial breaking strength for new webbing to provide a margin of safety for use throughout the life of a child restraint. In the Agency's analysis in determining a minimum breaking strength requirement for new webbing, published in a Notice of Proposed Rulemaking (NPRM)[10] and subsequent Final Rule,[11] NHTSA examined harness webbing compliance data for 109 child restraint systems collected from 2000 to 2002. That compliance data showed that 92 percent (100 out of 109) of the harness webbing complied with the proposed 11,000 N minimum breaking strength requirement. In *Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance,* 75 FR 510 (January 5, 2010) (NHTSA–2008–0132) (and decisions cited therein), the Agency explained that an inconsequentiality petition is not the appropriate means to challenge the methodology of a specific test and/or stringency of a performance requirement in a FMVSS. The appropriate venue for such arguments is to comment during the proposal phase or as a petition for rulemaking to amend a current safety standard. During the 2005–2006 proposal and final rulemaking phases for the new webbing strength requirement, NHTSA published a report showing test results for the Combi Baby One dated June 10, 2005.[12] In that report the median new webbing strength of the adjuster webbing was 9,207 N (converted from 2,070 lbs.). Despite this, Combi neither commented on the NPRM nor petitioned for reconsideration of the final rule with respect to FMVSS No. 213 paragraph S5.4.1.2(a).

NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that Combi has not met its burden of persuasion that the subject FMVSS No. 213 noncompliance is inconsequential to motor vehicle safety. Accordingly, Combi's petition is hereby denied, and Combi is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Joseph Kolly,

Acting Associate Administrator for Enforcement.

[FR Doc. 2021–18356 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–59–P

[9] Frank Savino (2020, October). *Child restraint system, component parts: Model No.: Combi Babyride* (Report No. 4642921–018). National Highway Traffic Safety Administration.

[10] 70 FR 37731 (June 30, 2005)

[11] 71 FR 32855 (June 7, 2006)

[12] Frank Savino (2005, June). *Child restraint system, component parts: Model No.: Combi—Baby One* (Report No. 206827–08). National Highway Traffic Safety Administration.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0077; Notice 2]

Cooper Tire & Rubber Company, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of petition denial.

SUMMARY: Cooper Tire & Rubber Company (Cooper Tire) has determined that certain Cooper brand tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Cooper Tire filed a noncompliance report dated May 4, 2018, and subsequently petitioned NHTSA on May 21, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of Cooper Tire's petition.

FOR FURTHER INFORMATION CONTACT: Abraham Diaz, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5310, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview

Cooper Tire has determined that certain Cooper brand tires do not fully comply with paragraph S5.5.1 of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR part 571.139). Cooper Tire filed a noncompliance report dated May 4, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* and subsequently petitioned NHTSA on May 21, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Cooper Tire's petition was published with a 30-day public comment period, on December 6, 2018, in the **Federal Register** (83 FR 62949). No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2018–0077.''

II. Tires Involved

Approximately 327 Evolution H/T size 245/70R16 tubeless radial tires, manufactured between June 4, 2017, and June 10, 2017, are potentially involved.

III. Noncompliance

Cooper Tire explains that the noncompliance is that the subject tires were molded with an incorrectly ordered serial week and year on the outboard sidewall. This date is required by paragraph S5.5.1(b) of FMVSS No. 139. Specifically, the subject tires were manufactured with serial week ''1723'' when they should have been manufactured with serial week ''2317.''

IV. Rule Requirements

Paragraph S5.5.1(b) of FMVSS No. 139, includes the requirements relevant to this petition:

- For tires manufactured on or after September 1, 2009, each tire must be

labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire.

• Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall.

V. Summary of Petition

Cooper Tire described the subject noncompliance and contended that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Cooper Tire submitted the following:

1. While the 327 tires in the subject population contain an incorrectly ordered week and year for the fourth grouping of Tire Identification Number's (TIN), they are in all other respects properly labeled and meet all performance requirements under the FMVSSs. The serial week of manufacture has no bearing on the performance or operation of a tire and does not create a safety concern to either the operator of the vehicle on which the tires are mounted, or the safety of personnel in the tire repair, retread, and recycling industry.

2. Tire registration and traceability will not be interrupted. Cooper Tire's internally controlled online registration system has been modified to be able to accept the incorrectly ordered 1723 date code. Any tires registered with that date code and TIN will be identified properly as having been manufactured in the 23rd week of 2017. This will ensure that Cooper Tire is able to identify these tires in the event they must be recalled. If a recall is necessary, Cooper Tire will explain the date issue in any recall notice.

3. Cooper Tire can also confirm that it will not use the same full TIN in year 2023. Cooper Tire uses the third grouping of numbers within the TIN to identify the SKU or make of the tire, as is permitted at the option of the manufacturer under the regulations. *See* 49 CFR 574.5(g)(3). In this case, lJ9 is the third grouping, which indicates that this tire is a Cooper Evolution H/T. While Cooper Tire has not yet set its year 2023 production schedule, if Cooper Evolution H/T tires are made in year 2023, Cooper Tire will assign another unique identifier so that the tires made in year 2017 will be distinguishable from the tires made in year 2023. This will eliminate the potential for SKUs produced in year 2017 to be confused with those produced in year 2023 and will allow for Cooper Tire to readily identify the 327 tires that are the subject of this petition. However, this will not be obvious to any consumer. Therefore, there is a risk a consumer could buy an aged tire assuming it is a new tire.

4. NHTSA has granted a number of previous inconsequentiality petitions relating to mislabeled TINs, provided that the mislabeling does not affect the manufacturer's ability to identify the tires. ''The purpose of the date code is to identify a tire so that, if necessary, the appropriate action can be taken in the interest of public safety such as a safety recall notice.'' *See* Bridgestone/Firestone, Inc.; Grant of Application, 64 FR 29080 (May 28, 1999); and Cooper Tire & Rubber Company, Grant of Application, 68 FR 16115 (April 2, 2003). Accordingly, NHTSA has explained in multiple instances that ''[t]he agency believes that the true measure of inconsequentiality to motor vehicle safety, in this case, is the effect of the noncompliance on the ability of the tire manufacturer to identify the tires in the event of a recall.'' Bridgestone/Firestone, Inc., Grant of Application, 66 FR 45076 (August 27, 2001). As a result, NHTSA has granted petitions and found that TIN noncompliance is inconsequential to safety in cases where the TIN is out of sequence or mislabeled, including where the week and/or year of manufacture is mislabeled and even where the date code is missing altogether. *See, e.g.,* Bridgestone Firestone North America Tire, LLC, Grant of Petition, 71 FR 4396 (January 26, 2006) (granting petition where date code was missing because manufacturer could still identify and recall the tires); Cooper Tire & Rubber Company, Grant of Application, 68 FR 16115 (April 2, 2003) (granting petition where tires were labeled with wrong plant code, because ''the tires have a unique DOT identification''); Bridgestone/Firestone, Inc., Grant of Application, 66 FR 45076 (Aug. 27, 2001) (granting petition where the date code was labeled incorrectly, because ''the information included on the tire identification label and the manufacturer's tire production records is sufficient to ensure that these tires can be identified in the event of a recall''); Bridgestone/Firestone, Inc.; Grant of Application, 64 FR 29080 (May 28, 1999) (granting petition where the wrong year was marked in the date code on the tires); Cooper Tire & Rubber Company; Grant of Application, 63 FR 29059 (May 27, 1998) (granting petition where the date code was missing where tires had a unique TIN for recall purposes); Bridgestone/Firestone, Inc.; Grant of Application, 60 FR 57617 (November 16, 1995) (granting petition where the date code was out of sequence); Uniroyal Goodrich Tire Company; Grant of Petition, 59 FR 64232 (December 13, 1994) (granting petition where week and year were mislabeled on tires). As with other cases in which NHTSA has granted petitions for a determination of inconsequential noncompliance, Cooper Tire will be able to identify the tires that are the subject of this petition in the event of a recall. As described above, these tires will have a unique DOT identifier that will allow for Cooper Tire to identify and recall them in the event that any issues arise in the future.

5. Cooper Tire has taken steps over the last two years to add additional checks in its processes to prevent TIN errors. For example, Cooper Tire has implemented software that allows for a specific plant to choose only its plant code from a drop-down menu when engraving that portion of the TIN. Date codes are updated on a weekly basis and often produced in advance of the serial week. The serial week and year are manually entered into the system and then engraved on a plug for use. Cooper Tire is working to prevent future issues and evaluating the possibility of additional technology which will restrict the selection of date codes to a contained period of time. Cooper Tire is also reviewing its inspection processes to ensure that errors of this sort are identified earlier in the process.

Cooper Tire concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification and a remedy for the noncompliance, as required by 49 U.S.C. 30118–20, should be granted. Lastly, Cooper Tire informed the Agency that there are no warranty adjustments, personal injury claims, or property damage claims related to the subject noncompliance.

VI. NHTSA's Analysis

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect. In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any

safety issues, nor does it mean that there will not be safety issues in the future.'' ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.''

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition. Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.

NHTSA has reviewed Cooper Tire's statements on which it bases its belief that the noncompliance is inconsequential to motor vehicle safety. In this case, the subject tires were molded with an incorrectly ordered date code on the outboard sidewall.

NHTSA's decision considered the following arguments:

1. Markings—On NHTSA's website, the guidance for replacing a tire states the following: ''As tires age, they are more prone to failure. Some vehicle and tire manufacturers recommend replacing tires that are six to 10 years old regardless of treadwear.'' [1] In the case of the subject tires, the future erroneous date code ''1723'' may mislead a consumer about the age of the tire during its usage and lifetime.

The subject tires labeled with the incorrect date code ''1723'' instead of the correct date code ''2317'' may confuse consumers because it means the tires were made in the 17th week of year 2023. After the 17th week of year 2023, consumers may believe the date code is correct. An incorrect date code may affect a consumer's behavior, if the consumer believes that the tires are new instead of six years old.

In addition, tire dealers may store tires for multiple years before selling them. A customer who purchases tires with this type of labeling error may incorrectly believe the tire is not as old as it is and may not replace the tire, based on the manufacturer's recommendation for replacing tires due to age. For example, Cooper Tire recommends that all tires be replaced if 10 or more years has passed since the date of manufacture.[2]

2. Performance—Cooper Tire stated that the subject tires, in all other respects, are properly labeled and meet all performance requirements. Cooper Tire also stated that the date code has no bearing on the performance or operation of the tires. Cooper Tire further argued that the subject noncompliance does not pose a safety concern to either the operator, the vehicle on which the tires are mounted, or the safety of personnel in the tire repair, retread, and recycling industry. NHTSA does not find the arguments persuasive. The fact that a new tire meets all other minimum performance requirements fails to limit the potential risk from using a tire beyond the manufacturer's recommended maximum service life; thus, this labeling issue has potential performance implications.

3. Other petitions—In its petition, Cooper Tire cited a number of inconsequentiality petitions relating to TINs that the Agency previously granted. The Agency believes the facts of the petitions cited are sufficiently different and do not support granting the subject petition. The decision notice published at 64 FR 29080 (May 28, 1999) concerned a tire with an incorrectly labeled date code (one year past the actual date of production instead of six years as in the subject tires). The consequence of a consumer relying on the incorrect date was determined to be inconsequential under those circumstances.

The decision notice published at 71 FR 4396 (Jan 26, 2006), concerned a missing date code. It is distinguished from the subject case because it does not point to a future production date, and therefore, does not mislead consumers by providing an incorrect date six years into the future. In the decision notice published at 60 FR 57617 (Nov 16, 1995) the date code was correct but misplaced. In the Bridgestone/Firestone case, 66 FR 45076 (August 27, 2001), the date code related to only one year of future production in the mislabeling. In the prior Cooper Tire case, 68 FR 16115 (April 2, 2003), the noncompliance was irrelevant as it referred to the mislabeling of the plant code and not the date code, which is the concern in the subject tires. The other prior Cooper Tire case cited, 63 FR 29059 (May 27, 1998), is also irrelevant, as it relates to mislabeling of the plant code and a missing date code. In that Cooper Tire case, the missing date code did not mislead consumers about the age of the tire.

The Agency considers the Uniroyal Goodrich petition, 59 FR 1994 (December 13, 1994), relevant to the petition being considered because the mislabeling of the date code is similar to the subject Cooper Tire noncompliance. However, the Uniroyal Goodrich petition was granted in 1994. Since then, the Agency's understanding of the negative safety consequences of tire aging has evolved. NHTSA now recommends that tires be replaced, regardless of their service conditions or useful tread life, based on the manufacturer's recommended maximum service life. NHTSA finds that such a mislabeling is not inconsequential to safety when the mislabeling has the potential to allow a tire to remain in service significantly beyond the manufacturer's recommended maximum service life by six years.

4. Other considerations—The Agency recognizes that Cooper Tire has taken measures to allow customers to register their tires with an incorrectly ordered date code. NHTSA agrees that this will help enable Cooper Tire to identify consumers who have purchased and registered the affected tires. However, this does not, in NHTSA's view, negate the safety risk caused by the incorrect date code as tires may not be registered or may change hands subsequent to registration.

5. Claims—While Cooper Tire noted that there are no claims for property damage or crashes reported for the subject tires, this is not persuasive as the noncompliance likely only poses risk in the future.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Cooper Tire has not met its burden of persuasion of establishing that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. The mislabeled date code present in this case presents an obvious risk that the tires may be used or perhaps sold well after they have aged to the point where they cannot be safely used. Accordingly, Cooper Tire's petition is hereby denied. Cooper Tire is obligated to provide notification of, and a free remedy for, the noncompliance under 49 U.S.C. 30118 through 30120.

[1] *https://www.nhtsa.gov/equipment/tires* (''Should I replace my tires?'').

[2] *See http://us.coopertire.com/safety/replacement-guide/tire-service-life* (last accessed May 26, 2021).

(Authority: 49 U.S.C. 30118–30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Joseph Kolly,

Acting Associate Administrator for Enforcement.

[FR Doc. 2021–18354 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0115; Notice 1]

Harbor Freight Tools, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Harbor Freight Tools (HFT) has determined that certain Kenway 12V Magnetic Towing Light Kits and Submersible LED Trailer Lights manufactured by Jinhua Eagle King Tools Co., Ltd. do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* HFT filed a noncompliance report dated October 26, 2020, and subsequently petitioned NHTSA on November 23, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of HFT's petition.

DATES: Send comments on or before September 27, 2021.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–5304.

SUPPLEMENTARY INFORMATION:

I. Overview

HFT has determined that certain Kenway 12V Magnetic LED Towing Light Kits and Submersible Trailer Lights manufactured by Jinhua Eagle King Tools Co., Ltd., do not fully comply with the requirements of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). HFT filed a noncompliance report dated October 26, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* HFT subsequently petitioned NHTSA on November 23, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of HFT's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Equipment Involved

Jinhua Eagle King Tools Co., Ltd manufactured the Kenway 12V Magnetic LED Towing Light Kits between November 13, 2019 and December 22, 2019 and the Kenway 12V Submersible Trailer Lights between July 1, 2019 and July 9, 2019. Approximately 3,832 units, in total, are potentially involved.

III. Noncompliance

HFT explains that the noncompliance is that the subject trailer lighting kits are equipped with turn signal, stop lamp, and tail lamps that exceeds the maximum and/or minimum photometric intensity output requirements, as required by FMVSS No. 108.

IV. Rule Requirements

Paragraphs S7.1.2, S7.1.2.13, S7.1.2.13.1, S7.2, S7.2.13, S7.3, S7.3.13, and S7.3.13.1 of FMVSS No. 108 include the requirements relevant to this petition. Each rear turn signal lamp must be designed to conform to the photometry requirements of Table VII, when tested according to the procedure of paragraph S14.2.1, for the number of lamp compartments or individual lamps, the type of vehicle it is installed on, and the lamp color as specified by S7.1.2.2. Each tail lamp must be designed to conform to the photometry requirements of Table VIII, when tested according to the procedure of S14.2.1. Each stop lamp must be designed to conform to the photometry requirements of Table IX, when tested according to the procedure of paragraph S14.2.1, for the number of lamp compartments or individual lamps and the type of vehicle it is installed on. Table VII specifies the various minimum and maximum photometric intensity requirements for rear turn signal lamps at specified test points. Table VIII specifies the various

minimum and maximum photometric intensity requirements for tail lamps at specified test points. Table IX specifies the various minimum and maximum photometric intensity requirements for stop lamps at specified test points.

V. Summary of HFT's Petition

The following views and arguments presented in this section, ''V. Summary of HFT's Petition,'' are the views and arguments provided by HFT. They have not been evaluated by the Agency and do not reflect the views of the Agency. HFT describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, HFT submitted the following reasoning:

1. HFT contends that the subject trailer light kits deviate only by small margins at certain points and not by a degree that is sufficient enough to be noticeable to other road users or create an increased safety risk.

2. HFT explains that the trailer light kits are combination lamps with turn signal, stop lamp and tail lamp functions and that use light emitting diodes (LEDs) as their light source. HFT explains that it engaged Calcoast to conduct comprehensive compliance monitoring of its trailer light products. In certain individual units, portions of the LEDs used in specific production batches have candela values that were either marginally below and/or were slightly above the luminous intensity output provided for in FMVSS No. 108. HFT states that the deviation from the photometry requirements is slight and all but one case falls within 25% of the required output. Thus, HFT claims, the actual performance of HFT's lamps compared to compliant lamps would not be perceptible to the human eye and therefore would not create an enhanced risk to safety. A description of each of the products and associated test results from Calcost are set out below.

a. Submersible LED Trailer Lights—Part Number 64274

i. HFT's submersible trailer light kit consists of a pair of replacement trailer lamps to be used on trailers less than 80 inches in overall width. The LED lamps used in the kit, function as a combination lamp with three lighted sections.

ii. In this case, a total of six tests were conducted on samples from the same production batch produced in calendar week 27. Four of the samples meet all of the FMVSS No. 108 requirements to which they were tested. Two individual test samples fell below the required candela values for turn signals and stop lamps only in Zone 3.

iii. The minimum candela value for Zone 3 for a lamp with three lighted sections is 520 cd. For these two test samples, one sample measured 466.33 cd in Zone 3 and the other sample measured 497.39 cd in Zone 3—a deviation of 4.5% and 10.4%, respectively. In each case, all of the individual test points that make up Zone 3 were at least 60% of the required candela value and in many cases, were more than 90% of the value for the individual test point.

iv. Overall, HFT says that in each case, although Zone 3 fell below the minimum candela value, it nevertheless fulfilled 89.6%–95.6% of the requirement for the zone. In other words, the zone itself was only 10.4% and 4.4% lower than the minimum required candela value. In addition, none of the individual test points fell below 60% of the specified candela value for the test point. Because all of the test points within the zone are compliant, this accounts for the minimal effects on the photometric output of the zone overall.

v. Further, HFT claims that the lamps met the photometric requirements for all other testing zones and met all other requirements of FMVSS No. 108 to which they were tested.

b. Magnetic Trailer Light Kit—Part Number 64282

i. The second product at issue is a 12V magnetic LED trailer light kit each trailer light kit consists of a pair of lamps that are intended to be magnetically attached to the rear of a trailer and that are wired to the towing vehicle's tail lamps. Each lamp is a combination lamp that functions as a turn signal, stop lamp and tail lamp with three lighted sections.

ii. A total of 13 sets of lamps were tested for this product and the Calcoast test results indicate that individual units within two separate production batches (calendar week 46 and calendar week 52) had individual test units that did not meet the photometry requirements for stop lamps, turn signals and tail lamps.

iii. For this product, the noncompliance occurred at certain individual test points, not at the zone level. HFT states that the lamps met the photometric requirements at all other test points and met all other requirements of FMVSS No. 108 to which they were tested.

iv. For the magnetic trailer light kit produced in calendar week 46, two samples measured slightly higher candela values for a single test point when evaluated under the photometric intensity values for turn signals and stop lamps. Where the maximum candela value is 420 cd, in one sample a single test point (1.0U/0.7R) measured 579.81 cd after one minute (an exceedance of 27.6%)5 and in the other sample a single test point (0.7D/0.3L) measured 426.87 cd after one minute (an exceedance of 1.7%). However, HFT claims, the overall photometric requirements for all of the test zones were met.

v. In addition, there were slight exceedances of the tail lamp photometry provisions. In one sample, a single test point slightly exceeded the tail lamp maximum output of 25 candelas, where one sample measured 25.7 cd at the H–V point and in another sample a single test point (at 1.0U/0.9R) measured 31.87 cd. This is a range of 2.7%–21.5% above the maximum candela value. All of the overall photometric requirements for each of the zones were met.

vi. Separately, a batch of magnetic trailer light kits produced in week 52 was evaluated. In that case, one exemplar unit had a single test point (0.5D/1.3L) that measured 440 cd after one minute, an exceedance of 4.6% and above the 420 cd maximum value for any test point. Again, all of the overall photometric requirements for each of the zones were met.

vii. Further, HFT states, for the magnetic trailer light kits there is no increased risk of glare to oncoming motorists because the photometric exceedances are minimal and in all cases, below the threshold metric of 25% so that the differences are not perceptible to other drivers.[1]

3. HFT says that historically, NHTSA has granted inconsequentiality petitions when the noncompliance is imperceptible or nearly imperceptible to vehicle occupants or surrounding traffic. HFT states that when the photometric intensity level is within 25% above or below the boundary limit, the difference in the light being emitted is typically not perceptible to other drivers. This objective metric has been applied to various types of lighting sources, including turn signal lighting.[2] NHTSA has also applied this reasoning to noncompliances with particular zones, not just individual test points.[3]

[1] *See Grant of Petition for Determination of Inconsequential Noncompliance; Hella, Inc.* 55 FR 37601, September 21, 1990.

[2] *See Driver perception of just-noticeable differences of automotive signal lamp intensities,* Huey, R., Dekker, D. and Lyons, R. (1994); (Report No. DOT HS 808 209).

[3] *See General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance;* 61 FR 1663, January 22, 1996.

In each of the samples, HFT states that the deviation is well within 25% of the required values. The plot diagram at Attachment 7 [4] provides a visual depiction of the relationship between the two outlier values to the 520 cd minimum for the Zone 3 test results for the submersible trailer light kits tested by Calcoast. The plot diagram at Attachment 8 gives a visual depiction of the relationship between the outlier values and the photometric requirements for the magnetic trailer light kits.

4. HFT states that an alternative basis on which to grant the petition is the performance exceedances of each of the other surrounding zones. Zones 1, 2, 4 and 5 all exceeded the minimum candela value for their respective zone by wide margins (*e.g.* from a range of 27%–44% higher than the minimum candela value for the zone for one sample and 26%–37% higher than the minimum candela value for each zone for the other sample). Thus, HFT claims the minor discrepancy in one zone is offset by the substantial (and compliant) exceedances in the remaining zones. Taking the performance of the lamp as a whole, and because drivers view the output of lamps as a whole rather than at individual points within the lamp, the additional light from the other zones would compensate for the deviation in Zone 3. HFT states that this rationale is consistent with the agency's findings in other similar petitions which concluded that enhanced photometric values in other areas of the same lamp could effectively minimize a minor deviation in one portion of the lamp.[5]

5. Separately, HFT also states that NHTSA has recognized the inherent challenges to manufacture all lamps so that each and every test point within the lamp meets the minimum criteria. HFT claims that is the case here. When HFT commissioned Calcoast to review and confirm the performance of these lighting products, it tested a total of 24 sets of lamps produced over a seven month/year period. Of that universe, there were just two samples of submersible trailer light kits that had slightly reduced photometric values and three samples of the magnetic trailer light kit that experienced minimal exceedances. HFT claims that this indicates that the LED lamps were in fact designed to comply with FMVSS No. 108 and that the results of the monitoring testing indicate an isolated number of random failures, not a systemic lapse in production processes. NHTSA has stated that it will not consider a lamp to be noncompliant if its failure to meet a test point is random and occasional.[6] Thus, historically, there has never been an absolute requirement that every motor vehicle lighting device meet every single photometric test point to comply with FMVSS No. 108.

6. Finally, HFT has reviewed its systems and has not received any reports or complaints about the levels of brightness for these trailer lighting kits. The lack of reports or indications that the subject trailer lights are either too bright or too dim supports the conclusion that the condition is undetectable to road users such as drivers following a vehicle equipped with either of the lighting products. HFT is providing copies of the relevant Calcoast test reports with this petition at Attachment 2 for the submersible trailer light kits and at Attachments 3 and 4 for the magnetic trailer light kits.

HFT concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

HFT's complete petition and all supporting documents are available by logging onto the FDMS website at *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject equipment that HFT no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant equipment under their control after HFT notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2021–18355 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–59–P

[4] HFT's petition and the attachments can be found in full at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

[5] *See General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance;* 61 FR 1663, January 22, 1996; *see also BMW of North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance;* 82 FR 55484, November 21, 2017.

[6] *See Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment;* 83 FR 51766, October 12, 2018.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; American Honda Motor Co., Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the American Honda Motor Co., Inc.'s (Honda) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its Acura RDX vehicle line beginning in model year (MY) 2022. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

DATES: The exemption granted by this notice is effective beginning with the 2022 model year.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. NHTSA promulgated regulations at 49 CFR part 541 (theft prevention standard) to require parts-

marking for specified passenger motor vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition the Secretary of Transportation for an exemption for a line of passenger motor vehicles equipped with an antitheft device as standard equipment that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the theft prevention standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an ''immobilizer'') as standard equipment that complies with one of the standards specified in that section.[1]

Section 543.8 establishes requirements for processing petitions for exemption from the theft prevention standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will notify the petitioner of the deficiencies. Once NHTSA receives a complete petition the agency will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.[2] Exemptions granted under part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the **Federal Register** and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers American Honda Motor Co., Inc.'s (Honda) petition for its Acura RDX vehicle line beginning in MY 2022.

I. Specific Petition Content Requirements Under 49 CFR 543.6

Pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention,* Honda petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the theft prevention standard, beginning in MY 2022. Honda petitioned under 49 CFR 543.6, *Petition: Specific content requirements,* which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements.

More specifically, section 543.6(a)(1) requires petitions to include a statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which the exemption is sought. Under section 543.6(a)(2), each petition must list each component in the antitheft system, and include a diagram showing the location of each of those components within the vehicle. As required by section 543.6(a)(3), each petition must include an explanation of the means and process by which the device is activated and functions, including any aspect of the device designed to: (1) Facilitate or encourage its activation by motorists; (2) attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; (3) prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key; (4) prevent the operation of a vehicle which an unauthorized person has entered using means other than a key; and (5) ensure the reliability and durability of the device.[3]

In addition to providing information about the antitheft device and its functionality, petitioners must also submit the reasons for their belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form a basis for that belief,[4] and the reasons for their belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of part 541 in reducing and deterring motor vehicle theft. In support of this belief, the petitioners should include any statistical data that are available to the petitioner and form the basis for the petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or a similar line which have parts marked in compliance with part 541.[5]

The following sections describe Honda's petition information provided pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention.* To the extent that specific information in Honda's petition is subject to a properly filed confidentiality request, that

[1] 49 CFR 543.7 specifies that the manufacturer must include a statement that their entire vehicle line is equipped with an immobilizer that meets one of the following standards:

(1) The performance criteria (subsections 8 through 21) of C.R.C, c. 1038.114, Theft Protection and Rollaway Prevention (in effect March 30, 2011), as excerpted in appendix A of [part 543];

(2) National Standard of Canada CAN/ULC–S338–98, Automobile Theft Deterrent Equipment and Systems: Electronic Immobilization (May 1998);

(3) United Nations Economic Commission for Europe (UN/ECE) Regulation No. 97 (ECE R97), Uniform Provisions Concerning Approval of Vehicle Alarm System (VAS) and Motor Vehicles with Regard to Their Alarm System (AS) in effect August 8, 2007; or

(4) UN/ECE Regulation No. 116 (ECE R116), Uniform Technical Prescriptions Concerning the Protection of Motor Vehicles Against Unauthorized Use in effect on February 10, 2009.

[2] 49 U.S.C. 33106(d).

[3] 49 CFR 543.6(a)(3).

[4] 49 CFR 543.6(a)(4).

[5] 49 CFR 543.6(a)(5).

information was not disclosed as part of this notice.[6]

II. Honda's Petition for Exemption

In a petition dated January 12, 2021, as supplemented with additional information submitted on June 22, 2021,[7] Honda requested an exemption from the parts-marking requirements of the theft prevention standard for the Acura RDX vehicle line beginning with MY 2022.

In its petition, Honda provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Acura RDX vehicle line. Honda stated that its MY 2022 Acura RDX vehicle line will be installed with an engine immobilizer device as standard equipment, as required by 543.6(a)(1). Honda stated that it will offer a ''smart entry remote'' (keyless key) system on its vehicle line. Honda also stated that the Acura RDX vehicle line will offer two types of remotes, one with remote engine start and one without remote start. Key components of the ''smart entry remote'' system will include a passive immobilizer, ''smart entry'' remote, powertrain control module (PCM), and body control module (BCM). Honda further stated that its vehicle line will be installed with a vehicle security alarm system as standard equipment which will activate a visible and audible alarm whenever unauthorized access is attempted.

Pursuant to Section 543.6(a)(3), Honda explained that its ''smart entry and start'' system is part of the normal operation of the ignition key and activates automatically when the ignition switch is in the ''OFF'' position. Honda further explained that if a smart entry remote without a matching code is within operating range and the engine start/stop button is pressed, the PCM will prevent fueling of the engine and the engine will not start. Honda also stated that the immobilizer system is deactivated when a valid smart entry remote and matching codes are verified, allowing the engine to continue normal operations. Honda further stated that the security indicator flashes continuously when the immobilizer is activated, and turns off when it is deactivated.

Honda stated that the audible and visible vehicle security alarm system installed on its Acura RDX vehicles will monitor any attempts of unauthorized entry and attract attention to an unauthorized person attempting to enter its vehicles without the use of a ''smart entry'' remote or its built-in mechanical door key. Specifically, Honda stated that whenever an attempt is made to open one of its vehicle doors, hood or trunk without using the ''smart entry'' remote or turning a key in the key cylinder to disarm the vehicle, the vehicle's horn will sound and its lights will flash. Honda stated that its vehicle security system is activated when all of the doors are locked and the hood and trunk are closed and locked. Honda further stated that its vehicle security system is deactivated by using the key fob buttons to unlock the vehicle doors or having the ''smart entry'' remote within operating range when the operator grabs either of the vehicle's front door handles.

Honda also stated that in addition to the standard security system on all 2022 MY Acura RDX models, additional security features include counterfeit resistant vehicle identification number (VIN) plates, secondary VINs, a hood release located inside the vehicle, and its smart entry remote will utilize rolling codes for the lock and unlock functions of its vehicles.

As required in section 543.6(a)(3)(v), Honda provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Honda provided a list of requirements for the characteristics and durability testing along with its results. Honda stated that its device does not require the presence of a ''smart entry'' remote battery to function nor does it have any moving parts (*i.e.,* the PCM, BCM, ''smart entry'' remote and the corresponding electrical components found within its own housing units), which it believes reduces the chance for deterioration and wear from normal use.

Honda believes that installation of the antitheft immobilizer device as standard equipment reduces the vehicle theft rate by making conventional methods of theft obsolete, *i.e.,* punching out the steering column or hot-wiring the ignition. Additionally, Honda stated that the proposed immobilizer system was first installed on its MY 2007 Acura RDX as standard equipment which was the first year of its introduction. Honda referenced NHTSA's theft rate information for the Acura RDX showing theft rates for MYs 2007–2014 were below the theft rate median. Also, Honda stated that its proposed immobilizer system is similar to the design offered on its Lexus RX vehicles which have been granted an exemption by the agency. Honda also referenced NHTSA's theft rate information for its Lexus RX showing theft rates for MYs 2012–2014 that were below the theft rate median.

III. Decision To Grant the Petition

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Honda has provided adequate reasons for its belief that the antitheft device for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. This conclusion is based on the information Honda provided about its antitheft device. NHTSA believes, based on Honda's supporting evidence, the antitheft device described for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

The agency concludes that Honda's antitheft device will provide the five types of performance features listed in section 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the theft prevention standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the theft prevention standard.

If Honda decides not to use the exemption for its requested vehicle line, the manufacturer must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6

[6] 49 CFR 512.20(a).

[7] As discussed above, per 49 CFR 543.8(a), NHTSA processes the petition once the manufacturer submits all the information required by 49 CFR part 543.

(marking of major component parts and replacement parts).

NHTSA notes that if Honda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption.''

The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if Honda contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Honda's petition for exemption for the Acura RDX vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its MY 2022 vehicles.

Issued under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2021–18419 Filed 8–25–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

[Docket No. PHMSA–2021–0052]

Pipeline and Hazardous Materials Safety Administration Pipeline Safety: Request for Special Permit; Sabal Trail Transmission, LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from the Sabal Trail Transmission, LLC (STT). The special permit request is seeking relief from compliance with certain requirements in the federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by September 27, 2021.

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from STT, a joint venture between Spectra Energy Partners, LP (Enbridge), NextEra Energy, Inc., and Duke Energy, which is operated by Enbridge Inc., seeking a waiver from the requirements of 49 CFR 192.611: Change in class location: Confirmation or revision of maximum allowable operating pressure. This special permit is being requested in lieu of pipe replacement or pressure reduction for one (1) special permit segment totaling 53,486 feet (approximately 10.130 miles) on the STT Line 1 Pipeline. The proposed special permit segment is located in Sumter County, Florida. The STT Line 1 Pipeline class location in the special permit segment has changed from a Class 1 to a Class 3 location. The STT Line 1 Pipeline special permit segment is a 36-inch diameter pipeline with an existing maximum allowable operating pressure of 1,456 pounds per square inch gauge. The installation of the special permit segment occurred in 2017.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the above listed STT pipeline segments are available for review and public comments in Docket No. PHMSA–2021–0052. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and

environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2021–18331 Filed 8–25–21; 8:45 am]

BILLING CODE 4910–60–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 Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; 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 the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

A. On August 20, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

BILLING CODE 4810–AL–P

1. ALEXANDROV, Alexey Alexandrovich (Cyrillic: АЛЕКСАНДРОВ, Алексей Александрович) (a.k.a. ALEXANDROV, Aleksey Alexandrovich; a.k.a. ALEXANDROV, Alexey (Cyrillic: АЛЕКСАНДРОВ, Алексей); a.k.a. FROLOV, Aleksey Andreevich; a.k.a. FROLOV, Alexey (Cyrillic: ФРОЛОВ, Алексей)), Moscow, Russia; DOB 16 Jun 1981; alt. DOB 16 Jun 1980; nationality Russia; Gender Male (individual) [NPWMD].

Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," (E.O. 13382) for acting or purporting to act for or on behalf, directly or indirectly, the FEDERAL SECURITY SERVICE, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. VASILIEV, Kirill Yurievich (Cyrillic: ВАСИЛЬЕВ, Кирилл Юрьевич) (a.k.a. VASILIEV, Kirill; a.k.a. VASILYEV, Kirill), Russia; DOB 22 Feb 1973; nationality Russia; Gender Male; Tax ID No. 773721109701 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of Executive Order 14024 of April 15, 2021, "Blocking Property with Respect to Specified Harmful Activities of the Government of the Russian Federation," (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

3. ZHIROV, Artur Aleksandrovich (Cyrillic: ЖИРОВ, Артур Александрович) (a.k.a. ZHIROV, Artur), Moscow, Russia; DOB 06 Jul 1961; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

4. BOGDANOV, Vladimir Mikhaylovich (Cyrillic: БОГДАНОВ, Владимир Михайлович) (a.k.a. BOGDANOV, Vladimir; a.k.a. BOGDANOV, Vladimir Mikhailovich), Moscow, Russia; DOB 17 Jul 1958; POB Moscow, Russia; nationality Russia; Gender Male (individual) [NPWMD].

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf, directly or indirectly, the FEDERAL SECURITY SERVICE, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. KUDRYAVTSEV, Konstantin (Cyrillic: КУДРЯВЦЕВ, Константин) (a.k.a. KUDRYAVTSEV, Konstantin Borisovich; a.k.a. SOKOLOV, Konstantin; a.k.a. SOKOLOV, Konstantin Yevgenievich), Russia; DOB 28 Apr 1980; alt. DOB 28 Apr 1979; nationality Russia; Gender Male (individual) [NPWMD].

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf, directly or indirectly, the FEDERAL SECURITY SERVICE, a person whose property and interests in property are blocked pursuant to E.O. 13382.

6. MAKSHAKOV, Stanislav Valentinovich (Cyrillic: МАКШАКОВ, Станислав Валентинович), Moscow, Russia; DOB 1966; nationality Russia; Gender Male (individual) [NPWMD] (Linked To: FEDERAL SECURITY SERVICE).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf, directly or indirectly, the FEDERAL SECURITY SERVICE, a person whose property and interests in property are blocked pursuant to E.O. 13382.

7. OSIPOV, Ivan Vladimirovich (Cyrillic: ОСИПОВ, Иван Владимирович) (a.k.a. OSIPOV, Ivan (Cyrillic: ОСИПОВ, Иван); a.k.a. SPIRIDONOV, Ivan (Cyrillic: СПИРИДОНОВ, Иван); a.k.a. SPIRIDONOV, Ivan Vasilyevich), Moscow, Russia; DOB 21 Aug 1976; alt. DOB 21 Aug 1975; Gender Male (individual) [NPWMD].

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf, directly or indirectly, the FEDERAL SECURITY SERVICE, a person whose property and interests in property are blocked pursuant to E.O. 13382.

8. PANYAEV, Vladimir Alexandrovich (Cyrillic: ПАНЯЕВ, Владимир Александрович) (a.k.a. ALEXEEV, Vladimir; a.k.a. ALEXEYEV, Vladimir; a.k.a. PANYAEV, Vladimir (Cyrillic: ПАНЯЕВ, Владимир); a.k.a. PANYAEV, Vladimir Aleksandrovich), Moscow, Russia; DOB 25 Nov 1980; POB Serdobsk, Penza Oblast, Russia; Gender Male (individual) [NPWMD].

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf, directly or indirectly, the FEDERAL SECURITY SERVICE, a person whose property and interests in property are blocked pursuant to E.O. 13382.

9. SEDOV, Aleksei Semyonovich (Cyrillic: СЕДОВ, Алексей Семенович) (a.k.a. SEDOV, Aleksei (Cyrillic: СЕДОВ, Алексей); a.k.a. SEDOV, Alexei; a.k.a. SEDOV, Alexei Semenovich), Russia; DOB 26 Aug 1954; POB Sochi, Russia; nationality Russia; Gender Male (individual) [NPWMD].

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf, directly or indirectly, the FEDERAL SECURITY SERVICE, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Entities

1. STATE INSTITUTE FOR EXPERIMENTAL MILITARY MEDICINE OF THE MINISTRY OF DEFENSE (Cyrillic: ГОСУДАРСТВЕННЫЙ НАУЧНО-ИССЛЕДОВАТЕЛЬСКИЙ ИСПЫТАТЕЛЬНЫЙ ИНСТИТУТ ВОЕННОЙ МЕДИЦИНЫ МО) (a.k.a. GNIII VM MOD RF (Cyrillic: ГНИИИ ВМ МО РФ); a.k.a. GOSUDARSTVENNY NAUCHNO-ISSLEDOVATELSKIY ISPYTATELNY INSTITUT VOYENNOY MEDITSINY; a.k.a. STATE INSTITUTE FOR EXPERIMENTAL MILITARY MEDICINE (Cyrillic: ГОСУДАРСТВЕННЫЙ НАУЧНО-ИССЛЕДОВАТЕЛЬСКИЙ ИСПЫТАТЕЛЬНЫЙ ИНСТИТУТ ВОЕННОЙ МЕДИЦИНЫ); a.k.a. STATE RESEARCH EXPERIMENTAL INSTITUTE OF MILITARY MEDICINE; a.k.a. "GNII VM" (Cyrillic: "ГНИИ ВМ")), Lesoparkovaya Street, Building 4, St. Petersburg 195043, Russia (Cyrillic: Улица Лесопарковая, Дом 4, Санкт-Петербург 195043, Russia); Registration ID 1157847310048; Tax ID No. 7806194153 [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

2. FSB CRIMINALISTICS INSTITUTE (Cyrillic: ИНСТИТУТ КРИМИНАЛИСТИКИ ФСБ) (a.k.a. CRIMINALISTICS INSTITUTE (Cyrillic: ИНСТИТУТ КРИМИНАЛИСТИКИ); a.k.a. CRIMINALISTICS INSTITUTE OF THE CENTER FOR SPECIAL TECHNOLOGY OF THE FSB OF RUSSIA (Cyrillic: ИНСТИТУТ КРИМИНАЛИСТИКИ ЦЕНТРА СПЕЦИАЛЬНОЙ ТЕХНИКИ ФСБ РОССИИ); a.k.a. FSB SPECIAL TECHNOLOGY CENTER'S INSTITUTE OF CRIMINOLOGY; a.k.a. INSTITUT KRIMINALISTIKI; a.k.a. MILITARY UNIT 34435; a.k.a. RESEARCH INSTITUTE - 2; a.k.a. "NII-2"), Akademika Vargi Street 2, Moscow, Russia [NPWMD].

Designated pursuant to section 1(a)(iv) of E.O. 13382 for being owned or controlled by, directly or indirectly, the FEDERAL SECURITY SERVICE, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Dated: August 20, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–18334 Filed 8–25–21; 8:45 am]

BILLING CODE 4810–AL–C

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 have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley 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 the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action

On March 2, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

BILLING CODE 4810–AL–P

1. BORTNIKOV, Aleksandr Vasilievich (Cyrillic: БОРТНИКОВ, Александр Васильевич), Moscow, Russia; DOB 15 Nov 1951; POB Perm, Russia; nationality Russia; Gender Male (individual) [NPWMD] [UKRAINE-EO13661] (Linked To: FEDERAL SECURITY SERVICE).

   Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and their Supporters," 70 FR 38567, CFR 3, 2006 Comp., p. 170 (E.O. 13382), for acting or purporting to act for or on behalf, directly or indirectly, the FEDERAL SECURITY SERVICE, a person whose property and interests in property are blocked pursuant to E.O. 13382.

   Also designated pursuant to 1(a)(ii)(A) of March 16, 2014, "Blocking Property of Additional Persons Contributing to the Situation in Ukraine," 79 FR 15535, 3 CFR, 2014 Comp., p. 229, (E.O. 13661), for being an official of the Government of the Russian Federation.

2. KALASHNIKOV, Alexander Petrovich (Cyrillic: КАЛАШНИКОВ, Александр Петрович) (a.k.a. KALASHNIKOV, Aleksandr (Cyrillic: КАЛАШНИКОВ, Александр)), Russia; DOB 27 Jan 1964; POB Tatarsk, Novosibirsk Region, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661].

   Designated pursuant to 1(a)(ii)(A) of E.O. 13661 for being an official of the Government of the Russian Federation.

3. KIRIYENKO, Sergei Vladilenovich (Cyrillic: КИРИЕНКО, Сергей Владиленович), Moscow, Russia; DOB 26 Jul 1962; POB Sukhumi, Georgia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661].

   Designated pursuant to 1(a)(ii)(A) of E.O. 13661 for being an official of the Government of the Russian Federation.

4. KRASNOV, Igor Victorovich (Cyrillic: КРАСНОВ, Игорь Викторович) (a.k.a. KRASNOV, Igor (Cyrillic: КРАСНОВ, Игорь); a.k.a. KRASNOV, Igor Viktorovich), 6-3 Michurinsky Prospekt, Moscow, Russia; DOB 24 Dec 1975; POB Arkhangelsk, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661].

   Designated pursuant to 1(a)(ii)(A) of E.O. 13661 for being an official of the Government of the Russian Federation.

5. KRIVORUCHKO, Aleksei Yurievich (Cyrillic: КРИВОРУЧКО, Алексей Юрьевич), Russia; DOB 17 Jul 1975; POB Stavropol, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661].

   Designated pursuant to 1(a)(ii)(A) of E.O. 13661 for being an official of the Government of the Russian Federation.

6. POPOV, Pavel Anatolievich (Cyrillic: ПОПОВ, Павел Анатольевич), Russia; DOB 01 Jan 1957; POB Krasnoyarsk, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661].

   Designated pursuant to 1(a)(ii)(A) of E.O. 13661 for being an official of the Government of the Russian Federation.

7. YARIN, Andrei Veniaminovich (Cyrillic: ЯРИН, Андрей Вениаминович), Moscow, Russia; DOB 13 Feb 1970; POB Nizhny Tagil, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661].

   Designated pursuant to 1(a)(ii)(A) of E.O. 13661 for being an official of the Government of the Russian Federation.

Dated: March 2, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–18333 Filed 8–25–21; 8:45 am]

BILLING CODE 4810–AL–C

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 have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or the Assistant Director for Regulatory Affairs, tel. 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On August 19, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals:

1. JIMENEZ GONZALEZ, Abelardo (a.k.a. JIMENEZ GONZALEZ, Roberto Abelardo); Infanta 1506 Santa Rosa Y Estevez, Cerro, Cuba; DOB 22 Feb 1952; nationality Cuba; Gender Male; National ID No. 52022201646 (Cuba) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(iii)(B) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption'' (E.O. 13818) for having acted or purported to act for or on behalf of, directly or indirectly, the MINISTRY OF INTERIOR*, a person whose property and interests in property are blocked pursuant to E.O. 13818.

2. GONZALEZ BRITO, Andres Laureano (Latin: GONZÁLEZ BRITO, Andrés Laureano); Havana, Cuba; DOB 04 Jul 1954; POB Barajagua, Las Villas, Cuba; alt. POB Barajagua, Cienfuegos, Cuba; nationality Cuba; Gender Male; Chief, Central Army (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, directly or indirectly, serious human rights abuse relating to the leader's or official's tenure.

3. LEGRA SOTOLONGO, Roberto (Latin: LEGRÁ SOTOLONGO, Roberto); Havana, Cuba; DOB 1955; POB Baracoa, Cuba; nationality Cuba; Gender Male; Deputy Chief of the General Staff Revolutionary Armed Forces and Chief of the Directorate of Operations of the FAR (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, directly or indirectly, serious human rights abuse relating to the leader's or official's tenure.

Dated: August 19, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–18400 Filed 8–25–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment, Repayment of a Buyout Prior to Re-Employment With the Federal Government

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning a notice regarding repayment of a buyout prior to re-employment with the Federal Government.

DATES: Written comments should be received on or before October 25, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Repayment of a buyout prior to re-employment with the Federal Government.

OMB Number: 1545–1920.

Form Number: 12311.

Abstract: This form requests applicants to certify if they ever worked for the Federal Government and if they received a Buyout within the last 5 years. This is to ensure that applicants who meet the criteria are counseled that they are required to pay back the entire Buyout prior to entering on duty with the IRS.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and Federal Government.

Estimated Number of Respondents: 6,624.

Estimated Time per Respondent: 4.8 mins.

Estimated Total Annual Burden Hours: 530.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: August 23, 2021.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2021–18418 Filed 8–25–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to Form 8938, Statement of Specified Foreign Financial Assets.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden related to Form 8938, *Statement of Specified Foreign Financial Assets.*

DATES: Written comments should be received on or before October 25, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Statement of Specified Foreign Financial Assets.

OMB Number: 1545–2195.

Regulation/Project Number: Form 8938.

Abstract: Form 8938 was developed to comply with IRC section 6038D to Report Foreign Financial Assets. Taxpayers use Form 8938 to report specified foreign financial assets if the total value of all the specified foreign financial assets in which they have an interest is more than the appropriate reporting threshold.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business, or other for-profit organizations.

Estimated Number of Responses: 350,000.

Estimated Time per Respondent: 4 hours 43 minutes.

Estimated Total Annual Burden Hours: 1,652,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become

material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: August 23, 2021.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2021–18404 Filed 8–25–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Establish Pricing for United States Mint Numismatic Product

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

The United States Mint is announcing new pricing for a United States Mint numismatic product in accordance with the table below:

Product	2021 retail price
George Herbert Walker Bush—Coin and Chronicles Set (20PA)	$120.00

FOR FURTHER INFORMATION CONTACT: Josephine Campbell, Marketing Specialist, Sales and Marketing; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–7750.

Authority: Public Law 116–112.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2021–18310 Filed 8–25–21; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Part 460

Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 460

[EERE–2009–BT–BC–0021]

RIN 1904–AC11

Energy Conservation Program: Energy Conservation Standards for Manufactured Housing

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of supplemental notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'' or ''the Department'') is publishing a supplemental notice of proposed rulemaking (''SNOPR'') to establish energy conservation standards for manufactured housing pursuant to the Energy Independence and Security Act of 2007. This document presents an updated proposal based on the 2021 version of the International Energy Conservation Code (''IECC'') and comments received during interagency consultation with the U.S. Department of Housing and Urban Development, as well as from stakeholders. This proposal presents two potential approaches—one would provide a set of ''tiered'' standards based on the manufacturer's retail list price for the manufactured home that would apply the 2021 IECC-based standards to manufactured homes, except that manufactured homes with a manufacturer's retail list price of $55,000 and below would be subject to less stringent building thermal envelope requirements based on manufacturer's retail list price. The alternative approach would apply standards based on the 2021 IECC to all manufactured homes, with no exceptions for building thermal envelope requirements based on manufacturer's retail list price.

DATES:

Meeting: DOE will hold a public meeting via webinar on Tuesday, September 28, 2021, from 11:00 a.m. to 4:00 p.m. See section VI, ''Public Participation,'' for webinar registration information, participant instructions and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this SNOPR not later than October 25, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to: *Manufactured_Housing@ee.doe.gov.* Include docket number EERE–2009–BT–STD–0021 and/or RIN number 1904–AC11 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VI of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2009-BT-BC-0021.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VI for information on how to submit comments through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program (EE–2J), 1000 Independence Avenue SW, Washington, DC 20585; 202–287–1692; *john.cymbalsky@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel (GC–33), 1000 Independence Avenue SW, Washington, DC 20585; 202–586–2555; *matthew.ring@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

This SNOPR proposes to incorporate by reference into 10 CFR part 460 the following industry standards:

ANSI/ACCA 2 Manual J–2016 (''ACCA Manual J''), ''Manual J—Residential Load Calculation (8th edition)'', Copyright 2016.

ANSI/ACCA 3 Manual S–2014 (''ACCA Manual S''), ''Manual S—Residential Equipment Selection (2nd edition)'', Copyright 2014.

Copies of Manual J and Manual S may be purchased from Air Conditioning Contractors of America Inc., (ACCA), 2800 S Shirlington Road, Suite 300, Arlington, VA 22206, Telephone: 703–575–4477. *www.acca.org/.*

PNL–8006 (''Overall *U*-values and Heating/Cooling Loads—Manufactured Homes''), ''Overall *U*-values and Heating/Cooling Loads—Manufactured Homes'', C.C. Conner and Z.T. Taylor of Pacific Northwest Laboratory, prepared for the Department of Housing and Urban Development, published February 1992.

A copy of Overall *U*-Values and Heating/Cooling Loads—Manufactured Homes may be purchased from: *www.huduser.org/portal/publications/manufhsg/uvalue.html.* Telephone: 800–245–2691.

See section V.M of this document for further discussion of these standards.

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I. Summary of the SNOPR

The Energy Independence and Security Act of 2007 (''EISA,'' Pub. L. 110–140) directs the U.S. Department of Energy (''DOE'' or in context, ''the Department'') to establish energy conservation standards for manufactured housing.[1] (42 U.S.C. 17071) Manufactured homes are constructed according to a code administered by the U.S. Department of Housing and Urban Development (''HUD Code''). 24 CFR part 3280. See also generally 42 U.S.C. 5401–5426. Structures, such as site-built and modular homes that are constructed to the state, local or regional building codes are excluded from the coverage of the HUD Code.[2]

EISA directs DOE to base the standards on the most recent version of the International Energy Conservation Code (''IECC'') and any supplements to that document, except in cases where DOE finds that the IECC is not cost-effective or where a more stringent standard would be more cost-effective, based on the impact of the IECC on the purchase price of manufactured housing and on total lifecycle construction and operating costs. (See 42 U.S.C. 17071(b)(1)) Standards shall be established after notice and an opportunity to comment by manufacturers of manufactured housing and other interested parties, and consultation with the Secretary of Housing and Urban Development (''HUD''), who may seek further counsel from the Manufactured Housing Consensus Committee. (42 U.S.C. 17071(a)(2)) The energy conservation standards established by DOE may (1) take into consideration the design and factory construction techniques of manufactured homes, (2) be based on the climate zones established by HUD rather than the climate zones of the IECC, and (3) provide for alternative practices that result in net estimated energy consumption equal to or less than the specified standards. (42 U.S.C. 17071(b)(2))

On June 17, 2016, DOE published in the **Federal Register** a notice of proposed rulemaking (''NOPR''), including proposals recommended by the negotiated rulemaking working group for manufactured housing. 81 FR 39756 (June 2016 NOPR). DOE also issued a comprehensive technical support document. *See* Document ID EERE–2009–BT–BC–0021–0136.[3] The agency also issued for public review and comment a draft Environmental Assessment (''EA'') pursuant to the National Environmental Policy Act. In conjunction with the draft EA, DOE issued a request for information that would help it analyze potential impacts of the proposed standards on the indoor air quality of manufactured homes. *See* Draft Environmental Assessment for Notice of Proposed Rulemaking, ''Energy Conservation Standards for Manufactured Housing'' With Request for Information on Impacts to Indoor Air Quality, 81 FR 42576 (June 30, 2016) (''2016 EA–RFI''). DOE received nearly 50 comments on the proposed rule during the comment period. In addition, DOE also received over 700 substantively similar form letters from individuals. DOE also received 7 comments to the 2016 EA–RFI during its comment period.

During DOE's interagency consultation with HUD, HUD expressed concerns about the adverse impacts on manufactured housing affordability that would likely follow if DOE were to adopt the approach laid out in its June 2016 NOPR. A variety of commenters also expressed concerns over the potentially negative impacts on the affordability of manufactured housing flowing from increased consumer costs resulting from DOE's approach in the June 2016 NOPR. DOE published a Notice of Data Availability (NODA) on August 3, 2018. 83 FR 38073 (August 2018 NODA). In the August 2018 NODA, DOE stated it was examining a number of possible alternatives to those proposed in the June 2016 NOPR on which it sought further input from the public, including the first-time costs related to the purchase of these homes.

After evaluating the comments received in response to the June 2016 NOPR and the August 2018 NODA, in this SNOPR, DOE proposes energy conservation standards for manufactured homes based on the 2021 IECC. These standards would be based on the current HUD zones.

In this SNOPR, DOE's primary proposal is the ''tiered'' approach, based on the 2021 IECC, wherein a subset of

[1] The National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, defines ''manufactured home'' as ''a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary [pursuant to 24 CFR 3282.13] and complies with the standards established under this title [24 CFR part 3280]; and except that such term shall not include any self-propelled recreational vehicle.'' 42 U.S.C. 5402(6).

[2] See 42 U.S.C. 5403(f). See also 24 CFR 3282.12.

[3] Available at: *https://www.regulations.gov/document?D=EERE-2009-BT-BC-0021-0136.*

the energy conservation standards would be less stringent for certain manufactured homes in light of the cost-effectiveness considerations required by statute. DOE's alternate proposal is the ''untiered'' approach, wherein energy conservation standards for all manufactured homes would be based only on the 2021 IECC. Both proposals replace DOE's June 2016 proposal and the selected approach would be codified in a new part of the Code of Federal Regulations (''CFR'') under 10 CFR part 460 subparts A, B, and C.

As proposed in this document, subpart A presents generally the scope of the rule and provides definitions of key terms. Proposed subpart B would establish new requirements for manufactured homes that relate to climate zones, the building thermal envelope, air sealing, and installation of insulation. Subpart C proposes new requirements related to duct sealing, heating, ventilation, and air conditioning (''HVAC''); service hot water systems; mechanical ventilation fan efficacy; and heating and cooling equipment sizing.

Under either approach, subparts A and C would remain the same; however, the stringency of the requirements under proposed subpart B would depend on the manufacturer's retail list price of the manufactured home for the tiered approach. Under the tiered proposal, two sets of standards would be established in proposed subpart B (*i.e.,* Tier 1 and Tier 2). Tier 1 would apply to manufactured homes with a manufacturer's retail list price of $55,000 or less, and also incorporate building thermal envelope measures based on certain thermal envelope components subject to the 2021 IECC but would limit the incremental purchase price increase to an average of approximately $750. Tier 2 would apply to manufactured homes with a manufacturer's retail list price above $55,000, and incorporate building thermal envelope measures based on certain thermal envelope components and specifications of the 2021 IECC (*i.e.,* the Tier 2 requirements would be the same as those under the proposed single, ''untiered'' set of standards).

As mentioned previously, in the tiered proposal, DOE proposes to base the applicability of the two tiers on the manufacturer's retail list price. This is more appropriate than basing the tiers on the purchase price as the purchase price may not be known until after a manufactured home leaves the manufacturer, and manufacturers may have limited control of the final purchase price of manufactured homes sold by third-party retailers. DOE also notes that the manufacturer's retail list price is specified in EISA for the purpose of determining penalties for non-compliance. (42 U.S.C. 17071(d)) However, DOE relies on purchase price in its analysis for assessing incremental price increases for manufactured homes as an appropriate approximation for manufacturer's retail list price because available data for manufactured homes are only in terms of purchase price.

Under both approaches, DOE proposes to adopt a compliance date such that the standards would apply to manufactured homes starting one year after the publication date of the final rule in the **Federal Register**. While DOE has tentatively concluded that either approach could be considered cost-effective, DOE requests comment regarding the cost-effectiveness of both options to inform its final decision.

A. Benefits and Costs to Purchasers of Manufactured Housing

As explained in greater detail in section IV.A of this document and in chapter 9 of the SNOPR technical support document (''TSD''), DOE tentatively estimates that benefits to manufactured home homeowners—in terms of lifecycle cost (''LCC'') savings and energy cost savings of the requirements as proposed in both proposals—could outweigh the potential increase in purchase price for manufactured homes.

Table I.1 and Table I.2 present the average purchase price increase of a manufactured home as a result of the energy conservation standards for the tiered standards, *i.e.,* Tier 1 standard and Tier 2 standard, respectively. Table I.3 presents the average purchase price increase of a manufactured home as a result of the energy conservation standards for manufactured homes under the proposed single set of standards based on 2021 IECC (''untiered'' standard). The average purchase price increase for the Tier 2 standard and the untiered standard are the same.

TABLE I.1—NATIONAL AVERAGE MANUFACTURED HOUSING PURCHASE PRICE (AND PERCENTAGE) INCREASES UNDER TIER 1 STANDARD

[2020$]

	Single-section		Multi-section	
	$	%	$	%
Climate Zone 1	$629	1.2	$900	0.9
Climate Zone 2	629	1.2	900	0.9
Climate Zone 3	721	1.4	702	0.7
National Average	663	1.2	839	0.8

TABLE I.2—NATIONAL AVERAGE MANUFACTURED HOUSING PURCHASE PRICE (AND PERCENTAGE) INCREASES UNDER TIER 2 STANDARD

[2020$]

	Single-section		Multi-section	
	$	%	$	%
Climate Zone 1	$2,574	4.8	$4,143	4.0
Climate Zone 2	4,820	9.1	6,167	5.9
Climate Zone 3	4,659	8.8	5,839	5.6
National Average	3,914	7.4	5,289	5.1

TABLE I.3—NATIONAL AVERAGE MANUFACTURED HOUSING PURCHASE PRICE (AND PERCENTAGE) INCREASES UNDER THE UNTIERED STANDARD

[2020$]

	Single-section		Multi-section	
	$	%	$	%
Climate Zone 1	$2,574	4.8	$4,143	4.0
Climate Zone 2	4,820	9.1	6,167	5.9
Climate Zone 3	4,659	8.8	5,839	5.6
National Average	3,914	7.4	5,289	5.1

The analysis results for the annual energy cost savings and simple payback periods are projected to be the same for both the Tier 2 standard and the untiered standard because they have the same energy efficiency measures and inputs (*e.g.,* purchase price inputs). Because the loan parameters are different for both proposed standards, however, the lifecycle cost savings results are different. See section IV.A.2 for further details.

Table I.4 presents the estimated national average LCC savings and energy savings for the compliance year that a manufactured homeowner would experience under the proposals compared to a manufactured home constructed in accordance with the minimum requirements of existing HUD Manufactured Home Construction and Safety Standards (''HUD Code'') at 24 CFR part 3280 *et. seq.* Table I.4, Figure I.1, Figure I.2 and Figure I.3 present the nationwide average simple payback period (purchase price increase divided by first year energy cost savings) estimated under the proposals. The methods and information used for these analyses are discussed more in section IV.A.

TABLE I.4—NATIONAL AVERAGE PER-HOME COST SAVINGS UNDER THE SNOPR *

	Single-section	Multi-section
Tier 1 Standards		
Lifecycle Cost Savings (30-Year Lifetime)	$1,643	$2,235
Lifecycle Cost Savings (10-Year Lifetime)	$761	$1,050
Annual Energy Cost Savings in 2020$	$181	$242
Simple Payback Period	3.7	3.5
Tier 2 Standards		
Lifecycle Cost Savings (30-Year Lifetime)	$2,105	$3,033
Lifecycle Cost Savings (10-Year Lifetime)	$124	$264
Annual Energy Cost Savings in 2020$	$359	$499
Simple Payback Period	10.9	10.6
Untiered Standard		
Lifecycle Cost Savings (30-Year Lifetime)	$1,727	$2,511
Lifecycle Cost Savings (10-Year Lifetime)	($12)	$77
Annual Energy Cost Savings in 2020$	$359	$499
Simple Payback Period	10.9	10.6

* Negative values in parenthesis.

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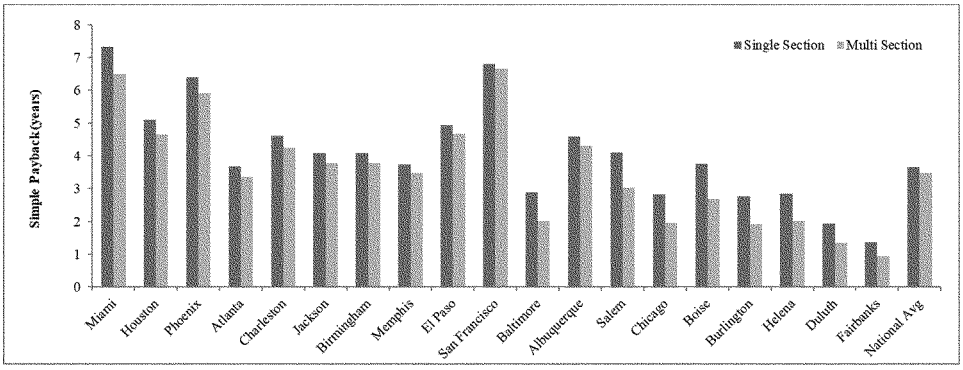

Figure I.1: Simple Payback Period of the Tier 1 Standard

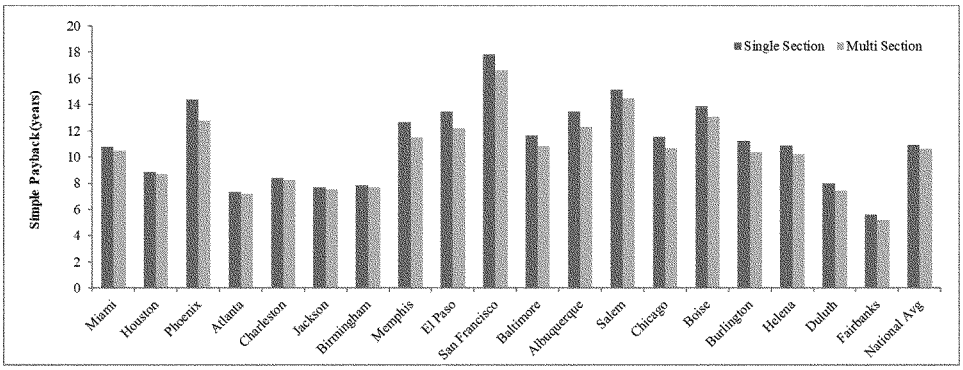

Figure I.2: Simple Payback Period of the Tier 2 Standard

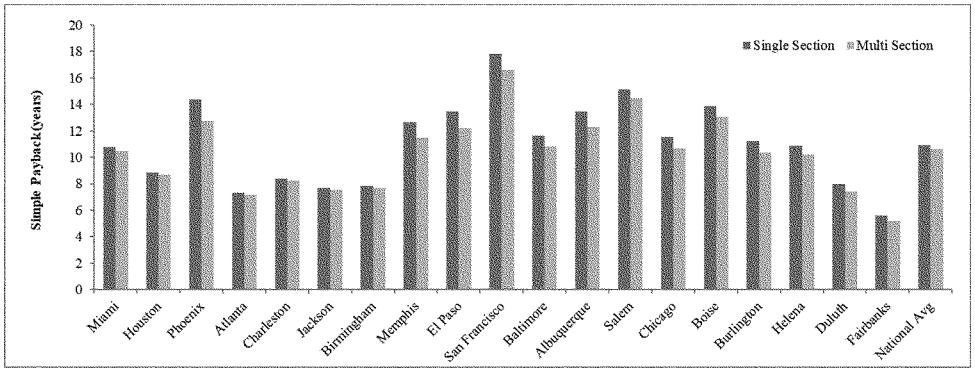

Figure I.3: Simple Payback Period of the Untiered Standard

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B. Impact on Manufacturers

As discussed in more detail in section IV.B of this document and chapter 12 of the SNOPR TSD, the industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the reference year (2021) through the end of the analysis period (2052). Using a real discount rate of 9.2 percent, DOE tentatively estimates the INPV under a no-regulatory-action alternative, which would maintain energy conservation requirements at the levels established in the existing HUD Code, to be $16.2 billion. Under the tiered approach, the change in INPV would range from −1.7 percent to 2.0 percent. Industry would incur total conversion costs of $1.8 million. Under the untiered standard, the change in INPV would range from −2.1 percent to 2.4 percent. Industry would incur total conversion costs of $1.8 million.

C. Nationwide Impacts

As described in more detail in section IV.C of this document and chapter 11 of the SNOPR TSD, DOE's national impact analysis (''NIA'') projects a net benefit to the nation as a whole under both the tiered and untiered proposals, in terms of national energy savings (''NES'') and the net present value (''NPV'') of expected total manufactured homeowner costs and savings compared with the baseline. In this case, the baseline is manufactured homes built to the minimum standards established in the HUD Code. As part of its NIA, DOE has projected the energy savings, operating cost savings, incremental costs, and NPV of manufactured homeowner benefits for manufactured homes sold in a 30-year period from the compliance year of 2023 through 2052. The NIA builds off the LCC analysis by aggregating results for all affected shipments over a 30-year period. All NES and percentage energy savings calculations are relative to a no-regulatory-action alternative, which would maintain energy conservation requirements at the levels established in the existing HUD Code.

Table I.5 illustrates the cumulative NES over the 30-year analysis period under both the tiered and untiered standards on a full-fuel-cycle (''FFC'') energy savings basis. FFC energy savings apply a factor to account for losses associated with generation, transmission, and distribution of electricity, and the energy consumed in extracting, processing, and transporting or distributing primary fuels. NES differ among the different climate zones because of varying energy conservation requirements and varying shipment projections in each climate zone. All NES and percentage energy savings calculations are relative to a no-regulatory-action alternative, which as discussed would maintain energy conservation requirements at the levels established in the existing HUD Code. DOE tentatively estimates that, under the tiered standards, 2.32 quads of FFC energy would be saved relative to the baseline over the 30-year analysis period. DOE tentatively estimates that, under the proposed untiered standard, 2.58 quads of FFC energy would be saved relative to the baseline over the 30-year analysis period.

TABLE I.5—CUMULATIVE FULL-FUEL-CYCLE NATIONAL ENERGY SAVINGS OF MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME

	Single-section quadrillion Btu (quads)	Multi-section (quads)
Tiered Standards		
Climate Zone 1	0.222	0.616
Climate Zone 2	0.172	0.491
Climate Zone 3	0.324	0.499
Total	0.718	1.606
Untiered Standard		
Climate Zone 1	0.316	0.616
Climate Zone 2	0.254	0.491
Climate Zone 3	0.405	0.499
Total	0.976	1.606

Table I.6 and Table I.7 illustrate the NPV of consumer benefits over the 30-year analysis period under both proposals for a discount rate of 7 percent and 3 percent, respectively. The NPV of consumer benefits differ among the three climate zones because of differing initial costs and corresponding operating cost savings, as well as differing shipment projections in each climate zone.

TABLE I.6—NET PRESENT VALUE OF CONSUMER BENEFITS FOR MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME AT A 7% DISCOUNT RATE

	Single-section (billion 2020$)	Multi-section (billion 2020$)
Tiered Standards		
Climate Zone 1	$0.22	$0.47
Climate Zone 2	0.08	0.08
Climate Zone 3	0.42	0.36
Total	0.72	0.90
Untiered Standard		
Climate Zone 1	0.24	0.46
Climate Zone 2	0.00	0.06
Climate Zone 3	0.26	0.35
Total	0.49	0.87

TABLE I.7—NET PRESENT VALUE OF CONSUMER BENEFITS FOR MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME AT A 3% DISCOUNT RATE

	Single-section (billion 2020$)	Multi-section (billion 2020$)
Tiered Standards		
Climate Zone 1	$0.70	$1.69
Climate Zone 2	0.38	0.79
Climate Zone 3	1.34	1.50
Total	2.42	3.98
Untiered Standard		
Climate Zone 1	0.85	1.63
Climate Zone 2	0.29	0.73
Climate Zone 3	1.12	1.44
Total	2.26	3.80

D. Nationwide Energy Savings and Emissions Benefits

As discussed in section IV.C of this document and in the NIA included in chapter 11 of the SNOPR TSD, DOE's analyses indicate that both the tiered and untiered proposals would reduce overall demand for energy in manufactured homes. Both proposals also would produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production.

Emissions avoided under the proposed rule as a result of the energy savings that would be achieved within manufactured homes. As discussed previously, DOE tentatively estimates that, under the proposed tiered standard, 2.32 quads of FFC energy would be saved over the 30-year analysis period relative to the baseline. DOE tentatively estimates that, under the untiered standards, 2.58 quads of FFC energy would be saved over the 30-year analysis period relative to the baseline. DOE estimates reductions in emissions of six pollutants associated with energy savings: Carbon dioxide (CO_2), mercury (Hg), nitric oxide and nitrogen dioxide (NO_X), sulfur dioxide (SO_2), methane (CH_4), and nitrous oxide (N_2O). These emissions reductions are referred to as ''site'' emissions reductions. Furthermore, DOE estimates reductions in emissions associated with the production of these fuels (including extracting, processing, and transporting these fuels to power plants or manufactured homes). These emissions reductions are referred to as ''upstream'' emissions reductions. Together, site emissions reductions and upstream emissions reductions account for the FFC.

Table I.8 lists the emissions reductions under the proposed rule for both single-section and multi-section manufactured homes.

TABLE I.8—EMISSIONS REDUCTIONS ASSOCIATED WITH ELECTRICITY PRODUCTION FOR MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME

Pollutant	Tiered standard		Untiered standards	
	Single-section	Multi-section	Single-section	Multi-section
Site Emissions Reductions				
CO_2 (million metric tons)	31.7	67.7	42.4	67.7
Hg (metric tons)	0.063	0.146	0.087	0.146
NO_X (thousand metric tons)	18.3	37.3	24	37.3
SO_2 (thousand metric tons)	12.8	27.7	17.2	27.7
CH_4 (thousand metric tons)	1.86	4.14	2.51	4.14
N_2O (thousand metric tons)	0.35	0.74	0.47	0.74
Upstream Emissions Reductions				
CO_2 (million metric tons)	3.1	6.32	4.09	6.32
Hg (metric tons)	3.42E–4	7.67E–04	4.65E–04	7.67E–04
NO_X (thousand metric tons)	39.7	81.7	52.5	81.7
SO_2 (thousand metric tons)	0.32	0.64	0.42	0.64
CH_4 (thousand metric tons)	221	463	293	463
N_2O (thousand metric tons)	0.016	0.033	0.021	0.033
Total Emissions Reductions				
CO_2 (million metric tons)	34.8	74.0	46.4	74
Hg (metric tons)	0.064	0.147	0.087	0.147
NO_X (thousand metric tons)	58	119	76.5	119
SO_2 (thousand metric tons)	13.1	28.3	17.6	28.3
CH_4 (thousand metric tons)	223	467	296	467
N_2O (thousand metric tons)	0.37	0.78	0.49	0.78

DOE calculates the value of the CO_2, CH_4, and N_2O (collectively, greenhouse gases or GHGs) using a range of values per metric ton of pollutant, consistent with the interim estimates issued in February 2021 under Executive Order 13990. The derivation of these Social Cost of Carbon, Methane, and Nitrous Oxide values is discussed in section IV.D of this document. DOE also estimated the monetary benefits of NO_X and SO_2 emission reduction, also discussed in section IV.D of this document.

Table I.9 provides the NPV of monetized emissions benefits from reduction in emissions of GHGs for which social cost is considered, and NO_X and SO_2 under both proposals.

TABLE I.9—NET PRESENT VALUE OF MONETIZED BENEFITS FROM GHG AND EMISSIONS REDUCTIONS UNDER THE SNOPR

Monetary benefits	Discount rate (%)	Net present value (million 2020$)			
		Tiered standard		Untiered standards	
		Single-section	Multi-section	Single-section	Multi-section
GHG Reduction (using avg. social costs at 5% discount rate)*	5	344.4	731.0	459.5	731.0
GHG Reduction (using avg. social costs at 3% discount rate)*	3	1,448.6	3,076.4	1,932.9	3,076.4
GHG Reduction (using avg. social costs at 2.5% discount rate)*	2.5	2,372.9	5,039.4	3,166.2	5,039.4

TABLE I.9—NET PRESENT VALUE OF MONETIZED BENEFITS FROM GHG AND EMISSIONS REDUCTIONS UNDER THE SNOPR—Continued

Monetary benefits	Discount rate (%)	Net present value (million 2020$)			
		Tiered standard		Untiered standards	
		Single-section	Multi-section	Single-section	Multi-section
GHG Reduction (using 95th percentile social costs at 3% discount rate) *	3	4,347.5	9,235.5	5,801.6	9,235.5
NO_X Reduction **	3	149.0	297.1	194.6	297.1
	7	52.4	104.8	68.6	104.8
SO_2 Reduction **	3	240.9	493.8	317.2	493.8
	7	84.8	174.5	111.8	174.5

* Estimates of SC-CO_2 SC-CH_4, and SC-N_2O are calculated using a range of discount rates for use in regulatory analyses. Three sets of values are based on the average social costs from the integrated assessment models, at discount rates of 5 percent, 3 percent, and 2.5 percent. The fourth set, which represents the 95th percentile of the social cost distributions calculated using a 3-percent discount rate, is included to represent higher-than-expected impacts from climate change further out in the tails of the social cost distributions. The social cost values are emission year specific. See section IV.D for more details.

** The benefits from NO_x and SO_2 were based on the low estimate monetized value. See section IV.D.2 of this document for more details.

E. Total Benefits and Costs

Table I.10 summarizes the economic benefits and costs expected to result from the proposed standards for manufactured homes.

TABLE I.10—SUMMARY OF ECONOMIC BENEFITS AND COSTS TO MANUFACTURED HOME HOMEOWNERS UNDER THE PROPOSED STANDARDS

	Net present value (billion 2020$)		Discount rate (%)
	Tiered	Untiered	
Benefits:			
Consumer Operating Cost Savings	5.5	6.1	7.
	14.3	15.9	3.
GHG Reduction (using avg. social costs at 5% discount rate) *	1.1	1.2	5.
GHG Reduction (using avg. social costs at 3% discount rate) *	4.5	5.0	3.
GHG Reduction (using avg. social costs at 2.5% discount rate) *	7.4	8.2	2.5.
GHG Reduction (using 95th percentile social costs at 3% discount rate) *	13.6	15.0	3
NO_X Reduction	0.2	0.2	7.
	0.4	0.5	3.
SO_2 Reduction	0.3	0.3	7.
	0.7	0.8	3.
Total Benefits	7 to 19.5	7.8 to 21.6	7 plus GHG range.
	10.5	11.6	7.
	20.0	22.2	3.
	16.6 to 29.1	18.4 to 32.2	3 plus GHG range.
Costs:			
Consumer Incremental Product Costs †	3.9	4.7	7.
	7.9	9.6	3.
Total Net Benefits:			
Including GHG and Emissions Reduction Monetized Value	3.1 to 15.6	3 to 16.9	7 plus GHG range.
	6.6	6.9	7.
	12.1	12.6	3.
	8.7 to 21.2	8.7 to 22.6	3 plus GHG range.

Note: This table presents the costs and benefits associated with manufactured homes shipped in 2023–2052.

* The benefits from GHG reduction were calculated using global benefit-per-ton values. See section IV.D.2 of this document for more details.

** Total Benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. In the rows labeled ''7% plus GHG range'' and ''3% plus GHG range,'' the consumer benefits and NO_X and SO_2 benefits are calculated using the labeled discount rate, and those values are added to the GHG reduction using each of the four GHG social cost cases.

† The incremental costs include incremental costs associated with principal and interest, mortgage and property tax for the analyzed loan types.

The benefits and costs of the proposed standards for manufactured housing sold in 2023–2052 can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the savings in consumer operating costs, minus (2) the increases in product installed costs, plus (3) the value of the benefits of GHG and NO_X and SO_2 emission reductions, all annualized.[4] Total Benefits for both the 3-percent and 7-percent cases are presented using the average social costs

[4] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2020, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2020. The calculation uses discount rates of 3 and 7 percent for all costs and benefits. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, which yields the same present value.

with 3-percent discount rate. Estimates of social cost of greenhouse gases (''SC–GHG'') values are presented for all four discount rates in section IV.D.4.b of this document.

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered housing and are measured for the lifetime of manufactured housing shipped in 2023–2052. The benefits associated with reduced GHG emissions achieved as a result of the proposed standards are also calculated based on the lifetime of manufactured housing shipped in 2023–2052.

Table I.11 and Table I.12 present the total estimated benefits and costs to manufactured housing homeowners associated with the proposed tiered standard and the untiered standards, expressed in terms of annualized values.

TABLE I.11—ANNUALIZED BENEFITS AND COSTS TO MANUFACTURED HOME HOMEOWNERS UNDER THE PROPOSED TIERED STANDARD

Category	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate	Discount rate (%)
	(Million 2020$/year)			
Benefits:				
Consumer Operating Cost Savings	509	471	554	7.
	774	701	858	3.
GHG Reduction (using avg. social costs at 5% discount rate) **	70	69	74	5.
GHG Reduction (using avg. social costs at 3% discount rate) **	231	227	243	3.
GHG Reduction (using avg. social costs at 2.5% discount rate) **	354	348	374	2.5.
GHG Reduction (using 95th percentile social costs at 3% discount rate) **	693	681	730	3.
NO_X Reduction **	13	12	13	7.
	23	22	24	3.
SO_2 Reduction **	21	21	22	7.
	37	37	39	3.
Total Benefits ††	613 to 1,236	573 to 1,185	663 to 1,319	7 plus GHG range.
	773	731	832	7.
	1,065	987	1,165	3.
	904 to 1,527	829 to 1,441	995 to 1,651	3 plus GHG range.
Costs:				
Consumer Incremental Product Costs †	359	352	385	7.
	427	407	464	3.
Total Net Benefits:				
Including GHG and Emissions Reduction Monetized Value ††	254 to 877	221 to 833	278 to 934	7 plus GHG range.
	414	379	447	7.
	638	580	701	3.
	477 to 1,100	422 to 1,034	531 to 1,187	3 plus GHG range.

Note: This table presents the annualized costs and benefits associated with manufactured homes shipped in 2023—2052. These results include benefits to consumers which accrue after 2052 from the products purchased in 2023—2052. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2020* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in section IV.A and IV.C of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* The benefits from GHG reduction were calculated using global benefit-per-ton values. See section IV.D.2 of this document for more details.

** The benefits from NO_X and SO_2 were based on the low estimate monetized value. See section IV.D.2 of this document for more details.

† The incremental costs include incremental costs associated with principal and interest, mortgage and property tax for the analyzed loan types. Further discussion can be found in chapter 8 of the TSD.

†† Total Benefits for both the 3-percent and 7-percent cases are presented using the average social costs with 3-percent discount rate. In the rows labeled ''7% plus GHG range'' and ''3% plus GHG range,'' the consumer cost and benefits and NO_X and SO_2 benefits are calculated using the labeled discount rate, and those values are added to the GHG reduction calculation using each of the four social cost cases.

TABLE I.12—ANNUALIZED BENEFITS AND COSTS TO MANUFACTURED HOME HOMEOWNERS UNDER THE PROPOSED UNTIERED STANDARDS

Category	Primary estimate	Low-net-benefits estimate	High-Net-benefits estimate	Discount rate (%)
	(Million 2020$/year)			
Benefits:				
Consumer Operating Cost Savings	565	523	615	7.
	859	778	951	3.
GHG Reduction (using avg. social costs at 5% discount rate) **	77	76	81	5.
GHG Reduction (using avg. social costs at 3% discount rate) **	256	251	269	3.
GHG Reduction (using avg. social costs at 2.5% discount rate) **	392	385	414	2.5.
GHG Reduction (using 95th percentile social costs at 3% discount rate) **	767	754	808	3.
NO_X Reduction **	14	14	15	7.
	25	25	26	3.
SO_2 Reduction **	23	23	24	7.
	41	41	43	3.
Total Benefits ††	679 to 1,369	636 to 1,314	735 to 1,462	7 plus GHG range.
	858	811	923	7.
	1,181	1,095	1,290	3.
	1,003 to 1,693	920 to 1,597	1,102 to 1,829	3 plus GHG range.
Costs:				
Consumer Incremental Product Costs †	440	429	471	7.
	530	503	576	3.

TABLE I.12—ANNUALIZED BENEFITS AND COSTS TO MANUFACTURED HOME HOMEOWNERS UNDER THE PROPOSED UNTIERED STANDARDS—Continued

Category	Primary estimate	Low-net-benefits estimate	High-Net-benefits estimate	Discount rate (%)
	(Million 2020$/year)			
Total Net Benefits:				
Including GHG and Emissions Reduction Monetized Value ††	239 to 929	207 to 885	264 to 991	7 plus GHG range.
	418	382	452	7.
	651	592	714	3.
	473 to 1,163	417 to 1,094	526 to 1,253	3 plus GHG range.

Note: This table presents the annualized costs and benefits associated with manufactured homes shipped in 2023—2052. These results include benefits to consumers which accrue after 2052 from the products purchased in 2023—2052. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2020* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in section IV.A and IV.C of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* The benefits from GHG reduction were calculated using global benefit-per-ton values. See section IV.D.2 of this document for more details.

** The benefits from NO_X and SO_2 were based on the low estimate monetized value. See section IV.D.2 of this document for more details.

† The incremental costs include incremental costs associated with principal and interest, mortgage and property tax for the analyzed loan types. Further discussion can be found in chapter 8 of the TSD.

†† Total Benefits for both the 3-percent and 7-percent cases are presented using the average social costs with 3-percent discount rate. In the rows labeled ''7% plus GHG range'' and ''3% plus GHG range,'' the consumer cost and benefits and NO_X and SO_2 benefits are calculated using the labeled discount rate, and those values are added to the GHG reduction calculation using each of the four social cost cases.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.C, IV.D, and IV.E of this document.

F. Conclusion

DOE has tentatively determined that the energy conservation standards under either approach in this SNOPR (*i.e.,* the tiered approach or the untiered approach) could be considered cost-effective when evaluating the impact of the standards on the purchase price of a manufactured home and on the total lifecycle construction and operating costs, but DOE requests comment regarding the cost-effectiveness of both options to inform its final decision. Additionally, DOE has tentatively determined that under either proposal the benefits to the Nation of the standards (energy savings, consumer LCC savings, positive NPV of consumer benefit, and emission reductions) outweigh the burdens (loss of INPV, LCC increases for some homeowners of manufactured housing, and price-sensitive consumers who do not purchase manufactured homes).

II. Introduction

This section addresses the legal and factual background to date regarding DOE's efforts to establish energy conservation standards for manufactured housing. By statute, DOE is obligated to set standards for manufactured housing in consultation with HUD and to consider certain specific factors when establishing these standards. DOE is also obligated to update these standards within a prescribed period of time.

A. Authority

Section 413 of EISA directs DOE to:

- Establish standards for energy conservation in manufactured housing;
- Provide notice of, and an opportunity for comment on, the proposed standards by manufacturers of manufactured housing and other interested parties;
- Consult with the Secretary of HUD, who may seek further counsel from the Manufactured Housing Consensus Committee (MHCC); and
- Base the energy conservation standards on the most recent version of the IECC and any supplements to that document, except in cases where DOE finds that the IECC is not cost-effective or where a more stringent standard would be more cost-effective, based on the impact of the IECC on the purchase price of manufactured housing and on total lifecycle construction and operating costs.

(42 U.S.C. 17071(a) and (b)(1))

Section 413 of EISA also provides that DOE may:

- Consider the design and factory construction techniques of manufactured housing;
- Base the climate zones on the climate zones established by HUD [5] rather than the climate zones under the IECC; and
- Provide for alternative practices that, while not meeting the specific standards established by DOE, result in net estimated energy consumption equal to or less than the specific energy conservation standards.

(42 U.S.C. 17071(b)(2))

DOE is directed to update its standards not later than one year after any revision to the IECC. (42 U.S.C. 17071(b)(3)) Finally, under EISA, a manufacturer of manufactured housing that violates a provision of Part 460 ''is liable to the United States for a civil penalty not exceeding 1 percent of the manufacturer's retail list price of the manufactured housing.'' (42 U.S.C. 17071(c))

B. Background

1. Current Standards

Section 413 of EISA provides DOE with the authority to regulate energy conservation in manufactured housing, an area of the building construction industry traditionally regulated by HUD. HUD has regulated the manufactured housing industry since 1976, when it first promulgated the HUD Code. (42 U.S.C. 5401 *et seq.;* 24 CFR part 3280) The purpose of the HUD Code includes protecting the quality, durability, safety, and affordability of manufactured homes; facilitating the availability of affordable manufactured homes and increasing homeownership for all Americans; protecting residents of manufactured homes with respect to personal injuries and the amount of insurance costs and property damages in manufactured housing; and ensuring that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to the Federal standards and their enforcement. (42 U.S.C. 5401(b))

The HUD Code includes requirements related to the energy conservation of

[5] The statute uses the term ''climate zones'' in reference to the HUD requirements (42 U.S.C. 17071(b)(2)(B). HUD has not established ''climate zones'' but has established ''insulation zones.'' See, *U/O Value Zone Map for Manufactured Housing* at 24 CFR 3280.506. DOE understands the statutory reference to ''climate zones'' in this context to mean the established insulation zones at 24 CFR 3280.506.

manufactured homes. Specifically, Subpart F of the HUD Code, entitled ''Thermal Protection,'' establishes requirements for U_o of the building thermal envelope. U_o is a measurement of the heat loss or gain rate through the building thermal envelope of a manufactured home; therefore, a lower U_o corresponds with a more insulated building thermal envelope. The HUD Code contains maximum requirements for the combined U_o value of walls, ceilings, floors, fenestration, and external ducts within the building thermal envelope for manufactured homes installed in different zones. 24 CFR 3280.506(a).

The HUD Code also provides an alternate pathway to compliance that allows manufacturers to construct manufactured homes that meet adjusted U_o requirements based on the installation of high-efficiency heating and cooling equipment in the manufactured home. 24 CFR 3280.508(d). Moreover, Subpart F of the HUD Code establishes requirements to reduce air leakage through the building thermal envelope. 24 CFR 3280.505.

Subpart H of the HUD Code, entitled ''Heating, Cooling, and Fuel Burning Systems,'' establishes requirements for sealing air supply ducts and for insulating both air supply and return ducts. 24 CFR 3280.715(a). *R*-value is the measure of a building component's ability to resist heat flow (thermal resistance). A higher *R*-value represents a greater ability to resist heat flow and generally corresponds with a thicker level of insulation. The HUD Code contains no requirements for fenestration solar heat gain coefficient (''SHGC''), mechanical system piping insulation, or installation of insulation.

The statutory authority for DOE's rulemaking effort is different from the statutory authority underlying the HUD Code. EISA directs DOE to establish energy conservation standards for manufactured housing without reference to existing HUD Code requirements that also address energy conservation. However, EISA also requires DOE to consult with HUD. (42 U.S.C. 17071(a)(2)(B)) Such consultations have informed DOE in development of the regulations proposed in this document, and DOE remains cognizant of the HUD Code, as well as HUD's Congressional charge to protect the quality, durability, safety, affordability, and availability of manufactured homes. Compliance with the DOE requirements would not prevent a manufacturer from complying with the requirements set forth in the HUD Code. Section III.F provides a crosswalk of the energy conservation standards that are proposed in this rule with the standards in the HUD Code. Moreover, as discussed further in section III, DOE considered the potential impact on manufactured home purchasers resulting from costs associated with additional energy efficiency measures.

2. The International Energy Conservation Code (IECC)

The statutory authority for this rulemaking requires DOE to base its standards on the most recent version of the IECC and any supplements to that document, subject to certain exceptions and considerations. (42 U.S.C. 17071(b)(1)) The IECC is a nationally recognized model code, developed under the auspices of and published by the International Code Council (''ICC''). Many state and local governments have adopted the IECC [6] in establishing minimum design and construction requirements for the energy efficiency of residential and commercial buildings, including site-built residential and modular homes.[7] The IECC is developed through a consensus process that seeks input from a number of relevant stakeholders and is updated on a rolling basis, with new editions of the IECC published approximately every three years. The IECC was first published in 1998, with the most recent version, the 2021 IECC, being published in January 2021.

The 2021 IECC is divided into two major sections, with provisions for both residential and commercial buildings. The manufactured housing energy conservation standards and test procedure are based on the requirements for residential buildings. The residential building requirements of the 2021 IECC, however, are not specific to manufactured housing.

Chapter 4 of the residential section of the 2021 IECC sets forth specifications for residential energy efficiency, including specifications for building thermal envelope energy conservation, thermostats, duct insulation and sealing, mechanical system piping insulation, heated water circulation system, and mechanical ventilation. To the extent that the HUD Code regulates similar aspects of energy conservation as the 2021 IECC, the 2021 IECC is generally considered more stringent than the corresponding requirements in the HUD Code, given that many areas of the HUD Code have not been updated as frequently as the IECC.

DOE notes that the IECC is designed for building structures that have a permanent foundation. Manufactured housing structures, however, are not built on permanent foundations but are built on a steel chassis to enable them to be moved or towed when needed. As a result, because they present their own set of unique considerations that the IECC was not intended to address, some aspects of the IECC are unable, or highly impractical, to be applied to manufactured housing. Instead, as DOE proposed in its June 2016 NOPR and consistent with the considerations required by EISA, this supplemental proposal utilizes aspects of the IECC that are appropriate for manufactured housing as the basis for the standards proposed herein, thereby accounting for the unique physical characteristics of manufactured housing.

Additionally, the ''tiered'' proposal provides an approach to mitigate the potential adverse impacts of increased costs on manufactured housing affordability that may arise from increasing the stringency of energy efficiency requirements applied to manufactured homes. In its tiered proposal, by dividing the market into designated manufacturer retail list price-based segments and assigning efficiency levels as appropriate for each segment, DOE suggests a way to address the affordability concerns presented in this housing segment, and relatedly the cost-effectiveness considerations set forth in EISA, while also promoting that the statutory objective of improving manufactured housing energy efficiency.

3. Development of the Initial Proposal and Responses

Manufactured housing accounts for approximately six percent of all homes in the United States.[8] Because the purchase price of manufactured homes often is lower than similarly sized site-built homes, manufactured homes serve as affordable housing options, particularly for low-income families. However, many manufactured homes often have higher utility bills than comparably sized site-built and modular homes in part due to different energy conservation standards and variability

[6] The current status of the adoption of the IECC is provided at *https://www.energycodes.gov/status-state-energy-code-adoption.*

[7] Modular homes are generally excluded from the coverage of the National Manufactured Housing Construction and Safety Standards Act and constructed to the same state, local or regional building codes as site-built homes. See 42 U.S.C. 5403(f); 24 CFR 3282.12.

[8] U.S Census Bureau, American Housing Survey 2019—National Summary Tables. Available at *https://www.census.gov/programs-surveys/ahs/data.html.*

among building codes and industry practices.[9]

Establishing improved energy conservation requirements for manufactured homes results in the dual benefit of reducing manufactured home energy use and enabling owners of manufactured homes to experience lower utility expenses over the long-term. Improved energy conservation standards are also expected to provide nationwide benefits of reducing utility energy production levels that would in turn reduce greenhouse gas emissions and other air pollutants.

DOE published an advance notice of proposed rulemaking (''ANOPR'') to initiate the process of developing energy conservation standards for manufactured housing and to solicit information and data from industry and stakeholders.[10] *See* 75 FR 7556 (February 22, 2010). DOE also consulted with HUD in developing the requirements and in obtaining input and suggestions that would increase energy conservation in manufactured housing, while maintaining affordability. In addition to meeting with HUD on multiple occasions, DOE attended three MHCC meetings, where DOE gathered information from MHCC members. DOE also initiated discussions with members of the manufactured housing industry following the issuance of the ANOPR.[11] A summary of each meeting is available at the *regulations.gov* web page at *https://www.regulations.gov/docket?D=EERE-2009-BT-BC-0021.* The June 2016 NOPR provides more details on the comments received in response to the ANOPR. 81 FR 39755 (June 17, 2016).

On June 25, 2013, DOE published a request for information (''RFI'') seeking information on indoor air quality, financing and related incentives, model systems of enforcement, and other studies and research relevant to DOE's effort to establish energy conservation standards for manufactured housing. 78 FR 37995 (''June 2013 RFI''). The June 2016 NOPR provides more details on the comments received on the RFI. 81 FR 39765 (June 17, 2016).

After reviewing the comments received in response to the ANOPR, the June 2013 RFI, and other stakeholder input, DOE ultimately determined that development of proposed manufactured housing energy conservation standards would benefit from a negotiated rulemaking process. On June 13, 2014, DOE published a notice of intent to establish a negotiated rulemaking manufactured housing (''MH'') working group to discuss and, if possible, reach consensus on a proposed rule. 79 FR 33873. On July 16, 2014, the MH working group was established under the Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') in accordance with the Federal Advisory Committee Act and the Negotiated Rulemaking Act. 79 FR 41456; 5 U.S.C. 561–570, App. 2. The MH working group consisted of representatives of interested stakeholders with a directive to consult, as appropriate, with a range of external experts on technical issues in developing a term sheet with recommendations on the proposed rule. The MH working group consisted of 22 members, including one member from ASRAC, and one DOE representative. 79 FR 41456. The MH working group met in person during six sets of public meetings held in 2014 on August 4–5, August 21–22, September 9–10, September 22–23, October 1–2, and October 23–24. 79 FR 48097 (Aug. 15, 2014); 79 FR 59154 (Oct. 1, 2014).

On October 31, 2014, the MH working group reached consensus on energy conservation standards in manufactured housing and assembled its recommendations for DOE into a term sheet that was presented to ASRAC. Public docket EERE–2009–BT–BC–0021–0107 (''Term Sheet''). ASRAC approved the term sheet during an open meeting on December 1, 2014 and sent it to the Secretary of Energy to develop a proposed rule.

On February 11, 2015, DOE published an RFI requesting information that would aid in determining proposed solar heat gain coefficient (''SHGC'') requirements for certain climate zones. 80 FR 7550 (''February 2015 RFI''). Following preparation and submission of the term sheet by the MH working group, DOE also consulted further with HUD regarding DOE's proposed energy conservation standards. In addition to meeting with HUD, DOE prepared two presentations to discuss the proposed rule with MHCC members, which were designed to gather information on development of the proposed standards.[12]

On June 17, 2016, DOE published a NOPR for the manufactured housing energy conservation standards rulemaking. 81 FR 39755. (''June 2016 NOPR'') DOE posted the NOPR analysis as well as the complete NOPR TSD on its website.[13] In response to comments on the 2013 RFI DOE also published the 2016 EA–RFI to accompany the 2016 NOPR. The draft EA drew no conclusions regarding the potential impacts on the indoor air quality of manufactured homes as a result of implementing any final energy conservation standard for these structures. DOE held a public meeting on July 13, 2016, to present the June 2016 NOPR, which included the proposed prescriptive and performance requirements, in addition to the LCC, NIA, manufacturer impact analysis (''MIA''), and emissions analyses. In response to the June 2016 NOPR, DOE received comments from a variety of stakeholders.

TABLE II.2—JUNE 2016 NOPR WRITTEN COMMENTS

Organization(s)	Reference in this SNOPR	Organization type
Advanced Energy	Advanced Energy	Manufacturer.
Air Conditioning Contractors of America	ACCA	Trade association.
American Chemistry Council	ACC FSSC	Trade association.
American Council for an Energy-Efficient Economy	ACEEE	Efficiency organization.
American Gas Association and American Public Gas Association	AGA and APGA	Trade association.
Arkansas Manufactured Housing Association	AMHA	Trade association.
Better Homes AHEAD	Better Homes	Manufacturer.

[9] American Council for an Energy-Efficient Economy; Mobilizing Energy Efficiency in the Manufactured Housing Sector, July 2012; *https://www.aceee.org/sites/default/files/publications/researchreports/a124.pdf.*

[10] The ANOPR comments can be accessed at: *https://www.regulations.gov/#!docketDetail;D=EERE-2009-BT-BC-0021.*

[11] These included discussions with the Manufactured Housing Institute (''MHI'') and several of its member manufacturers, the California Department of Housing and Community Development, the Georgia Manufactured Housing Division, three private-sector third-party primary inspection agencies under the HUD manufactured housing program, and one private-sector stakeholder familiar with manufactured housing.

[12] Available at *https://www.regulations.gov/document?D=EERE-2009-BT-BC-0021-0069* and *https://www.regulations.gov/document?D=EERE-2009-BT-BC-0021-0058.*

[13] The NOPR analysis, NOPR TSD, and NOPR public meeting information are available at *https://regulations.gov* under docket number EERE–2009–BT–BC–0021.

TABLE II.2—JUNE 2016 NOPR WRITTEN COMMENTS—Continued

Organization(s)	Reference in this SNOPR	Organization type
Cato Institute	Cato Institute	
Cavco Industries	Cavco	Manufacturer.
Clayton Home Building Group	Clayton Homes	Manufacturer.
Commodore Corporation	Commodore Corporation	Manufacturer.
Community Owners (7 Part) Business Alliance	COBA	Trade association.
Earthjustice	Earthjustice	Efficiency organization.
Environmental Defense Fund, Institute for Policy Integrity, Natural resources Defense Council, and Union of Concerned Scientists.	Joint Advocates	Efficiency organizations.
George Washington University Regulatory Studies Center	GWU	Academia.
International Code Council	ICC	Codes organization.
Lippert Components	Lippert Components	Manufacturer.
Manufactured Housing Association for Regulatory Reform	MHARR	Trade association.
Manufactured Housing Consensus Committee	MHCC	Advisory committee.
Manufactured Housing Industry of Arizona	MHIAZ	Trade association.
Manufactured Housing Institute	MHI	Trade association.
Manufactured Housing Institute of Maryland	MHIM	Trade association.
Manufactured Housing Institute of South Carolina	MHISC	Trade Association.
Mississippi Manufactured Housing Association	MMHA	Trade association.
Modular Lifestyles, Inc.	Modular Lifestyles	Manufacturer.
National Propane Gas Association	NPGA	Trade association.
New Mexico Manufactured Housing Association	NMMHA	Trade association.
Next Step Network, Inc.	Next Step	Efficiency organization.
North Carolina Justice Center	NCJC	Consumer organization.
Northwest Energy Efficiency Alliance	NEEA	Efficiency organization.
Ohio Manufactured Homes Association	OMHA	Trade Association.
Palm Harbor Homes, Inc.	Palm Harbor Homes	Manufacturer.
Pennsylvania Manufactured Housing Association	PMHA	Trade association.
Bob Pfeiffer	Pfeiffer	Individual.
Pleasant Valley Homes, Inc.	Pleasant Valley Homes	Manufacturer.
Responsible Energy Codes Alliance	RECA	Efficiency organization.
Skyline Corporation	Skyline Corporation	Manufacturer.
South Mountain Co., Inc.	South Mountain	Manufacturer.
Systems Building Research Alliance	SBRA	Trade association.
U.S. Chamber of Commerce, American Chemistry Council, American Coke and Coal Chemicals Institute, American Forest & Paper Association, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, Association of Home Appliance Manufacturers, Brick Industry Association, Council of Industrial Boiler Owners, National Association of Home Builders, National Association of Manufacturers, National Mining Association, National Oilseed Processors Association, Portland Cement Association.	U.S. Chamber of Commerce	Trade association.
U.S. Small Business Administration's Office of Advocacy	Advocacy	Government agency.
Vermont Energy Investment Corporation	VEIC	Efficiency organization.
West Virginia Housing Institute, Inc.	WVHI	Trade association.
Window and Door Manufacturers Association	WDMA	Trade association.

DOE also received over 700 substantively similar form letters from individuals. All of the comment submissions are available in the docket for this rulemaking. The comments and DOE's responses are discussed in sections III, IV, and V of this document.

4. Development of the Current Proposal

DOE received a number of responses to its June 2016 NOPR. In response to concerns related to potential adverse impacts on price-sensitive, low-income purchasers of manufactured homes from the imposition of energy conservation standards on manufactured housing, DOE sought additional information from the public regarding these impacts by publishing the August 2018 NODA. See 83 FR 38073 (August 3, 2018). That NODA indicated that DOE had re-examined its available data and re-evaluated its approach in developing standards for manufactured housing. The August 2018 NODA also indicated that HUD had made DOE aware of the adverse impacts on manufactured housing affordability that would likely follow if DOE were to adopt the approach laid out in its June 2016 NOPR. See 83 FR 38073, 38075. These discussions with HUD, along with a concern over the initial first-cost impacts that DOE's earlier proposal would have on low-income buyers, led DOE to examine a potential tiered proposal that would require varying levels of energy efficiency performance with specified increases in incremental upfront-costs that would still improve the overall energy efficiency of manufactured homes. See 83 FR 38077.

DOE has not included test procedure or compliance and enforcement provisions in this SNOPR. DOE also has not included provisions related to waivers or exception relief that might be available to manufacturers regarding compliance with any standards that DOE may adopt. DOE does not intend to address test procedures or compliance and enforcement provisions in this rulemaking. DOE notes that HUD has an established design approval, monitoring and enforcement system, defined in 24 CFR part 3282, that is robust and provides compliance and enforcement of the manufactured housing industry standards. Moreover, manufacturers must comply with referenced standards incorporated by HUD in its regulations. While DOE would consider HUD's established compliance and enforcement mechanism appropriate to support any standards HUD incorporates by reference from any final

manufactured housing rule, DOE is seeking comment on such an approach. DOE intends to continue consulting with HUD on potential approaches and is seeking comment on other potential approaches to compliance with, and enforcement of, a final energy conservation standard for manufactured housing.

III. Discussion of the Proposed Standards

A. The Basis for the Proposed Standards

1. Scope

DOE's authority under 42 U.S.C. 17071 to establish energy conservation standards for manufactured homes specifies that those standards ''shall be based on'' the most recent version of the IECC. Because the IECC is specific to site-built structures, DOE's supplemental proposal, while based on the 2021 IECC, has required modifications to IECC provisions for application to manufactured homes. In DOE's view, the language Congress used in instructing DOE to set standards for these structures is broad and does not require the imposition of requirements for manufactured homes that are identical to those that IECC provides for site-built structures. The use of the phrase ''based on'' readily indicates that Congress anticipated that DOE would need to use its discretion in adapting elements of the IECC's provisions for manufactured housing use, including whether those elements would be appropriate in light of the specific circumstances related to the structure. Further, Congress indicated that DOE has discretion to depart from the IECC to the extent it is not cost-effective.

Pursuant to this discretion afforded by Congress, as opposed to complete adoption of the 2021 IECC, DOE is proposing, first, a tiered standard whereby manufactured homes with manufactured retail list prices of $55,000 or less (''Tier 1'' manufactured homes) would be subject to different building thermal envelope requirements (subpart B of proposed 10 CFR part 460) than all other manufactured homes (''Tier 2'' manufactured homes). Both tiers are based on the 2021 IECC in that both tiers have requirements for the building thermal envelope, duct and air sealing, installation of insulation, HVAC specifications, service hot water systems, mechanical ventilation fan efficacy, and heating and cooling equipment sizing provisions of the 2021 IECC. However, in light of cost-effectiveness concerns, Tier 1 provides tailored improvements in efficiency with regard to building thermal envelope, which are projected to result in an approximately $750 incremental price increase. Tier 2 focuses on the building thermal envelope, duct and air sealing, insulation installation, HVAC specifications, service hot water systems, mechanical ventilation fan efficacy, and heating and cooling equipment sizing provisions, based on the 2021 IECC, and is estimated to result in an average incremental price increase of $3,900–$5,300 for single- and multi-section homes, respectively. As an alternative, DOE is also proposing a single, untiered standard for manufactured homes that is the same as the Tier 2 standard.

In establishing standards for manufactured housing, Congress directed DOE to: (1) Consult with the Secretary of HUD (42 U.S.C. 17071(a)(2)(b)), and (2) base the standards on the most recent version of the IECC, except in cases in which the Secretary finds that the code is not cost-effective, or a more stringent standard would be more cost-effective, based on the impact of the codeon the purchase price of manufactured housing and on total life-cycle construction and operating costs. (42 U.S.C. 17071(b)(1)) Relatedly, the Secretary of HUD is mandated to establish standards for manufactured housing that, in part, ''ensure that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to the Federal standards and their enforcement.'' (42 U.S.C. 5401(b))

In this consultative role, HUD raised a concern with the potential adverse impacts on manufactured housing affordability that could result from additional energy efficiency standards being established for manufactured homes. More specifically, HUD noted concerns that increases in the purchase prices for manufactured homes resulting from the costs of requiring to meet standards based upon the IECC could result in prospective manufactured homeowners being unable to purchase a manufactured home. With this concern in mind, in the August 2018 NODA, DOE requested comment on a report released in 2014 from the Consumer Financial Protection Bureau (''CFPB'') indicating manufactured housing purchasers face substantial constraints compared to traditional home purchasers.[14] 83 FR 38073, 38076. As discussed in the August 2018 NODA, the report, ''Manufactured-Housing Consumer Finance in the United States,'' (hereinafter, ''CFPB Report'') presented the following key findings:

- Manufactured home ownership varies widely by region, with the majority of manufactured homes located outside of metropolitan areas;
- Manufactured home owners tend to have lower incomes and less net worth than their counterparts who own site-built homes;
- There is an extremely constrained secondary market for manufactured homes, following the collapse of the manufactured home market in the late 1990s through the early 2000s;
- Most manufactured-housing purchasers who finance their homes obtained a loan of between $10,000 and $80,000, with a median loan value of $55,000.

These constraints may make purchasers of manufactured homes more price sensitive to potential changes that would impact the costs to construct (and purchase) a manufactured home. Moreover, the CFPB Report suggests that manufactured home consumers are particularly cost-driven.[15]

The CFPB Report stated that the median annual income of families living in manufactured homes is slightly over $26,000, and the median net worth of these families is $26,000 (a quarter of the median net worth for families in site-built homes). *See id.* at 16–18.

Additionally, owners of manufactured homes who finance their homes tend to pay higher interest rates than their site-built home counterparts. A key reason for this difference is that the vast majority of manufactured housing stock is titled as chattel (*i.e.* personal property), and as a result is eligible only for chattel financing. Chattel financing is typically offered to purchasers at a significantly higher interest rate than the rates offered to site-built home owners. While most manufactured home

[14] See *https://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.*

[15] In particular, the report noted: ''There is evidence that some households who move into manufactured housing are less satisfied with their homes than those who choose to move into site-built housing. These results suggest that for at least some households, the choice to live in a manufactured home may be more cost-driven than quality-driven.'' CFPB Report at 22.

owners who also own the land on which the manufactured home is sited may be eligible for mortgage financing, there is a tradeoff between lower origination costs with significantly higher interest rates (chattel loans) and higher origination costs with significantly lower interest rates and greater consumer protections (mortgage). *See id.* at pp. 23–25.

Therefore, in response to the affordability concerns raised by HUD and commenters, DOE is contemplating whether there are cost-effective approaches that would also mitigate first-cost impacts for purchasers at the lower end of the manufactured home price range. Accordingly, DOE is presenting a tiered proposal that would provide in proposed subpart B tiered standards based on a manufacturer's retail list price. According to 2019 data, the average purchase price (*i.e.,* sales price if the home is intended for sale) of a single section manufactured home is $53,200, the average purchase price of a multi-section manufactured home is $104,000, and the average purchase price of all manufactured homes is $81,900.[16] To the extent that manufactured home purchasers are cost-driven, in conjunction with the lower median income and net worth of these purchasers, consumers at the lower end of the manufactured home purchase price range generally would be more sensitive to increases in purchase price. Accordingly, DOE created a tiered proposal to address affordability issues associated with the full implementation of the 2021 IECC in the untiered proposal.

Accordingly, under the tiered proposal, the stringency of the standards under proposed subpart B applicable to Tier 1 manufactured homes (*i.e.,* manufactured homes with a manufacturer's retail list price of $55,000 or less) would require building thermal envelope measures that would result in an incremental purchase price increase of approximately $750. Section III.A.2 provides further discussion on how the manufacturer's retail list price tier threshold and $750 incremental purchase price were developed.

DOE estimates the SNOPR would result in a loss in demand and availability of about 53,329 homes (single section and multi-section combined) for the tiered standard and about 71,290 homes (single section and multi-section combined) for untiered standards based on a price elasticity of demand of –0.48 for the analysis period (2023–2052). Out of the 53,329 homes in the tiered standard, the majority of the reduction is in Tier 2 (93 percent) vs. Tier 1 (7 percent). Within Tier 1, DOE estimates a 0.52 percent reduction (essentially no reduction) in availability due to Tier 1 standards for low income purchasers. Table III.1 provides a summary of the change in shipments for tiered standards. See section IV.c.1.b. for a discussion of price elasticity with respect to manufactured housing shipments and people who do not buy because they are price-sensitive.

TABLE III.1—CHANGE IN SHIPMENTS FOR TIERED STANDARDS *

	No-standards shipments		Standards case shipments		Change in shipments, tiered		
	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Total
30-year analysis	703,725	2,086,927	700,032	2,037,291	(3,693)	(49,636)	(53,329)
Annual					(123)	(1,655)	(1,778)

* Values in parenthesis are negative.

As a sensitivity, DOE also considered a price elasticity of demand of –2.4 instead of –0.48. Further discussion on this sensitivity is provided in section IV.C.2 of this document. Table III.2 provides a summary of the change in shipments for tiered standards for price elasticity of –2.4 instead of –0.48.

TABLE III.2—CHANGE IN SHIPMENTS COMPARED TO BASELINE, −0.48 AND −2.4 PRICE ELASTICITY

	Change in shipments,–0.48 price elasticity			Change in shipments,–2.4 price elasticity		
	Tier 1	Tier 2	Total	Tier 1	Tier 2	Total
30-year analysis	(3,693)	(49,636)	(53,329)	(18,375)	(247,692)	(266,067)
Annual	(123)	(1,655)	(1,778)	(613)	(8,256)	(8,869)

* Values in parenthesis are negative.

On May 27, 2021, the CFPB issued another report entitled ''Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data'' (the ''2021 CFPB Report'').[17] DOE is aware of the 2021 CFPB report, but has not yet reviewed it in detail. Accordingly, DOE did not incorporate any new or additional data from the 2021 CFPB report into the analysis presented in this SNOPR. DOE is also aware that the U.S. Census has released the 2020 Manufactured Housing Survey,[18] but similarly has not reviewed the results in detail or incorporated these new data into the analysis presented here. DOE welcomes comment on the use of the data in 2021 CFPB report and the 2020 Manufactured Housing Survey in DOE's analyses for this rulemaking.

DOE invites comment on whether (1) the manufacturer's retail list price threshold for Tier 1 under the tiered proposal is appropriate, (2) the untiered proposal in this SNOPR is cost-effective, generally, and (3) the untiered proposal is cost-effective for low-income consumers.

Finally, the scope proposed in this document provides additional clarification that the proposed energy conservation standards would apply to the design, construction and aspects of onsite completion of manufactured

[16] Manufactured Housing Survey 2019; U.S. Census Data; *https://www.census.gov/data/tables/time-series/econ/mhs/annual-data.html.*

[17] The report may be found at: *files.consumerfinance.gov/f/documents/cfpb_manufactured-housing-finance-new-insights-hmda_report_2021-05.pdf.*

[18] *https://www.census.gov/data/tables/time-series/econ/mhs/annual-data.html.*

homes—not to the installation of a home.

On November 9, 2016, DOE published a NOPR for test procedures (2016 Test Procedure NOPR), as a companion to the draft energy efficiency standards rule for manufactured housing. See 81 FR 78733 (November 9, 2016). The 2016 Test Procedure NOPR proposed procedures for how those subject to energy conservation standards for manufactured housing would confirm products are in compliance with the standards. More specifically, the 2016 Test Procedure NOPR proposed procedures to determine compliance with the following metrices from the June 2016 NOPR: The R-value of insulation; the U-factor of windows, skylights, and doors; the solar heat gain coefficient of fenestration; U-factor alternatives to R-value requirements; the air leakage rate of air distribution systems; and mechanical ventilation fan efficacy. 81 FR 78733. A discussion of the 2016 Test Procedure NOPR may be found in section III.C of this document.

DOE is not addressing a test procedure, or compliance and enforcement provisions for an energy conservation standard for manufactured housing in this document. DOE continues to consult with HUD about pathways to address testing, compliance and enforcement for this proposed standard in a manner consistent with the current HUD inspection and enforcement process so that such testing, compliance and enforcement procedures are not overly burdensome for manufacturers. While many of the requirements in the proposed standard and alternative proposal would require minimal compliance efforts and costs (*e.g.,* documenting the use of materials subject to separate Federal or industry standards, such as the R-value of insulation or U-factor values for fenestration), DOE acknowledges that it has not fully enumerated testing and enforcement costs at this time. However, because testing and compliance and enforcement requirements may be dependent upon the final outcome of this rulemaking, DOE is not proposing any testing, compliance or enforcement provisions at this time. DOE has also not included any potential associated costs of testing, compliance or enforcement. DOE intends to continue working with HUD on potential approaches and is seeking comment on other potential approaches for testing, compliance and enforcement that will ensure manufacturer compliance with the standard in a manner that is not overly burdensome or costly to manufacturers.

DOE welcomes comment on approaches for testing, compliance and enforcement provisions for the proposed standards and alternative proposal. DOE also welcomes comments and information related to potential testing, compliance and enforcement under the current HUD inspection and enforcement process, and potential costs of testing, compliance and enforcement of the proposed standards and alternative proposal in this document.

2. Proposed Standards

EISA requires DOE to base standards for manufactured housing on the IECC. However, application of the IECC standards is also subject to a number of considerations set forth by the statute in order to ensure standards will be appropriately tailored for manufactured homes and the manufactured home market. Specifically, EISA requires that DOE establish energy conservation standards for manufactured housing that are ''based on the most recent version of the [IECC], except in cases in which [DOE] finds that the [IECC] is not cost-effective, or a more stringent standard would be more cost-effective, based on the impact of the [IECC] on the purchase price and on total life-cycle construction and operating costs.'' (42 U.S.C. 17071(b)(1)).

In addition to the required cost-effectiveness considerations, EISA explicitly allows DOE to consider the differences in design and factory construction techniques of manufactured homes, as compared to site-built and modular homes. (42 U.S.C. 17071(b)(2)) As noted in section II.B.2, the 2021 IECC applies generally to residential buildings, including site-built and modular housing, and is not specific to manufactured housing. The energy conservation standards proposed in this SNOPR are generally based on certain specifications included in the 2021 IECC while also accounting for the unique aspects of manufactured housing. DOE carefully considered the following aspects of manufactured housing design and construction in developing the standards:

- Manufactured housing structural requirements contained in the HUD Code;
- External dimensional limitations associated with transportation restrictions;
- The need to optimize interior space within manufactured homes; and
- Factory construction techniques that facilitate sealing the building thermal envelope to limit air leakage.

Upon consideration of these aspects of manufactured housing design and construction, DOE is not proposing to include several of the 2021 IECC requirements such as more stringent ceiling *R*-value requirements (greater than *R*-38) in the northern climate zones and the requirement for the exterior ceiling insulation to be of uniform thickness or uniform density given the space constraints of manufactured homes (discussed in further detail in section III.E.2.b).

EISA also allows DOE to base standards on the climate zones of the HUD Code instead of the IECC. (42 U.S.C. 17071(b)(2)(B)) There are differences in the number and boundaries of the HUD zones as compared to the IECC climate zones. For example, under the 2021 IECC climate zone map, California is divided into five climate zones (including zone variation based on moisture regimes), with four of the zones subject to SHGC maximums (0.40 applicable to climate zones 4 and 5, and 0.25 applicable to climate zones 2 and 3). Under the HUD zone map, all of California is within a single zone. Developing energy conservation standards based on the HUD climate zones, as DOE is proposing to do in this SNOPR and as permitted under EISA, necessitates deviating from the IECC. The updated proposal would establish thermal envelope requirements, as does the 2021 IECC, but setting the values for those requirements necessitates that DOE develop standard levels different than those in the 2021 IECC to account for the difference in the number of climate zones.

In addition, DOE has conducted a sensitivity analysis for an alternative exterior insulation requirement, R–21, for Tier 2 in zones 2 and 3. This alternative insulation requirement is based on (but not identical to) the 2021 IECC, which includes a requirement for continuous insulation (R–20+5). DOE developed this sensitivity analysis to evaluate the effects on life-cycle costs and payback period for Tier 2 consumers. This sensitivity analysis is further discussed in section IV.A.2 of this document.

In modifying the IECC requirements, DOE relied, in part, on the statutorily required interagency consultation with HUD. As discussed, the HUD consultation ensures that DOE is informed by HUD's expertise and statutory duties as they pertain to the role of manufactured housing in the U.S. housing market, as recognized by Congress. As a result of concerns raised by HUD regarding the need to maintain affordability, which interrelate with the cost-effectiveness concerns specified in 42 U.S.C. 17071, DOE is presenting a primary proposal based on tiered standards that would prescribe a complement of cost-effective energy

conservation requirements based on requirements in the 2021 IECC.

The proposed Tier 1 standards would apply to manufactured homes with a manufacturer's retail list price of $55,000 or less (in real 2019$). The proposed Tier 1 requirements incorporate IECC-based building thermal envelope component measures that result in an incremental purchase price increase of approximately $750. The proposed Tier 2 standards would apply to manufactured homes with a manufacturer's retail list price that is greater than $55,000 (in real 2019$). The Tier 2 standards would be based on the most recent version of the IECC, with consideration of the design and factory construction techniques of manufactured homes. As an alternative, DOE also proposes an untiered standard in which all manufactured homes would be at the same stringencies as the standards based on the most recent version of the IECC, similar to the Tier 2 standard.

a. Manufacturer's Retail List Price Tier Threshold

The proposed manufacturer's retail list price tier threshold for the tiered standard was developed using loan and manufactured home purchase price data. The loan data were derived from the CFPB report.[19] The purchase price data were derived from the manufactured housing survey (''MHS'') 2019 public use file (''PUF''') data, which provide estimates of average sales prices for new manufactured homes sold or intended for sale by geographical region and size of home.[20] The CFPB report states that high-priced manufactured housing loans (including chattel loans) account for roughly 68 percent of total manufactured housing loans.[21] If people typically receive one primary loan, the percentage of high-priced loans used should roughly equal the percentage of people receiving high-priced loans and, thus, homes purchased with high-priced loans (*i.e.,* 68 percent). Assuming that price-sensitive, low-income purchasers rely on high-priced loans, and pairing the CFPB figure with the MHS 2019 PUF data, the 68th percentile manufactured housing price gives a reasonable estimate for the upper bound for a manufactured home sales price that a price-sensitive low-income purchaser would pay. DOE considered that low-income purchasers would mainly purchase single-section homes that are, on average, at a lower sales price than multi-section homes. Accordingly, applying the 68th percentile for a single-section manufactured home using the MHS 2019 PUF data, yields a sales price of approximately $55,000. This price serves as the proposed threshold for Tier 1. Using this threshold, Tier 1 consists of approximately 25 percent of the total sales (single-section and multi-section) of manufactured homes. Tier 2 consists of approximately 75 percent of the sales total (single-section and multi-section) of manufactured homes.

DOE acknowledges that the boundary of the proposed tiers is being applied to manufacturers' retail list prices, while the underlying data from which the boundary is derived in the MHS 2019 PUF data are sales and/or purchase price data of manufactured homes. DOE understands the manufacturer's retail list price to be the price that the manufacturer provides in the sales contract to a distributor or retailer—*i.e.,* the price that the manufactured home is originally listed at by the manufacturer. On the other hand, the purchase price is the final sales price of the home to the consumer. The manufacturer's retail list price and the purchase price are not the same. However, the MHS 2019 PUF purchase price data are the most robust and reliable data of the manufactured housing market that, to date, DOE has found in its own search, or that has been provided to DOE. DOE believes these data are still largely representative of the overall manufactured housing market and that the tiers are appropriately set based on this data.

DOE believes the proposed threshold based on manufacturer's retail list price can sufficiently address the affordability concerns previously expressed by HUD and other stakeholders. DOE also notes that, based on its understanding of the MHS 2019 PUF data, the proposed $55,000 threshold would not vary significantly across regions. Although DOE is proposing a national retail price-based threshold, in consultations with HUD and the MHCC, DOE received comments and questions regarding the use of alternative metrics upon which to base the boundary between tiers, such as the size of the manufactured home. Accordingly, DOE also considered other threshold types that would be based on size (*e.g.,* square footage or for single-section vs. multi-section homes) or region (*e.g.,* retail price thresholds tailored to specific regions rather than a single national value). For example, the MHS 2019 PUF data set provides data that relates home size (in terms of square feet) with purchase price. Table III.3 summarizes the average, minimum and maximum sales prices based on home size using square footage and section. In general, the data indicates that while price increases with home size, the minimum and maximum prices do not vary significantly with home size (with certain exceptions).

TABLE III.3—MHS PUF 2019 HOME SIZE AND SALES PRICE DATA

Home size (square feet)	Single-section sales price (2019$)			Dual-section sales price (2019$)		
	Average	Minimum	Maximum	Average	Minimum	Maximum
440–539	$36,786	$28,400	$53,000	.....	.....	.....
540–639	46,769	29,600	100,000	.....	.....	.....
640–739	45,012	32,100	100,000	.....	.....	.....
740–839	49,011	28,400	101,000	.....	.....	.....
840–939	44,497	28,400	101,000	$90,274	$60,000	$226,000
940–1039	49,943	32,100	101,000	87,596	55,000	156,000
1040–1139	52,698	29,600	101,000	79,413	52,000	226,000
1140–1239	57,330	29,600	101,000	94,153	54,000	256,000
1240–1339	59,781	28,400	100,000	84,873	52,000	256,000
1340–1439	63,848	39,000	74,000	105,697	54,000	256,000
1440–1539	.....	.....	.....	97,973	52,000	256,000
1540–1639	.....	.....	.....	94,109	52,000	256,000

[19] CFPB report, 2014. *https://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.* At the time of this analysis, the 2014 CFPB report was the latest that was available.

[20] Manufactured Housing Survey, Public Use File (PUF) 2019. *https://www.census.gov/data/datasets/2019/econ/mhs/puf.html.*

[21] The Consumer Finance Protection Bureau (CFPB) in general describes a higher-priced mortgage loan as a loan with an annual percentage rate, or APR, higher than a benchmark rate called the Average Prime Offer Rate. The requirements for this loan can be found in 12 CFR 1026.35.

TABLE III.3—MHS PUF 2019 HOME SIZE AND SALES PRICE DATA—Continued

Home size (square feet)	Single-section sales price (2019$)			Dual-section sales price (2019$)		
	Average	Minimum	Maximum	Average	Minimum	Maximum
1640–1739				101,684	52,000	256,000
1740–1839				109,921	52,000	256,000
1840–1939				103,365	60,000	226,000
1940–2039				105,981	52,000	256,000
2040–2139				117,584	52,000	226,000
2140–2239				118,631	52,000	226,000
2240–2339				122,939	79,000	164,000
2340–2439				136,305	103,000	162,000
2440–2539				136,428	60,000	226,000
All	53,246	28,400	101,000	104,006	52,000	256,000

The MHS 2019 PUF data set also provides data that relates Census region (the U.S. Census Bureau divides the country into four census regions) with purchase price. Table III.4 summarizes the average, minimum and maximum sales prices based on census region and section. In general, the data indicates that average price (specifically for single-section homes) does not differ significantly based on census region.

TABLE III.4—MHS PUF 2019 CENSUS REGION AND SALES PRICE DATA

Census region	Single-section sales price (2019)			Dual-section sales price (2019)		
	Average	Minimum	Maximum	Average	Minimum	Maximum
Northeast	$54,430	$33,800	$101,000	$106,502	$55,000	$256,000
Midwest	54,025	32,100	75,000	98,512	54,000	162,000
South	52,879	29,600	74,000	102,222	52,000	164,000
West	53,318	28,400	100,000	113,312	60,000	226,000
All	53,246	28,400	101,000	104,006	52,000	256,000

At this time, DOE has tentatively determined that a national retail price-based threshold will accomplish the purposes of EISA while taking into account the importance of affordable housing. However, DOE is considering conducting additional analyses on alternative thresholds prior to the final rule stage. DOE requests comment on this approach and whether other types of thresholds are worth considering for the final rule stage.

DOE requests comment on the use of a tiered approach to address affordability and PBP concerns from HUD, other stakeholders, and the policies outlined in Executive Order 13985. DOE also requests comment regarding whether the price point boundary between the proposed tiers is appropriate, and if not, at what price point should it be set and the basis for any alternative price points. DOE also requests comment on its assumptions regarding the use of high-priced loans (*e.g.,* chattel loans) by low-income purchasers, or other purchasers, of manufactured housing.

DOE also requests comment on alternate thresholds (besides price point) to consider for the tiered approach, including a size-based threshold (*e.g.,* square footage or whether a home is single- or multi-section). DOE requests comment on the square footage and region versus sales price data provided in the notice (from MHS PUF 2019) and how that data (or more recent versions of that data) could be used to create either a size-based or region-based threshold instead. DOE further requests input on whether there should be single national threshold as proposed, or whether it should vary based on geography or other factors, and if so, what factors should be considered.

As mentioned previously, the threshold proposed in this SNOPR is based in real 2019 dollars. Accordingly, DOE also proposes under the tiered proposal that the manufacturer's retail list price thresholds would be adjusted for inflation (for the applicable year of compliance) using the most recently available Annual Energy Outlook (''AEO'') GDP deflator time series. For AEO 2020, Table III.5 provides the values of the GDP deflator time series.[22]

[22] See Table 20. Macroeconomic Indicators; GDP Chain-type Price Index; Reference case.

TABLE III.5—AEO 2020 GDP DEFLATOR

	GDP deflator
2019	1
2020	1.024394
2025	1.152839
2030	1.296141
2035	1.445744
2040	1.614055
2045	1.809366
2050	2.041051

DOE requests comment on using the AEO GDP deflator series to adjust the manufacturer's retail list price threshold for inflation. DOE requests comment on whether other time series, including those that account for regional variability, should be used to adjust manufacturer's retail list price.

b. Tier Proposals

The proposed lower incremental purchase price for manufactured homes covered by the Tier 1 standard was developed in response to concerns from HUD and other commenters regarding the incremental purchase price, and the ability of the first homeowner/purchaser for these homes to recoup the increase in purchase price and realize the savings offered by the greater energy

efficiency of a Tier 1 manufactured home. As discussed in section IV.A.1.a, several commenters expressed concern that first homeowners of manufactured homes would not live in the homes long enough to recoup the increases in purchase price or realize the energy savings of the energy efficiency measures proposed in the June 2016 NOPR.

In determining the energy efficiency measure (EEM) combinations, DOE ensured that the performance-based overall thermal transmittance (*Uo*) for these combinations would be more stringent than the current HUD requirements. DOE's objective in defining the Tier 1 incremental purchase price threshold was based on which threshold a low-income buyer purchasing a single-section home (using typical loan terms available to these homebuyers, primarily chattel loans with higher interest rates) would, on average, realize a positive cash flow within Year 1 of the standard based on the down payment, incremental loan payment, and energy cost savings. As such, DOE preliminarily determined that an incremental purchase price of no more than $750 provided a beneficial financial outcome for these consumers given lifecycle cost savings and energy cost savings, while minimizing first cost impacts. Specifically, for single-section manufactured homes, DOE determined the set of energy efficiency measures with an average incremental purchase price of $663 (as presented in Table I.1) with a 10 percent down payment (using a chattel loan, as discussed in section IV.A.1.d) would, on average, result in a positive cash flow within the first year, as presented in Table III.6. Further discussion on the LCC inputs to this subgroup calculation are presented in section Chapter 9 of the TSD.

TABLE III.6—TIER 1 LCC SUB-GROUP NATIONAL RESULTS

Single-section only; 30-year analysis period; national results	Tier 1
Incremental cost	$662.64
Down-payment (10%)	66.26
Yearly Incremental Loan Payment	78.55
First Year Incremental Payment (Down-payment + Loan)	144.81
Yearly Energy Cost Savings	180.83
First Year Savings (Energy Cost Savings – Incremental Payment)	36.01

Accordingly, by focusing the Tier 1 standards on those measures that would result in an incremental purchase price increase of approximately $750, DOE proposes a way to take into account energy efficiency and cost-effectiveness in a manner consistent with the statute. Further discussion is provided in Chapter 6 of the TSD.

The proposed Tier 2 standard would be at the same stringencies as the standards based on the most recent version of the IECC, with consideration of cost-effectiveness and design and factory construction techniques of manufactured homes. (42 U.S.C. 17071(b)(1); 42 U.S.C. 17071(b)(2)(A)) The proposed building thermal envelope requirements for both tiers are presented in section III.E.2.b of this document.

c. General Comments to the June 2016 NOPR on Energy Conservation Standards

This SNOPR reflects general comments to the June 2016 NOPR regarding the need to update the energy conservation standards for manufactured homes and the basis for any standards established. MHARR stated that HUD-regulated manufactured homes are already energy efficient, with median monthly energy costs that are either lower or comparable to the median monthly costs for site-built homes, without high costs to the consumer. (MHARR, No. 143 at p. 4) Next Step cited a study done by the American Council for Energy Efficient Economy (''ACEEE'') that found that residents of manufactured homes spend 30 percent more income on energy than the average American household and 66 percent more than owners of site-built homes. (Next Step, No. 174 at p. 1)

DOE also received several comments regarding the use of the IECC as a basis for this rulemaking. SBRA stated that the IECC is a weak regulatory basis for developing manufactured housing standards, as IECC is not developed with cost-effectiveness as a primary consideration. SBRA recommended that in the future, DOE base changes to energy conservation standards for manufactured housing primarily on methods and practices specific to the MH industry. (SBRA, No. 163 at p. 1)

As described in section II.A, EISA mandates that the manufactured housing energy conservation standards be based upon the most recent IECC, except in cases in which the Secretary finds that the IECC is not cost-effective, or a more stringent standard would be more cost-effective, based on the impact of the IECC on the purchase price of manufactured housing and on total life-cycle construction and operating costs. (42 U.S.C. 17071(b)(1)) As discussed, DOE evaluated the requirements of the IECC along with the other considerations enumerated by EISA. EISA also requires DOE to update the energy conservation standards no later than one year after any revisions to the IECC; therefore, future revisions to the standards will also be based on the IECC along with the other considerations identified by EISA. In this SNOPR, DOE proposes to include several IECC provisions with modification, incorporating some of the MH working group's recommendations that were based on cost-effectiveness. DOE also proposes to include modified IECC provisions to make the DOE standards better tailored to the manufactured housing industry, as discussed in further depth in the next paragraphs.

Regarding the statutory requirement to base standards on the IECC, the ICC stated in its comments that its codes generally do not apply rules that distinguish among buildings based on their structure or how they were built. ICC went on to state that it understands there may be technical reasons that warrant modifying the IECC standards, but it asserted that those changes should be based on a showing of impossibility and incompatibility with the manufactured housing process. (ICC, No. 160 at p. 2)

One of the considerations provided by EISA in establishing standards is ''the design and factory construction techniques of manufactured homes.'' (42 U.S.C. 17071(b)(2)(A)) The design and construction of manufactured homes was a main focus of the MH working group while developing the recommendations that DOE has considered in this rulemaking. For example, section R402.2.4 of the 2015 IECC (which was considered by the MH working group) and the 2021 IECC (which is the latest version of the IECC and considered in this SNOPR) include

a specification for vertical doors that provide access from conditioned to unconditioned spaces to meet certain fenestration insulation requirements. However, doors that separate conditioned and unconditioned space rarely are relevant to manufactured homes. Therefore, the MH working group recommended that this provision be removed from the energy conservation standards as it was deemed not relevant to manufactured housing design and construction. Modifications to the IECC in this proposal were based on unique, technical aspects of the manufactured housing industry, as well as use of the HUD zones and to address cost-effectiveness concerns related to the potential impact cost increases would have on the affordability of the manufactured housing market.

Additionally, as noted previously, the authority under 42 U.S.C. 17071 to establish energy conservation standards for manufactured homes specifies that those standards ''shall be based on'' the most recent version of the IECC. In DOE's view, this does not require the energy conservation standards for manufactured homes to be an identical or verbatim equivalent of the IECC, especially in light of the other considerations DOE must make under the statute (*i.e.,* the design and construction techniques of manufactured homes, cost-effectiveness, etc.). Because the IECC is specific to site-built structures, both approaches proposed in this document would establish requirements using modified versions of those related IECC provisions that can be adapted for manufactured homes.

In another comment regarding the IECC, VEIC commented that DOE should include a provision to regularly update the standards with changes made to the IECC in the future. (VEIC, No. 187 at p. 2) In response, DOE notes that EISA already requires the agency to update its energy conservation standards for manufactured housing not later than ''one year after any revision to the IECC.'' (42 U.S.C. 17071(b)(3)(B)) DOE has considered the latest version of the IECC (the 2021 IECC) for this SNOPR, and is proposing energy conservation standards based on the latest version of the IECC. DOE will review subsequent IECC standards issued in the future and evaluate whether to update the energy conservation standards for manufactured housing based on the considerations required by EISA.

Southern Company questioned whether the new regulations are subject to the seven-factor test for cost-effectiveness as found in 10 CFR part 430. (Southern Company, Public Meeting Transcript, No. 148 at p. 143) DOE understands the question from Southern Company to refer to the seven statutory factors, as described in 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII), that apply to energy conservation standards established under the Energy Conservation Program for Consumer Products Other than Automobiles (Title III, Part B of the Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA)). Manufactured housing is not a covered product under Title III, Part B of EPCA, and is subject to a separate statutory scheme (*i.e.,* 42 U.S.C. 17071). Therefore, this rulemaking is not directly subject to the EPCA seven-factors test, although similar analyses have been conducted for this rulemaking (*e.g.,* LCC, MIA).

B. Rulemaking Process

As part of developing energy conservation standards for manufactured housing, DOE is undertaking a multi-stage process providing numerous opportunities for public comment and engagement, as discussed in further detail in section II.B.3 of this document. For this rulemaking, EISA requires DOE to ''consult with the Secretary of HUD, who may seek further counsel from the Manufactured Housing Consensus Committee''. 42 U.S.C. 17071(a)(2)(B). Pursuant to the statutory requirement, DOE has consulted with HUD throughout the development of these standards, as discussed in section II.B.3. DOE met with HUD multiple times during the preliminary stages of the proposed rule, as well as throughout the rest of the rulemaking process, and consulted HUD in the development of the proposals in this SNOPR. As EISA expressly states that the Secretary of HUD may engage with the MHCC with regard to this rulemaking, DOE has attended three MHCC meetings, most recently in June of 2021, to gather further information and input on the rule. This proposed rule includes a number of the changes submitted by the MHCC (MHCC, No. 162), which mirrored comments from other individual stakeholders on the June 2016 NOPR. A number of other stakeholders, including industry stakeholders, have also provided information, data, and opinions regarding the rule. All interested stakeholders will have the opportunity to provide input and comments on this SNOPR.

In response to the 2016 NOPR, DOE received several comments regarding the rulemaking process used by DOE for these energy conservation standards. MHARR had numerous comments regarding issues with the overall process used for this rulemaking. MHARR asserted that the DOE rulemaking process was not transparent, and that the proposed rule was a violation of the 1974 National Manufactured Housing Construction and Safety Standards Act; the ''arbitrary, capricious [or] abuse of discretion'' standard of the Administrative Procedure Act; the Negotiated Rulemaking Act; and EISA. (MHARR, No. 154 at pp. 2–15)

MHARR was also concerned that a 2011 draft of the proposed rule was distributed to a select group of organizations. MHARR stated that following this distribution, a ''fresh start'' was required for the proposed rule, but there is no evidence that a ''fresh start'' actually occurred. (MHARR, No. 154 at pp. 2–15; MHARR, No. 143 at pp. 1, 3; MHARR, Public Meeting Transcript, No. 148 at p. 149)

As stated earlier, DOE is conducting this rulemaking pursuant to the statutory provisions in EISA that direct DOE to establish energy conservation standards for manufactured housing. This statutory directive is separate from the 1974 National Manufacturing Housing Construction and Safety Standards Act that governs HUD's authority in promulgating regulations for manufactured housing. Additionally, DOE demonstrates in section III.F how the standards proposed in this SNOPR do not conflict with those established by HUD. Furthermore, this discussion and related supporting analyses together present the analytical approach used by DOE in evaluating the relevant information and on which DOE based its determinations regarding the proposed requirements in accordance with the directives in EISA, the Administrative Procedure Act and the Negotiated Rulemaking Act. Accordingly, as discussed previously, in preparation for the prior negotiated rulemaking that produced the June 2016 NOPR, DOE set up a negotiated rulemaking process in accordance with the Federal Advisory Committee Act and the Negotiated Rulemaking Act, which included a broad and balanced array of stakeholder interests and expertise, and included a representative from MHARR. 79 FR 41456 (July 16, 2014).

DOE also received several comments regarding the consensus approach used in the June 2016 NOPR. SBRA and Clayton Homes supported the ASRAC decision to use a consensus approach for this rulemaking and recommended DOE should continue this method for future rulemakings regarding

manufactured housing. (SBRA, No. 163 at p. 1; Clayton Homes, No. 185 at p. 5) DOE appreciates these comments supporting the use of a negotiated rulemaking process by DOE and will consider these and all other permissible options for future manufactured housing rulemakings.

With regard to the rulemaking process, DOE received several comments regarding the inclusion of the MHCC during the rulemaking. Several commenters stated that the proposed rule should not be finalized until the views and comments of MHCC are incorporated, as they have done for past HUD rulemakings. (Pleasant Valley Homes, No. 154 at p. 2; WVHI, No. 156 at p. 2; MHIM, No. 155 at p. 2; NMMHA, No. 157 at p. 2; MHIAZ, No. 161 at p. 2; PMHA, No. 164 at p. 2; Skyline Corporation, No. 165 at p. 1; OMHA, No. 166 at p. 2; MHI, No. 182 at p. 2; MMHA, No. 170 at p. 2; MHISC, No. 191 at p. 2; AMHA, No. 173 at p. 2, Commodore Corporation, No. 195 at p. 2) AMHA also stated that the proposed rule should not be finalized without thoughtful consideration of the detailed comments of professionals involved with manufactured housing including the MHCC, as well as MHARR and MHI. (AMHA, No. 173 at p. 3)

MHARR stated that DOE must consult with HUD and MHCC during the formulation of DOE standards, and that there is no evidence that these consultations ever occurred. (MHARR, No. 154 at p. 18) MHARR also commented that DOE never provided a chance for MHCC to provide substantive consensus input regarding the proposed rule and actively prevented any input from MHCC at any point when it would have mattered. (MHARR, No. 154 at p. 19) As stated previously, DOE has consulted both with HUD and engaged with the MHCC with regard to this rulemaking, and has incorporated information and considerations provided by HUD and the MHCC into this SNOPR.

C. Test Procedure

DOE published a test procedure NOPR for manufactured housing on November 9, 2016. 81 FR 78733 (November 2016 test procedure NOPR). The November 2016 test procedure NOPR proposed applicable test methods to determine compliance with the following metrics that were included in a June 2016 NOPR: the *R*-value of insulation; the *U*-factor of windows, skylights, and doors; the SHGC of fenestration; *U*-factor alternatives to *R*-value requirements; the air leakage rate of air distribution systems; and mechanical ventilation fan efficacy. The November 2016 test procedure NOPR proposed test methods that would dictate the basis on which a manufactured home's performance is represented and how compliance with the energy conservation standards would be determined. DOE notes that a number of the test methods that were proposed were consistent with test methods from the IECC, which includes test methods for *R*-value of insulation, *U*-factor and SHGC of fenestration, duct leakage and mechanical fan efficacy.

The November 2016 test procedure NOPR provided stakeholders an opportunity to comment on the proposed test procedure for manufactured housing. As discussed above, DOE is not addressing a test procedure in this rulemaking. DOE will consider the comments related to test procedures in any future action on test procedures.

D. Certification, Compliance, and Enforcement

In the November 2016 test procedure NOPR, DOE did not propose a system of certification, compliance, and enforcement (''CCE''), instead indicating those items would be addressed in a separate rulemaking. At this time, DOE is not addressing CCE issues in this rulemaking, but may do so in the future.

DOE received several comments identifying compliance and enforcement as a major issue that needs to be addressed. Several commenters stated that they are concerned that establishing standards prior to the establishment of a compliance regime would risk manufacturers facing complicated, conflicting, and overlapping requirements from both HUD and DOE. (Pleasant Valley Homes, No. 153 at p. 2; WVHI, No. 156 at p. 2; MHIM, No. 155 at p. 2; NMMHA, No. 157 at p. 2; MHIAZ, No. 161 at p. 2; OMHA, No. 166 at p. 2; MHCC, No. 162 at p. 2; MHI, No. 182 at p. 2; Clayton Homes, No. 185 at p. 1; Palm Harbor Homes, No. 193 at p. 3; MHISC, No. 191 at p. 2; AMHA, No. 173 at p. 2; Skyline Corporation, No. 165 at p. 2; NCJC, No. 184 at p. 2; Form Letters, No. 182 at p. 1; MHARR, No. 154 at p. 22) Commenters suggested that the proposed rule not be finalized until DOE and HUD can determine a single, efficient, and practical enforcement strategy, where HUD is the prime regulator. (MHI, Public Meeting Transcript, No. 148 at p. 11; MHI, Public Meeting Transcript, No. 148 at p. 142; Washington State University (WSU) Energy Program, Public Meeting Transcript, No. 148 at p. 146; Pleasant Valley Homes, No. 153 at p. 2; WVHI, No. 156 at p. 2; MHIM, No. 155 at p. 2; NMMHA, No. 157 at p. 2; MHIAZ, No. 161 at p. 2; Better Homes, No. 168 at p. 1; OMHA, No. 166 at p. 2; MHI, No. 182 at p. 2; ACEEE, No. 178 at p. 3; Next Step, No. 174 at p. 2; MMHA, No. 170 at p. 2; Clayton Homes, No. 185 at p. 1; Palm Harbor Homes, No. 193 at p. 3; MHISC, No. 191 at p. 2; AMHA, No. 173 at p. 2; Skyline Corporation, No. 165 at p. 2; MHI, No. 182 at p. 8; Form Letters, No. 182 at p. 1, Commodore Corporation, No. 195 at p. 2)

NEEA suggested that DOE establish a collaborative method with HUD to provide compliance oversight with the DOE standards. As suggested by NEEA, HUD could continue to use the existing Design Approval Primary Inspection Agencies (DAPIA) and Inspection Primary Inspection Agencies (IPIA) system, with DOE serving as a third-party review and technical support through periodic energy code compliance studies. (NEEA, No. 190 at p. 2)

ACEEE and South Mountain stated that in order to have effective compliance, it is important that DOE provide training and tools to assist manufacturers in compliance and to monitor effectiveness of implementation, particularly during the initial implementation period. (ACEEE, No. 178 at p. 4; South Mountain, No. 151 at p. 1) One particular technical tool that was suggested by SBRA and Palm Harbor Homes was a single software package that provides a platform for overall compliance. This software could check for HUD and DOE Code compliance, conduct loads analysis (Manual J), equipment sizing (Manual S), generate an Energy Rating Index, and check for ENERGY STAR® compliance. (SBRA, No. 163 at p. 2; Palm Harbor Homes, No. 193 at p. 3) Lastly, ACEEE commented that the residential compliance software used by DOE, REScheck, also be adapted to verify these new requirements. (ACEEE, No. 178 at p. 4)

DOE also received comments regarding specific aspects of compliance and enforcement. Earthjustice commented that DOE should move quickly to propose and finalize provisions related to compliance and enforcement, but that these specific provisions should not delay finalizing the overall rule. (Earthjustice, No. 169 at p. 2)

WSU Energy Program commented that insulation installations and air leakage compliance must be clear for IPIA- and DAPIA-approved quality assurance, suggesting a compliance approach that relies on existing HUD mechanisms. (WSU Energy Program, Public Meeting Transcript, No. 148 at pp. 42, 57)

ACEEE commented that some degree of energy-related information should be provided to purchasers, renters, and owners. To make this possible, ACEEE urged DOE to require MH manufacturers to use effective labeling and sales information that would easily convey the effects of the energy conservation standards to consumers, but without undue burden on manufacturers. (ACEEE, No. 178 at p. 4)

Modular Lifestyles commented that consumers do not usually buy homes directly from the manufacturer; normally, retailers will purchase the manufactured homes from the manufacturer to then sell to consumers. Modular Lifestyle commented that the manufacturer should be held accountable, upon the purchase of the manufactured home by the retailer, that the home meets the consumer's local energy conservation standards, as the manufacturer and consumer may be located in different DOE climate zones. (Modular Lifestyle, No. 141 at p. 2)

NCJC suggested both that compliance and enforcement standards be included in the energy conservation standard, and that a provision be added that would allow homeowners to sue manufacturers for failure to construct homes in accordance with these energy conservation standards. (NCJC, No. 184 at p. 2) GWU suggested DOE consider retrospectively reviewing its rule after implementation to assess any potential overlap or conflicts with the existing HUD Code. (GWU, No. 175 at p. 11)

DOE appreciates the comments received on potential options for a CCE system. DOE will consider the comments related to CCE received in this rulemaking and will consult with HUD in any future action on CCE.

E. Energy Conservation Standards Requirements

This section discusses in detail the energy conservation standards proposed in this SNOPR, in particular as compared to the energy conservation standards as proposed in the June 2016 NOPR. In response to the 2021 IECC, additional analyses conducted by DOE, and comments received to the June 2016 NOPR, including those regarding potential adverse impacts on price-sensitive low-income purchasers of manufactured homes, DOE is updating the proposed energy conservation standards as presented in the June 2016 NOPR.

The following paragraphs discuss the tiered and untiered standard proposed for manufactured homes based on the 2021 IECC. As discussed previously, the proposed Tier 1 standard would include manufactured homes with a manufacturer's retail list price of $55,000 or less (in real 2019$) and would be subject to a less stringent set of standards, while providing cost-effective energy bill savings and positive cash flow within the first year of occupancy.

DOE is continuing to propose that standards would be codified in a new part of the CFR under 10 CFR part 460 subparts A, B, and C. Subpart A, as proposed, provides the scope of the standards, definitions of key terms, and other commercial standards that are incorporated by reference into this part. The subpart also would establish a compliance date of one year following the publication of the final rule.

As proposed, subpart B would include energy conservation standards requirements associated with the building thermal envelope of a manufactured home according to the climate zone in which the home is located. DOE bases its proposed building thermal envelope energy conservation standards on the three HUD zones. Under the proposal, manufacturers may choose between two pathways to comply, with each one ensuring an appropriate level of thermal transmittance through the building thermal envelope. The first pathway relies on prescriptive requirements for components of the building thermal envelope. The second pathway relies on performance requirements, under which a manufactured home is required to achieve a maximum U_o in addition to fenestration *U*-factor and SHGC requirements. Manufactured homes would be required to comply with one of these two pathways. Subpart B would also establish prescriptive requirements for insulation and sealing the building thermal envelope to limit air leakage.

Proposed subpart C includes requirements related to duct leakage, HVAC thermostats and controls, service water heating, mechanical ventilation fan efficacy, and equipment sizing.

1. Subpart A: General

DOE received several comments regarding the rulemaking in general, both in favor of and opposed. A number of commenters stated that they support the overall standards proposed by DOE in the June 2016 NOPR. (ACEEE, Public Meeting Transcript, No. 148 at p. 17; NEEA, No. 190 at p. 1; South Mountain, No. 151 at p. 1; RECA, No. 188 at p. 1) ACEEE and RECA also commented on the many benefits of the requirements as proposed in the June 2016 NOPR, especially on the energy savings for the owners of manufactured homes. (ACEEE, Public Meeting Transcript, No. 148 at p. 17; RECA, No. 188 at p. 1) NEEA commented that it supports the improved overall building thermal envelope efficiency, citing both increased insulation and lower fenestration *U*-values. (NEEA, No. 190 at p. 1) Natural Resource Defense Council (NRDC) stated that DOE's standards as proposed in the June 2016 NOPR have opportunities for very high return on investments and are justified on an overall economic perspective. (NRDC, Public Meeting Transcript, No. 148 at p. 16) NJCJ and WSU Energy Program commented that the improved standards will help address not only high energy bills, but also help reduce physical degradation to the house, which is an issue that plagues many manufactured home homeowners. (NCJC, No. 184 at p. 2; WSU Energy Program, Public Meeting Transcript, No. 148 at p. 106) While these commenters expressed general support for the rulemaking, some provided specific criticisms, which are discussed in more detail throughout this SNOPR.

Earthjustice and NCJC urged DOE to implement the proposed rule as soon as possible, as it has gone through a prolonged development process and general consensus was reached in late 2014. These commenters stated that additional time taken to implement this rule deprives new manufactured home homeowners the benefits of greater energy conservation standards. (Earthjustice, No. 169 at p. 1; NCJC, No. 184 at p. 1) NEEA stated that DOE provided more than adequate time for stakeholders to participate and provide comment, and that the rule should be finalized. (NEEA, No. 190 at p. 1)

DOE appreciates the comments supporting the proposed energy conservation standards and the projected benefits. DOE notes that the currently proposed standards were developed with consideration of recommendations received through an in-depth consensus process, recommendations received from a working group, consultations with HUD, and comments received during rulemaking. As noted, EISA requires DOE to base the energy conservation standards on the most recent version of the IECC (42 U.S.C. 17071(b)(1)), and that following the June 2016 NOPR, the 2018 and 2021 editions of the IECC were published. In response, DOE considered the changes to the IECC from the version used in the June 2016 SNOPR (2015 IECC), as well as cost-effectiveness considerations, in developing the energy conservation standards proposed in this SNOPR.

DOE also received comments urging caution in establishing a final rule. SBRA and NCJC stated that while they

believe that sections of the document can be improved, the overall rule should be adopted. (SBRA, Public Meeting Transcript, No. 148 at p. 148; NCJC, No. 184 at p. 1) Cavco stated that this rulemaking should be thoroughly vetted and reviewed because any errors in the calculation of cost-effectiveness could have a significant negative impact on consumers and the manufactured housing industry. (Cavco, Public Meeting Transcript, No. 148 at p. 151) MHI stated that given the magnitude of issues to be addressed (a general reference to all comments raised by MHI), DOE should consider publishing another draft rule for comment before moving to a final rule. (MHI, No. 182 at p. 8)

Several commenters were specifically concerned with increased consumer cost, which is addressed in section IV.A.1.g, and issues regarding compliance, which is addressed in section III.D. (OMHA, No. 166 at p. 1; MHISC, No. 191 at p. 1; WVHI, No. 156 at p. 1; MHIM, No. 155 at p. 1; NMMHA, No. 157 at p. 1; MHIAZ, No. 161 at p. 1; PMHA, No. 164 at p. 1; Skyline Corporation, No. 165 at p. 1; Commodore Corporation, No. 195 at p. 1)

In response to comments received related to potential adverse impacts on price-sensitive, low-income purchasers, and in light of the consultation with HUD, DOE has updated its analyses specifically to evaluate the potential burden of incremental costs from energy conservation standards on low-income purchasers. To allow stakeholders to comment on the updated proposal contained in this SNOPR, DOE notes that it is proposing updated requirements based on further analyses and is requesting additional comments before establishing a final rule.

a. Proposed § 460.1 Scope

Section 431 of EISA directs DOE to establish energy conservation standards for manufactured housing. (42 U.S.C. 17071(a)(1)) In this SNOPR, DOE proposes that § 460.1 (1) restate the statutory requirement and introduce the scope of the requirements, and (2) require manufactured homes that are manufactured on or after one year following publication of the final rule to comply with the requirements established, consistent with the June 2016 NOPR. 81 FR 39756, 39766 DOE stated that a 1-year notice period is a common industry practice for changes to building codes, and would allow manufacturers to transition their designs, materials, and factory processes to comply with the finalized DOE energy conservation standards. *Id.*

In response to the June 2016 NOPR, ACEEE and South Mountain supported the 1-year period before the rule becomes effective, stating a 1-year period appropriately balances the urgency of implementing the energy conservation standards and the work required of manufacturers to implement changes. (ACEEE, No. 178 at p. 1; South Mountain, No. 151 at p. 1) RECA recommended an implementation timeline of no longer than one year, as outlined in the June 2016 SNOPR. (RECA, No. 188 at p. 2) RECA, Next Step Network, and Modular Lifestyles commented that many manufacturers produce higher efficiency homes that already meet the energy conservation standards, indicating that the path to compliance was known and well established. (RECA, No. 188 at p. 2; Next Step, No. 174 at p. 1; Modular Lifestyles, No. 141 at p. 2) AGA and APGA suggested that the lead time for compliance instead be 5 years, as this would both allow more time for the market to adjust as well as give more time to educate consumers. (AGA and APGA, No. 172 at p. 1) In addition, Advocacy recommended that DOE adopt delayed compliance schedules for small manufacturers, as this would allow them to manage their limited resources. (Advocacy, No. 177 at p. 4)

As noted in comments previously, the industry has experience with the means to comply with the proposed requirements. DOE notes that section 413 requires DOE to update the manufactured home standards within one year following an update to the IECC. (42 U.S.C. 17071(b)(3)(B)) A one-year lead time for compliance would allow DOE to evaluate industry compliance with the proposed standards, if made final, prior to consideration of updates to the IECC in 2024, as required by the statute. The one-year lead time would also minimize the lag time between updates to the IECC and any potential updates to the DOE standards, ensuring that manufactured home purchasers are receiving energy savings based on the most recent model energy codes.

DOE recognizes that compliance with the DOE energy conservation standards may require manufacturers to update designs and certifications required under the HUD Code. However, EISA requires DOE to base the energy conservation standards for manufactured homes on the latest edition of the IECC, with considerations made for cost-effectiveness. As discussed in detail in section I.A, while manufacturers may incur costs to update designs to meet the proposed standards, if finalized, these costs appear outweighed by the benefits gained in energy savings by manufactured home purchasers as a result of the standards.

DOE requests comment on whether a one-year lead time would be sufficient given potential constraints that compliance with the DOE standards may initially place on the HUD certification process, and whether a longer lead time (*e.g.,* a three-year lead time) or some other alternative lead-time for this first set of standards (*e.g.,* phased-in over three years, with one-year lead-times thereafter) should be provided.

b. Proposed § 460.2 Definitions

In this SNOPR, DOE proposes to maintain certain definitions proposed in the June 2016 NOPR, update other definitions from the June 2016 NOPR based on comments received, and add/update certain definitions based on the later IECC version published since the June 2016 NOPR (the 2018 IECC and the 2021 IECC). As such, DOE proposes the definitions for the following terms proposed in the June 2016 NOPR remain the same for § 460.2: ''automatic,'' ''ceiling,'' ''climate zone,'' ''continuous air barrier,'' ''door,'' ''duct,'' ''duct system,'' ''fenestration,'' ''floor,'' ''glazed or glazing,'' ''insulation,'' ''manufactured home,'' ''manufacturer,'' ''manual,'' ''*R*-value (thermal resistance),'' ''rough opening,'' ''service hot water,'' ''solar heat gain coefficient (SHGC),'' ''state,'' ''thermostat,'' ''*U*-factor (thermal transmittance),'' ''U_o (overall thermal transmittance),'' ''ventilation,'' ''vertical fenestration,'' ''wall,'' ''whole-house mechanical ventilation system,'' ''window,'' and ''zone.''

Furthermore, DOE proposes definitions in the SNOPR for the following terms that are either (1) updates from the June 2016 NOPR, (2) new proposals based on the 2018 and 2021 IECC, or (3) other clarifications needed, as discussed later in this section: ''access (to)''; ''air barrier''; ''building thermal envelope''; ''conditioned space''; ''dropped ceiling''; ''dropped soffit''; ''eave''; ''equipment''; ''exterior ceiling''; ''exterior floor''; ''exterior wall''; ''heated water circulation system''; ''2021 IECC''; ''opaque door''; ''skylight''; ''skylight well'';

The following paragraphs summarize the comments received to the June 2016 NOPR and DOE's analysis of the 2018 and 2021 IECC updates to the definitions.

COBA requested that a definition of the term ''affordable housing'' be added. COBA suggested the following:

''Housing is affordable when individuals or households earning less than half the Area Median Income or AMI can afford to rent a conventional apartment or buy a home in their local housing market.'' [23] (COBA, No. 158 at p. 3) Regarding affordability, WSU Energy Program stated that ''affordability'' should be defined as affordable to purchase at the upfront cost, as suggested by COBA, but also affordable to maintain and operate. (WSU Energy Program, No. 148 at pp. 20, 85) Impact on purchase price is a particular consideration in the development of the energy conservation standards for manufactured housing, and DOE requested comments on the potential impact of standards on affordability/purchase price. 81 FR 39756, 39765, 39784. However, affordability is not an element of the proposed regulatory text in this SNOPR and ''affordability'' as a defined term is not needed to support the energy conservation standard regulatory text (at 10 CFR part 460). As such DOE is not proposing a definition of ''affordability''.

ACC FSC requested that DOE define ''continuous insulation.'' (ACC FSC, No. 186 at p. 1) DOE determined in the June 2016 NOPR that a definition for ''continuous insulation'' was not necessary, as it was deemed not relevant to the proposed energy conservation requirements. Because the regulatory text proposed does not use the term ''continuous insulation,'' DOE is not proposing a definition for this term.

NEEA commented that improved clarity on what is considered interior conditioned space is needed. NEEA stated that the space under the floor but above insulation should not be considered conditioned space. (NEEA, No. 190 at p. 2) DOE recognizes that there was some confusion regarding the definition of ''conditioned space'' proposed in the June 2016 NOPR. DOE intended to use the 2015 IECC definition for the term ''conditioned space,'' but an error led to an incorrect definition being listed in § 460.2 of the proposed regulatory text. For this SNOPR, DOE proposes that the definition of conditioned space match the 2021 IECC definition, which is the same as the 2015 IECC definition for conditioned space. Using this proposed definition, the space under the floor but above the insulation is considered conditioned space. As DOE is proposing the term as defined in the IECC, the term is appropriately understood by industry. Therefore, DOE proposes to define ''conditioned space'' as an area, room, or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned space, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping, or other sources of heating or cooling.

NEEA recommended that ''skylight wells'' be defined as exterior walls, to clearly indicate that they require insulation to at least exterior wall insulation levels. (NEEA, No. 190 at p. 3) While ''skylight'' is defined in the 2021 IECC, ''skylight well'' is not defined. As suggested by NEEA, a ''skylight well'' would extend from the interior finished surface of the exterior ceiling to the exterior surface of the roof. For some homes, the upper part of this well may exist above the exterior ceiling insulation. This upper part of the well would provide an uninsulated path from the interior to the exterior of the home if the skylight well were not insulated. Per the proposed definition of exterior wall, ''skylight wells'' would be considered exterior walls. DOE agrees with NEEA's suggestion to define the term ''skylight well,'' which DOE proposes to define as encompassing the walls underneath a skylight that extend from the interior finished surface of the exterior ceiling to the exterior surface of the location to which the skylight is attached.

DOE also proposes to specify that skylight wells are exterior walls by updating the definition of ''exterior wall'' to include skylight wells. DOE proposes to define ''exterior wall'' as a wall, including a skylight well, that separates conditioned space from unconditioned space.

HUD's allowance of ''alternative construction'' of manufactured homes permits manufacturers to utilize new designs or techniques. 24 CFR 3282.14. One such home design can be a multistory manufactured home. In this SNOPR, DOE proposes that the ceiling, wall, and floor building thermal requirements for these energy conservation standards are only for the exterior ceiling, wall, and floor that separate conditioned space from unconditioned space, not for any internal ceilings that can be found in a multistory manufactured home, or for interior walls. Therefore, DOE proposes adding definitions for the term ''exterior ceiling'' as a ceiling that separates conditioned space from unconditioned space and ''exterior floor'' as a floor that separates conditioned space from unconditioned space.

DOE also proposes to update the following definitions proposed in the June 2016 NOPR that included ''ceiling'' and ''floor'' to include the use of ''exterior ceiling'' and ''exterior floor,'' as appropriate: ''building thermal envelope,'' ''dropped ceiling,'' ''dropped soffit,'' ''eave,'' and ''rough opening.''

DOE also reviewed several relevant definitions updated since the publication of the 2015 IECC (in the 2018 IECC and the 2021 IECC). For the 2018 IECC, the updates included the following terms: ''air barrier'' and ''building thermal envelope.'' These same updates were carried over to the 2021 IECC. DOE reviewed these updates and finds them to be clarifications rather than substantive changes. Specifically, the 2018 (and 2021) IECC definition for ''air barrier'' clarified that the materials should be joined together in a continuous manner to restrict or prevent passage of air through the building thermal envelope; the ''continuous manner'' element was not part of the same definition in the 2015 IECC. The addition of this term means that the material should be joined together without any thermal bridges, other than fasteners and service openings, so that any passage of air through the building thermal envelope is prevented. DOE notes that the term ''continuous'' is one generally used by and understood within industry and is consistently used in the 2021 IECC (without being defined).

The 2018 (and 2021) IECC definition for ''building thermal envelope'' specified that it should be building element assemblies as opposed to just building elements. DOE has tentatively determined this update to be non-substantive because it clarifies the original intent of the definition to include all components that separate conditioned from unconditioned space. In addition, the 2018 IECC also added a new definition for ''opaque door.'' The term opaque door is included in the definition for ''vertical fenestration'' but previously had not been defined. The 2018 IECC defines an opaque door as a door that is not less than 50 percent opaque in surface area.

For the 2021 IECC, the relevant updates included the following terms: ''accessible,'' which was replaced by ''access (to),'' and ''skylights.'' DOE had only previously proposed a definition for ''accessible'' because the 2015 IECC defined the term and included the term in the residential provisions, which DOE had incorporated into the regulatory text. However, the 2021 IECC replaces ''accessible'' with ''access (to)''

[23] Allen, G. and Savage, B. The First 20 Years! 2013. PMN Publishing; Franklin, IN.

and no longer includes the term ''accessible'' in the residential provisions of the IECC. In response to the June 2016 NOPR, NEEA commented that a clearer definition of the word ''access'' was required.[24] (NEEA, 190 at p. 2). As the definition of the word ''access'' is now found in the 2021 IECC, DOE is proposing to include a definition for ''access''. Further, to prevent confusion, DOE proposes to revise the regulatory text to incorporate the use of the word ''access'' instead of ''accessible,'' similar to the updates in the 2021 IECC. Therefore, DOE proposes to define the term ''access (to)'' as ''that which enables a device, appliance or equipment to be reached by ready access or by a means that first requires the removal or movement of a panel or similar obstruction.''

In addition, the 2021 IECC clarifies that skylights include ''unit skylights, tubular daylighting devices, and glazing materials in solariums, sunrooms, roofs and sloped walls.'' DOE understand these updates to be clarifications rather than a substantive change and does not alter the meaning of the original definition. Therefore, DOE proposes to include this clarification in the proposed skylight definition. Accordingly, DOE proposes to include the updated definitions for ''air barrier,'' ''building thermal envelope'' and ''skylight'' and the new definition for ''opaque door'' and ''access (to)'' in this SNOPR.

In review of the proposed regulatory text from the June 2016 NOPR, DOE also recognized that the term ''Circulating hot water system'' is defined, but the term ''heated water circulation system'' is used in the substantive requirements of the June 2016 NOPR. In this SNOPR, DOE proposes to change this defined term to reflect what is used in the substantive provisions of the regulations. Additionally, DOE defined the term ''service hot water'' in the June 2016 SNOPR, but the proposed substantive requirements also used the term ''service water heating.'' The IECC uses both terms. For consistency DOE proposes to define and use the term ''service hot water'' throughout the regulations.

DOE also recognized that the June 2016 NOPR definition for ''equipment'' included the term ''appliances''. However, the MH working group generally did not recommend provisions addressing appliances. Furthermore, this SNOPR is not proposing requirements for appliances that are regulated pursuant to the statutory scheme in EPCA. Therefore, DOE proposes to remove ''appliances'' from the definition of ''equipment.''

DOE also recognized that the term ''infiltration'' was defined in the proposed regulations in the June 2016 NOPR but was not otherwise used. As the term is not used in the regulatory text, DOE proposes to not include a definition for ''infiltration'' in this SNOPR.

DOE requests comment on its understanding of the definitional changes in the 2018 IECC and the 2021 IECC. DOE also requests comments on its changes to the proposed definitions as compared to those proposed in the June 2016 NOPR.

c. Proposed § 460.3 Materials Incorporated by Reference

In this SNOPR, DOE is not proposing to incorporate the 2021 IECC by reference. The 2021 IECC serves as the basis for the regulations proposed in this document, with the proposed requirements addressing technical issues specific to manufactured homes, relying on the HUD zones, and addressing issues related to health and safety, as well as the need to preserve the affordability of manufactured homes.

Further, DOE continues to propose to incorporate by reference Air Conditioning Contractors of America (''ACCA'') Manual J; ACCA Manual S; and ''Overall *U*-Values and Heating/Cooling Loads—Manufactured Homes'' by Conner and Taylor (the Battelle Method). DOE proposes that ACCA Manuals J and S would be incorporated by reference in § 460.205 of the regulatory text and would relate to the selection and sizing of heating and cooling equipment. In addition, the Battelle Method is an industry standard methodology for calculating the overall thermal transmittance (U_o) of a manufactured home and is also currently referenced in the HUD Code for calculation of overall thermal transmittance. DOE proposes to use the Battelle method to determine the same (U_o).

In response to the June 2016 NOPR, ACCA commented in favor of the references to Manual J and Manual S. (ACCA, No. 159 at p. 2) DOE also received comments regarding the 2015 IECC (which was the basis of the June 2016 NOPR requirements). The ICC commented that it is concerned with the manner that DOE proposed to use and modify the IECC, which is copyrighted, specifically that DOE did not incorporate by reference the 2015 IECC. Referencing Circular OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, Revised,'' ICC stated that all ''Federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities,'' and that DOE must report the reasons for its use of government-unique standards in lieu of voluntary consensus standards. The ICC also commented that section 5.g of the OMB Circular A–119 directs agencies ''to observe and protect the rights of the copyright holder.'' (ICC, No. 160 at p. 3) ICC commented that in order to meet minimum requirements for OMB–A119, DOE must ''(a) expressly acknowledge that the IECC is a copyright protected document, published and owned by ICC; (b) explicitly state that any reproduction or copying of the standard (other than for personal, non-commercial purposes) requires express written permission or license from ICC; and (c) state that copies of the IECC are available for purchase from ICC at its website, *www.iccsafe.org.*'' (ICC, No. 160 at p. 4) ACCA also commented that the incorporation of the 2015 IECC language, either directly or with slight modification, should require DOE to properly acknowledge the ICC and its work, as the 2015 IECC is copyright protected. (ACCA, No. 159 at p. 2)

Subject to copyright law, DOE acknowledges that the IECC is a copyright protected document, published and owned by the ICC, and that reproduction or copying of the IECC requires written permission or license from the ICC. As noted above, copies of the IECC are available for purchase at *www.iccsafe.org.* They may also be viewed for free on ICC's public access website at: *https://codes.iccsafe.org/public/collections/I-Codes.* As discussed previously, DOE and the MH working group evaluated the 2015 IECC, and DOE subsequently evaluated the 2018 and the 2021 IECC. The MH working group recommendations and the June 2016 NOPR were based on the 2015 IECC, but as explained throughout this document, modifications are necessary to address technical issues that are specific to manufactured housing, as opposed to site-built housing, which is the focus of the IECC. As such, the SNOPR's proposals (1) are based directly on certain IECC sections, (2) are based on other sections of the IECC with modification, and (3) do not include certain other sections as they were either not pertinent to manufactured

[24] In the June 2016 NOPR, DOE proposed that access hatches, panels, and doors must provide *access to* all equipment that prevents damaging or compressing of the insulation.

housing or not needed to establish energy conservation standards.

DOE requests comment on incorporating by reference ACCA Manual J, ACCA Manual S, and ''Overall *U*-Values and Heating/Cooling Loads—Manufactured Homes'' by Conner and Taylor.

d. Proposed § 460.4 Energy Conservation Standards

Proposed § 460.4 would specify that manufactured homes would be required to comply with the proposed building thermal envelope in subpart B and the equipment and controls requirements in subpart C, as applicable. The proposed requirements of subparts B and C are discussed in the following paragraphs. As discussed, DOE is proposing a tiered proposal with two tiers of energy conservation standards based on the manufacturer's retail list price of a manufactured home. Under the tiered proposal proposed § 460.4 would specify the requirements applicable to the two tiers.[25]

2. Subpart B: Building Thermal Envelope

The proposed requirements in subpart B relate to climate zones, the building thermal envelope, installation of insulation and building thermal envelope leakage for manufactured homes. The following sections provide further details, a discussion of comments on the June 2016 NOPR relevant to subpart B and responses to any such comments. As discussed above, the tiered standards approach is DOE's primary proposal in this document *i.e.* manufactured homes with manufactured retail list prices of $55,000 or less (Tier 1 manufactured homes) would be subject to different building thermal envelope requirements than all other manufactured homes (Tier 2 manufactured homes). The requirements are discussed in the following sections.

a. Proposed § 460.101 Climate Zones

Pursuant to EISA, DOE may base its energy conservation standards on the climate zones established by HUD rather than on the climate zones contained in the IECC. (42 U.S.C. 17071(b)(2)(B)) The potential for climactic differences to affect energy consumption supports an approach in which energy conservation standards account for geographic differences in climate. In this SNOPR, DOE proposes to align with the HUD climate zones.

As indicated in Figure III.1, the HUD Code divides the United States into three distinct climate zones for the purpose of setting its building thermal envelope requirements, the boundaries of which are separated along state lines. By contrast, as indicated in Figure III.2, section R301 of the 2021 IECC divides the country into nine climate zones, the boundaries of which are separated along county lines. The 2021 IECC also provides requirements for three possible variants (dry, moist, and marine) within certain climate zones, as indicated in Figure III.2. The HUD Code zones were developed to be sensitive to the manner in which the manufactured housing industry constructs and places manufactured homes into the market. The IECC climate zones are separated along county lines to reflect a more granular overview of climate distinctions within the United States, and to facilitate state and local enforcement of the IECC for residential and commercial buildings, including site-built and modular construction.

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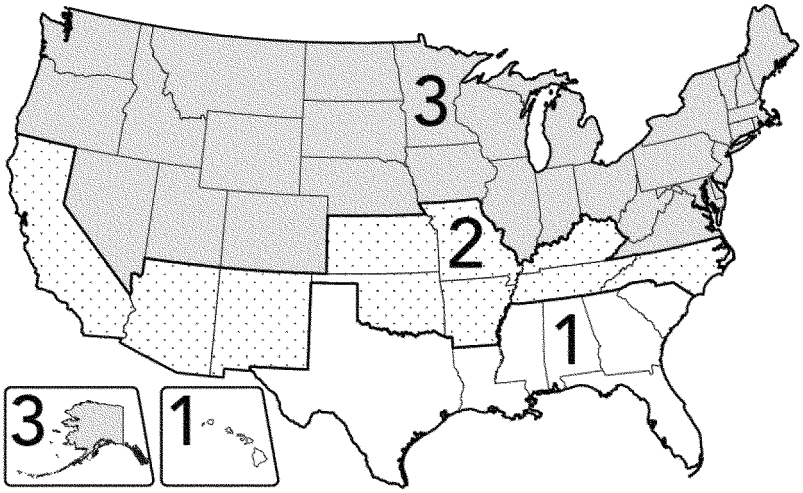

Figure III.1 U_o Zones in the HUD Code

[25] In the proposed regulatory text provided at the end of this document, bracketed language is specific to the tiered proposal.

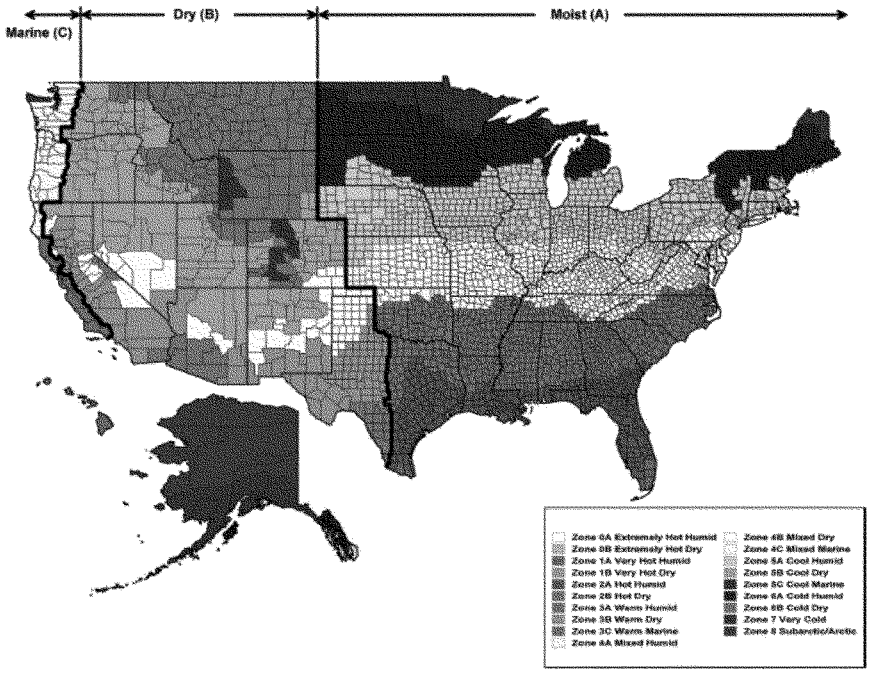

Figure III.2 Climate Zones in the 2021 IECC

In the June 2016 NOPR, proposed § 460.101 provided for four climate zones, as illustrated in Figure III.3. This was based on the MH working group recommendation that DOE establish four climate zones that placed cities with the same set of most-cost-effective building thermal envelope requirements in the same climate zone. DOE's proposed climate zones bifurcated Texas, Louisiana, Alabama, Mississippi, Georgia, and Arizona.

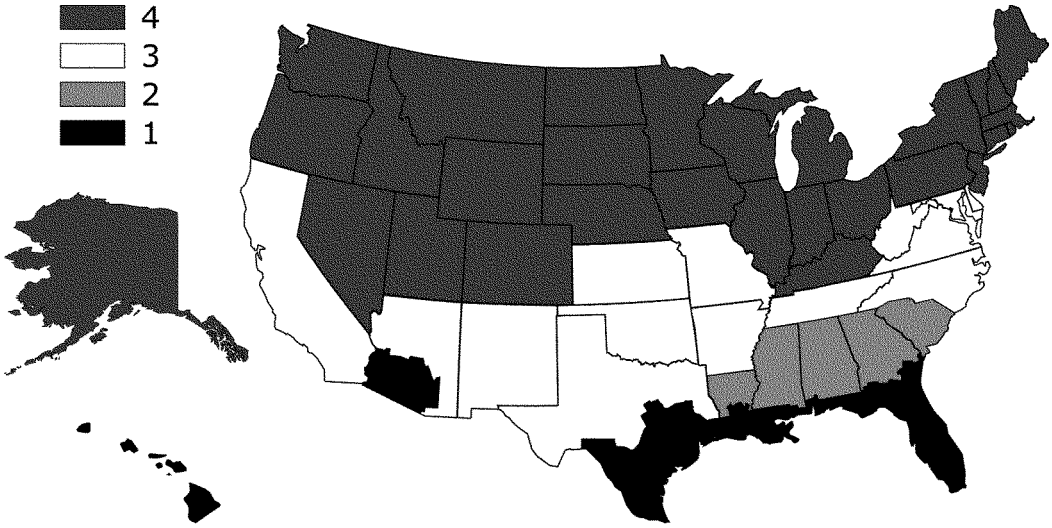

Figure III.3 June 2016 NOPR-Proposed Climate Zones

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DOE received several comments regarding climate zones. Modular Lifestyles recommended alternate climate zones. It stated that the local building ZIP code should be used to determine the building climate zone for the placement of a manufactured home. As an example, it referenced the California Energy Commission's climate zones for California, which has 16 building climate zones based on ZIP codes. (Modular Lifestyles, No. 141 at p. 1) In essence, Modular Lifestyles advocated for a finer resolution in climate zones, potentially with even more climate zones than listed in the IECC.

In the June 2016 NOPR, DOE proposed four climate zones based on the recommendation and analysis completed by the MH working group (using the 2015 IECC), which placed cities with the same set of most-cost-effective building thermal envelope requirements in the same climate zone. As noted above, in this document DOE is proposing in this SNOPR a set of energy efficiency requirements applicable to Tier 1 manufactured

homes to provide energy savings at an incremental purchase price of approximately $750 and Tier 2 manufactured homes. The June 2016 NOPR climate zone analysis did not consider this tiered proposal.

In this SNOPR, DOE proposes to incorporate the HUD zones instead of the June 2016 NOPR-proposed climate zones, as explicitly permitted under EISA. (42 U.S.C. 17071(b)(2)(B)) As noted, the HUD zones were developed with specific consideration of the manner in which the manufactured housing industry constructs and places manufactured homes into the market. The HUD zone boundaries are separated along state lines, whereas the June 2016 NOPR-proposed climate zones bifurcated certain states. Aligning the climate zones between the DOE requirements and the HUD Code would reduce the complexities faced by manufacturers in coordinating compliance between the two sets of requirements. Additionally, it would reduce the potential for confusion of manufactured home purchasers, by allowing them to rely on a single map to determine whether a manufactured home would be appropriate for a given location, as opposed to requiring them to consult one map under the HUD Code and a different map under the DOE requirements.

Modular Lifestyle's suggestion to use local building zone ZIP codes to determine climate zones would extend the subdivision of states and be overly burdensome for manufacturers. Although its suggested climate zones could more accurately account for U.S. climatic conditions that affect energy use, the potential benefit of this accounting would be offset by the impracticality to the manufactured housing industry of developing homes per building ZIP code, with multiple zones existing within the same state, where the eventual destination of the home is not always known when the home is manufactured.

DOE also received comments regarding the proposed climate zone map (Figure 460.101), Table 460.101–1, and Table 460.101–2 from the June 2016 NOPR that provided a list of the U.S. states located in each climate zone. Several commenters stated that there was inconsistency between where Kentucky was located in Figure 460.101, and where it was located in Table 460.101–1. (Cavco, No. 167 at p. 1; Earthjustice, No. 169 at p. 2; MHI, No. 182 at p. 1; Clayton Homes, No. 185, at p. 2; PMHA, No. 164 at p. 3) Cavco, Clayton Homes, and MHI recommended that Kentucky be moved to climate zone 3 in the map figure. Several commenters also stated that California was missing in Table 460.101–1 and Table 460.101–2, and therefore the tables needed to be updated. (Clayton Homes, No. 185 at p. 2; MHCC, No. 162 at p. 1; Earthjustice, No. 169 at p. 2; Skyline, No. 165 at p. 2) As already discussed, for this SNOPR, DOE proposes to align with the HUD zones as opposed to the June 2016 NOPR-proposed climate zones. Accordingly, comments received regarding issues with the June 2016 proposed climate zone map are no longer applicable to this SNOPR.

DOE requests comment on basing the climate zones on the three HUD zones instead of the June 2016 NOPR-proposed four climate zones, or other configuration of climate zones. DOE further requests input on whether energy efficiency requirements should be based on smaller geographic areas than provided with the 3 or 4 zone model.

b. Proposed § 460.102 Building Thermal Envelope Requirements

In this SNOPR, DOE's primary proposal is the tiered proposal and the alternate proposal is the untiered proposal. Both proposals are based on the HUD zones. For the tiered proposal, Tier 1 would incorporate building thermal envelope measures based on certain thermal envelope components subject to the 2021 IECC but would limit the incremental purchase price increase to an average of approximately $750. For Tier 2, DOE proposes building thermal envelope measures based on those proposed in the June 2016 NOPR, updated to reflect the HUD zones and the 2021 IECC requirements. The alternate untiered proposal requirements would be the same as the Tier 2 requirements.

Consistent with the June 2016 NOPR, DOE proposes to add § 460.102 in the regulatory text to establish requirements related to the building thermal envelope, including the materials within a manufactured home that separate the interior conditioned space from the exterior of the building or interior spaces that are not conditioned space. Further DOE also proposes that § 460.102(a) would provide manufacturers the option of choosing one of two pathways for compliance to ensure that the building thermal envelope would meet more stringent energy conservation levels. These two pathways are known as the prescriptive approach and the performance approach. Consistent with the recommendation of the MH working group and the June 2016 NOPR, DOE proposes to allow manufacturers to choose between these two pathways for compliance, which would result in cost-effective energy savings for homeowners while providing for flexibility within the manufactured housing industry. Term Sheet, No. 107 at pp. 3–4. This approach is consistent with the 2021 IECC, which provides a climate zone-specific prescriptive building thermal envelope component pathway (R402.1.2) and an alternate pathway to compliance, which allows for a home to be constructed using a variety of materials as long as the entire building thermal envelope has a maximum, singular total UA value [26] (R402.1.5).

Further, consistent with the June 2016 NOPR, DOE continues to propose that the prescriptive requirements would establish specific component minimum *R*-value, maximum *U*-factor, and SHGC requirements, providing a straightforward option for construction planning. The prescriptive requirements were proposed under § 460.102(b), with the building thermal envelope requirements proposed under § 460.102(b)(1) The compliance option based on performance requirements, on the other hand, would allow a manufactured home to be constructed using a variety of materials with varying thermal properties so long as the building thermal envelope achieved a required level of overall thermal performance. The performance requirements thus would provide manufacturers with greater flexibility in identifying and implementing cost-effective approaches to building thermal envelope design. The U_o requirements would be determined by applying the proposed prescriptive building thermal envelope requirements to manufactured homes using typical dimensions and construction techniques and then calculating the resulting U_o.

In developing the set of Tier 1 energy efficiency measures proposed in this document, DOE considered measures for building elements of manufactured homes based on building components subject to the 2021 IECC (*i.e.,* exterior floor, exterior walls, exterior ceiling, and fenestration). DOE evaluated different combinations of energy efficiency measures and stringencies for exterior floor, wall, ceiling, and windows (fenestration). DOE compared the potential energy savings for each of the different combinations analyzed and preliminarily determined the optimal set of energy efficiency measures that would yield an incremental cost increase of approximately $750. For this analysis, DOE evaluated the same range of energy efficiency measures and costs that were used for the June 2016 NOPR.

[26] UA is the *U*-factor multiplied by area.

In developing the set of Tier 2 energy efficiency measures proposed in this document, DOE first mapped the June 2016 NOPR requirements (based on four climate zones) to HUD zones (based on three climate zones). DOE used the manufactured home national shipment percentages for each of the cities analyzed,[27] and the corresponding HUD zone and the June 2016 NOPR climate zone identifiers for each of the cities. DOE then summed the shipment percentages of the cities with the same June 2016 NOPR proposed climate zones within each of the HUD zones. According to which of the June 2016 NOPR-proposed climate zones showed the maximum shipment weight per HUD zone, DOE incorporated those proposed June 2016 NOPR requirements for that HUD zone.

For proposed climate zone 1, the cities identified were in either the June 2016 NOPR-proposed climate zones 1 or 2; however, the summed shipment weights per the June 2016 NOPR-proposed climate zone did not provide an obvious indicator as to which of the energy efficiency measures to incorporate for proposed climate zone 1. The only difference between the June 2016 NOPR-proposed climate zone 1 and 2 energy efficiency measures was the glazed fenestration requirement. Therefore, in this SNOPR, DOE proposes to use the less stringent glazed fenestration requirement (0.33 vs. 0.25) to accommodate cost-effective measures that were proposed in the June 2016 NOPR for proposed climate zone 2.

Next, DOE considered the updates to the 2021 IECC. In reviewing Section R402.1 of the 2021 IECC, DOE determined the following relevant updates are merited when compared to the 2015 IECC that the MH working group had considered:

- The maximum fenestration *U*-factors were updated from 0.35 to 0.30 for IECC climate zones 3 and 4 (except marine); and from 0.32 to 0.30 for IECC climate zones marine 4, 5 through 8.
- The maximum glazed fenestration SHGC was updated from NR to 0.40 for IECC climate zones 5 and marine 4.
- The minimum ceiling *R*-value was updated from *R*-38 to *R*-49 for IECC climate zones 2 and 3; and from *R*-49 to *R*-60 for IECC climate zones 4 through 8.
- The minimum wall *R*-value was updated from *R*-13 to *R*-13 or *R*-0+10 for IECC climates zones 0 through 2; from *R*-20 or *R*-13+5 to *R*-20 or *R*-13+5ci or *R*-0+15 for IECC climate zones 3; from *R*-20 or *R*-13+5 to *R*-20+5 or *R*-13+10ci or *R*-0+15 for IECC climate zones 4 and 5; and from *R*-20+5 or *R*-13+10ci to *R*-20+5ci or *R*-13+10ci or *R*-0+20 for IECC climate zones 6 through 8.

With regards to the 2021 IECC updates, DOE did not incorporate the minimum ceiling *R*-value updates given the physical space constraints of manufactured homes and because EISA allows DOE to consider the design and factory construction techniques of manufactured homes as compared to site-built and modular homes. (42 U.S.C. 17071(b)(2)). Specifically, manufactured homes typically have a lower overall height compared to site-built homes, which leads to constrained space, and therefore there is less exterior ceiling insulation. DOE did consider all other updates consistent with EISA and the analysis done for the June 2016 NOPR. Accordingly, DOE similarly mapped the 2021 IECC updates to the corresponding proposed climate zone.

Therefore, for the tiered proposal, the Tier 1 prescriptive building thermal envelope requirements are presented in Table III.7 and the Tier 2 prescriptive building thermal envelope requirements are presented in Table III.8. The untiered proposal's building thermal envelope requirements would be the same as the Tier 2 requirements presented in Table III.8.

TABLE III.7—TIER 1 BUILDING THERMAL ENVELOPE PRESCRIPTIVE REQUIREMENTS

Climate zone	Exterior wall insulation *R*-value	Exterior ceiling insulation *R*-value	Exterior floor insulation *R*-value	Window *U*-factor	Skylight *U*-factor	Door *U*-factor	Glazed fenestration SHGC
1	13	22	22	1.08	0.75	0.40	0.7
2	13	22	19	0.5	0.55	0.40	0.6
3	19	22	22	0.35	0.55	0.40	Not applicable

TABLE III.8—TIER 2 (AND UNTIERED) BUILDING THERMAL ENVELOPE PRESCRIPTIVE REQUIREMENTS

Climate zone	Exterior wall insulation *R*-value	Exterior ceiling insulation *R*-value	Exterior floor insulation *R*-value	Window *U*-factor	Skylight *U*-factor	Door *U*-factor	Glazed fenestration SHGC
1	13	30	13	0.32	0.75	0.40	0.33
2	20+5	30	19	0.30	0.55	0.40	0.25
3	20+5	38	30	0.30	0.55	0.40	Not applicable

For the exterior wall insulation, the ''+5'' involves using ''continuous insulation,'' which is insulation that runs continuously over structural members and is free of significant thermal bridging. As a sensitivity analysis, DOE considered the impacts on the LCC savings from requiring less stringent exterior wall insulation (at R-21 instead of R-20+5) to remove the continuous insulation requirement. At R-20+5, the incremental cost relative to the baseline is $2,500, versus $850 for R-21. DOE considered this alternative insulation requirement for zones 2 and 3 to address potential equity impacts in the regional distribution of benefits and costs and to ensure that each metro area analyzed could experience a positive LCC at Tier 2. DOE is considering additional analysis to further explore the impacts of R-21 for Tier 2 homes and the untiered proposal prior to the final rule stage. Further discussion on the sensitivity analysis results is provided in section IV.A.2.

[27] DOE used shipments for 2019 from the annual production and shipment data provided by MHI. See Manufactured Home Shipments by Product Mix, Manufactured Housing Institute (2019).

As discussed, use of the HUD zones (or the climate zones proposed in the June 2016 NOPR) instead of the IECC climate zones does not allow for use of the IECC requirements absent modification. In line with the building thermal envelope requirements and use of the HUD zones, proposed in this document, DOE proposes the following changes to the June 2016 NOPR-proposed regulatory text:

• Update the requirement regarding the use of a combination of *R*-21 batt insulation and *R*-14 blanket insulation in lieu of *R*-30 for the purpose of compliance with the climate zone 3 exterior floor insulation *R*-value requirement. (Under the tiered proposal this would be applicable for Tier 2 only.)

• Update the maximum *U*-factor values as alternatives to the minimum *R*-value requirements. DOE calculated the maximum *U*-factor values by using the Battelle method that was recommended by the MH working group.[28] DOE performed these calculations based on typical wall, ceiling, and floor assemblies used by the manufactured home industry. Table III.9 provides the updated maximum *U*-factor values for Tier 1 manufactured homes under the tiered proposed rule. Table III.10 provides the updated maximum *U*-factor values for Tier 2 manufactured homes (and the untiered manufactured homes) under the tiered proposed rule.

TABLE III.9—*U*-FACTOR ALTERNATIVES TO THE TIER 1 *R*-VALUE REQUIREMENTS

Climate zone	Exterior ceiling *U*-factor		Exterior wall *U*-factor	Exterior floor *U*-factor
	Single-section	Multi-section		
1	0.061	0.057	0.094	0.049
2	0.061	0.057	0.094	0.056
3	0.061	0.057	0.068	0.049

TABLE III.10—*U*-FACTOR ALTERNATIVES TO THE TIER 2 (AND UNTIERED) *R*-VALUE REQUIREMENTS

Climate zone	Exterior ceiling *U*-factor		Exterior wall *U*-factor	Exterior floor *U*-factor
	Single-section	Multi-section		
1	0.045	0.043	0.094	0.078
2	0.045	0.043	0.047	0.056
3	0.038	0.037	0.047	0.032

• Update the building thermal envelope performance requirements. DOE calculated the updated U_o values using the Battelle method for single- and multi-section manufactured homes. Table III.11 provides the updated U_o values for Tier 1 manufactured homes under the tiered proposal. The proposed Tier 1 standards provide energy efficiency standards more stringent than the HUD thermal protection standards required in 24 CFR 3280.506(a). Table III.12 provides the updated U_o values for Tier 2 (and untiered) manufactured homes.

TABLE III.11—TIER 1 BUILDING THERMAL ENVELOPE PERFORMANCE REQUIREMENTS

Climate zone	Single-section U_o	Multi-section U_o
1	0.110	0.109
2	0.091	0.087
3	0.074	0.072

TABLE III.12—TIER 2 (AND UNTIERED) BUILDING THERMAL ENVELOPE PERFORMANCE REQUIREMENTS

Climate zone	Single-section U_o	Multi-section U_o
1	0.086	0.082
2	0.062	0.063
3	0.053	0.052

• Update the area-weighted average vertical fenestration *U*-factor requirements to the HUD zones instead. DOE proposes that the area-weighted average vertical fenestration *U*-factor must not exceed 0.48 in climate zone 2 or 0.40 in climate zone 3.

• Update the area-weighted average skylight *U*-factor requirements to reflect use of the HUD zones instead. DOE proposes that the area-weighted average skylight *U*-factor must not exceed 0.75 in climate zone 2 and climate zone 3.

DOE also notes that section R401.2.5 of the 2021 IECC requires that in addition to the prescriptive compliance option, additional energy efficiency requirements must be utilized to achieve further energy savings. Section 408.2 provides five additional efficiency package options to achieve these additional energy savings, which include: (1) Enhanced envelope performance; (2) more efficient HVAC equipment performance; (3) reduced energy use in service water heating; (4) more efficient duct thermal distribution; and (5) improved air sealing and efficient ventilation system.

In developing recommendations the MH working group evaluated the 2015 IECC, which does not include comparable provisions to section R401.2.5 and R408.2 of the 2021 IECC. However, the MH working group generally did not recommend provisions addressing minimum appliance efficiencies. For example, the MH working group reached consensus that R401.5 of 2015 IECC, which provided for tradeoffs between the building thermal envelope and HVAC equipment and other appliances, was not applicable to manufactured homes. (MH working group, No. 107 at p. 22) Consistent with the recommendations of the MH working group, the performance requirements in the proposed energy conservation standards are specific to the building thermal envelope only, and do not incorporate any specifications on HVAC energy efficiency. Accordingly,

[28] "Overall *U*-Values and Heating/Cooling Loads—Manufactured Homes" by Conner and Taylor.

DOE did not consider the more efficient HVAC equipment performance and reduced energy use in service water heating options in this SNOPR.

Further, DOE also did not examine the more efficient duct thermal distribution option based on EISA's allowance to consider the design and factory construction techniques of manufactured housing. (42 U.S.C. 17071(b)(2)) DOE understands that the requirements in R408.2 of the 2021 IECC focus primarily on the location of the duct or ductless systems in a home (in terms of duct thermal distribution design) as opposed to improving efficiency of the ducts as already installed and designed. Therefore, the options remaining were those that DOE considered are relevant to manufactured homes and this rulemaking, which include the enhanced envelope performance option and the improved air sealing and efficient ventilation option.

The enhanced envelope performance option in the 2021 IECC requires that the total building thermal envelope UA (the sum of *U*-factor times assembly area) shall be less than or equal to 95 percent of the total UA resulting from multiplying the *U*-factors in Table R402.1.2. (Section R408.2.1 of the 2021 IECC) For this SNOPR, DOE was unable to incorporate this requirement given the proposed building thermal envelope requirements in Table III.8 and the space constraints of manufactured homes.

The improved air sealing and efficient ventilation system option requires that the measured air leakage rate is less than or equal to three air changes per hour (''ACH''), with either heat recovery ventilators (''HRV'') or energy recovery ventilators (''ERV''), installed (with specific requirements on airflow). An HRV recovers heat from the exhaust air and then adds it to the supply air drawn from outside the home. An ERV also recovers heat from the exhaust air, but also transfers some of the moisture from the exhaust air to keep the humidity in the home at a constant level. DOE notes that ERV and HRV fans can be applicable to manufactured housing. However, this option would require an HRV or ERV, which the MH working group or DOE had not considered previously.

Analysis conducted in support of the DOE Building Energy Codes Program (''BECP'') suggests that a primary first cost for HRV could be as high as $1,500.[29] ERVs were not considered in the analysis. Although the BECP analysis concluded that HRVs are cost effective for certain northern climate zones, DOE notes that the analysis conducted is based on a single-family home size conditioned floor area (1,200 to 4,500 ft^2 CFA), whereas manufactured homes are typically smaller in size (single section homes are analyzed with 924 ft^2 CFA). For this SNOPR, DOE is not proposing either the HRV or ERV option because DOE has not yet determined whether this requirement would be cost-effective in manufactured homes.

DOE requests comment on the Tier 1 energy conservation standards, which would be applicable to manufactured homes with a manufacturer's retail list price of $55,000 or less. DOE also requests comment on the proposed energy conservation standards based on the most recent version of the IECC for the Tier 2 and untiered standards and the consideration of R–21 sensitivity for exterior wall insulation for climate zones 2 and 3.

DOE requests comment on the additional energy efficiency requirements from the 2021 IECC and whether they should apply to manufactured homes, including those that DOE has initially considered as not applicable to manufactured homes. If so, DOE requests comment on how these requirements would apply and the costs and savings associated with these requirements.

The following sections discuss comments DOE received regarding the building thermal envelope requirements proposed in the June 2016 NOPR, and any other corresponding proposed changes to the June 2016 NOPR requirements.

General Comments on the Prescriptive Requirements

DOE received several comments regarding the prescriptive requirements proposed in the June 2016 NOPR. NEEA commented that the prescriptive requirements for exterior walls, floor, ceiling, and fenestration should be based on *U*-factors, not current prescriptive requirements for *R*-value or *U*-factor alternative. NEEA stated that the proposed approach may result in two different thresholds depending on how the engineer chooses to calculate the *U*-factor alternative. (NEEA, No. 190 at p. 2) In response, DOE notes that allowing for both insulation *R*-value and fenestration *U*-factor requirements, in addition to equivalent *U*-factor alternatives to *R*-values, allows for more flexibility for manufacturers to comply with the energy conservation standards. Having both insulation *R*-value and fenestration *U*-factor requirements are also in line with the 2021 IECC requirements. Further, DOE is proposing that manufacturers use the Battelle method for calculating the overall thermal transmittance (U_o) of a manufactured home, which is the same as the HUD Code and provides a consistent way to calculate the component *U*-factors to determine U_o. Therefore, DOE continues to propose in this SNOPR both *R*-value and *U*-factor options for the prescriptive requirements, and a *U*-factor alternative requirement.

DOE also received several comments regarding the *U*-factor alternatives to *R*-value requirements. NEEA recommended that the *U*-factors used for the standard be recalculated based on framing factors used in the manufactured home industry. For example, in section 7.4.2 of the June 2016 NOPR TSD, the assumed framing factor in walls is 25 percent, which NEEA commented is reasonable for site-built homes, but not for manufactured homes. NEEA commented that typical framing factors in manufactured homes rarely exceed 18 percent because they are single-story structures built in factories with glazing fractions (applicable to windows, skylights, and doors, for example) most commonly less than 12 percent. NEEA also stated that updating the *U*-factors using manufactured home-specific factors would increase the cost-effectiveness of the proposal. (NEEA, No. 190 at p. 2) RECA and ACEEE commented that the proposed *U*-factor values for specified *R*-values were significantly less efficient that the equivalent *U*-factors set by the IECC. (RECA, No. 188 at p. 6 ACEEE, No. 178 at p. 2) WSU Energy Program commented that there might be some issues with the *R*-value and *U*-factor calculations and that the *U*-factor equivalent to *R*-21 that DOE used is much lower than the standard at *R*-21. WSU Energy Program provided the same comment with respect to the exterior floor. (WSU Energy Program, Public Meeting Transcript, No. 148 at p. 42)

Based on the comments received, DOE revisited the calculations performed to determine the *U*-factor alternatives to *R*-value requirements. To perform the calculations, DOE used the Battelle method that was recommended by the MH working group.[30] DOE performed these calculations based on typical wall, ceiling, and floor

[29] Taylor, Zachary T. Residential Heat Recovery Ventilation. United States. *https://doi.org/10.2172/1488935*.

[30] ''Overall *U*-Values and Heating/Cooling Loads—Manufactured Homes'' by Conner and Taylor.

assemblies used by the manufactured home industry.

DOE used a different *R*-value to *U*-factor equivalency conversion than the IECC because the IECC equivalency conversion is primarily based on typical site-built home construction parameters (focus of the 2015 IECC and the 2021 IECC) whereas DOE's focus is typical manufactured home construction parameters. EISA allows for DOE to take the design and factory construction techniques of manufactured homes into consideration for the energy conservation standards. (42 U.S.C. 17071(b)(2)(A)) As such, the *R*-value to *U*-factor equivalency conversion used in this SNOPR is modified from the 2021 IECC conversion approach to reflect manufactured homes rather than site-built homes. When comparing the *U*-factors from the proposal and the *U*-factors from the 2015 IECC and the 2021 IECC, the largest difference is with the exterior ceiling and exterior floor *U*-factors. The manufactured home dimensions that were used in the analysis were those recommended by the MH working group. Manufactured homes typically have a lower overall height compared to site-built homes, which leads to constrained space, and therefore there is less exterior ceiling and exterior floor insulation. See Chapter 7 of the TSD for further details on how the equivalent *U*-factors were determined.

DOE based certain aspects of its rulemaking analysis (*R*-value to *U*-factor conversion, energy use calculations, incremental costs, etc.) on a home built to the typical specifications recommended by the MH working group. These specifications included an assumption of a 25 percent framing fraction, which the MH working group considered typical for manufactured homes. Absent sufficient justification to change the assumptions, which could result in significant changes to fundamental aspects of the recommendations of the MH working group, DOE maintains the assumptions from its analysis in the June 2016 NOPR. As discussed previously, DOE is proposing that manufacturers use the Battelle method for calculating the overall thermal transmittance (U_o) of a manufactured home, which allows for the option to use framing fractions based on the construction of the home, in addition to typical framing fractions. Therefore, in practice, if a manufacturer uses a framing fraction specific to the construction of the home, the manufacturer may use more or less insulation relative to the representative home in DOE's model, but the energy use will be the same when using the *U*-factor alternative path to compliance. Therefore, in its analysis, DOE used the recommendations for typical assemblies and the calculation methodology from the MH working group. As previously discussed in this section, DOE has updated the *U*-factor alternatives to match the SNOPR-proposed prescriptive *R*-value building thermal requirements, which reflect use of the HUD zones and the tiered proposal.

DOE also received a comment regarding *U*-factor alternatives for single-section versus multi-section homes. ACEEE stated that basing the *U*-factor alternatives on single-section home construction means the values are less stringent (*i.e.,* can be achieved with lower insulation *R*-values) for multi-section homes. ACEEE urged DOE to use the more stringent multi-section *U*-factors for all homes, or to provide separate values for the two types of homes as is done for the overall *U*-factors (U_o) in the performance building thermal envelope requirements. (ACEEE, No. 178 at p. 3)

In response, DOE notes that the objective of the *U*-factor alternative is to create an equivalent *U*-factor requirement when compared to the corresponding *R*-value. Based on this objective, DOE agrees that the *U*-factor alternative should be different for single-section compared to multi-section homes for the external ceiling assembly because the assumed typical construction of the external ceiling differs in the ratio of insulation to framing members. Other assemblies, such as the external wall and floor, are assumed to be the same for single- and multi-section homes, so the *U*-factor alternative for those assemblies would also be the same for both home sizes. For this SNOPR, DOE proposes separate *U*-factor alternatives for the external ceilings of single- and multi-section homes. DOE used the Battelle method to determine the external ceiling *U*-factor for both single- and multi-section homes. More details on the assumptions used for this calculation are provided in chapter 7 of the TSD. See Table III.9 and Table III.10 for the updated proposed external ceiling *U*-factor alternatives.

DOE also received specific comments regarding the prescriptive requirements. NEEA recommended that DOE should provide a list of typical constructions with nominal *R*-value batt insulation configurations that meet the *U*-value targets, as this allows designers to comply with standards without considering all possible framing, door and window configurations. (NEEA, No. 190 at p. 2) The proposed prescriptive requirements already serve this purpose: The prescriptive requirements would allow a manufacturer or designer to simply install certain insulation and fenestration components in the house to achieve compliance with regulations. The *U*-factor alternative and the performance path would provide greater flexibility in selecting insulation and fenestration components if the manufacturer chooses to run the necessary calculations.

ACC FSC stated that there should be a reference to a document that lists *U*-factor assumptions for non-insulation components when calculating *U*-factors. (ACC FSC, No. 186 at p. 1) DOE notes that the Battelle method provides details on typical framing factors, and any component specific rules for *U*-factor calculations. The Battelle method also provides references (including the ASHRAE HOF) and values for non-insulation components. The Battelle method is referenced in proposed section 460.3.

Palm Harbor Homes stated that Table 460.102–2 lists alternative *U*-factors to the fourth decimal, which is inconsistent with the Battelle method incorporated by reference and in which *U*-values are to the third decimal. Palm Harbor Homes recommended rounding the listed *U*-values to three decimal points. (Palm Harbor Homes, No. 193 at p. 2) DOE agrees that the *U*-values should be consistent with the Battelle method, and therefore has rounded the proposed *U*-factor alternatives to three decimal places.

General Comments on the Performance Requirements

DOE received a comment regarding the performance requirements proposed in the June 2016 NOPR. ACC FSC stated that the performance requirements allow for unlimited tradeoffs to the building envelope, as long as the net thermal performance is achieved. It commented that this approach assumes that all components are working together simultaneously, and that the maintenance of HVAC components is sustained. ACC FSC stated, however, that the thermal envelope will last much longer than the service lives of tradeoff components such as HVAC, and the short-term components will be required to be replaced. It suggested that the performance path should have a back-stop to prevent excessive tradeoffs of the thermal envelope. (ACC FSC, No. 186 at p. 1)

The performance requirements in the proposed energy conservation standards are specific to the building thermal envelope, and do not incorporate any specifications on HVAC energy efficiency or maintenance. Therefore, tradeoffs are only allowed within the

building thermal envelope, and not HVAC equipment or other appliances. For the thermal envelope, DOE proposes to limit tradeoffs between insulation and fenestration products via the following constraints, consistent with the MH working group recommendations and the 2021 IECC:

- A maximum area-weighted average vertical fenestration *U*-factor of 0.48 in climate zone 2, or 0.40 for climate zone 3,
- A maximum area-weighted average skylight *U*-factor of 0.75 in climate zones 2 and 3,
- Windows, skylights, and doors containing more than 50 percent glazing by area to satisfy the SHGC requirements under § 460.102(a) on the basis of an area-weighted average.

Prescriptive SHGC Requirements

DOE received several comments on the June 2016 NOPR that suggested that climate zones 1 and 2 should be combined into one climate zone, such that there would be three climate zones in total. Commenters stated that a SHGC requirement of 0.33 would then apply to all homes in the new combined climate zone. (Lippert Components, No. 152 at p. 1; MHIAZ, No. 161 at p. 3; PMHA, No. 164 at p. 3; Cavco, No. 167 at p. 1; SBRA, No. 163 at p. 3; Skyline, No. 165 at p. 2; OMHA, No. 166 at p. 2; MHI, No. 182 at p. 1; MMHA, No. 170 at p. 3; Clayton Homes, No. 185 at p. 2; Palm Harbor Homes, No. 193 at p. 1; MHISC, No. 191 at p. 2; MHIM, No. 155 at p. 3; Commodore Corporation, No. 195 at p. 3) During the June 2016 NOPR public meeting and in its written comments, ACEEE and South Mountain supported the four proposed climate zones. (ACEEE, Public Meeting Transcript, No. 148 at p. 35; ACEEE, No. 178 at p. 2; South Mountain, No. 151 at p. 1)

As part of its written comment, SBRA also performed its own analysis on SHGC for climate zones 1 and 2 and found that 0.33 for both climate zones 1 and 2 was most cost-effective for both zones. SBRA stated that it believes that DOE's analysis in the February 2015 RFI was based on an atypical set of assumptions (*e.g.,* all windows due west, no window shading, no landscaping), which it stated would be at odds with the MH working group's approach of using industry average or market representative assumptions when evaluating the economic benefits of measures that improve energy performance. (SBRA, No. 163 at p. 5) SBRA acknowledged that its analysis applied markedly different assumptions than DOE's analysis. The differences included the following: Window shading, window orientation, window area, and window cost. In addition, SBRA used the REMRate computer model, which is different than the Energy Plus 5.0 model used by DOE. (SBRA, No. 163 at p. 5)

Regarding the SHGC requirements proposed by DOE in the June 2016 NOPR, Lippert Components stated that the increased stringency on solar heat gain only really benefits those in the glazing industry, and the increased cost associated with increased stringency will reduce the sales of manufactured homes. Lippert Components suggested that the more stringent value of SHGC only be considered after real energy usage in homes has been evaluated and shows that it is a cost-viable option. (Lippert Components, No. 152 at p. 1)

For climate zone 2, RECA commented that SHGC should be 0.25, consistent with the 2015 IECC, but did not comment in the context of the number of climate zones. It stated that DOE should not diverge from the IECC value, as the statute only allows deviations from the IECC value when the code is either not cost-effective, or when ''a more stringent standard would be more cost-effective.'' RECA asserted that the IECC value of 0.25 is cost-effective, and the statute does not allow for a less stringent standard that would be more cost-effective. (RECA, No. 188 at p. 3) RECA also commented that DOE's analysis of cost effectiveness for SHGC values did not use worst-case orientation of all windows facing west. (RECA, No. 188 at p. 3) (In response to comments received on the February 2015 RFI, DOE changed the assumption from all windows oriented west to assuming an even distribution of the windows.) RECA also stated that low-SHGC fenestration is both widely available and widely used in the proposed climate zone 2. (RECA, No. 188 at p. 4) ACEEE stated that it has no objection to climate zones 1 and 2 having the same required SHGC level considering that all other aspects of the standard are the same for the two zones; however, ACEEE did not recommend any specific SHGC. (ACEEE, No. 178 at p. 2)

As already discussed in III.E.2.a of this document, DOE proposes to align the climate zones to the HUD zones (three zones) instead of the June 2016 NOPR-proposed climate zones (four zones). In addition, as detailed previously in this document, DOE is proposing energy conservation standards based on the 2021 IECC, with a tiered and untiered proposal. For Tier 1 of the tiered proposal, DOE proposes to base the standards on an incremental cost increase maximum because of concerns from HUD and stakeholders regarding the high upfront cost from the June 2016 NOPR standards. For the Tier 2 and untiered proposal, however, because of the proposed updates of the energy efficiency measures to HUD zones, DOE is proposing a glazed fenestration requirement of 0.33 for proposed climate zone 1. The proposed building thermal envelope measures are discussed in section III.E.2.b of this document.

For the energy modeling in Energy Plus 5.0, DOE used the same assumptions as the June 2016 NOPR analysis for window-to-floor area, window shading, and window cost, which were recommendations from the MH working group and formed the basis of the MH working group's deliberations and recommendations. DOE continues to find the assumptions of the MH working group appropriate and is continuing to apply them in this SNOPR rather than those assumptions from the SBRA analysis. As explained in the June 2016 NOPR, DOE did not find reason to use assumptions different from those recommended by the MH working group based on the considerations of the MH working group arriving at them. 81 FR 39756, 39772.

In addition, while DOE had originally modeled all windows facing west, based on comments received in response to the February 2015 RFI, DOE changed the assumption from all windows oriented west to assuming an even distribution of the windows. DOE maintains the assumption of uniform window distribution in the SNOPR, rather than RECA's assumption of all windows due west. As explained in the June 2016 NOPR, although the assumption of all windows facing west represents the highest energy use window orientation, consumers of manufactured homes with other window orientations would not experience as large an economic benefit. 81 FR 39756, 39772.

Regarding the window costs specifically, SBRA stated that DOE's estimate for the incremental cost to the consumer to improve the SHGC from 0.33 to 0.25 for a single-section home was too low. While DOE used an incremental cost of $91, SBRA stated that it determined that the incremental cost for the SHGC improvement would be $144. SBRA stated that it gathered pricing data from the industry's major window suppliers but did not provide the sources for this information or the calculations used to arrive at this estimate. Additionally, it did not provide its estimate for the incremental cost for multi-section homes.

In response to SBRA's comment on window costs, DOE conducted further

research on the costs of windows with comparable *U*-factor and SHGC values. DOE's research found that both DOE's and SBRA's window cost estimates are within the range of common industry costs per square foot of fenestration. Because DOE has seen no evidence that the assumptions agreed to by the MH working group are no longer representative of typical manufactured home construction, DOE continues to use the same assumptions from the MH working group for the SHGC analysis. Term Sheet, No. 107 at p. 3.

RECA commented that reduced SHGC fenestration can result in benefits like smaller air conditioning systems (which have a lower purchase price) and the reduction of peak-load electricity demand due to smaller cooling loads (and the smaller cooling equipment). (RECA, No. 188 at p. 3) In the June 2016 NOPR, DOE did not include air conditioner downsizing and associated cost savings opportunities in its SHGC analysis (or any of its cost-effectiveness analysis).

DOE recognizes that decreases in air conditioning equipment size and peak electric load may result from the proposed requirements. However, these outcomes may not happen in practice for all consumers. Further, while reduction in peak demand is a benefit to the nation, not all consumers have an energy bill pricing structure (time of use based) that would afford them direct benefits. Therefore, DOE did not introduce the uncertainty associated with these potential benefits into the LCC analysis, and instead continues to focus on the direct impacts of improvements to the building thermal envelope insulation and other energy efficiency measures.

Window/Fenestration *U*-Factors

In the June 2016 NOPR, DOE proposed window *U*-factors of 0.35 for climate zones 1, 2, and 3; and 0.32 for climate zone 4. Skyline Corporation commented that the 2015 IECC allows for window *U*-factor of 0.40 for climate zones 1 and 2, which is higher than the window *U*-factor allowed in the proposed rule. It recommended that a *U*-factor of 0.40 be used for climate zone 1. (Skyline, No. 165 at p. 2)

As already discussed, DOE is proposing to rely on the HUD zones. Further, for the Tier 2 and untiered proposals, DOE has updated the proposed requirements based on the latest version of the IECC (the 2021 IECC), in accordance with the EISA mandate. See 42 U.S.C. 17071(b)(1) Accordingly, DOE proposes updated window *U*-factor requirements based on a review of the 2021 IECC, which are summarized in Table III.8.

In the tiered proposed approach DOE is proposing as Tier 1 requirements a set of energy conservation requirements with a first-cost impact of approximately $750. The Tier 1 energy efficiency measures proposed in this document would provide energy savings exceeding that amount and are presented in section III.E.2.b. DOE has tentatively determined that a window *U*-factor of 1.08, 0.5 and 0.35 for climate zones 1, 2 and 3 respectively, in addition to the combination of the other thermal envelope measures, would provide savings above the first-cost impact in each of the proposed climate zones.

Sections R405 and R406 From the IECC

In the June 2016 NOPR, DOE did not propose including sections R405 and R406 from the IECC. Section R405 of the 2015 IECC establishes criteria for compliance using a simulated energy performance analysis, which involves calculating expected building energy use and comparing that value to the energy use of a standard reference building that complies with the minimum specifications of the 2015 IECC. Section R405 compliance is based on the total estimated annual energy usage across the whole building: Envelope, mechanical, and service water heating. Section R406 of the 2015 IECC establishes criteria for compliance using an energy rating index that contemplates the use of software to calculate the energy use of a building. DOE stated that while both sections are valid and technically feasible options, the options do not appear to offer additional flexibility in the design of a manufactured home relative to the performance requirements for the building thermal envelope.

Several commenters, however, stated that the proposed rule lacks a performance path that enables tradeoff among a wider range of energy features than the envelope alone, and recommended that DOE consider compliance options tailored for the manufactured housing industry, using section R405, *Simulated Performance Alternative,* and section R406, *Energy Rating Index Compliance Alternative,* from the 2015 IECC as models. (SBRA, No. 163 at p. 2; MHI, No. 182 at p. 8; Palm Harbor Homes, No. 193 at p. 2; NPGA, No. 171 at p. 2; AGA & APGA, No. 172 at p. 1)

Sections R405 and R406 incorporate the energy use of the whole building, including mechanical equipment such as appliances. The performance requirements in the proposed energy conservation standards are specific to the building thermal envelope only. As discussed, the MH working group generally did not recommend provisions addressing minimum appliance efficiencies and specifically identified R405 and R406 as inapplicable to manufactured homes. (MH working group, No. 107 at p. 22) Consistent with the recommendations of the MH working group, the performance requirements in the proposed energy conservation standards are specific to the building thermal envelope only, and do not provide for tradeoffs with mechanical equipment such as appliances. DOE does capture a key element of sections R405 and R406 in its performance path to compliance. The IECC does not have a U_o-based performance path; it instead has the options described in sections R405 and R406. Similar to those sections, a U_o calculation gives the manufactured home manufacturer the flexibility to design the manufactured home, as long as the overall U_o is met.

DOE also received comments regarding the use of sections R405 and R406 of the IECC, citing the use of a full-fuel-cycle (FFC) calculation in those provisions as an advantage in terms of fully accounting for the impact of homes heated with different fuel types. (NPGA, No. 171 at p. 2; AGA & APGA, No. 172 at p. 1) An FFC measure of energy includes point-of-use (site) energy; the energy losses associated with generation, transmission, and distribution of electricity; and the energy consumed in extracting, processing, and transporting or distributing primary fuels.

NPGA commented that R405 includes an exception for the performance-based compliance approach, which allows the energy use to be based on source energy by using a source energy multiplier (one for electricity and another for fuels other than electricity). NPGA stated that this exception would be consistent with DOE's approach of incorporating energy consumption and emissions beyond the site in DOE's national impact analysis. In addition, NPGA commented that the adoption of R405 would provide a means for manufacturers of HUD homes to choose appliances based on their FFC efficiency ratings, and in turn, benefit from any reductions in FFC energy consumption and carbon emissions. (NPGA, No. 171 at p. 2) AGA and APGA encouraged DOE to reconsider incorporating sections R405 or R406 of the IECC, which utilizes the FFC analysis, for the national impact analysis. (AGA & APGA, No. 172 at p. 1)

As discussed previously, sections R405 and R406 would incorporate the energy use of the whole building, including mechanical equipment. Therefore, any FFC energy use resulting from sections R405 and R406 would also include energy use of the whole building. However, for the reasons discussed, this rulemaking only proposes provisions specific to the building thermal envelope. Therefore, DOE continues to not propose requirements associated with alternative performance from the 2015 and the 2021 IECC sections R405 and R406 in this SNOPR.

Ceiling Insulation Requirement

In the June 2016 NOPR, DOE proposed that exterior ceiling insulation must have uniform thickness or a uniform density. Several commenters stated that uniform thickness will generally not be possible, and uniform density would not allow high-density insulation in the truss heel area. (SBRA, Public Meeting Transcript, No. 148 at p. 52; NEEA, Public Meeting Transcript, No. 148 at p. 53; MHIM, No. 155 at p. 3; MHIAZ, No. 161 at p. 3; PMHA, No. 164 at p. 3; Cavco, No. 167 at p. 2; SBRA, No. 163 at p. 3; Skyline, No. 165 at p. 3; OMHA, No. 166 at p. 3; MHCC, No. 162 at p. 1; MHI, No. 182 at p. 3; MMHA, No. 170 at p. 3; Clayton Homes, No. 185 at p. 3; Palm Harbor Homes, No. 193 at p. 2; MHISC, No. 191 at p. 3; Commodore Corporation, No. 195 at p. 3)

DOE tentatively agrees with commenters that the exterior ceiling insulation proposal of uniform thickness or a uniform density would prohibit effective insulation techniques. While uniform thickness and density is sound insulation installation practice in most situations, given that the space between the roof and exterior ceiling is limited, particularly at the eaves, this uniformity may not be possible at the insulation levels proposed in the NOPR. In addition, there is no requirement in the 2015 or the 2021 IECC for uniform thickness or density. Therefore, DOE is not proposing in this SNOPR to require that exterior ceiling insulation must have uniform thickness or a uniform density.

DOE requests comment on the proposal to not require that exterior ceiling insulation must have uniform thickness or a uniform density.

Total Area of Glazed Fenestration Requirement

In the June 2016 NOPR, DOE proposed a maximum ratio of 12 percent for glazed fenestration area to floor area for energy modeling purposes, consistent with the recommendation from the MH working group. DOE used this ratio as a typical housing characteristic in its analyses for determining the prescriptive requirements. DOE also required the same ratio in the proposed prescriptive requirements. DOE received several comments regarding the proposed prescriptive requirement for the maximum total area of glazed fenestration. Several commenters stated that there is no such total area of glazed fenestration requirement in the 2015 IECC, and therefore the requirement must be removed from DOE's prescriptive requirements. (Skyline, No. 165 at p. 3; MHCC, No. 162 at p. 1; MHI, No. 182 at p. 4; Clayton Homes, No. 185 at p. 3; RECA, No. 188 at p. 5; PMHA, No. 164 at p. 4; WDMA, No. 183 at p. 2)

DOE agrees that there are no similar glazing requirements in the 2015 or the 2021 IECC. DOE proposed a fenestration area to floor area limit in the June 2016 NOPR to preserve energy savings associated with the prescriptive requirements. While the performance requirements improved building thermal envelope insulation to offset larger fenestration to floor area percentages (fenestration typically has a much higher *U*-factor than an exterior wall), the prescriptive requirements would prohibit a home to be constructed primarily from fenestration. DOE now tentatively finds that a 12-percent ratio was too restrictive given current manufacturing practices for manufactured homes. Therefore, in this SNOPR, DOE is not proposing a limit on the total area of glazed fenestration. DOE still maintains that a 12-percent ratio is typical in practice and does not expect the absence of such a requirement to result in an increase in the construction of homes with larger fenestration to floor area ratios. Such design would likely be much more expensive (windows are costly relative to opaque wall), and thereby limit the increase in use of fenestration.

DOE requests comment on the proposal not to limit the total area of glazed fenestration.

Using NFRC for *U*-Factor and SHGC Values

DOE received several comments regarding the use of the National Fenestration Rating Council (''NFRC'') labels for the fenestration *U*-factor and SHGC values. RECA commented that the IECC has always had a requirement that fenestration be labeled and certified to certain NFRC standards, and that a set of default *U*-factors and SHGCs are given for fenestration that are not labeled to these standards. RECA recommended using NFRC standards to maintain consistency with the 2015 IECC, and that DOE clarify that products lacking the NFRC labels shall be assigned the default *U*-factor or SHGC values. (RECA, Public Meeting Transcript, No. 148 at p. 45; RECA, No. 188 at p. 7). Lippert Components commented that the June 2016 NOPR proposal was unclear as to when to use the default *U*-factor and SHGC values. Lippert Components stated that the MH working group intended the default *U*-factor and SHGC tables to apply to fenestration that did not have third-party certified thermal performance ratings developed in accordance with NFRC methodology. Therefore, Lippert Components suggested updating the language, and clarifying what constitutes certified ratings by using similar wording to that found in C303.1.1 in the 2015 IECC. (Lippert Components, No. 152 at p. 2)

WDMA commented that fenestration *U*-factor and SHGC should be determined with NFRC 100 and 200, respectively. WDMA also commented that the lack of a proposed test procedure leaves the proposed standards incomplete. (WDMA, No. 183 at p. 2) Additionally, ACEEE stated that the 2015 IECC (section R303.1.3) directs that fenestration generally be rated by the NFRC. It recommended incorporating this standard, stating that it will ensure consistency with site-built homes and allow for more window options. (ACEEE, No. 178 at p. 2)

NFRC standards are widely used by industry in a variety of capacities. Many component manufacturers affix an NFRC label to their fenestration products, which includes the *U*-factor, SHGC, visible transmittance, and air leakage values. The NFRC program has a large number of participants (more than 500 component manufacturers), and NFRC-certified products frequently are used to comply with local energy code requirements. In addition, a fenestration product must be NFRC-certified to meet the criteria for becoming an ENERGY STAR product. Also, the 2021 IECC reference NFRC in section R303.1.3 for fenestration product rating.

Since DOE published the June 2016 NOPR, DOE has also published the November 2016 test procedure NOPR for manufactured housing, which proposed NFRC standards to determine fenestration *U*-factor and SHGC. *See* 81 FR 78733, 78738–78739. Specifically, in the November 2016 test procedure NOPR, DOE proposed that the fenestration *U*-factors and SHGC be tested based on ANSI/NFRC 100 and

200 respectively. In addition, DOE proposed that for the prescriptive requirements, manufacturers be allowed to use either the NFRC-rated fenestration *U*-factor and SHGC values, or the default *U*-factor and SHGC values provided by DOE. Because the use of the NFRC standards applies directly to the manufactured housing test procedure, DOE will address these comments in any future action addressing testing, compliance and enforcement provisions related to these standards.

In addition, regarding NFRC labels, NEEA recommended that the final rule be explicit that the NFRC labels should remain on the windows until the house arrives at the site. (NEEA, No. 190 at p. 3) DOE's authority for this rulemaking is to establish energy conservation standards for manufactured housing as manufactured. (42 U.S.C. 17071(c)) The proposed energy conservation standards are specific only to the building thermal requirements for a manufactured home. However, DOE notes that the energy conservation standards, if finalized as proposed, would not prevent industry from pursuing this labeling practice suggested by NEEA.

Other Remaining Comments Regarding § 460.102

DOE also received individual comments regarding the proposed building thermal envelope requirements in § 460.102. ACC FSC stated that exterior foam sheathing should be listed as an alternative to cavity-only insulation. (ACC FSC, No. 186 at p. 1) For this rule as proposed, DOE is not precluding the use of foam sheathing. As long as the installed insulation would meet the building thermal envelope requirements, as finalized, then it would be an acceptable option for use in a manufactured home.

ACC FSC also specifically requested that DOE add an ''R13+5ci'' [31] option to climate zones 3 and 4 for the wall *R*-value under the prescriptive path. (ACC FSC, No. 186 at p. 1) As long as the installed insulation would meet the adopted building thermal envelope requirements, the proposed requirements would not prohibit certain insulation options from being used in the manufactured home.

c. Proposed § 460.103 Installation of Insulation

Consistent with the June 2016 NOPR, DOE proposes in § 460.103 of the regulatory text to require manufacturers to install insulation according to both the insulation manufacturer's installation instructions and the instructions set forth in proposed Table 460.103. DOE also proposes to require manufacturers to comply with the insulation manufacturer's installation instructions to ensure that the intended performance of the insulation is achieved. Further, consistent with the June 2016 NOPR, DOE proposes to add as part of a new Table 460.103 several component installation requirements, including general requirements, and requirements for access hatches, panels and doors, baffles, ceiling or attic, eave vents, narrow cavities, rim joists, shower or tub adjacent to exterior wall, and walls.

The following paragraphs discuss comments DOE received regarding the installation of insulations requirements proposed in the June 2016 NOPR, and any other corresponding proposed changes to the June 2016 NOPR requirements based on comments received, or updates to the 2021 IECC.

DOE received a comment on the June 2016 NOPR regarding the quality of insulation installation. Wisconsin Energy Conservation Corporation (WECC) commented that the overall quality of the insulation installation is important to avoid any degradation in insulation performance. (WECC, No. 150 at p. 3) Consistent with the 2015 and the 2021 IECC, DOE has maintained that insulation is to be installed according to the manufacturer's instructions to ensure the insulation achieves its rated *R*-value.

DOE received several comments on the June 2016 NOPR regarding the exterior floor insulation requirements. In general, commenters stated that the provision requiring exterior floor insulation be placed in contact with the subflooring material be removed because the requirement is not supported by building scientists; DOE has not demonstrated its value for manufactured home energy efficiency; assuming the bottom board acts as the air barrier (as seen in Table 460.104) obviates the need for the insulation to be in contact with the decking; the overall efficiency of the home decreases as exterior floor insulation between I-beams is usually placed beneath ducts (effectively moving the ducts inside the thermal envelope minimizing thermal losses); and it is difficult to do in a factory setting. (MHIM, No. 155 at p. 3; MHIAZ, No. 161 at p. 3; PMHA, No. 164 at p. 3; Cavco, No. 167 at p. 1; SBRA, No. 163 at p. 3; OMHA, No. 166 at p. 3; MHI, No. 182 at p. 3; MMHA, No. 170 at p. 3; Clayton Homes, No. 185 at p. 3; Palm Harbor Homes, No. 193 at p. 2; MHISC, No. 191 at p. 3; Commodore Corporation, No. 195 at p. 3; Skyline, No. 165 at p. 3; MHCC, No. 162 at p. 1).

During the public meeting, NEEA also stated that the permanent contact with the underside of the subfloor is virtually impossible in the center of a manufactured home. (NEEA, Public Meeting Transcript, No. 148 at p. 55) WECC commented that it is impractical to require insulation to completely contact the subfloor; completely filling the floor with insulation results in cooler floor temperatures leading to consumer complaints. WECC also questioned how the insulation under the ductwork will be supported and maintained, and to what extent the cross-braces have an effect on compaction of increased fiberglass. Overall, WECC stated that it sees many logistical problems with the extra levels of insulation. (WECC, No. 150 at p. 2)

The requirement that exterior floor insulation installed must maintain permanent contact with the underside of the subfloor is found in the 2015 IECC, which was the basis of the June 2016 NOPR requirement. However, a study provided by MHI and other stakeholders shows that this requirement is not necessary and can actually be harmful to homes.[32] The study finds that installing insulation on the underside of the floor decking results in the wood floor joists from the floor framing to get cold enough that the temperature falls below the dewpoint temperature of the air in the crawlspace. The low temperatures would therefore form condensation on the surface of the wood, which could affect the integrity of the flooring. Based on the comments received, including the cited study, DOE tentatively agrees that it is inappropriate for MH manufacturers to give insulation permanent contact under the whole subfloor. In addition, in manufactured homes, the common practice is to lay blanket insulation over the duct work below the floor, placing the ducts between the insulation and the rough floor decking, which creates a pocket of air between the blanket insulation and the rough floor decking in the space near the ducts. Therefore, by taking into account common manufactured home

[31] The first value is cavity insulation and the second value is continuous insulation. Therefore, ''13+5'' would mean *R*-13 cavity insulation plus *R*-5 continuous insulation. In general, the cavity insulation is interrupted by framing members, which lets heat through more readily, whereas continuous insulation is uninterrupted. Therefore, a layer of cavity insulation is less effective than a layer of continuous insulation for the same *R*-value. To calculate the wall assembly's overall *R*-value, as would be required under the proposed rule, one would need to use the Battelle method, which references the ASHRAE HOF.

[32] Lstiburek, Joseph, BSI–009: New Light in Crawlspaces, Building Science Corporation (2010), et al.

building practice, in this SNOPR, DOE is deviating from the 2015 and the 2021 IECC and proposes to remove the requirement that exterior floor insulation installed must maintain permanent contact with the underside of the rough floor decking over which the finished floor, flooring material, or carpet is laid.

DOE requests comment on removing the proposed requirement that exterior floor insulation installed must maintain permanent contact with the underside of the rough floor decking.

DOE also received several comments specifically on duct material and insulation. Cavco and Pfeffer stated that high-density duct board and flex duct is subject to severe rodent degradation over time, and so ductwork material should be considered in the rulemaking. (Cavco, Public Meeting Transcript, No. 148 at p. 67; Pfeiffer, No. 150 at p. 1) WECC and NCJC advocated using metal ductwork for the entire duct system. Metal ductwork is less susceptible to damage from animals, water, and moisture degradation. (WECC, No. 150 at p. 1; NCJC, No. 184 at p. 2) In addition, WECC commented that both the flex duct and duct boards that are commonly used are capable of being crushed or compressed, which reduces efficiency, as well as being hard to install and permanently repair. (WECC, No. 150 at p. 1)

EISA directs DOE to establish energy conservation standards for manufactured housing. While there may be an issue with the reliability of certain building materials, this issue only indirectly relates to the energy efficiency of manufactured homes and is beyond the scope of this rulemaking. Therefore, DOE is not assessing or proposing regulations relating to duct material.

Regarding duct insulation, NEEA recommended that *R*-8 insulation should be required everywhere where ducts are not embedded in insulation. This specifically ensures that ducts under the floor are insulated. (NEEA, No. 190 at p. 3) VEIC stated that HVAC ductwork located in the floor assembly with crossover ducts should be eliminated and relocated inside the thermal envelope, as this would improve energy performance and increase durability. (VEIC, No. 187 at p. 2) NEEA commented that all crossover ducts should have *R*-8 insulation. (NEEA, No. 190 at p. 3)

DOE's research indicates that HVAC ducts are generally located between the floor and the insulation and are therefore within the conditioned space. Cavco also commented that the common practice on entry-level products is to locate them in the floor. (Cavco, Public Meeting Transcript, No. 148 at p. 65) Therefore, because ducts are already located within the conditioned space, and would already be insulated because of the insulation required within the conditioned space, DOE is not proposing any additional insulation for ducts in this SNOPR.

NEEA and WSU Energy Program stated that a clearer statement on how insulation should contain no voids or compression as installed, is necessary. (NEEA, No. 190 at p. 2; WSU Energy Program, Public Meeting Transcript, No. 148 at p. 54, 57). Manufacturer installation instructions specify that insulation be installed per the insulation chart. Insulation charts, depending on the type of insulation, are required by the Federal Trade Commission (''FTC'') to show the *R*-value for a certain insulation thickness, or at an installed thickness. 16 CFR 460.12. Because DOE requires that insulation must be installed according to the insulation manufacturer's installation instructions, the MH manufacturer would have to determine the correct thickness for the *R*-value required in the manufactured home.[33] Any compression would result in a different thickness, which would in turn change the *R*-value of the insulation. Additionally, certain insulation manufacturer's installation instructions specifically state that compression must be avoided when installing insulation, because compression will reduce the *R*-value. Likewise, insulation manufacturer's installation instructions also state that there cannot be gaps between pieces of insulation, as it can reduce the installed *R*-value of insulation.[34] Therefore, DOE continues to find the requirements proposed in section 460.103 of the June 2016 NOPR are sufficient to prohibit compression and voids, and DOE continues to propose these requirements without change, consistent with R303.2 of the 2021 IECC.

The 2021 IECC included several updates (relative to the 2015 IECC) in sections R402.2 through R402.3 and Table R402.4.1.1 for insulation installation criteria relevant to manufactured housing, which are discussed in Table III.13.

TABLE III.13—THE 2021 IECC UPDATES FOR INSTALLATION OF INSULATION

Component	June 2016 NOPR proposal	The 2021 IECC updates, SNOPR proposal
General	Air-permeable insulation must not be used as a material to establish the air barrier.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.
Access hatches, panels, and doors.	Access hatches, panels, and doors between conditioned space and unconditioned space must be insulated to a level equivalent to the insulation of the surrounding surface, must provide access to all equipment that prevents damaging or compressing the insulation, and must provide a wood-framed or equivalent baffle or retainer when loose fill insulation is installed within an exterior ceiling assembly to retain the insulation both on the access hatch, panel, or door and within the building thermal envelope.	Relevant updates from the 2015 IECC to the 2021 IECC include requiring access hatches and doors from conditioned to unconditioned spaces be insulated to the same *R*-value required by Table R402.1.3 for the wall or ceiling in which they are installed, with certain exceptions. For this SNOPR, DOE is seeking comment on whether the 2021 IECC update applies to manufactured homes.

[33] Green Fiber insulation fact sheet; *https://www.greenfiber.com/uploads/documents/Fact-Sheet-INS541LD-19.05LB-Retail-Bag.pdf.*

[34] CertainTeed sustainable insulation installation manual; *https://www.buildsite.com/pdf/certainteed/CertainTeed-Sustainable-Insulation-Installation-Instructions-1814058.pdf.*

TABLE III.13—THE 2021 IECC UPDATES FOR INSTALLATION OF INSULATION—Continued

Component	June 2016 NOPR proposal	The 2021 IECC updates, SNOPR proposal
Baffles	Baffles must be constructed using a solid material, maintain an opening equal or greater than the size of the vents, and extend over the top of the attic insulation.	Relevant updates from the 2015 IECC to the 2021 IECC include requirements that the baffle be installed to the outer edge of the exterior wall top plate so as to provide maximum space for attic insulation coverage over the top plate. In addition, where soffit ventilation is not continuous, requires that baffles be installed continuously to precent ventilation air in the eave soffit from bypassing the baffle. For this SNOPR, DOE is seeking comment on whether the 2021 IECC update applies to manufactured homes.
Ceiling or attic	The insulation in any dropped ceiling or dropped soffit must be aligned with the air barrier.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.
Eave vents	Air-permeable insulations in vented attics within the building thermal envelope must be installed adjacent to eave vents.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.
Floors	Floor insulation must be installed to maintain permanent contact with the underside of the rough floor decking over which the finished floor, flooring material, or carpet is laid, except where air ducts directly contact the underside of the rough floor decking.	No relevant updates made from the 2015 IECC to the 2021 IECC. However, as previously discussed in this section, DOE is no longer proposing this requirement from the June 2016 proposal.
Narrow cavities	Batts in narrow cavities must be cut to fit or narrow cavities must be filled with insulation that upon installation readily conforms to the available cavity space.	Relevant updates from the 2015 IECC to the 2021 IECC were editorial in nature and intended to improve clarity. DOE proposes to include these updates in this SNOPR.
Rim joists	Rim joists must be insulated	Relevant updates from the 2015 IECC to the 2021 IECC include additional updates that the insulation be installed such that the insulation maintain permanent contact with the exterior rim board. DOE proposes to include this update in this SNOPR as it provides further clarity on how the rim joists must be insulated.
Shower or tub adjacent to exterior wall.	Exterior walls adjacent to showers and tubs must be insulated.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.
Walls	Air permeable exterior building thermal envelope insulation for framed exterior walls must completely fill the cavity, including within stud bays caused by blocking lay flats or headers.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.
Shaft, penetrations	None	Relevant updates from the 2015 IECC to the 2021 IECC include requirements that the insulation shall be fitted tightly around utilities passing through shafts and penetrations in the building thermal envelope to maintain required *R*-value. For this SNOPR, DOE is seeking comment on whether the requirement generally applies to manufactured homes.

The 2021 IECC also includes building thermal envelope updates for mass walls, steel-framed buildings, basement walls, slab-on grade floors, crawl space walls, sunroom and heated garage insulation. DOE has not included these requirements in the proposed rule because they are not directly relevant to manufactured housing.

DOE requests comment on the proposed updates to the installation of insulation criteria as it applies to manufactured homes construction only.

DOE requests comments on whether there are any of the 2021 IECC updates relevant to manufactured housing that should be considered as part of this rulemaking. Specifically, DOE requests comment on whether the 2021 IECC updates for installation criteria for access hatches and doors, baffles and shafts are applicable to manufactured housing and should be considered in this rulemaking.

d. Proposed § 460.104 Building Thermal Envelope Air Leakage

Consistent with the June 2016 NOPR, DOE proposes to add a new § 460.104 that would require manufacturers to seal manufactured homes against air leakage. Air leakage sealing limits air infiltration through the building thermal envelope, in turn reducing heating and cooling loads. Proposed § 460.104 would specify both general and specific requirements for sealing a manufactured home to prevent air leakage, all of which are based on Table R402.4.1.1 of the 2015 IECC with modifications based on recommendations from the MH working group (Term Sheet No. 107 at p. 5) and any further modifications based on DOE's review of the 2021 IECC (discussed further in this section). The MH working group also recommended prescriptive air leakage sealing requirements that are designed to achieve an overall air exchange rate of five air changes per hour (ACH) within a manufactured home. Term Sheet No. 107 at p. 5.

The proposed general requirements in § 460.104 would require that manufacturers properly seal all joints, seams, and penetrations in the building thermal envelope to establish a continuous air barrier, and use appropriate sealing materials to allow for differential expansion and contraction of dissimilar materials. The proposed specific requirements in Table 460.104 include air barrier criteria for

ceiling or attic, duct system register boots, electrical box or phone on exterior walls, floors, mating line surfaces, recessed lighting, rim joists, shower or tub adjacent to exterior wall, walls and windows, skylights and doors.

In developing its recommendations, the MH working group also identified concerns regarding the potential impacts of the air sealing requirements on the indoor air quality in manufactured homes, but understood indoor air quality to be outside the scope of the working group. (MH Working Group Meeting Transcript No. 115, pp. 95–96)

Prior to issuing the 2016 EA–RFI, DOE issued a request for information (RFI) regarding ''data, studies, and other such materials that address the relationship between potential reductions in levels of natural air infiltration and both indoor air quality and occupant health for a manufactured home.'' (June 25, 2013, 78 FR 37995). Specifically, DOE requested information on the relationship between potential reductions in levels of natural air infiltration and both indoor air quality and occupant health for a manufactured home. 78 FR 37995, 37996. With regard to indoor air quality, one commenter mentioned that reductions in air leakage can lead to increased formaldehyde concentrations and noted that increased mechanical ventilation also can increase moisture infiltration in humid climates, potentially leading to deleterious impacts such as mold growth. (MHARR, No. 36 at pp. 6–7) Several commenters suggested including measures approved by the MHCC at the time, including requirement for carbon monoxide alarms, vent termination separation from air intake and an option for individual manufacturers to adopt ASHRAE Standard 62.2. (Joint commenters,[35] No. 38 at p. 2; NEEA, No. 40 at p. 3) NEEA also recommended NFPA 501 standard for window and door flashing and weather resistant barriers to improve durability and reduce moisture-related indoor air quality problems associated with wind driven rain and long-term failure of the building envelope siding and window systems. (NEEA, No. 40 at p. 3) Several other commenters noted that there have been no reported issues with occupant health in energy efficient homes that have been sealed tightly to reduce air infiltration. (MHI, No. 39, at p. 5; Joint commenters, No. 38 at p. 2) Specifically, whole house mechanical ventilation systems have been incorporated into the HUD MHCSS for nearly 20 years. (Joint commenters, No. 38 at p. 2) Further, NEEA noted that for voluntary energy efficiency programs (*i.e.,* EPA ENERGY STAR homes and DOE Challenge home) the few IAQ problems encountered were associated with HVAC commissioning and/or occupant education, not with building tightness. (NEEA, No. 40 at p. 3)

In the June 2016 NOPR, DOE again requested information on the relationship between a reduction in levels of natural air infiltration (through sealing leaks in the building thermal envelope) and health and safety. 81 FR 39756, 39798. In response to the June 2016 NOPR, DOE did not receive any studies or data regarding the potential impact on health and safety from reduced levels of natural air infiltration in a manufactured home. However, DOE is considering measures to mitigate potential adverse impacts to indoor air quality that could arise from this SNOPR proposal. See section III.E.3.d of this document for further details.

The following paragraphs discuss comments DOE received regarding the building thermal envelope air leakage requirements proposed in the June 2016 NOPR, and any other corresponding proposed changes to the June 2016 NOPR requirements based on comments received, or updates to the 2021 IECC.

WSU Energy Program commented that ACH rate of five can be achieved through the prescriptive approaches recommended by the MH working group and that to ensure it is met, specific direction must be provided as to the areas required to be sealed and further that DOE needs to provide education and training to MH manufacturers. (WSU Energy Program, Public Meeting Transcript, No. 148 at p. 57)

As discussed, the June 2016 proposed envelope air leakage requirements were based on Table R402.4.1.1 of the 2015 IECC with modifications. The IECC applies generally to residential buildings, including site-built and modular housing, and is not specific to manufactured housing. As stated by WSU Energy Program in its comments, the building thermal envelope air leakage requirements (as proposed in § 460.104) are prescriptive requirements intended to achieve an envelope tightness of five ACH when depressurized to 50 pascals. Term Sheet, No. 107 at p. 5. Further, DOE reviewed the 2021 IECC and is proposing additional updates to the air barrier criteria, as discussed later in this section.

NEEA commented that a clearer definition of how a proper air barrier should be designed was needed in order to make construction requirements more specific, and to establish a single meaning without ambiguity. (NEEA, No. 190 at p. 2). NEEA did not provide a further explanation of how the proposed requirements for an air barrier were lacking or presented an opportunity for misapplication. As stated earlier in this section, DOE has listed many specific requirements for proper air barrier installation in Table 460.104. These requirements were based on Table R402.4.1.1 of the 2015 IECC and related recommendations from the MH working group. Further, DOE reviewed the 2021 IECC to make any additional updates to the air barrier criteria.

DOE also received a comment regarding installation requirements. VEIC stated that the rule should also have clear installation requirements for insulation, as well as for air and duct sealing. (VEIC, No. 187 at p. 2) DOE notes that its proposal would require that insulation and air leakage sealing must be done according to manufacturer's instructions, and the requirements set forth in proposed §§ 460.103 and 460.104, accordingly.

WDMA recommended that a provision regarding fenestration air leakage requirements be added. WDMA stated that provisions regarding fenestration air leakage are necessary for natural air infiltration limits required by the IECC to be met. WDMA cited section R402.4.3 of the 2015 IECC as an example. (WDMA, No. 183 at p. 3) As stated in the June 2016 NOPR, DOE did not include specifications for air leakage of fenestration consistent with the MH working group recommendation to reduce testing burden. In addition, as discussed in the following paragraphs, DOE is proposing air leakage requirements at the full building thermal envelope level, which will capture any air leakage associated with installed fenestration. Additionally, the proposed prescriptive building thermal envelope air leakage standards include requirements to seal the space between fenestration and framing. Therefore, DOE is not proposing fenestration specific quantitative air leakage requirements.

DOE also received several comments on the June 2016 NOPR regarding the building's air barrier. NEEA recommended that the standards be explicit that the multi-section marriage line air seal shall be installed at the factory with proper quality control rather than being installed in the field.

[35] The letter comprised the joint comments of ACEE, MHI, National Association of State Energy Officials, National Consumer Law Center (on behalf of its low-income clients), National Manufactured Home Owners Association, Natural Resources Defense Council, Northwest Power & Conservation Council, and SBRA.

(NEEA, No. 190 at p. 3) All requirements proposed in this SNOPR would apply to the manufactured home as manufactured, *i.e.,* the manufacturer of the manufactured home is responsible for ensuring compliance with the requirements proposed in this SNOPR. (42 U.S.C. 17071(c)) A manufactured home would have to comply with the requirements, once finalized, prior to being installed in the field. DOE proposes to clarify in § 460.1 that the requirements apply to the manufactured home as manufactured, prior to installation.

DOE also received a comment regarding the duct system register boots air barrier installation criteria. The June 2016 NOPR proposed that duct system register boots that penetrate the building thermal envelope or the air barrier must be sealed to the air barrier or the interior finish materials with caulk, foam, gasket, or other suitable material. WECC recommended that boot penetration be sealed to the subfloor. In WECC's experience with retrofit work, sealing to a finished vinyl flooring surface causes the flooring to float when the air handler is energized. (WECC, Public Meeting Transcript, No. 148 at p. 61) DOE reinvestigated this topic and acknowledges that the 2015 IECC requires that the duct register boots that penetrate building thermal envelope be sealed to the subfloor or drywall. The MH working group also voted to include this statement from the 2015 IECC in the term sheet. Term Sheet, No. 107 at p. 19. The 2018 and the 2021 IECC replaces the use of the term ''drywall'' with ''wall covering or ceiling penetrated by the boot.'' In this SNOPR, DOE is proposing to revise its earlier proposed regulatory text in Table 460.104 regarding register boots consistent with the language in the 2021 IECC to clarify that duct systems register boots may also be sealed to the subfloor. DOE is proposing the following air barrier criteria for duct system register boots in this SNOPR: ''Duct system register boots that penetrate the building thermal envelope or the air barrier must be sealed to the subfloor, wall covering or ceiling penetrated by the boot, air barrier, or the interior finish materials with caulk, foam, gasket, or other suitable material.'' This revision provides added flexibility, addresses WECC's concern, and follows the provisions of the 2021 IECC and the recommendations of the MH working group.

Further, DOE considered several other updates of the 2021 IECC in section R402.4 and Table R402.4.1.1 (relative to the 2015 IECC) for air barrier criteria relevant to manufactured housing—see Table III.14.

TABLE III.14—THE 2021 IECC UPDATES FOR AIR BARRIER CRITERIA

Component	June 2016 NOPR proposal	The 2021 IECC updates; SNOPR proposal
Ceiling or attic	The air barrier in any dropped ceiling or dropped soffit must be aligned with the insulation and any gaps in the air barrier must be sealed with caulk, foam, gasket, or other suitable material. Access hatches, panels, and doors, drop-down stairs, or knee wall doors to unconditioned attic spaces must be weather-stripped or equipped with a gasket to produce a continuous air barrier.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.
Duct system register boots *.	Duct system register boots that penetrate the building thermal envelope or the air barrier must be sealed to the air barrier or the interior finish materials with caulk, foam, gasket, or other suitable material.	As previously discussed, DOE proposes to update this requirement consistent with the 2021 IECC.
Electrical box or phone box on exterior walls.	The air barrier must be installed behind electrical or communication boxes or the air barrier must be sealed around the box penetration with caulk, foam, gasket, or other suitable material.	Relevant updates from the 2015 IECC to the 2021 IECC include a clarification that the air barrier shall be installed behind electrical ''and'' communication boxes, not ''or''. DOE proposes to update this requirement in this SNOPR.
Floors	The air barrier must be installed at any exposed edge of insulation. The bottom board may serve as the air barrier.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.
Mating line surfaces	Mating line surfaces must be equipped with a continuous and durable gasket.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.
Recessed lighting	Recessed light fixtures installed in the building thermal envelope must be sealed to the drywall with caulk, foam, gasket, or other suitable material.	Relevant updates from the 2015 IECC to the 2021 IECC include requiring sealing in accordance with section R402.4.5, which includes specific air leakage rate requirements. Considering the original proposal was determined to be prescriptive only, DOE is not including the updates in this SNOPR, but is requesting comment on this.
Rim joists	The air barrier must enclose the rim joists	Relevant updates from the 2015 IECC to the 2021 IECC include updates that the junctions of the rim board to the sill plate and the rim board and the subfloor shall be air sealed. DOE proposes to include this update in this SNOPR as it provides further clarity on how the rim joists must be sealed.
Shower or tub adjacent to exterior wall.	The air barrier must separate showers and tubs from exterior walls.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.
Walls	The junction of the top plate and the exterior ceiling, and the junction of the bottom plate and the exterior floor, along exterior walls must be sealed with caulk, foam, gasket, or other suitable material.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.

TABLE III.14—THE 2021 IECC UPDATES FOR AIR BARRIER CRITERIA—Continued

Component	June 2016 NOPR proposal	The 2021 IECC updates; SNOPR proposal
Windows, skylights, and exterior doors.	The rough openings around windows, exterior doors, and skylights must be sealed with caulk or foam.	No relevant updates made from the 2015 IECC to the 2021 IECC. Therefore, DOE proposes no changes between the 2016 NOPR and this SNOPR.
Shafts, penetration ...	Sealing methods between dissimilar materials must allow for differential expansion and contraction and must establish a continuous air barrier upon installation of all opaque components of the building thermal envelope. All gaps and penetrations in the exterior ceiling, exterior floor, and exterior walls, including ducts, flue shafts, plumbing, piping, electrical wiring, utility penetrations, bathroom and kitchen exhaust fans, recessed lighting fixtures adjacent to unconditioned space, and light tubes adjacent to unconditioned space, must be sealed with caulk, foam, gasket or other suitable material.	Relevant updates from the 2015 IECC to the 2021 IECC clarifies that sealing should allow for expansion, contraction and mechanical vibration. DOE proposes to include the term ''mechanical vibration'' to provide further clarity.
Narrow cavities	None	Relevant updates from the 2015 IECC to the 2021 IECC include updates that narrow cavities of 1 inch or less that are not able to be insulated shall be air sealed. For this SNOPR, DOE is not proposing to include this update because DOE is unsure how it would affect the June 2016 NOPR conclusion that the proposed prescriptive air leakage sealing requirements are designed to achieve 5 ACH. DOE requests comment on this topic.
Plumbing, wiring or other obstructions.	None	Relevant updates from the 2015 IECC to the 2021 IECC include update that all holes created by wiring, plumbing or other obstructions in the air assembly must be air sealed. For this SNOPR, DOE is not proposing to include this update because DOE is unsure how it would affect the June 2016 NOPR conclusion that the proposed prescriptive air leakage sealing requirements are designed to achieve 5 ACH. DOE requests comment on this topic.

* Updates based on comments received to the June 2016 NOPR.

The 2021 IECC also includes air barrier criteria updates for basement crawl space and slab foundations, garage separation, and concealed sprinklers. DOE has not included these requirements in the proposed rule because they are not directly relevant to manufactured housing.

DOE requests comment on the proposed updates to the air barrier criteria as it applies to manufactured homes construction only. Further, DOE requests comment whether the SNOPR proposal continues to be designed to achieve air leakage sealing requirements of 5 ACH.

DOE requests comments on whether there are any of the 2021 IECC updates relevant to manufactured housing that should be considered as part of this rulemaking. Specifically, DOE requests comment on whether the 2021 IECC updates for air barrier criteria for recessed lighting, narrow cavities and plumbing are applicable to manufactured housing and should be considered in this rulemaking. If so, DOE requests comment on whether the requirements would alter the 5 ACH designation.

3. Subpart C: HVAC, Service Water Heating, and Equipment Sizing

Subpart C proposes requirements that would be applicable to manufactured homes related to ducts; HVAC; service hot water systems; mechanical ventilation fan efficacy; and heating and cooling equipment sizing. The proposed subpart C requirements would be applicable to all manufactured homes under either the proposed rule or the tiered proposed rule (*i.e.,* under the tiered proposed rule the subpart C requirements would be applicable to Tier 1 and Tier 2 manufactured homes). The following sections provide further details regarding Subpart C.

a. Proposed § 460.201 Duct System

DOE proposes to include in § 460.201(a) a requirement that manufactured homes equipped with a duct system be designed to limit total air leakage to less than or equal to 4 cubic feet per minute (''cfm'') per 100 square feet of conditioned floor area. DOE initially determines this proposal to be consistent with R403 of the 2021 IECC. In addition, DOE also proposes to require that building framing cavities not be used as ducts or plenums under § 460.201(a), consistent with the 2021 IECC and the recommendation of the MH working group (Term Sheet, No. 107 at p. 1). Building framing cavities are typically not tightly sealed and do not provide an adequate barrier to foreign bodies for air quality reasons. The use of building framing cavities as ducts and plenums is generally considered to be poor construction practice and is not a typical practice in the manufactured housing industry.

The following paragraphs discuss comments DOE received regarding the duct system requirements proposed in the June 2016 NOPR, and any other corresponding proposed changes to the June 2016 NOPR requirements based on comments received, or updates to the 2021 IECC.

The majority of the comments were recommending more specificity on the proposed duct sealing requirements. Several commenters suggested that the duct leakage requirements should only be applicable to homes that are equipped with a duct system, so as not to prohibit use of a ductless HVAC system. (MHIM, No. 155 at p. 3; MHIAZ, No. 161 at p. 3; PMHA, No. 164 at p. 4; Cavco, No. 167 at p. 2; SBRA, No. 163 at p. 4; OMHA, No. 166 at p. 3; MHI, No. 182 at p. 4; Clayton Homes, No. 185 at p. 3; Palm Harbor Homes, No. 193 at p. 2; MHISC, No. 191 at p. 3; SBRA,

Public Meeting Transcript, No. 148 at p. 59; Commodore Corporation, No. 195 at p. 3; Skyline, No. 165 at p. 3; MHCC, No. 162 at p. 2; NEEA, No. 190 at p. 3)

In the June 2016 NOPR, DOE proposed to include in section 460.201(a) a requirement that manufacturers equip each manufactured home with a duct system designed to limit total air leakage to less than or equal to 4 cubic feet per minute (cfm) per 100 square feet of conditioned floor area. DOE agrees with the commenters that each manufactured home should not be required to have a duct system. An implicit requirement for including a duct system would prohibit usage of ductless HVAC systems, which could improve the energy performance of the home.[36] Therefore, in this SNOPR, DOE proposes to require only manufactured homes with duct systems to limit total duct air leakage to less than or equal to 4 cfm per 100 square feet of conditioned floor.

DOE received other comments regarding the design of duct systems. Skyline Corporation and MHCC questioned the wording of proposed § 460.201 Duct Systems—section (b), which stated, ''building framing cavities must not be used as ducts or plenums.'' They stated this is ambiguous as to whether it applies to return air plenums. They recommended that the section be revised to include ''. . . as ducts or plenums when directly connected to mechanical systems.'' (Skyline, No. 165 at p. 3; MHCC, No. 162 at p. 2) Clayton Homes stated that proposed § 460.201(a), the last sentence should be changed to read ''Building framing cavities must not be used as supply ducts or plenums.'' Clayton Homes commented that the addition of the word ''supply'' will enable cavities to be used for return air, as intended and allowed by the IECC. (Clayton Homes, No. 185 at p. 4) DOE agrees with commenters that return air plenums should not be included in the requirement because they are free-flowing and generally not ducted. Therefore, DOE is proposing to state the return air plenums are not included.

DOE also received a comment on higher performing duct systems. WSU Energy Program commented that some manufacturers are looking toward higher performing duct systems than the minimum standards, and there is no incentive for manufacturers to use these better performing systems (*e.g.,* ductless mini-split heat pumps, and other HVAC systems without a central duct system). It also commented that there could be a prescriptive requirement or alternative option for a manufacturer willing to redesign its manufactured homes so that the supply ducts would be within the thermal envelope. (WSU Energy Program, Public Meeting Transcript, No. 148 at p. 60) As noted, DOE has based its proposed energy conservation standards for manufactured homes on the most recent IECC, as directed by EISA. (42 U.S.C. 17071(b)(1)) DOE emphasizes that the energy conservation standards proposed in this SNOPR are minimum standards, but this does not prohibit manufacturers from employing more efficient measures.

NEEA recommended that the standard include specifics on air leakage testing on ducts to be performed, and that duct leakage be tested in the factory. (NEEA, No. 190 at p. 2) As discussed previously, DOE is not addressing a test procedure in this rulemaking.

DOE also reviewed the updates to section R403.3.4 of the 2021 IECC (relative to the 2015 IECC reviewed by the MH Working Group) as it relates to duct sealing and leakage. As previously discussed, DOE is not proposing any testing provisions at this time. As it relates to duct leakage requirements, DOE notes that section R403.3.6 of the 2021 IECC was updated to require that for ducts and air handlers that are located entirely within building thermal envelope, the total leakage would be less than or equal to 8 cfm per 100 square feet of conditioned floor area. For manufactured homes, DOE notes that it is not always the case that ducts and air handlers are located entirely within the building thermal envelope. Accordingly, for this rulemaking, DOE continues to propose the MH Working Group recommendation that total air leakage of duct systems is to be less than or equal to 4 cfm per 100 square feet of conditioned floor area under a post-construction test.

DOE requests comment on the proposal to require that total air leakage of duct systems for all manufactured homes is to be less than or equal to 4 cfm per 100 square feet of conditioned floor area.

b. Proposed § 460.202 Thermostats and Controls

Consistent with the June 2016 NOPR, DOE proposes including specifications for thermostats in § 460.202(a) of the regulatory test based on the IECC. Section R403.1 of the 2015 and 2021 IECC specifies that at least one thermostat shall be provided for each separate heating and cooling system. DOE also proposes specifications for programmable thermostats in § 460.202(b), based on section R403.1.1 of the 2015 and 2021 IECC. Section R403.1.1 of the 2015 and 2021 IECC also specifies that the thermostat controlling the primary heating or cooling system must be capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day. In addition, consistent with the June 2016 NOPR, DOE proposes to include in § 460.202(c) specifications for heat pumps having supplementary heat, based on section R403.1.2 of the 2015 and 2021 IECC.

The following paragraphs discuss comments DOE received regarding the thermostat and controls requirements proposed in the June 2016 NOPR, and any other corresponding proposed changes to the June 2016 NOPR requirements based on comments received, or updates to the 2021 IECC.

Regarding thermostat control, NEEA recommended that the final rule be explicit that the electric resistance lockout in central heat pump systems when the outdoor air temperature is greater than 40 °F. (NEEA, No. 190 at p. 3). While section R403.1.2 of the 2015 and the 2021 IECC provides requirements for the shutoff of heat pumps having supplementary electric-resistance heat under certain conditions, the 2015 and the 2021 IECC do not provide any temperature specifications for this shutoff. Therefore, DOE did not consider these requirements in the proposed energy conservation standards.

DOE also reviewed the updates to sections R403.1 of the 2021 IECC (relative to the 2015 IECC reviewed by the MH Working Group) as it relates to thermostats and controls. DOE notes that section R403.1 is no longer identified as ''mandatory'' in the 2021 IECC. DOE's understanding of this update is that no technical changes were intended, rather the removal of the label ''mandatory'' was only to make the IECC more understandable and easier to use because the label ''mandatory'' was not used consistently in the IECC. The 2021 IECC prescriptive compliance option application described in section R401.2.1 continues to require compliance with section R403.1, regardless of whether the label ''mandatory'' is included in that section. Therefore, DOE preliminarily concludes this update is not a substantive change. In addition, DOE observed that the programmable thermostat requirements were updated to allow for maintaining different temperature set point at different days of the week in addition to

[36] Duct losses can account for more than 30 percent of energy consumption for space conditioning, so ductless heating and cooling systems prevent energy losses that can occur via ductwork (*http://energy.gov/energysaver/ductless-mini-split-air-conditioners*).

at different times of day. For this SNOPR, DOE proposes to continue to include thermostat and controls requirements, as recommended by the MH working group. In addition, DOE proposes to include the updated requirements of ''different days of the week,'' consistent with the 2021 IECC.

DOE requests comment on DOE's interpretation of R403.1 and the proposed updates to the thermostat and controls requirements. In addition, DOE requests comments on whether there are any of the 2021 IECC updates relevant to manufactured housing that should be considered as part of this rulemaking.

c. Proposed § 460.203 Service Hot Water

Consistent with the June 2016 NOPR, DOE proposes to require in § 460.203(a) that manufacturers install service water heating systems according to the service water heating system manufacturer's installation instructions. As proposed, § 460.203 would apply to any service water heating system installed by a manufacturer. In addition, § 460.203 would require manufacturers to provide maintenance instructions for the service water heating system with the manufactured home. These requirements would promote the correct installation and maintenance of service water heating equipment and help to ensure that such equipment performs at its intended level of efficiency.

Further, DOE proposes that § 460.203(b) would require any automatic and manual controls, temperature sensors, and pumps associated with service water heating systems to be similarly accessible. This requirement would ensure that homeowners would have adequate control over service water heating equipment in order to achieve the intended level of efficiency contemplated in 10 CFR part 460. This proposal was consistent with the recommendation of the MH working group. Term Sheet, No. 107 at p. 1.

DOE also proposes specifications for heated water circulation systems in § 460.203(c) based on section R403.5.1.1 of the 2015 and 2021 IECC. The specifications proposed included: (1) Requiring heated water circulation systems be provided with a circulation pump, and that the system return pipe be a dedicated return pipe or cold water supply pipe; (2) prohibiting gravity and thermosyphon circulation systems; (3) requiring that controls for heated water circulation system pumps identify a demand for hot water within the home when starting the pump; and (4) requiring the controls to automatically turn off the pump when the water in the circulation loop is at the desired temperature and when there is no demand for hot water.

Finally, DOE also proposes that all hot water pipes outside conditioned space be required to be insulated to at least *R*-3, and that all hot water pipes from a water heater to a distribution manifold be required to be insulated to at least *R*-3. These requirements are consistent with the recommendations of the MH working group. Term Sheet, No. 107 at p. 6.

The following paragraphs discuss comments DOE received regarding the service hot water requirements proposed in the June 2016 NOPR, and any other corresponding proposed changes to the June 2016 NOPR requirements based on comments received, or updates to the 2021 IECC.

NEEA recommended that pipe insulation be required on the hot water main branch and locations where the insulation is not in direct contact with the pipe or underfloor. (NEEA, No. 190 at p. 3) WSU Energy Program recommended that all hot water pipes be insulated. (WSU Energy Program, Public Meeting Transcript, No. 148 at p. 63) Taking the opposite viewpoint, Cavco commented that there is minimal to no energy savings from insulating pipes inside the conditioned space. (Cavco, Public Meeting Transcript, No. 148 at p. 66)

DOE's proposal of requiring a minimum *R*-value for all hot water pipes outside conditioned space, and from a service hot water system to a distribution manifold, was based on the 2015 IECC, and is consistent with the 2021 IECC. Term Sheet, No. 107 at p. 6. Therefore, DOE continues to propose the hot water pipe insulation requirement from the June 2016 NOPR. DOE notes that its energy conservation standards do not prohibit manufacturers from employing additional insulation beyond DOE's requirements.

DOE also reviewed the updates to sections R403.5 of the 2021 IECC (relative to the 2015 IECC reviewed by the MH Working Group) as it relates to service hot water systems. DOE notes that section R403.5 is no longer identified as ''mandatory'' in the 2021 IECC. Similar to R403.1 of the 2021 IECC, DOE's understanding of this update is that no technical changes were intended, rather the removal of the label ''mandatory'' was only to make the IECC more understandable and easier to use because the label ''mandatory'' was not used consistently in the IECC. Therefore, DOE preliminarily concludes this update is not a substantive change. In addition, DOE observed the additional requirement that the controls for circulating hot water system shall limit the temperature of the water entering the cold water piping to not greater than 104 °F (40 °C). For this SNOPR, DOE proposes to continue to include service hot water systems requirements, as recommended by the MH working group. In addition, DOE understands that the temperature limitation is not directly applicable to manufactured homes and therefore DOE is not proposing to incorporate in this SNOPR.

DOE requests comment on DOE's interpretation of R403.5 and the proposed updates to the service hot water requirements. In addition, DOE requests comments on whether there are any of the 2021 IECC updates relevant to manufactured housing that should be considered as part of this rulemaking. Specifically, DOE requests comment on whether the circulating hot water system temperature limit should be included as a requirement.

d. Proposed § 460.204 Mechanical Ventilation Fan Efficacy

DOE proposes mechanical ventilation fan efficacy requirements in proposed Table 460.204 based on Table R403.6.2 of the 2021 IECC, which provides requirements for mechanical ventilation system fan efficacy.

DOE received one comment on the June 2016 NOPR regarding mechanical fan efficacy. NEEA commented that the fan efficacy requirement is not as high as it could be, especially with bathroom utility fans, but did not provide a suggested efficacy level. (NEEA, Public Meeting Transcript, No. 148 at p. 64) The mechanical efficacy requirements being proposed in this SNOPR are based on the 2021 IECC. However, DOE emphasizes that it is proposing energy conservation standards established as minimum standards. The requirements as proposed would not prohibit manufacturers from employing more efficient measures.

DOE also reviewed the updates to section R403.6 of the 2021 IECC (relative to the 2015 IECC reviewed by the MH Working Group) as it relates to mechanical ventilation. The 2021 IECC includes new mandatory requirements for IECC climate zones 7 and 8, where dwelling units must be provided with a heat or energy recovery ventilation, and the system must be balanced with a minimum sensible heat recovery efficiency of 65 percent at 32 °F (0 °C) at a flow greater than or equal to the design flow. Further, Table R403.6.2 of 2021 IECC updates the mechanical fan efficacy requirements to include new minimum efficacy requirements for heat recovery ventilators (HRV) and energy recovery ventilators (ERV), and air

handlers that are integrated to tested and listed HVAC equipment, in addition to more stringent minimum efficacy requirements for in-line supply or exhaust fans, other exhaust fans (with separate requirements for fans having a minimum airflow rate of <90 CFM and ≥90 CFM). Finally, DOE notes that the 2021 IECC no longer includes the requirement that where mechanical ventilation fans are integral to tested and listed HVAC equipment, they shall be powered by an electronically commutated motor.

As discussed in section III.E.2.b, ERV and HRV fans can be applicable to manufactured housing. DOE notes that per the 2021 IECC, these requirements would only be applicable to homes in IECC climate zones 7 and 8, which would translate to manufactured homes in HUD zone 3 only, and about 8 percent shipments within the HUD zone. At a primary cost of $1,500 (based on the analysis performed in support of the BECP [37]), the incremental cost for single-section manufactured homes would be as high as $6,159 (see Table I.3 for the purchase price increase). Mandatory requirements for ERV and HRV were not considered by the MH working group and DOE has not yet determined whether this requirement would be cost-effective in manufactured homes.

Regarding the updates to minimum efficacy requirements, this SNOPR proposes to include all requirements except the efficacy requirements for air handlers that are integrated to tested and listed HVAC equipment. This SNOPR is not proposing requirements for appliances and equipment that are regulated pursuant to the statutory scheme in EPCA. Further, DOE proposes to remove the requirement that mechanical fans that are integral to HVAC equipment must be powered by an electronically commutated motor, in line with the 2021 IECC. DOE is also clarifying that the mechanical ventilation fan efficacy requirements would not apply to furnace fans, which are regulated under EPCA.[38] To the extent that a mechanical ventilation fan that is integral to tested and listed HVAC equipment is a furnace fan as defined in 10 CFR 430.2, the furnace fan would be excluded from the proposed efficiency and motor requirements in § 460.204.

In this SNOPR, DOE is also considering energy efficiency measures to reduce uncontrolled air infiltration and air exchange associated with leaks in the air distribution ductwork for the central heating and cooling system, as well as measures that would reduce the energy consumption of mechanical ventilation equipment that is required in the HUD Code.[39] The proposal considers a continuously-operated whole-house exhaust fan. Alternate ventilation approaches include a central fan integrated supply system (in which outdoor air is supplied into the return side of the central heating and cooling system air handler fan by negative pressure whenever the central fan operates for heating/cooling or ventilation); and a heat-recovery ventilation (HRV) system, which is required for certain (colder) climate zones in the 2021 IECC. Various operating schedules could be considered for each type of ventilation equipment.

In addition, DOE is considering measures to mitigate potential adverse impacts to indoor air quality that could arise from the proposal. Considerations include signage for ventilation controls related to energy efficiency, informing the manufactured homeowner of the benefits to indoor air quality of using the system (reinforcing HUD encouragement to operate it whenever the home is occupied per 24 CFR 3280.103(b)(6)), as well as measures that would mitigate indoor air quality impacts per other current ventilation standards (*e.g.,* ASHRAE Standard 62.2, Ventilation and Acceptable Indoor Air Quality in Residential Buildings). In accordance with the Section 413(b)(2) of EISA, such measures are being considered to take into consideration the design and factory construction techniques of manufactured homes and provide for alternative practices that result in net estimated energy consumption equal to or less than the specified standards, and to address previous comments received regarding potential impacts to indoor air quality.

DOE requests comment on the proposal to include the 2021 IECC fan efficacy standard requirements. DOE requests comment on whether any of the fan efficacy requirements are not applicable to manufactured homes.

DOE requests comment on whether the HRV and ERV provisions under 2021 IECC for site-built homes are applicable to manufactured homes and whether they would be cost-effective. Specifically, DOE requests comment on costs for the HRV and ERV requirements as it applies to manufactured homes in all climate zones.

DOE requests comment on the above ventilation strategies, including (but not limited to) cost, performance, noise, and any other important attributes that DOE should consider, including those related to mitigation measures. While the alternate ventilation approaches are not integrated into the analysis presented as part of this proposal, DOE is giving serious consideration as to whether it should incorporate one or more of these options as part of its final rule based on any additional data and public comments it receives.

e. Proposed § 460.205 Equipment Sizing

Consistent with the June 2016 NOPR, DOE proposes specifications for equipment sizing in § 460.205 of the regulatory text, based on section R403.7 of the 2015 and 2021 IECC, which sets forth specifications on the appropriate sizing of heating and cooling equipment within a manufactured home. This section of the 2015 and 2021 IECC requires the use of ACCA Manual S to select appropriately sized heating and cooling equipment based on building loads calculated using ACCA Manual J. The MH working group recommended the inclusion of this specification in the proposed rule. Term Sheet, No. 107 at p. 1.

DOE received several comments on the June 2016 NOPR regarding equipment sizing. ACCA commented that while HVAC manufacturers are producing highly efficient products that exceed DOE's regulatory demands, DOE does not require MH manufacturers to follow the minimum installation design standards that HVAC manufacturers recommend. ACCA asserted that as a result, HVAC systems are significantly less efficient and have shorter lifespans due to incorrect installation. (ACCA, No. 159 at p. 1) ACCA also commented that if DOE educated and incentivized homeowners to demand HVAC systems be installed to industry recommended standards by trained technicians, DOE could promote energy savings. (ACCA, No. 159 at p. 1) WSU Energy Program stated that DOE should consider including regulations regarding the installation of HVAC equipment. (WSU Energy Program, Public Meeting Transcript, No. 148 at p. 116)

DOE acknowledges that installation can affect the efficiency of HVAC

[37] Taylor, Zachary T. Residential Heat Recovery Ventilation. United States. *https://doi.org/10.2172/1488935.*

[38] ''Furnace fan'' is defined as an electrically-powered device used in a consumer product for the purpose of circulating air through ductwork. 10 CFR 430.2.

[39] Based on the HUD requirement for equipment that can provide at least 0.035 cubic feet per minute (cfm) per square foot of floor area (or hourly average equivalent) and a minimum airflow of 50 cfm, HUD requires airflow of at least 50 cfm for any unit up to 1429 square feet, *i.e.,* for all single-wide MH, and 55 cfm for a typical 1570 square foot double-wide unit.

equipment and that HVAC equipment may be installed after a home is manufactured (*i.e.,* at the point of installation). As previously discussed, this rulemaking addresses energy efficiency standards for manufactured housing. To the extent that issues arise in the installation of HVAC equipment by the manufacturer related to proper sizing, § 460.205 addresses such concerns. In addition, HUD provisions in subpart H of 24 CFR part 3280 provide installation requirements for heating, cooling, and fuel burning systems.

DOE did not receive any other comments regarding equipment sizing. In addition, section R403.7 of the 2021 IECC provides no updates to the equipment sizing and efficiency rating requirements.

4. Remaining Comments Regarding the Energy Conservation Standard Requirements

DOE also received numerous other comments that were not specific to the preceding sections or that could not be placed in only one of the preceding sections. Advanced Energy commented that, given the negative health effects of carbon monoxide exposure, carbon monoxide detection should be added to the proposed rule, similar to section 915 of the 2015 International Building Code. (Advanced Energy, No. 189 at p. 1) EISA provides DOE with the authority to regulate energy conservation in manufactured housing. (42 U.S.C. 17071(a)) Because the installation of a carbon monoxide detector is a health and safety matter as opposed to an energy conservation matter, DOE has not proposed this requirement in the SNOPR.

ACC FSC stated that air-permeable insulation without the proper vapor retarder will cause condensation problems and that reducing air leakage and increasing insulation in homes will increase the possibility of condensation unless the proper materials are specified. (ACC FSC, No. 186 at p. 1) DOE is not proposing specifications for condensation control and vapor retarders because condensation control is not an energy conservation measure. The HUD Code, however, includes specifications for condensation control and installation of vapor retarders at 24 CFR 3280.504. DOE's proposed energy conservation standard would not prevent manufacturers from meeting the condensation and vapor retarder requirements established by HUD. This SNOPR, if made final, would not prevent or impede manufacturers from selecting construction materials, assembly methods, and designs that prevent the concerns raised by ACC FSC.

VEIC stated that high-tier and middle-tier efficiency standards for HVAC, domestic hot water, lighting, and appliances should be included as requirements for certification. (VEIC, No. 187 at p. 2) NEEA commented that DOE should include the following energy savings elements in future revisions to the energy conservation standard: Lighting, appliances, domestic hot water efficiency, and HVAC efficiency. (NEEA, No. 190 at p. 4) ACEEE noted that section R404.1 of the 2015 IECC requires that 75 percent of lighting be high-efficacy lamps. It commented that this yields significant additional cost-effective savings over the federal lighting standards. ACEEE urged DOE to include this provision in the standard. (ACEEE, No. 178 at p. 2)

DOE is not proposing energy conservation standards for HVAC, water heaters, lighting, and appliances. As discussed, the energy efficiency of those products is specifically governed by the comprehensive Appliance Standards program established under EPCA. (42 U.S.C. 6291–6317) However, manufacturers would not be prohibited from installing more efficient products and appliances, as long as the energy conservation standards are met. DOE also invites parties interested in energy conservation standards for appliances to comment on the rulemakings associated with those products.[40]

VEIC stated that the proposed rule should include requirements for insulation and air barrier installation training, quality assurance oversight, commissioning, and field performance testing. (VEIC, No. 187 at p. 2) As discussed, EISA directs DOE to establish energy conservation standards for manufactured housing. While DOE is proposing regulations, DOE's Building America Solution Center[41] provides training materials for construction generally, including on topics applicable to manufactured homes. In terms of enforcement and performance testing, DOE will address compliance and enforcement provisions in a separate rulemaking.

Modular Lifestyles and VEIC both offered comments regarding the benefits of zero energy homes. VEIC commented that an alternative to manufactured homes is to replace them with zero energy modular homes. (VEIC, No. 187 at p. 2). Modular Lifestyle gave information regarding their NetZero manufactured home, built in Ojai, California. (Modular Lifestyle, No. 141 at p. 2) DOE acknowledges that there are homes in the market that are already at the top end of energy efficiency. This SNOPR proposes minimum energy efficiency requirements applicable to all manufactured homes, and nothing in this SNOPR would prohibit manufacturers from producing models that exceed these requirements.

WECC stated that the manufactured home's crawl area temperature is warmer than outside ambient temperature during winter, and if the ambient air temperature is used for calculations, then the associated savings are overestimated. (WECC, No. 150 at p. 2) The manufactured homes modeled in the energy simulations in the analyses conducted for the June 2016 NOPR and in this SNOPR are modeled with a vented crawl space below the floors. Thus, the floors are not exposed to ambient air, but to air temperatures within the vented crawlspace (which fall between the ambient outdoor air temperature and the conditioned indoor air temperature); this prevents the energy savings from being overestimated.

F. Crosswalk of Standards With the HUD Code

DOE compared the energy conservation standards proposed in this SNOPR to the construction and safety standards for manufactured homes established by HUD to confirm that compliance with the proposed requirements would not prohibit a manufacturer from complying with the HUD Code.

Table III.15 lists the energy conservation standards and discusses their relationship to similar requirements contained in the HUD Code.

[40] *http://energy.gov/eere/buildings/standards-and-test-procedures.*

[41] *https://basc.pnnl.gov/.*

TABLE III.15—CROSSWALK OF SNOPR STANDARDS WITH THE HUD CODE

DOE SNOPR (10 CFR part 460)	HUD Code (24 CFR part 3280)	Notes
Section 460.101 would establish three climate zones, in line with HUD, delineated by state boundaries. The DOE SNOPR proposes different U_o performance requirements for single- and multi-section homes.	Section 3280.506 establishes three zones delineated by state boundaries. The HUD Code establishes one standard for homes of all sizes within a zone.	
Section 460.102(a) would establish building thermal envelope prescriptive and performance compliance requirements.	Section 3280.506 establishes a performance approach.	Both DOE and HUD performance requirements are based on maximum Uo requirement per zone for the building thermal envelope. DOE, however, would establish separate Uo requirements per climate zone for single- and multi-section homes, whereas HUD only establishes one Uo requirement, regardless of home size, per zone.
Section 460.102(b) would set forth the prescriptive option for compliance with the building thermal envelope requirements.	Section 3280.506 establishes a performance approach only.	The Battelle method is used to determine performance standards (in terms of *Uo*) from prescriptive standards. The DOE proposed performance standards would be prescribed in § 460.102(c)(1).
Section 460.102(b)(2) would establish a minimum truss heel height.	No corresponding requirement.	
Section 460.102(b)(3) would establish an acceptable batt and blanket insulation combination for compliance with the floor insulation requirement in climate zone 3.	No corresponding requirement.	
Section 460.102(b)(4) would identify certain skylights not subject to SHGC requirements.	No corresponding requirements.	
Section 460.102(b)(5) would establish *U*-factor alternatives for the *R*-value requirements under section 460.102(b)(1).	No corresponding requirements.	
Section 460.102(c)(1) would establish maximum building thermal envelope U_o requirements.	Section 3280.506(a) establishes maximum building thermal envelope U_o requirements by zone.	DOE's proposed maximum building thermal envelope U_o requirements are lower than the corresponding maximum U_o requirements under § 3280.506(a). Compliance with the DOE proposed U_o requirements achieve compliance with the U_o requirements under the HUD Code.
Section 460.102(c)(2) would establish maximum area-weighted vertical fenestration *U*-factor requirements in climate zones 2 and 3.	No corresponding requirements.	
Section 460.102(c)(3) would establish maximum area-weighted average skylight *U*-factor requirements in climate zones 2 and 3.	No corresponding requirements.	
Section 460.102(c)(4) would authorize windows, skylights and doors containing more than 50 percent glazing by area to satisfy the SHGC requirements of § 460.102(a) on the basis of an area-weighted average.	No corresponding requirements.	
Section 460.102(e)(1) would establish a method of determining U_o using the Overall *U*-values and Heating/Cooling Loads—Manufactured Homes, or the Battelle method.	Section 3280.508(a) and (b) reference the Overall *U*-values and Heating/Cooling Loads—Manufactured Homes, or the Battelle method.	
Section 460.103 would require insulating materials to be installed according to the manufacturer installation instructions and the prescriptive requirements of Table 460.103.	No corresponding requirements.	
Section 460.103 would establish requirements for the installation of batt, blanket, loose fill, and sprayed insulation materials.	No corresponding requirements.	
Section 460.104 would require manufactured homes to be sealed against air leakage at all joints, seams, and penetrations associated with the building thermal envelope in accordance with the manufacturer's installation instructions and the requirements set forth in Table 460.104.	Section 3280.505 establishes air sealing requirements of building thermal envelope penetrations and joints.	

TABLE III.15—CROSSWALK OF SNOPR STANDARDS WITH THE HUD CODE—Continued

DOE SNOPR (10 CFR part 460)	HUD Code (24 CFR part 3280)	Notes
Section 460.201(a) would require each manufactured home to be equipped with a duct system that must be sealed to limit total air leakage to less than or equal to 4 cfm per 100 square feet of floor area and specify that building framing cavities are not to be used as ducts or plenums when directly connected to mechanical systems.	No corresponding requirements.	
Section 460.202(a) would require at least one thermostat to be provided for each separate heating and cooling system installed by the manufacturer.	Section 3280.707(e) requires that each space heating, cooling, or combination heating and cooling system be provided with at least one adjustable automatic control for regulation of living space temperature.	Both DOE's proposed rule and the HUD Code require the installation of at least one thermostat that is capable of maintaining zone temperatures.
Section 460.202(b) would require that installed thermostats controlling the primary heating or cooling system be capable of maintaining different set temperatures at different times of day and different days of the week.	No corresponding requirements.	
Section 460.202(c) would require heat pumps with supplementary electric resistance heat to be provided with controls that, except during defrost, prevent supplemental heat operation when the pump compressor can meet the heating load.	Section 3280.714(a)(1)(ii) requires heat pumps to be certified to comply with ARI Standard 210/240–89, heat pumps with supplemental electrical resistance heat to be sized to provide by compression at least 60 percent of the calculated annual heating requirements of the manufactured home, and that a control be provided and set to prevent operation of supplemental electrical resistance heat at outdoor temperatures above 40 °F.	Both DOE's proposed rule and the HUD Code require heat pumps with supplemental electric resistance heat to prevent supplemental heat operation when the heat pump compressor can meet the heating load of the manufactured home.
Section 460.203(a) would establish requirements for the installation of service hot water systems.	No corresponding requirements.	
Section 460.203(b) would require any automatic and manual controls, temperature sensors, pumps associated with service hot water systems to be accessible.	No corresponding requirement.	
Section 460.203(c) would establish requirements for heated water circulation systems.	No corresponding requirements.	
Section 460.203(d) would establish requirement for the insulation of hot water pipes.	No corresponding requirements.	
Section 460.204 would establish requirements for mechanical ventilation system fan efficacy.	Section 3280.103(b) establishes whole-house ventilation requirements.	HUD requirements at § 3280.103(b) do not overlap with DOE's proposed rule. DOE's proposed requirement is for fan electrical efficiency, while HUD requirements specify minimum and maximum air flow rates.
Section 460.205 would establish requirements for heating and cooling equipment sizing.	No corresponding requirements.	

IV. Discussion and Results of the Economic Impact and Energy Savings

A. Economic Impacts on Individual Purchasers of Manufactured Homes

DOE conducts LCC and PBP analyses to evaluate the economic impacts on individual consumers of energy conservation standards for manufactured housing. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE uses the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of a manufactured home over the life of that home, consisting of total installed cost plus total operating costs. To compute the total operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product (or another specified period).
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient manufactured home through lower operating costs.

For the June 2016 NOPR, DOE used the LCC and PBP analyses developed during the MH working group negotiations to inform the development of the proposed rule based on the economic impacts on individual purchasers of manufactured homes. The LCC of a manufactured home refers to the total homeowner expense over the life of the manufactured home (30 years), consisting of purchase expenses (*e.g.,* loan or cash purchase) and operating costs (*e.g.,* energy costs). To compute the operating costs, DOE discounted future operating costs to the time of purchase and summed them over the 30-year lifetime of the home used for the purpose of analysis in this rulemaking. A 10-year LCC was also calculated to reflect the cost of ownership over the tenure of the first homebuyer. DOE calculated the PBP by dividing the incremental increase in purchase cost by the reduction in

average annual operating costs that would result from this rule.

In the June 2016 NOPR, the LCC analysis demonstrated that increased purchase prices due to the proposed energy efficiency measures (''EEMs'') would be offset by the benefits manufactured home homeowners would experience via operating cost savings. DOE evaluated these projected impacts on individual manufactured home homeowners by analyzing the potential impacts to LCC, energy savings, and purchase price of manufactured homes under the proposed rule. For the purpose of the June 2016 NOPR economic analysis, DOE compared the purchase price and LCC for manufactured homes built in accordance with the proposed rule relative to a baseline manufactured home built in compliance with the minimum requirements of the HUD Code. Specifically, DOE performed energy simulations on manufactured homes located in 19 geographically diverse locations across the United States, accounting for five common heating fuel/system types and two typical industry sizes of manufactured homes (single-section and double-section manufactured homes).[42] DOE received a number of comments regarding several aspects of the economic impacts on individual consumers described in the June 2016 NOPR. DOE also received comments pertaining to the methodology and assumptions used in the economic analysis conducted for the June 2016 NOPR. For this SNOPR, DOE conducted similar LCC and PBP analyses for the requirements as proposed in this document. The changes made from the analyses performed for the June 2016 NOPR are discussed in the following sections, including any changes that DOE has made in the methodology and assumptions, along with a discussion of the submitted comments.

1. Discussion of Comments and Analysis Updates

a. Analysis Period for LCC

In the June 2016 NOPR, DOE analyzed a 10-year LCC to represent the first ownership period and cost of the first homebuyer, and a 30-year LCC to represent the lifetime of the manufactured home and associated costs, which would represent the total costs and benefits for all occupants over the life of the manufactured home. The 30-year lifetime was selected as a typical length that EEMs last in the aggregate. The monetary value of these EEMs was considered to depreciate linearly over the 30-year lifetime. At the end of this 30-year lifetime, the EEMs would have no monetary value.

DOE received comments on the June 2016 NOPR discussing the time period that a consumer owns a manufactured home. COBA commented that in its experience, consumers generally stay in their manufactured home 2 to 3 years. (COBA, Public Meeting Transcript, No. 148 at p. 97) SBRA also stated that on average, the first homeowner of a manufactured home sells their home within 7 years of purchase and is unlikely to realize any incremental value from the EEMs. (SBRA, No. 163 at p. 2) MHI stated that manufactured homes change ownership within 7 to 10 years. (MHI, No. 182 at p. 6)

DOE appreciates the information provided by these organizations regarding the potential ownership period of manufactured homes. DOE researched the ownership period of manufactured home homeowners and found that a study by the Consumer Financial Protection Bureau (CFPB) indicated an average ownership period of 13 years. This study also found that based on 50,000 manufactured homesites in 161 communities in 2014, manufactured homes resided in their community for an average of 40 years, an indication of manufactured home lifetime.[43] A 2012 study conducted by Foremost Insurance Group found that 40 percent of manufactured home homeowners do not anticipate ever selling their manufactured home.[44] Furthermore, a 2021 manufactured housing industry overview fact sheet developed by MHI suggests that 62 percent of all homeowners anticipate living in their homes for more than 10 years and that 38 percent of homeowners don't anticipate ever selling their home.[45] Therefore, there are many factors that may affect the duration of time that a manufactured home remains under a given homeowner. For purposes of this analysis, DOE continues to rely on the 10-year time period as a reasonable representation of the ownership period of the first homebuyer for the overall manufactured housing market as it is between the values suggested COBA and SBRA and the high value reported by the CFPB, and consistent with the value reported by MHI.

Additionally, due to concerns about incremental cost for low-income families, DOE is proposing the Tier 1 standard for manufactured homes with manufacturer's retail list price of $55,000 or less. As discussed below, manufactured homes complying with the Tier 1 standard would have an average PBP of 3.7 and 3.5 years for single-section and multi-section homes, respectively, while achieving a positive cash flow in the first year of occupancy. Further discussion of these concerns is addressed in section IV.A.1.i.

MHARR commented that the PBP found in the analysis will be longer once the costs of compliance are included and passed onto the consumer (MHARR, No. 154 at p. 27). As discussed above, DOE is not addressing a compliance, certification, and enforcement program in this rulemaking, but may do so in the future. However, DOE will consider comments and information on compliance and enforcement matters provided by stakeholders, including costs.

DOE also received comments regarding the longer term LCC period (*i.e.,* 30 years). MHI expressed concern with using a 30-year time period to justify energy efficiency investments because most manufactured homes change ownership within 7 to 10 years and may not see the savings from the increased upfront cost. (MHI, No. 182 at p. 6) GWU stated that the 10-year LCC analysis represents a much more accurate reflection of the manufactured housing consumers' benefits rather than the 30-year LCC analysis because the 30-year analysis is not representative of the timespan that owners live in manufactured homes. (GWU, No. 175 at pp. 3–4) Conversely, VEIC commented that the 30-year LCC should be used instead of the 10-year LCC analysis because the 30 years is more representative of the timespan in which the manufactured home will be in service. (VEIC, No. 187 at p. 2)

EISA directs DOE to base the standards on the most recent version of the IECC considering, among other things, the total life-cycle construction and operating costs. (42 U.S.C. 17071(b)(1)) As such, DOE is considering the total life-cycle costs and operating costs of the standards proposed in this document.

As discussed previously, DOE determined that the average tenure of a manufactured homeowner is 13 years, and the lifetime of a home can average 40 years. However, DOE understands that there are constraints in the secondary market for manufactured

[42] Double-section manufactured homes were used to represent all multi-section homes. Double-section manufactured homes have the largest market share by shipments (about 98 percent) of all multi-section homes.

[43] Consumer Financial Protection Bureau. Manufactured-housing Consumer Finance in the United States. September 2014.

[44] Foremost Insurance Group. 2012 Mobile Home Market Facts.

[45] Manufactured Housing Institute. 2021 Manufactured Housing Facts: Industry Overview.

homes, as outlined in the 2014 CFPB report. Accordingly, DOE performed the 10-year analysis to determine the economic impacts of the proposed rule on the first homeowner. DOE also performed the 30-year analysis to determine the economic impacts, as well as the cumulative benefits over the lifetime of the manufactured home. In this SNOPR, DOE continues to use both the 10-year and 30-year LCC analyses from the June 2016 NOPR.

DOE received several comments regarding PBP results relating to the LCC and homeownership periods. In the June 2016 NOPR, DOE reported national average PBP values of 7.1 years for single-section homes and 6.9 for multi-section homes. MHARR stated that the projected consumer PBP is longer than consumers live in a particular manufactured home. (MHARR, No. 154 at p. 27) AGA and APGA commented that the PBP should be less than 5 years for the resident to truly gain a benefit. (AGA & APGA, No. 172 at p. 1)

As previously stated, a study by the CFPB indicated that the average ownership period of 13 years. DOE assumes a 10-year ownership period for the first owner of the manufactured home in its 10-year LCC analysis. Table IV.17, Table IV.10, and Table IV.11 provide the results for DOE's simple PBP analysis for the rule as proposed in this SNOPR, broken out by tiers and climate zone for single-section and multi-section homes. These resulting simple PBPs indicate that the first owner of a Tier 1 manufactured home would gain a net benefit and would realize positive net savings from the proposed energy standards. The simple PBP of a Tier 1 standard manufactured home is 3.7 years for single-section and 3.5 years for multi-section homes, and the simple PBP of a Tier 2 standard manufactured home is 10.9 years for single-section and 10.6 years for multi-section. Although the simple PBPs for Tier 2 homes exceed the 10-year ownership period for the first owner, they still fall within the 13-year average ownership period. In addition, DOE considered a sensitivity analysis for an alternative insulation requirement for Tier 2 homes, R–21, wherein the PBP is 8.5 for single-section and 8.9 years for multi-section homes.

b. Interest Rate

In the June 2016 NOPR LCC analysis, DOE estimated an interest rate of 5 percent for consumers using real estate loans, 9 percent for consumers using chattel (personal property) loans, and 5 percent for consumers paying for the manufactured home outright with cash. These were conservative figures based on ranges provided by the MH working group. According to data provided by the MH working group, real estate loans typically have interest rates ranging from approximately 4.0 to 4.3 percent and chattel loans typically have interest rates ranging from 6.3 percent to 9.5 percent. EERE–2009–BT–BC–0021–0074. In the June 2016 NOPR analysis, DOE used a 5-percent real estate loan interest rate and a 9-percent chattel loan interest rate as a conservative estimate.

Regarding the different interest rates used for the LCC analysis, GWU commented that interest rates on chattel loans range from 7 percent to 13 percent and that DOE's use of 9 percent may be too low. (GWU, No. 175 at p. 5) DOE conducted research on interest rates for real estate and chattel loans to confirm the discount rates determined by the MH working group. DOE's research showed that chattel loans often range from 0.5 to 5 percent more than real estate loans according to a CFPB study released in September 2014.[46] This difference between real estate loan and chattel loan rates supports DOE's assumptions from the June 2016 NOPR, which used a chattel loan rate of 9 percent, which is 4 percent higher than the real estate loan interest rate of 5 percent. DOE did not find a more recent CFPB study of the same. For the SNOPR LCC analysis, DOE maintains the interest rate values used in the June 2016 NOPR.

c. Discount Rate for LCC

In the June 2016 NOPR LCC analysis, DOE used a discount rate of 5 percent for consumers using real estate loans, 9 percent for consumers using chattel (personal property) loans, and 5 percent for consumers paying for the manufactured home outright with cash. The discount rate was set equal to the loan interest rate because this rate represents a primary ''investment'' available to a homeowner (that is, the homeowner can pay down the loan early, avoiding interest payments at the rate associated with the loan). Therefore, DOE discounted cash flows in the LCC analysis using a discount rate equal to this alternative investment rate (the loan interest rate).

Regarding the discount rates used in the June 2016 NOPR LCC analysis, ACEEE supported the June 2016 NOPR, stating that an LCC analysis using a discount rate similar to the rate low-income homeowners would pay for a mortgage should be reasonable. (ACEEE, No. 178 at p. 3) Alternatively, GWU stated it also conducted its own LCC analysis based on discount rates of 5, 9, and 13 percent. GWU's LCC results using these inputs found that consumers in certain cities are anticipated to bear net costs and summing the percentage of national shipments of each of these cities would result in 28.5 percent of all shipments of single-section manufactured homes and 35.1 percent of all shipments of multi-section manufactured homes anticipated to bear net costs. GWU stated that these studies indicate that DOE's proposed rule does not fit the statutory cost-effectiveness requirement given in EISA. (GWU, No. 175 at p. 6)

DOE appreciates ACEEE's comment supporting the June 2016 NOPR LCC discount rates. Regarding the LCC analysis conducted by GWU, DOE's understanding is that the results were based on a discount rate of 13 percent, which was the upper bound of the 7-percent to 13-percent range of chattel rates GWU presented and is higher than DOE's estimate of 9 percent. In addition, it is not clear what analysis period GWU relied on (DOE uses 10 and 30 years). However, the discount rate values used by GWU diminish the value of the benefits of reduced energy use relative to the values used in the June 2016 NOPR. As described previously, the June 2016 NOPR analysis was based on the real estate and chattel loan rates of 5 percent and 9 percent, respectively, as well as a 30-year analysis period reflecting the lifespan of a manufactured home. For the reasons already discussed, for this SNOPR, DOE continues to find these values more appropriate than those used by GWU. Using the discount rates equal to the corresponding interest rate, in this SNOPR, DOE's 30-year and 10-year analyses indicate that the national average results show positive LCC savings compared to the baseline.[47]

d. Down Payment and Loan Term

In the June 2016 NOPR, DOE assumed a down payment of 20 percent for both real estate and chattel loans. DOE received several comments on the June 2016 NOPR suggesting alternatives to the down payment assumptions used in the NOPR.

[46] Consumer Financial Protection Bureau. Manufactured-housing Consumer Finance in the United States. September 2014. Available at: *https://www.consumerfinance.gov/data-research/research-reports/manufactured-housing-consumeR-finance-in-the-U-s/.*

[47] For Tier 1 standards, all cities (except for Miami in the 10-year analysis) indicate positive LCC savings. For Tier 2 standards, all cities in HUD climate zones 1 and 2 indicate positive LCC savings for 30-year and 10-year analyses. Certain cities in HUD climate zone 3, however, do not indicate positive LCC savings. Details can be found in chapter 8 and 9 of the SNOPR TSD.

MHI and COBA indicated that DOE may be overestimating the LCC savings by using a down payment assumption of 20 percent for chattel loans. According to MHI and COBA, chattel loan down payments are rarely 20 percent, and a more common range representative of the industry is 5–10 percent. (MHI, No. 182 at p. 6; COBA, Public Meeting Transcript, No. 148 at p. 92) After researching the matter, DOE tentatively agrees that a lower down payment assumption (relative to the June 2016 NOPR) is appropriate. MHI's ''Trends and Information About the Manufactured Housing Industry 2016'' indicates that down payments for all loans used for manufactured homes range from 10 to 20 percent.[48] Although some commenters stated that a 5 percent down payment can occur, a 5 percent down payment is below the lower boundary of what lenders accept for a chattel loan, as reported by MHI. DOE also notes that the impact of down payment percentage is limited in an LCC calculation because reductions in upfront down payment costs are mostly offset by increases in monthly principal and interest payments (and vice versa). Based on the comments and new information on typical down payments for chattel loans, for the SNOPR, DOE assumes a down payment of 10 percent for chattel loans and maintained a down payment of 20 percent for real estate loans.

Regarding the loan term for chattel loans, MHI recommended that DOE use an estimate of 10 to 15 years. (MHI, Public Meeting Transcript, No. 148 at p. 91; MHI, No. 182 at p. 7) In the June 2016 NOPR, DOE used a 15-year loan term for chattel loans for the LCC analysis based on suggestions from the MH working group. DOE's NOPR estimate of 15 years falls within the range recommended by MHI. No comments were received suggesting that the 15-year assumption was inappropriate. For the SNOPR, DOE maintains the chattel loan term of 15 years.

e. Resale Value of Manufactured Homes

DOE received several comments on the June 2016 NOPR regarding the resale value of manufactured homes and how that may affect the LCC analysis. GWU commented that DOE's LCC analysis did not take into account the difficulty in recouping high upfront costs via resale. It stated that secondhand buyers have difficulty obtaining adequate financing for resold manufactured homes because lenders often charge higher interest rates on used manufactured homes. (GWU, No. 175 at p. 3) Lippert Components and MHI also expressed concern that it will be unlikely that first-time homeowners will be able to recapture the cost of EEMs in the event of a resale. (Lippert Components, No. 152 at p. 1; MHI, No. 182 at p. 6) Conversely, WSU Energy Program commented that resale values of manufactured homes with energy efficiency measures are often higher than those without these measures. (WSU Energy Program, Public Meeting Transcript, No. 148 at p. 93) Further, WSU Energy Program stated that this higher resale value of the manufactured home must be considered when calculating payback period. (WSU Energy Program, Public Meeting Transcript, No. 148 at p. 93)

For the SNOPR, as with the June 2016 NOPR, DOE conducted the LCC analysis based on the total homeowner expense over the life of the manufactured home and operating costs. A 30-year lifetime was selected as a typical length that energy efficiency measures last in a manufactured home. In addition, DOE also performed a 10-year LCC analysis, which represents the cost of ownership over the tenure of the first homeowner. Both analyses assume that the incremental cost of the DOE-compliant home depreciates on a linear basis over the 30-year lifetime. Therefore, DOE's analysis assumes that not all of the incremental cost of EEMs is recouped at resale.

Increases in resale value can offset upfront costs when considering life cycle costs over a period of time. However, the PBP metric is a ''simple PBP'' based on dividing the incremental increase in purchase cost by the average annual savings in operating costs that would result from the rule. Therefore, resale value is not included in the PBP calculation. DOE maintains this methodology in the SNOPR, as the resale value of the home does not have any direct input into the calculation of a simple PBP.

f. Tax Rate

Property taxes vary widely within and among states. In the June 2016 NOPR, DOE assumed a property tax rate of 0.9 percent, which was agreed upon by the MH working group. DOE also separately determined the median tax rate and found that the 2013 American Housing (AHS) Survey for manufactured homes reported a $10 per $1,000 in home value, indicating a 1-percent tax rate.[49] The later AHS reports (2015, 2017 or 2019) did not provide an updated estimate; thus, DOE continues to consider the estimate from the 2013 AHS Survey. The reported AHS estimate substantiated the MH working group recommendation.

DOE received one comment regarding the property tax rate used in the June 2016 NOPR. COBA commented that the property tax rate data used in the June 2016 NOPR analysis for the LCC was incorrect, without further elaborating on a better estimate. (COBA, No. 158 at p. 3) As no alternative estimates were offered, for this SNOPR, DOE continues to assume a property tax rate of 0.9 percent based on the MH working group recommendation and the AHS Survey.

g. Incremental Cost

In the June 2016 NOPR, DOE arrived at the incremental cost to the consumer by calculating the difference in the EEM costs of DOE-compliant and minimally compliant HUD homes. These incremental costs correspond to the purchase prices seen by the homeowner, and thus account for manufacturer and retail markups. DOE used incremental component costs (retail costs) provided and agreed to by the MH working group. ASRAC Cost Analysis Data, EERE–2009–BT–BC–0021–0091.

Regarding the incremental costs, MHARR stated that the cost figures used for the June 2016 NOPR analysis were obtained primarily from large manufacturers, and therefore the cost is understated for smaller manufacturers who do not benefit from large volume supply orders. MHARR conducted a study based on higher supply costs associated with small manufacturers and concluded that the price increase will be $4,600 and $5,825 above the HUD Code for single- and multi-section manufactured homes, respectively. (MHARR, No. 154 at p. 30; MHARR, No. 143 at p. 4)

Conversely, NEEA and VEIC stated that the incremental costs found and used in DOE's analysis may be overstating the cost increases. NEEA commented that the real-world incremental costs would be lower than DOE estimates. NEEA cited data (from the Pacific Northwest region) that shows current incremental purchase prices for ENERGY STAR homes (which NEEA stated are more stringent than the proposed rule) are between $2,000 and $3,000 more than a manufactured home minimally compliant with the HUD

[48] Manufactured Housing Institute, Trends and Information about the Manufactured Housing Industry 2016. *https://www.manufacturedhousing.org/wp-content/uploads/2016/11/1836temp.pdf.*

[49] U.S. Census Bureau, American Housing Survey, 2013 *http://www.census.gov/programs-surveys/ahs/data.2013.html.*

Code. NEEA indicated that DOE's incremental costs do not incorporate economies of scale, good engineering practice, and improved technology, which would result (once all MH manufacturers meet the DOE standard) in much lower realized incremental costs. (NEEA, No. 190 at p. 4; NEEA, Public Meeting Transcript, No. 148 at p.72) VEIC commented that the estimated incremental costs are inflated. (VEIC, No. 187 at p. 2)

In the June 2016 NOPR, DOE used incremental component costs provided and agreed to by the MH working group. MHI stated that these costs represent small, medium, and large manufacturers, commenting that for the cost analysis conducted by MHI and SBRA, small, medium, and large manufacturers were all consulted during the MH working group process. (MHI, Public Meeting Transcript, No. 148 at p. 85) DOE analyzed MHARR's incremental costs and identified a number of differences in the inputs between DOE's and MHARR's calculations. Specifically, DOE found that for certain components, such as exterior floor insulation, MHARR's incremental costs were based on baseline thermal requirements that were different than what was used by the MH Working Group. In another case, MHARR's calculations also included costs for exterior doors. However, DOE expects no incremental cost associated with doors because the insulation level (*U*-factor) for a baseline home was assumed to already meet the *U*-factor requirement in the proposed rule. In addition, MHARR did not provide the sources for the costs identified. In summary, MHARR's comment provided insufficient detail to verify that the incremental costs corresponded to the same home construction parameters and the same EEMs as DOE used in its analysis. As a result of these inconsistencies, DOE did not revise the component incremental costs from the June 2016 NOPR based on the data provided by MHARR. Furthermore, DOE reviewed the 2020 RSMeans construction cost estimating software to corroborate the cost data used in the June 2016 NOPR and concluded that the estimates provided by the MH working group continues to remain mostly relevant. Therefore, for the SNOPR, DOE proposes to maintain the component incremental costs used in the June 2016 NOPR and established by the MH working group, as these values are representative of manufacturers of all sizes.

Regarding incremental cost impacts on retailers, MHARR stated that smaller retailers will feel the full brunt of the increased costs. (MHARR, No. 143 at p. 4) DOE notes that retailers will experience increased costs. However, DOE's analysis anticipates that the full incremental cost of the EEMs necessary to comply with the SNOPR will be passed through to the consumer, bypassing the manufacturer and retailer. While DOE agrees retailers (both large and small) will see higher prices when purchasing manufactured homes from MH manufacturers, these same manufactured homes will be sold at a correspondingly higher price to the consumer.

For this SNOPR, DOE updated the total incremental costs for the tiered standards—*i.e.,* Tier 1 energy efficiency requirements based on the set of energy efficiency measures that provide energy savings under at a set upfront incremental purchase price (*i.e.,* approximately $750) and Tier 2 energy efficiency requirements that specify more stringent building thermal envelope requirements. The proposed tiered approach addresses concerns regarding potential impacts of first-cost increases on price-sensitive, low-income purchasers of manufactured homes. Table I.1 and Table I.2 provide the updated total incremental costs, depending on the tiered standard being analyzed. Table I.3 provides the updated total incremental costs under the proposed untiered standard.

h. Reliability of the LCC

DOE received a comment regarding the overall reliability of the LCC analysis to capture potential savings related to the rulemaking. MHI stated that the LCC analysis is too uncertain to justify the projected upfront purchase price, and specifically stated that small errors in energy cost escalation rates can turn a long-term benefit into a long-term loss. (MHI, No. 182 at p. 6)

DOE understands that there may be uncertainties regarding the future prices of energy. In the June 2016 NOPR, the energy cost inputs used in the LCC analysis, including energy prices and their escalation rates, were based on the *Annual Energy Outlook 2015* (*AEO 2015*) and Short-Term Energy Outlook studies, prepared by the U.S. Energy Information Administration (''EIA''). The *AEO* presents long-term annual projections of energy supply, demand, and prices. The projections, focused on U.S. energy markets, are based on results from EIA's National Energy Modeling System (''NEMS''). NEMS enables EIA to make projections under internally consistent sets of assumptions. DOE believes these studies are the best current and future estimates of energy prices and escalation rates and uses these studies in support of all of its energy conservation standard rulemakings. In the SNOPR, DOE proposes to maintain the same source for establishing energy prices and escalation rates and updated the *AEO* source to the latest version at the time of the SNOPR analysis, which was *AEO 2020*.

Lastly, EISA requires that DOE establish energy conservation standards for manufactured housing with consideration of the cost-effectiveness as related to the purchase price and total life-cycle construction and operating costs generally. (42 U.S.C. 17071(b)(1)) As such, the LCC analysis in this SNOPR addresses this requirement by incorporating the total homeowner expense over the life of the manufactured home, consisting of purchase expenses (*e.g.,* loan or cash purchase) and operating costs (*e.g.,* energy costs).

i. Affordability

Consistent with concerns raised in DOE's consultation with HUD, commenters raised concerns regarding the impact of energy conservation standards on the affordability of manufactured homes. DOE received comments from organizations that stated that manufactured homes are an important aspect of unsubsidized affordable housing across the country and that the average income of a manufactured homeowner is half the national average. Commenters indicated that any changes in the cost of manufactured homes will price some consumers out of homeownership and expressed concern that the proposed rule did not offer any assistance to offset the predicted cost increase and resulting decrease in manufactured home production. (Pleasant Valley Homes, No. 153 at p. 1; Skyline Corporation, No. 165 at p. 1; Clayton Homes, No. 185 at p. 2; MHIM, No. 155 at p. 1; NMMHA, No. 157 at p. 1; MHIA, No. 161 at p. 1; MHISC, No. 191 at p. 1; OMHA, No. 166 at p. 1; MMHA, No. 170 at p. 2; AMHA, No. 173 at p. 2; PMHA, No. 164 at p. 1; Commodore Corporation, No. 195 at p. 1) Cavco commented that the industry must maintain affordability in order to increase home ownership and stated that if the cost to produce a home increases, the costs will be passed onto the consumer. They also expressed concern that the manufactured housing market has extended too much credit to homeowners. (Cavco, Public Meeting Transcript, No. 148 at p. 87) SBRA suggested that DOE analyze how this standard affects home ownership affordability for consumers once the

rule is implemented. (SBRA, Public Meeting Transcript, No. 148 at p. 19)

DOE recognizes the role of manufactured homes in the U.S. housing market and their ability to provide affordable housing. As already discussed in section II.B.4 and in several other sections in this document, concern over the initial first-cost impacts that the June 2016 NOPR energy efficiency requirements would have on low-income buyers led DOE to contemplate cost-effective approaches that would also mitigate first-cost impacts for purchasers at the lower end of the manufactured home price range, and to examine and propose the tiered-approach presented in this SNOPR. In consideration of the first-cost impacts and cost-effectiveness for low-income purchasers, the tiered approach would subject those manufactured homes with a manufacturer's retail list price of $55,000 or less (*i.e.,* Tier 1) to a set of energy efficiency measures that have an upfront incremental purchase price of approximately $750 (for a single-section home). Table I.1 provides the updated total incremental costs. Under the proposed tiered approach, manufactured homes with a manufacturer's retail list price greater than $55,000 (in real 2019$) (*i.e.,* Tier 2) would generally be subject to the same set of requirements as applicable to Tier 1 manufactured homes, but with more stringent *U*-factor and *R*-value requirements. The Tier 2 energy conservation standards are the same as those that would apply to all manufactured homes under the proposed untiered standard.

While both proposals presented in the SNOPR (*i.e.,* the tiered approach and the single set of standards) would result in incremental cost increases for manufactured homes that may be passed to the consumer, the full incremental cost is not paid by the consumer on the purchase date because consumers (particularly low-income consumers) purchase manufactured homes with a down payment and other financing (either through a personal property loan, often referred to as a ''chattel loan,'' or a real estate loan). A consumer would typically only pay a 10-percent down payment for a chattel loan, and the remainder of the incremental cost increase passed to the consumer would be spread through increases in payments throughout the loan term (15 to 30 years). DOE's current LCC analysis tentatively finds that these loan payment increases would be offset by the energy cost savings for all cities except one (with San Francisco being the only exception) in the tiered standards, providing a net benefit and cost-effectiveness to the consumer. San Francisco represents 1.2 percent of all single-section home shipments (Tier 1 + Tier 2) analyzed. Further, DOE notes that Tier 2 single-section homes would be a portion (approximately 0.5 percent) of the all single-section homes shipments. While increases in purchase price as a result of either proposed standard are tentatively projected to be offset by the benefits derived from the projected energy cost savings, DOE requests comment regarding the cost-effectiveness of both options to inform its final decision.

Relating to the general affordability of manufactured homes, SBRA recommended that DOE work with the industry in establishing an economic basis for energy efficiency standard development that would serve as the benchmark for setting requirements that improve home affordability. (SBRA, No. 163 at p. 2) DOE used the LCC and PBP analyses developed during the MH working group negotiations to inform the development of the proposed rule based on the economic impacts on individual purchasers of manufactured homes. As such, DOE has initially concluded that the national economic benefits outweigh the increased purchase price, indicating that under both proposals the applicable energy conservation standards would improve the economic status of consumers in most regions relative to the status quo.

DOE also received comments regarding affordability and the cost-effective provision of EISA. MHARR stated that the cost-effective provision of EISA must be applied to ensure that energy standards do not result in purchase price increases that would impair manufactured housing affordability, availability, or accessibility. (MHARR, No. 154 at p. 24) DOE performed an LCC analysis in this SNOPR that calculated the total homeowner expense over a period of 30 years, consisting of purchase expenses (*e.g.,* chattel loan, conventional mortgage or cash purchase) and operating costs (*e.g.,* energy costs). The national average results of the LCC analysis show positive LCC savings for a 30-year analysis period and annual energy cost savings for the homeowner in each climate zone (see section IV.A.2). The cost-benefit analysis shows that the increased purchase cost to the consumer would be offset by energy cost savings. In addition to these results, DOE presents a sensitivity analysis for an alternative insulation requirement for Tier 2 homes in zones 2 and 3, which would increase life-cycle cost savings and decrease the simple PBP for affected homes relative to the R–20+5 insulation requirement based on the 2021 IECC.

Regarding the availability of manufactured homes, for this SNOPR (and in the June 2016 NOPR), DOE addressed the reduction of shipments based on the projected increase in home upfront costs using a price elasticity of demand (price elasticity) calculation. Price elasticity is an economic concept that describes the change of the quantity demanded in response to a change in price. Price elasticity is typically represented as a ratio of the percentage change in quantity relative to a percentage change in price. Sections IV.C.1.a and IV.C.1.b provide more details on how DOE incorporated price elasticity in the shipments analysis and the magnitude of people who do not buy because they are price-sensitive.

DOE also received many comments from groups concerned with a potential 3–10 percent increase in purchase price of manufactured home as a result of the proposed standards. Because of the affordable housing crisis in the U.S., they stated that the final rule should avoid any increases in cost for consumers by providing programs for consumers to obtain financing or aid in purchasing their homes. These commenters urged DOE to improve energy efficiency while preserving affordability and to work with lenders, federal regulators, and HUD to mitigate the upfront costs of these regulations before the rule is finalized. (Pleasant Valley Homes, No. 153 at p. 1; Skyline Corporation, No. 165 at p. 1; Clayton Homes, No. 185 at p. 2; MHIM, No. 155 at p. 2; NMMHA, No. 157 at p. 2; MHIA, No. 161 at p. 2; MHISC, No. 191 at p. 1; OMHA, No. 166 at p. 1; MMHA, No. 10 at p. 2; AMHA, No. 173 at p. 2; PMHA, No. 164 at p. 2; Form Letter, No. 192 at p. 1; COBA, No. 158 at p. 5; Commodore Corporation, No. 195 at p. 2)

Specifically, several commenters recommended that DOE also consult with the CFPB and Federal Housing Finance Agency (''FHFA'') to ensure that there is enough flexibility in qualified mortgage regulations to permit an increase in debt-to-income ratios when paired with reductions in energy costs. (Better Homes, No. 168 at p. 1, Next Step, No. 174 at p. 2, MHI, No. 182 at p. 7) Next Step also commented that DOE should collaborate with HUD, FHFA, and the U. S. Department of Agriculture (''USDA'') to ensure flexibility in underwriting guidelines. (Next Step, No. 174 p. 2) WECC recommended the use of low-income weatherization funds, Property Assessed Clean Energy (PACE) financing, carbon offsets, and Environmental Protection

Agency's (EPA) Home Performance with ENERGY STAR program to help offset the increased price. (WECC, No. 150 at p. 3) Lastly, MHI recommended that DOE work with HUD, USDA, U.S. Department of Veterans Affairs (VA), and the U.S. Department of the Treasury to explore whether manufactured homes that meet DOE's standard would be eligible for ENERGY STAR tax credits, thereby providing more incentive and relief to the consumers despite the increase in purchase price. (MHI, No. 182 at p. 7)

DOE appreciates these comments and understands that affordability and cost-effectiveness for low-income purchasers is an important issue when discussing manufactured housing. However, DOE's authority for this rulemaking is limited to energy conservation standards for manufactured housing. While DOE has considered the cost-effectiveness and affordability concerns described throughout this document, matters related to financing, tax credits, or other financial incentives or assistance for manufactured housing are outside the scope of this rulemaking, which is being conducted only to establish an energy conservation standard for manufactured housing. As already discussed, to help mitigate the potential impacts of a price increase, DOE is proposing a tiered proposal in this SNOPR that would establish a pricing tier to address those manufactured homes likely to be purchased by more price-sensitive consumers, and by limiting the impact to the first-cost for Tier 1 manufactured homes. The Tier 1 energy conservation standards, as proposed, are estimated to result in a 0.7–1.4 percent increase in first cost, depending on climate zone. These incremental costs would be offset by the energy savings provided from the energy efficiency measures and the incremental increase in upfront costs and monthly loan payments is recouped in less than one year. Furthermore, the PBP associated with the Tier 1 standard is only 3.7 years for single-section homes and 3.5 years for multi-section homes.

Along with consumer financing, Next Step and Lippert Components both recommended the implementation of consumer education for potential homeowners, to properly inform them of the benefits and paybacks of more efficient homes. (Next Step, No. 174 at p. 3; Lippert Components, No. 152 at p. 1) Next Step also commented that it currently has a system called Manufactured Housing Done Right, which connects comprehensive homebuyer education with responsible financing so potential buyers can purchase ENERGY STAR compliant, factory-built homes. (Next Step, No. 174 at p. 1) DOE agrees that consumer education is important aspect to ensuring the effectiveness of any standards that may be adopted. To this end, DOE has described this proposed regulation in detail in this document and can respond to questions from the public. While a consumer education program is not an element of the statutory mandate of EISA, DOE provides a number of resources to educate homeowners on the energy efficiency, including those applicable to manufactured housing.[50]

MHI also commented that DOE must engage with HUD to revisit the economic assumptions and revise consumer impact estimates. MHI stated that any new regulation must avoid reducing the availability of affordable homeownership options. (MHI, No. 182 at p. 1) GWU stated that DOE should revisit the effect of the proposed standards on the Federal Government's goal to increase the availability of affordable housing. (GWU, No. 175 at p. 12) In this SNOPR, DOE has reviewed the economic assumptions relied upon in the June 2016 NOPR and made changes where appropriate. As explained, DOE is proposing a tiered approach in this SNOPR in response to concerns raised regarding affordability and cost-effectiveness. In addition, DOE changed the down payment assumptions from 20 percent to 10 percent for chattel loans (see section IV.A.1.d). Furthermore, DOE made updates to energy costs, energy escalation rates, and inflation rates based on the updates to *AEO 2020.* DOE also updated the distribution of heating type in the 19 cities analyzed in the LCC analysis based on the 2019 MHI shipments. DOE discusses its price elasticity calculation in the shipment analysis (see section IV.C.1.a).

j. Priced-Out Consumers

DOE received comments on the June 2016 NOPR indicating concern that the proposed rule's incremental cost relative to the existing HUD Code would eliminate the ability of some low-income consumers to obtain the financing necessary to purchase a new home, resulting in consumers being priced out of the manufactured housing market. (Advocacy, No. 177 at p. 3; GWU, No. 175 at p. 8; Form Letter, No. 192 at p. 1; Pleasant Valley Homes, No. 153 at p. 1; Skyline Corporation, No. 165 at p. 1; Clayton Homes, No. 185 at p. 2; MHIM, No. 155 at p. 1; NMMHA, No. 157 at p. 1; MHIA, No. 161 at p. 1; MHISC, No. 191 at p. 1; OMHA, No. 166 at p. 1; MMHA, No. 170 at p. 2; AMHA, No. 173 at p. 2; PMHA, No. 164 at p. 1; MHI, No. 182 at p. 1, SBRA, No. 163 at p. 2; MHARR, No. 143 at p. 4) Specifically, MHARR cited a 2014 National Association of Home Builders (''NAHB'') study that MHARR asserted indicates that more than 1 million households would be priced out of the market for a single-unit manufactured home and over an additional one million households would be priced out of the multi-section market as a result of DOE's proposed standards. (MHARR, No. 154 at p. 25) Similarly, AMHA stated a recent NAHB study indicated each $1,000 increase over the median-home price results in 200,000 prospective households being excluded from the market. (AMHA, No. 173 at p. 1)

As discussed in section IV.A.1.i, DOE is proposing a tiered approach for which energy conservation standards for manufactured home with a manufacturer's retail list price of $55,000 or less would be established, in part, on a defined upfront manufacturer's retail list price increase (*i.e.,* $750). DOE is proposing this approach in consideration of concerns related to potential adverse impacts on price-sensitive, low-income purchasers of manufactured homes from the imposition of energy conservation standards. Under the tiered proposal, incremental cost increases for Tier 1 manufactured homes would be 0.7–1.4 percent.

DOE reviewed the 2014 NAHB study referenced by MHARR and AMHA and found the values cited by MHARR and AMHA from that study are not representative of the manufactured housing market's prospective buyers. The NAHB study estimates the reduction in buyers assuming all American households intend to buy a home. The NAHB study stated that an increase of $1,000 would exclude approximately 350,000 households from purchasing a single-section home, and the same $1,000 would exclude 315,000 households from purchasing a multi-section home. MHARR extrapolated that the incremental costs of the standards would exclude more than 1 million households from each of the single- and multi-unit markets.

Rather than analyzing all American households, DOE's estimate in this SNOPR calculates the number of households no longer able to purchase a manufactured home from the pool of households planning to purchase a manufactured home (which is much smaller than the total number of American households). As a result of

[50] *E.g., https://www.energy.gov/energysaver/types-homes/energy-efficient-manufactured-homes.*

the tiered standards, first, DOE considered that a percentage of manufactured homes placed/sold would shift to less stringent standards, *i.e.,* a percentage of homes from Tier 2 would shift to Tier 1. The inclusion of this shift in the market is to more accurately estimate energy savings (and other downstream results) if the proposed tiered standard approach is finalized. Second, with the inclusion of this shift, DOE estimates the SNOPR would result in a loss in demand and availability because of the increase in upfront home price for each tier. Therefore, DOE includes in the analysis a price elasticity of demand, which is typically represented as a ratio of the percentage change in quantity relative to a percentage change in price. DOE considered a price elasticity of −0.48 based on a study by Marshall and Marsh.[51] Further discussion on the substitution effect is provided in section IV.C.1.a and price elasticity is provided in section IV.A.1.j.

Accordingly, DOE estimates the SNOPR would result in a loss in demand and availability of about 53,329 homes (single section and multi-section combined) for the tiered standard using a price elasticity of demand of −0.48 for the analysis period (2023–2052). Out of the 53,329 homes in the tiered standard, the majority of the reduction is in Tier 2 (93 percent) vs. Tier 1 (7 percent). Within Tier 1, DOE estimates a 0.52 percent reduction (essentially no reduction) in availability due to Tier 1 standards for low income purchasers. Given that low-income consumers generally purchase lower priced manufactured homes, DOE concludes that low-income consumers would not be priced out by the Tier 1 standards proposed in this SNOPR.

As a sensitivity, DOE also considered a price elasticity of demand of −2.4 instead of −0.48. Further discussion on this sensitivity is provided in Section 10.4 of Chapter 10 of the TSD. Table IV.1 provides a summary of the change in shipments from baseline for the tiered standards for a price elasticity of −0.48 and −2.4.

TABLE IV.1—CHANGE IN SHIPMENTS COMPARED TO BASELINE, −0.48 AND −2.4 PRICE ELASTICITY

	Change in shipments, −0.48 price elasticity			Change in shipments, −2.4 price elasticity		
	Tier 1	Tier 2	Total	Tier 1	Tier 2	Total
30-year analysis	(3,693)	(49,636)	(53,329)	(18,375)	(247,692)	(266,067)
Annual	(123)	(1,655)	(1,778)	(613)	(8,256)	(8,869)

In the study published in the Journal of Housing Economics by Marshall and Marsh, the authors conclude that national and local programs that cause small price increases in manufactured housing units (*e.g.,* increasing energy efficiency) will not necessarily deter thousands of low-income families from purchasing manufactured homes and that such consumers are likely to be willing to accept incrementally higher prices from improvements in energy use and cost efficiency. Specifically, the study states that these consumers are not nearly as price-sensitive because ''the cost of a manufactured home still ranges from 21% to 65% of the cost of a site built home and low- and moderate-income families have few low-cost choices for home ownership.''[52] Costs provided by a 2021 manufactured housing industry overview fact sheet developed by MHI suggests that in 2019, on average, the average sales price of a manufactured home compared to a new single-family site built home is about 27 percent (without land).[53] There is additional discussion in section IV.c.1.b on the decrease in manufactured housing shipments that results from people who do not buy because they are price-sensitive.

DOE requests comment on the price elasticity values used in DOE's analysis and in the sensitivity analysis as well as any data or research available with respect to the demand sensitivity in the manufactured housing market.

DOE also received comments stating that it was necessary to capture the costs and economic impact associated with the exclusion of some consumers from the manufactured housing market as a result of this standard. (MHARR, Public Meeting Transcript, No. 148 at p. 80; MHARR, No. 154 at p. 29) COBA commented that if a consumer is priced out of the market for manufactured homes, there are no energy savings that the consumer can encounter. (COBA, Public Meeting Transcript, No. 148 at p. 82) Lippert Components stated that it doubted that the benefits of the increases in energy efficiency will outweigh the negative impacts caused by the elimination of choice and reduction of affordability of manufactured homes due to the proposed standards. (Lippert Components, No. 152 at p. 1)

The cost savings estimates for the proposals in this SNOPR are based on manufactured housing sales in response to the incremental increase in housing costs. A discussion of the projected future shipments is provided at section III.C.1.a of this docment.

DOE also received comments regarding the issue of consumers being priced out of the manufactured housing market within specific regions. GWU suggested that DOE specifically consider the distributive economic impact on climate zones 1 and 2, as they account for roughly 40 percent of all manufactured housing shipments. GWU stated that under the standard as proposed in the June 2016 NOPR, climate zones 1 and 2 will bear higher costs from the increased standards, which is especially problematic as these zones have higher poverty rates. GWU recommended that DOE analyze the impact of the proposed rule on low-income consumers in high-poverty regions. (GWU, No. 175 at p. 8)

The energy standards in the proposals presented in this SNOPR would provide benefits in energy savings to the consumer (including those in climate zones 1 and 2) which, over the span of the PBP, would offset the increase in purchase price. Under the tiered proposal, manufactured homes that would be subject to the Tier 1 standards would have a PBP less than 10 years for all climate zones and recoup any additional upfront and monthly payments in less than one year.

k. Other Comments

DOE also received numerous other comments that were not specific to the above sections or could not be placed in only one of the above sections. WECC stated that consumers' trust and confidence must be secured if these higher costs are to be received favorably.

[51] See Marshall, M.I. & Marsh, T.L. Consumer and investment demand for manufactured housing units. *J. Hous. Econ.* 16, 59–71 (2007).

[52] See Marshall, M.I. & Marsh, T.L. Consumer and investment demand for manufactured housing units. *J. Hous. Econ.* 16, 59–71 (2007).

[53] Manufactured Housing Institute. 2021 Manufactured Housing Facts: Industry Overview.

WECC stated that the environment associated with manufactured housing is found to be fraught with deceptive loan practices, which is an issue that needs to be addressed. (WECC, No. 150 at p. 1) NCJC commented that the industry has been noted for predatory sales and lending practices. NCJC commented that DOE's analysis of the rule's economic impact and energy savings demonstrates the benefits of the rule to homebuyers, especially low-income ones. (NCJC, No. 184 at p. 2) DOE appreciates these comments. As noted, EISA directs DOE to establish energy conservation standards for manufactured housing while accounting for certain criteria and considerations. (42 U.S.C. 17071(a)–(b)) Comments regarding loan practices are beyond the scope of this rulemaking.

2. Results

This section provides the tentative results for the projected economic impacts on individuals, including the LCC and PBP. In this SNOPR, DOE has included two options: A two-tiered set of standards and a single untiered standard, as described in section III.E.2.b. DOE also updated all inputs to the LCC and PBP based on the updated AEO 2020. This includes updates to the inflation rates, energy prices, and energy pricing growth rates. DOE adjusted the down payment percentage for personal property (chattel) loans to 10 percent based on comments received on the June 2016 NOPR and maintained a 20 percent down payment for real estate loans. Lastly, the analyses include updates to the fuel type distributions based on 2019 MHI shipments.

Further, as discussed in section I.A, DOE also used different loan parameters for the analysis for the untiered standard and the alternate tiered standard. This is because the Tier 1 and Tier 2 standards each would apply to a portion of all manufactured homes, whereas the untiered standard would apply to all manufactured homes. Specifically, the Tier 1 standard would apply to manufactured homes with a manufacturer's retail list price of $55,000 or less, and would be applicable to price-sensitive, low-income purchasers. Therefore, DOE considered only personal property loans for the Tier 1 standard analysis. For the Tier 2 standard, DOE recalculated the loan percentages such that the sales-weighted Tier 1 and Tier 2 standard loan percentages would equate to the overall loan percentages for the untiered standard. See Table IV.2 for details on the loan parameter percentages used for the analyses.

TABLE IV.2—LOAN PARAMETER PERCENTAGES

	Personal property (%)	Real estate (%)	Cash (%)
Tier 1 Standard	100.0	0.0	0.0
Tier 2 Standard	39.5	20.5	40.0
Untiered Standard	54.6	15.4	30.0

The LCC analysis allowed DOE to analyze the effects of the energy conservation standard on both the individual consumer, as well as the aggregate benefits at the national level. Table IV.3, Table IV.4, and Table IV.5 provide the average purchase price increases to manufactured homes associated with the HUD climate zones, under the proposals. These costs are based on estimates for the increased costs associated with more energy efficient components, as provided by the MH working group. ASRAC Cost Analysis Data, EERE–2009–BT–BC–0021–0091. These costs are discussed in further detail in chapter 5 and chapter 9 of the SNOPR TSD.

TABLE IV.3—NATIONAL AVERAGE MANUFACTURED HOUSING PURCHASE PRICE (AND PERCENTAGE) INCREASES UNDER THE TIER 1 STANDARD

[2020$]

	Single-section		Multi-section	
	$	%	$	%
Climate Zone 1	$629	1.2	$900	0.9
Climate Zone 2	629	1.2	900	0.9
Climate Zone 3	721	1.4	702	0.7
National Average	663	1.2	839	0.8

TABLE IV.4—NATIONAL AVERAGE MANUFACTURED HOUSING PURCHASE PRICE (AND PERCENTAGE) INCREASES UNDER TIER 2 STANDARD

[2020$]

	Single-section		Multi-section	
	$	%	$	%
Climate Zone 1	$2,574	4.8	$4,143	4.0
Climate Zone 2	4,820	9.1	6,167	5.9
Climate Zone 3	4,659	8.8	5,839	5.6
National Average	3,914	7.4	5,289	5.1

TABLE IV.5—NATIONAL AVERAGE MANUFACTURED HOUSING PURCHASE PRICE (AND PERCENTAGE) INCREASES UNDER UNTIERED STANDARD

[2020$]

	Single-section		Multi-section	
	$	%	$	%
Climate Zone 1	$2,574	4.8	$4,143	4.0
Climate Zone 2	4,820	9.1	6,167	5.9
Climate Zone 3	4,659	8.8	5,839	5.6
National Average	3,914	7.4	5,289	5.1

Figure IV.1, Figure IV.2, and Figure IV.3 illustrate the average annual energy cost savings for space heating and air conditioning for the first year of occupation by geographic location under the proposed tiered approach based on the estimated fuel costs provided in chapter 8 of the SNOPR TSD.

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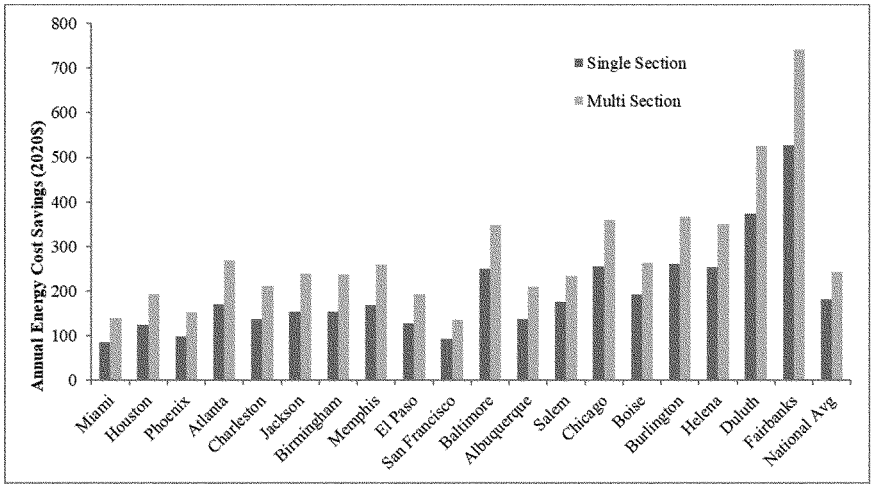

Figure IV.1: Annual Energy Cost Savings under the Tier 1 Standard

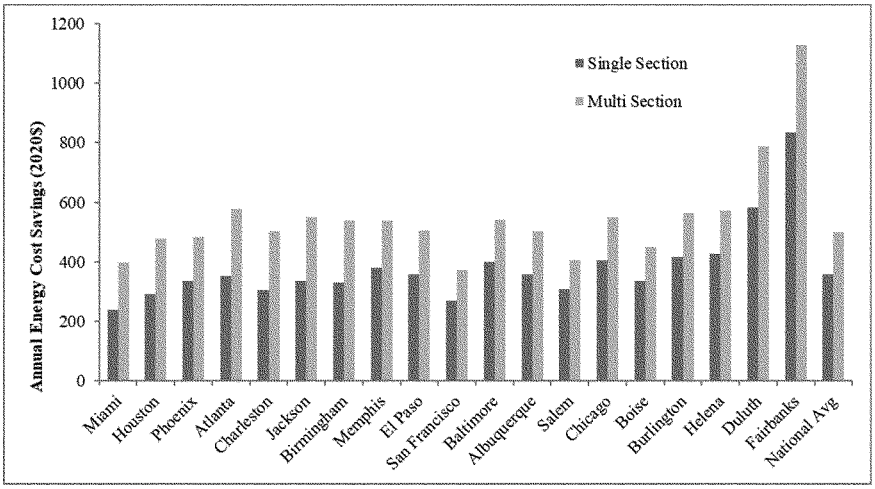

Figure IV.2: Annual Energy Cost Savings under the Tier 2 Standards

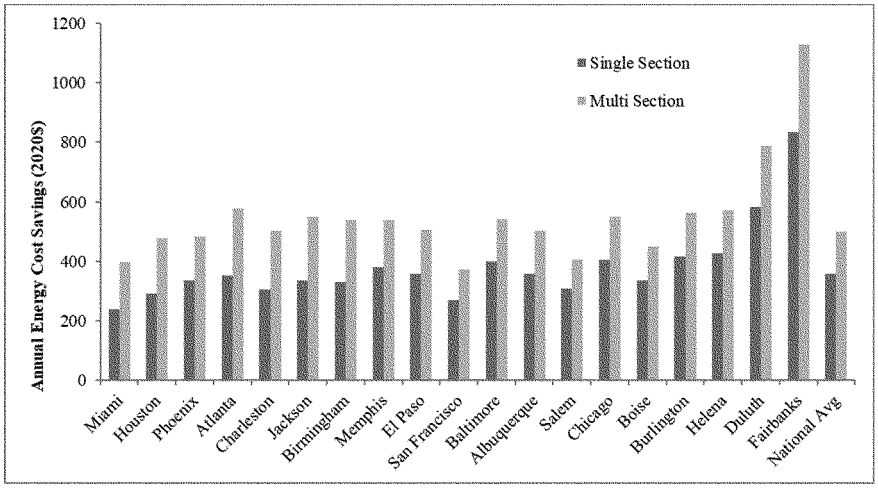

Figure IV.3: Annual Energy Cost Savings under the Untiered Standards

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Table IV.6 through Table IV.8 and Figure IV.4 through Figure IV.6 illustrate the average 30-year LCC savings by geographic location (averaged across the five different heating fuel/system types) associated with the proposals for both single-section and multi-section manufactured homes. As discussed in detail in chapter 8 of the SNOPR TSD, the results presented account for LCC savings and impacts over a 30-year period of analysis, including energy cost savings and chattel loans or conventional mortgage payment increases discounted to a present value using the discount rates discussed in chapter 4 of the SNOPR TSD. These tentative results also are based on the costs associated with the proposed energy conservation improvements, as discussed in chapter 5 of the SNOPR TSD.

TABLE IV.6—AVERAGE MANUFACTURED HOME LCC SAVINGS (30 YEARS) UNDER THE TIER 1 STANDARD BY CLIMATE ZONE

[2020$]

	Single-section	Multi-section
Climate Zone 1	$988	$1,505
Climate Zone 2	1,114	1,612
Climate Zone 3	2,691	3,763
National Average	1,643	2,235

TABLE IV.7—AVERAGE MANUFACTURED HOME LCC SAVINGS (30 YEARS) UNDER THE TIER 2 STANDARDS BY CLIMATE ZONE

[2020$]

	Single-section	Multi-section
Climate Zone 1	$2,351	$3,686
Climate Zone 2	1,073	1,808
Climate Zone 3	2,579	3,444
National Average	2,105	3,033

TABLE IV.8—AVERAGE MANUFACTURED HOME LCC SAVINGS (30 YEARS) UNDER THE UNTIERED STANDARDS BY CLIMATE ZONE

[2020$]

	Single-section	Multi-section
Climate Zone 1	$2,043	$3,196
Climate Zone 2	711	1,314
Climate Zone 3	2,117	2,851
National Average	1,727	2,511

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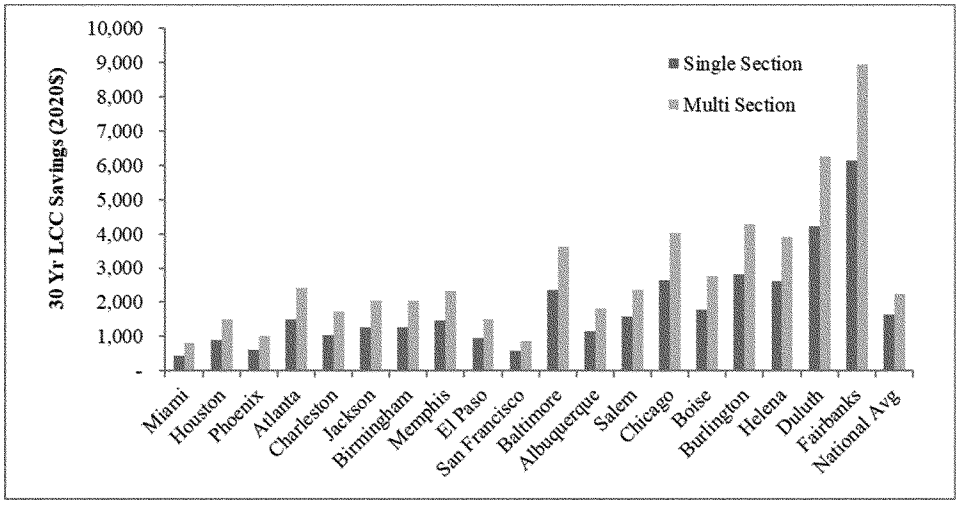

Figure IV.4: Thirty-Year Lifecycle Cost Savings under the Tier 1 Standard

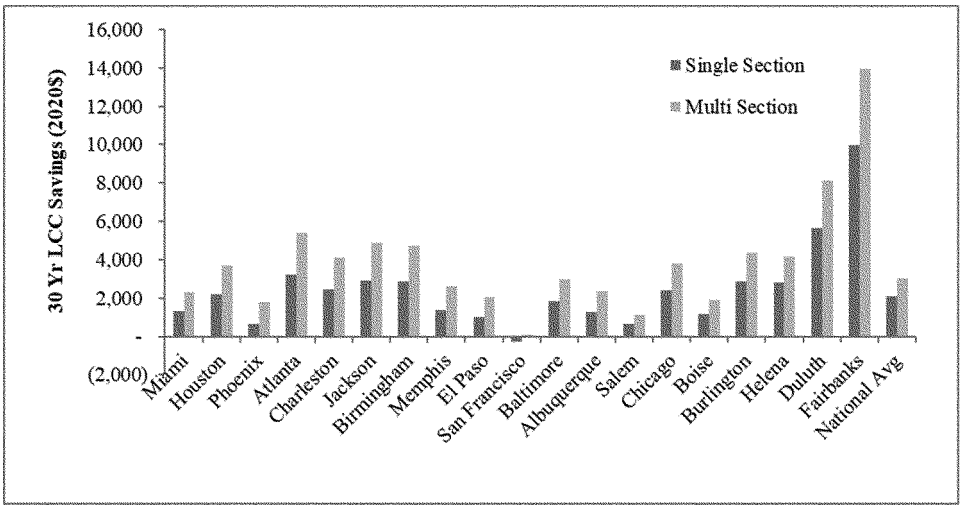

Figure IV.5: Thirty-Year Lifecycle Cost Savings under the Tier 2 Standards

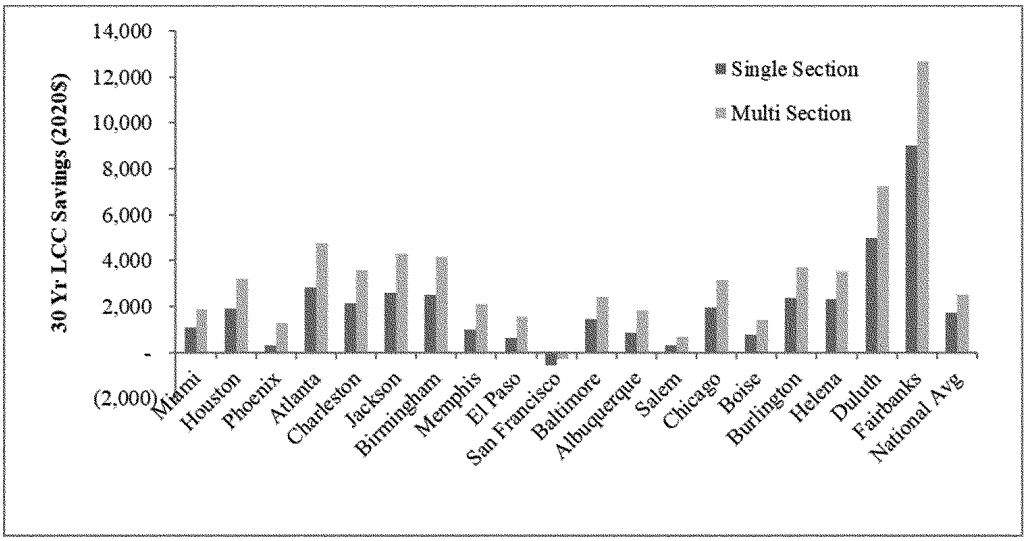

Figure IV.6: Thirty-Year Lifecycle Cost Savings under the Untiered Standards

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As shown, the national average savings for the untiered standard and the tiered standards (*i.e.,* Tier 1 and Tier 2) are net positive, though not every geographic region experiences a net savings in the proposed standards (*i.e.,* San Francisco in Climate Zone 2). DOE notes that for the prescriptive method, Tier 2 and Untiered manufactured homes in climate zone 2 (including San Francisco) and climate zone 3 would require a R–20+5 exterior wall insulation to be consistent with the 2021 IECC without modification. The ''+5'' involves using ''continuous insulation,'' which is insulation that runs continuously over structural members and is free of significant thermal bridging. As a sensitivity analysis, DOE considered the impacts on the LCC savings of instead requiring less stringent exterior wall insulation (at R–21 instead of R–20+5) to remove the continuous insulation requirement if complying with the prescriptive requirements presented in Table III.8. At R–20+5, the incremental cost per unit relative to the baseline is $2,500, versus $850 for R–21. DOE considered this alternative insulation requirement for zones 2 and 3 to address potential equity impacts in the regional distribution of benefits and costs and to ensure that each metro area analyzed could experience a positive LCC at Tier 2. Table IV.9 through Table IV.12 present the LCC savings results and Table IV.13 presents the simple payback periods for the sensitivity analysis. Chapter 8 of the TSD presents the same results per city. With this update, all cities, including San Francisco, show positive LCC savings for the 30-year analysis for both the tiered and untiered standards. Prior to the final rule stage, DOE is considering additional analysis to further explore the impacts of R–21 for homes in zones 2 and 3 under Tier 2 and the untiered proposal.

TABLE IV.9—AVERAGE MANUFACTURED HOME LCC SAVINGS (30 YEARS) UNDER THE TIER 2 STANDARDS BY CLIMATE ZONE

[2020$]

	With R–20+5 wall insulation for climate zones 2 and 3		With R–21 wall insulation for climate zones 2 and 3	
	Single-section	Multi-section	Single-section	Multi-section
Climate Zone 1	$2,351	$3,686	$2,351	$3,686
Climate Zone 2	1,073	1,808	2,373	3,124
Climate Zone 3	2,579	3,444	3,618	4,511
National Average	2,105	3,033	2,820	3,768

TABLE IV.10—AVERAGE MANUFACTURED HOME LCC SAVINGS (30 YEARS) UNDER THE UNTIERED STANDARDS BY CLIMATE ZONE

[2020$]

	With R–20+5 wall insulation for climate zones 2 and 3		With R–21 wall insulation for climate zones 2 and 3	
	Single-section	Multi-section	Single-section	Multi-section
Climate Zone 1	$2,043	$3,196	$2,043	$3,196
Climate Zone 2	711	1,314	2,031	2,648
Climate Zone 3	2,117	2,851	3,194	3,954
National Average	1,727	2,511	2,461	3,262

TABLE IV.11—AVERAGE MANUFACTURED HOME LCC SAVINGS (10 YEARS) UNDER THE TIER 2 STANDARDS BY CLIMATE ZONE

[2020$]

	With R–20+5 wall insulation for climate zones 2 and 3		With R–21 wall insulation for climate zones 2 and 3	
	Single-section	Multi-section	Single-section	Multi-section
Climate Zone 1	$563	$862	$563	$862
Climate Zone 2	(496)	(454)	452	501
Climate Zone 3	108	235	949	1,086
National Average	124	264	675	820

TABLE IV.12—AVERAGE MANUFACTURED HOME LCC SAVINGS (10 YEARS) UNDER THE UNTIERED STANDARDS BY CLIMATE ZONE

[2020$]

	With R–20+5 wall insulation for climate zones 2 and 3		With R–21 wall insulation for climate zones 2 and 3	
	Single-section	Multi-section	Single-section	Multi-section
Climate Zone 1	$460	$698	$460	$698

TABLE IV.12—AVERAGE MANUFACTURED HOME LCC SAVINGS (10 YEARS) UNDER THE UNTIERED STANDARDS—Continued
BY CLIMATE ZONE
[2020$]

	With R–20+5 wall insulation for climate zones 2 and 3		With R–21 wall insulation for climate zones 2 and 3	
	Single-section	Multi-section	Single-section	Multi-section
Climate Zone 2	(645)	(650)	334	337
Climate Zone 3	(53)	30	822	915
National Average	(12)	77	560	654

TABLE IV.13—AVERAGE MANUFACTURED HOME SIMPLE PAYBACK PERIOD UNDER THE TIER 2/UNTIERED STANDARDS

	With R–20+5 wall insulation for climate zones 2 and 3		With R–21 wall insulation for climate zones 2 and 3	
	Single-section	Multi-section	Single-section	Multi-section
Climate Zone 1	8.6	8.7	8.6	8.7
Climate Zone 2	13.3	12.7	9.3	9.7
Climate Zone 3	11.1	10.9	7.8	8.3
National Average	10.9	10.6	8.5	8.9

DOE requests comment on the cost-effectiveness and feasibility of requiring R–20+5 for the exterior wall insulation for climate zone 2 and 3 Tier 2/Untiered manufactured homes. DOE also requests comment on the sensitivity analysis for R–21 that would result in positive LCC savings for all cities.

The estimated LCC impacts under Figure IV.4, Figure IV.5, and Figure IV.6 vary by location for three primary reasons. First, each geographic location analyzed is situated in one of three climate zones and therefore would be subject to different energy conservation requirements. Second, geographic locations within the same climate zone would experience different levels of energy savings. Finally, the level of energy cost savings depends on the type of heating system installed and fuel type used in a manufactured home. As discussed in chapter 8 of the SNOPR TSD, DOE has accounted for regional differences in heating systems and fuel types commonly installed in manufactured housing.

Table IV.14 provides the national average LCC savings and annual energy cost savings associated with the proposals in the SNOPR for space heating and air conditioning (and percent reduction in space heating and cooling costs), both of which are measured against a baseline manufactured home constructed in accordance with the HUD Code. As discussed in further detail in chapter 9 of the SNOPR TSD, each geographic location has been determined to result in LCC savings and energy savings, on average.

TABLE IV.14—NATIONAL AVERAGE PER-HOME COST SAVINGS UNDER THE SNOPR

	Single-section	Multi-section
Tiered Standards		
Lifecycle Cost Savings (30 Years)	$1,852	$3,033
Annual Energy Cost Savings (2020$)	261	499
Untiered Standard		
Lifecycle Cost Savings (30 Years)	1,727	2,511
Annual Energy Cost Savings (2020$)	359	499

Table IV.15 through Table IV.17 and Figure IV.7 through Figure IV.9 illustrate the nationwide average simple payback period (purchase price increase divided by first year energy cost savings) under the SNOPR. The estimated simple payback periods vary by geographic location based on the different climate zone requirements for manufactured housing, geographic climatic differences within climate zones, type of heating system installed, and fuel type used in a manufactured home.

TABLE IV.15—AVERAGE MANUFACTURED HOME SIMPLE PAYBACK PERIOD UNDER THE TIER 1 STANDARD
BY CLIMATE ZONE

	Single-section	Multi-section
Climate Zone 1	4.8	4.6
Climate Zone 2	4.5	4.5

TABLE IV.15—AVERAGE MANUFACTURED HOME SIMPLE PAYBACK PERIOD UNDER THE TIER 1 STANDARD—Continued BY CLIMATE ZONE

	Single-section	Multi-section
Climate Zone 3	2.8	2.1
National Average	3.7	3.5

TABLE IV.16—AVERAGE MANUFACTURED HOME SIMPLE PAYBACK PERIOD UNDER TIER 2 STANDARD BY CLIMATE ZONE

	Single-section	Multi-section
Climate Zone 1	8.6	8.7
Climate Zone 2	13.3	12.7
Climate Zone 3	11.1	10.9
National Average	10.9	10.6

TABLE IV.17—AVERAGE MANUFACTURED HOME SIMPLE PAYBACK PERIOD UNDER UNTIERED STANDARD BY CLIMATE ZONE

	Single-section	Multi-section
Climate Zone 1	8.6	8.7
Climate Zone 2	13.3	12.7
Climate Zone 3	11.1	10.9
National Average	10.9	10.6

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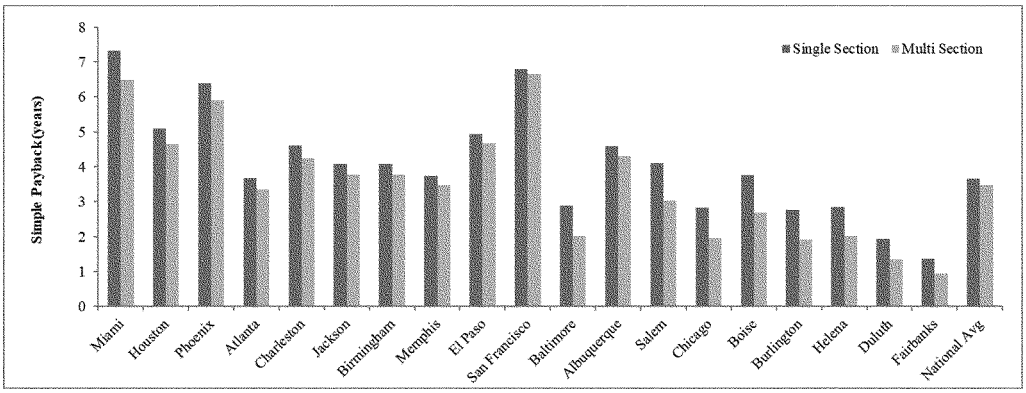

Figure IV.7: Simple Payback Period Under the Tier 1 Standard

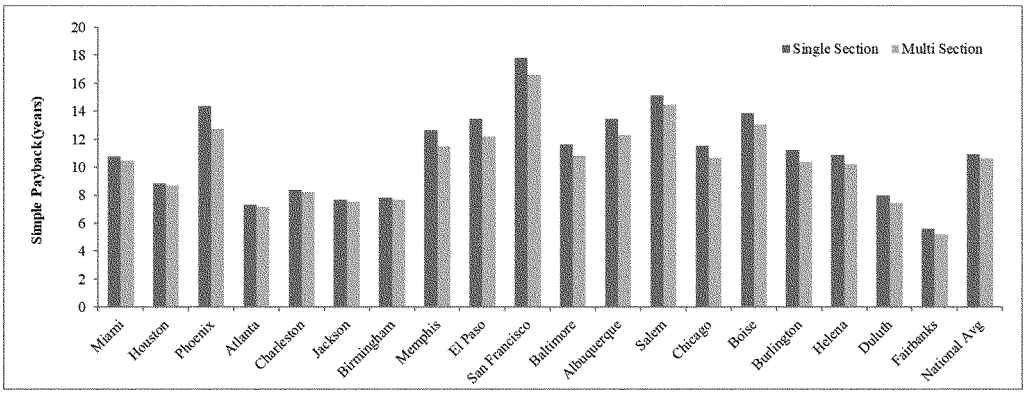

Figure IV.8: Simple Payback Period Under the Tier 2 Standards

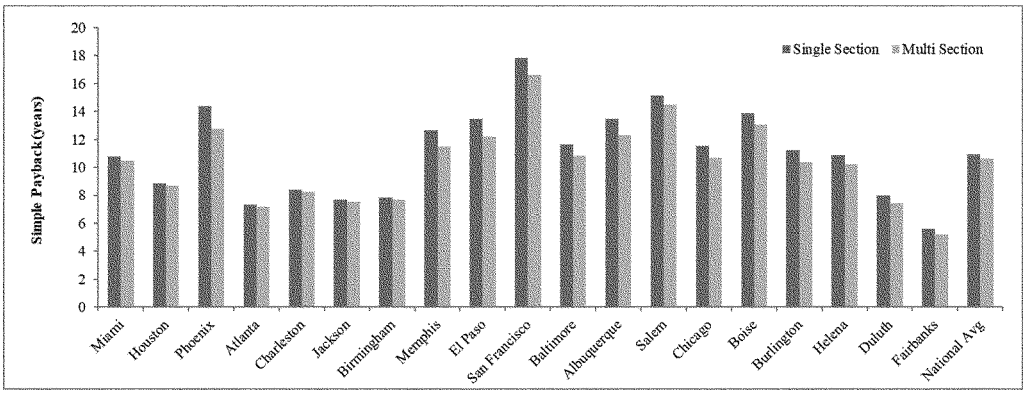

Figure IV.9: Simple Payback Period Under the Untiered Standards

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B. Manufacturer Impacts

DOE performed a manufacturer impact analysis (''MIA'') to estimate the potential financial impact of energy conservation standards on manufacturers of manufactured homes. The MIA relied on the Government Regulatory Impact Model (''GRIM''), an industry cash-flow model used to estimate changes in industry value as a result of energy conservation standards. The key GRIM inputs are: Industry financial metrics, manufacturer production cost estimates, shipments forecasts, conversion costs, and manufacturer markups. The primary output of the GRIM is industry net present value (''INPV''), which is the sum of industry annual cash flows over the analysis period (2021–2052), discounted using the industry average discount rate. The GRIM has a slightly different analysis period than the NIA and LCC since it accounts for the conversion period, the time between the announcement of the standard and the compliance date of the standard, because manufacturers may need to make upfront investments to bring their manufactured homes into compliance ahead of the standard going into effect. The GRIM estimates the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV between the no-standards case and the standards cases. The GRIM estimates a range of possible impacts under different manufacturer markup scenarios to capture the uncertainty relating to manufacturer pricing strategy following new standards. Additional detail on the GRIM can be found in chapter 12 of the SNOPR TSD.

1. Conversion Costs

DOE analyzed the upfront investments manufacturers would need to make to bring their products into compliance with the proposed energy conservation standards. These upfront investments include product conversion costs and capital conversion costs. Product conversion costs are one-time expenses in research, development, engineering time, and other costs necessary to make product designs comply with energy conservation standards. Capital conversion costs are one-time investments in property, plant, and equipment to adapt or change existing production lines to fabricate and assemble new product designs that comply with the energy conservation standards.

DOE received comments regarding the conversion costs used for the cost-benefit analysis. MHARR commented that the June 2016 NOPR cost-benefit analysis failed to include costs for testing, certification, inspections, and other compliance related activities, including new testing that is not currently included in the HUD Code. It stated that there are enforcement costs as well as ongoing regulatory compliance costs. MHARR expressed concern that these costs were not included in calculating the manufacturer impact as well as incremental cost increases since compliance costs will inevitably be passed onto the consumer (MHARR, No. 154 at p. 27; MHARR, No. 143 at p. 4). MHCC also commented that the cost analysis does not include compliance costs and stated that the enforcement of the proposed rule significantly affects the costs, planning, and implementation (MHCC, No. 162 at p. 2).

As stated in the November 2016 test procedure NOPR, for the *R*-value of insulation, *U*-factor and SHGC of fenestration, and mechanical ventilation fan efficacy, DOE anticipates that MH manufacturers will not incur testing costs because they would be able to use values currently provided by component manufacturers as part of the component specification sheets. 81 FR 78733, 78742. As discussed in section II.B.3, DOE is not proposing any testing, compliance or enforcement provisions at this time. Therefore, DOE has not included any potential associated costs of testing, compliance or enforcement in this SNOPR.

RECA, Next Step Network, and Modular Lifestyles commented that many manufacturers produce higher efficiency homes that already meet the proposed standards, and thus the impacts for those manufacturers will be significantly reduced. (RECA, No. 188 at p. 2; Next Step, No. 174 at p. 1; Modular Lifestyles, No. 141 at p. 2).

DOE recognizes that some manufacturers already produce higher efficiency homes that meet the proposed standard level. DOE received data on the number of ENERGY STAR manufactured homes but lacked information on the number of manufactured homes that already meet or exceed the standard levels proposed in this SNOPR. Therefore, DOE conservatively assumed that all shipments are minimally compliant with the current HUD level and all models for which standards would be applicable would need design updates as a result of this proposed rule for the purposes of the MIA analysis. This prevents underestimation of negative impacts on manufacturers. As such, DOE's conversion costs are the same for the tiered and untiered proposals, as DOE models the maximum potential conversion costs.

In contrast, the NIA assumes conservatively that all ENERGY STAR manufactured homes would not provide additional national benefits as a result of this proposed rule, if made final. More information about the shipments analysis used for the NIA can be found in section IV.C.1.a of this document.

DOE estimated conversion costs to be $52,000 per manufacturer. This figure included approximately $49,000 per manufacturer for product conversion

costs, and approximately $3,000 per manufacturer for capital conversion costs for investments in equipment. The difference in product conversion costs from the June 2016 NOPR to the SNOPR are due to increased wage rates for mechanical engineers and taking into account fully burdened wages. DOE based its product conversion costs on the engineering time required to update model plans. DOE calculates industry conversion costs to be approximately $1.8 million. Those costs consist of $0.1 million in capital conversion costs and $1.7 million in product conversion costs.

DOE requests comment on the inputs to the conversion cost estimates.

2. Manufacturer Production Costs and Markups

DOE analyzed the effect the proposed standards would have on manufacturer production costs. DOE derived these costs from purchase price information and the markup factor, which is the product of the manufacturer markup, the retail markup, and sales tax. DOE used census data to obtain HUD minimum purchase price data by state for single-section and multi-section manufactured homes in 2019.[54] DOE used a shipment-weighted average to convert the average purchase price by state to an average purchase price for each of 19 representative cities.

DOE added incremental purchase prices to the HUD minimum purchase prices to calculate the purchase price for manufactured homes built in compliance with the proposed standard levels. The incremental purchase prices were negotiated during MH working group meetings and discussed further in section IV.A.1.g.

To calculate MPCs from purchase prices for homes at the baseline level and at the proposed standard levels, DOE divided the purchase prices by the markup factor. The markup factor is the product of the manufacturer markup, retail markup and the sales tax factor. In the June 2016 NOPR, DOE used public sources, including company SEC 10–K filings [55] and corporate annual reports, to estimate a manufacturer markup of 1.25. DOE used legislative analysis,[56] research reports from the Encyclopedia of Business,[57] and Highbeam Business [58] to estimate a retail markup of 1.30, and a sales tax of 1.03. This resulted in a combined cost markup factor of 1.67.

MHCC recommended that an industry projected cost markup factor of 2.30 be used, as opposed to the factor of 1.67 used by DOE in the June 2016 NOPR analysis (MHCC, No. 162 at p. 2). MHI expressed concern that the DOE markup factor of 1.67 is too low. It stated that HUD typically uses a markup factor of 2.30 and MHI's own study found a cost markup factor of 2.23. By using a lower markup factor, it expressed concern that DOE may be underestimating the impact of price increases passed onto the consumer (MHI, No. 182 at p. 5).

DOE investigated the research quoted by MHI and MHCC regarding the markup factor and found a supporting paper developed by Pacific Northwest National Laboratory (''PNNL'') on behalf of National Fire Protection Association, MHCC, and HUD that referenced their methodology for the distribution chain markups. The research paper indicates that DOE's estimated retail markup in the June 2016 NOPR of 1.30 is representative of the MH industry, whereas DOE's estimated manufacturer markup of 1.25 is too low.[59] Based on the comments received and the PNNL research, DOE increased the manufacturer markup from 1.25 to 1.72 in this SNOPR. Applying a manufacturer markup of 1.72, a retail markup of 1.30, and a sales tax factor of 1.03 results in a markup factor of 2.30, which is in-line with stakeholder comments.

COBA commented that the retail markup varies greatly depending on the nature of the distribution process. Independent MH retailers, who sell on a deal-by-deal and commission-only basis, will seek to maximize profitability. COBA said Land-Lease-Lifestyle Communities (LLL) Community operators will minimize the retail markup for HUD Code homes to get homeowners or site lessees to sign a rental agreement (COBA, No. 158 at p. 5). COBA stated that this change in the manufactured home distribution system leads to several different scenarios for markup. (COBA, Public Meeting Transcript, No. 148 at p. 124). DOE acknowledges that retail markups can vary based on the distribution channel. However, based on public information and comments received from interested parties, a retail markup of 1.30 is the industry average.

COBA also commented on the topic of sales tax assumptions used in DOE's MIA. COBA stated that sales tax is a state matter that varies depending on whether a manufactured home is new or used (COBA, No. 158 at p. 5). DOE agrees that sales taxes vary by state. To account for variations in sales taxes, DOE took the shipment-weighted average sales tax by state to estimate a national average sales tax of three percent. The MH working group reviewed the sales tax assumptions used in the DOE's analysis during the negotiated consensus process. The MH working group agreed to a national average sales tax of three percent for the purposes of DOE's analyses. This is consistent across the June 2016 NOPR and the SNOPR analyses. Additional information can be found in section 8.2.6 of the SNOPR TSD.

3. Manufacturer Markup Scenarios

DOE modeled two standard case manufacturer markup scenarios that reflect changes in the manufacturer's ability to pass on their upfront investments and increases in production costs to the consumer. The manufacturer markup scenarios represent the uncertainty regarding prices and profitability for manufactured home manufacturers following the implementation of the rule. DOE modeled a high and a low scenario for manufacturers' ability to pass on their increased costs to the consumer: (1) A preservation of gross margin percentage markup scenario; and (2) a preservation of operating profit markup scenario. These scenarios lead to different manufacturer markup values that result in varying revenue and cash flow impacts to the manufacturer when applied to the inputted manufacturer production costs.

Under the preservation of gross margin scenario, manufacturers maintain their current average markup of 1.72 even as production costs increase. Manufacturers are able to maintain the same amount of profit as a percentage of revenues, suggesting that they are able to recover conversion costs and pass the costs of compliance to their consumers. DOE considers this scenario the upper bound to industry profitability.

In the preservation of per-unit operating profit scenario, manufacturer markups are set so that the per-unit operating profit in the standards case equals the per-unit operating profit in the no-standards case one year after the compliance date of the new energy conservation standard. Under this scenario, as the costs of production increase under a standards case, manufacturers are required to reduce their markups. The implicit assumption behind this markup scenario is that the

[54] *https://www2.census.gov/programs-surveys/mhs/tables/2017/stavg17.xls.*

[55] U.S. Securities and Exchange Commission. Annual 10–K Reports. Various Years. *http://sec.gov.*

[56] Cook. State Board of Equalization, Staff Legislation Bill Analysis, Assembly Bill 1474 (2009).

[57] SIC 6515 Operators of Residential Mobile Home Site. Encyclopedia of Business.

[58] Highbeam Business. Operators of Residential Mobile Homes Sites.

[59] *http://aceee.org/files/proceedings/2004/data/papers/SS04_Panel1_Paper05.pdf.*

industry can only maintain its existing per-unit operating profit in absolute dollars after compliance with the new standard is required. Therefore, the operating margin is reduced between the no-standards case and standards case. Under this scenario, manufacturers are not able to recover the conversion period investments made to comply with the standard. This manufacturer markup scenario represents a lower bound to industry profitability under a new energy conservation standard.

4. Cash-Flow and INPV Results

DOE calculated an industry average discount rate of 9.2 percent based on SEC filings for public manufacturers of manufactured homes. The INPV is the sum of the discounted cash flows over the analysis period, which begins in 2021 and ends in 2052, using the industry average discount rate. DOE compares the INPV of the no-standards case to that of the standard level. The difference between INPV in the no-standards case and INPV in the standards case is an estimate of the economic impacts on the industry.

TABLE IV.18—INPV RESULTS: PRESERVATION OF GROSS MARGIN PERCENTAGE SCENARIO *

	Tiered proposal		Untiered proposal	
	Single-section	Multi-section	Single-section	Multi-section
No-standards case INPV (billion 2020$)	4.87	11.36	4.87	11.36
Standards Case INPV (billion 2020$)	4.98	11.58	5.02	11.61
Change in INPV (billion 2020$)	0.10	0.22	0.15	0.25
Change in INPV (%)	2.1	1.9	3.0	2.2
Total Conversion Costs (billion 2020$)	0.0005	.0012	0.0005	.0012

* Values in parentheses are negative values.

TABLE IV.19—INPV RESULTS: PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO *

	Tiered proposal		Untiered proposal	
	Single-section	Multi-section	Single-section	Multi-section
No-standards case INPV (billion 2020$)	4.87	11.36	4.87	11.36
Standards Case INP (billion 2020$)	4.80	11.16	4.74	11.15
Change in INPV (billion 2020$)	(0.07)	(0.20)	(0.13)	(0.21)
Change in INPV (%)	(1.5)	(1.8)	(2.7)	(1.8)
Total Conversion Costs (billion 2020$)	0.0005	0.0012	0.0005	.0012

* Values in parentheses are negative values.

For single-section units, the no-standards case INPV is $4.87 billion. The tiered proposal standard level could result in a change of industry value ranging from −1.5 percent to 2.1 percent, or a change of −$0.07 billion to $0.10 billion, for single-section units. For multi-section units, the no-standards case INPV is $11.36 billion. The tiered proposal standard level could result in a change of industry value ranging from −1.8 percent to 1.9 percent, or a change of −$0.20 billion to $0.22 billion. For the entire industry, the no-standards case INPV is $16.23 billion. The tiered proposal standard level could result in a change in INPV of −1.7 percent to 2.0 percent, or a change of −$0.28 billion to $0.32 billion. Industry conversion costs total $0.0018 billion.

For single-section units, the no-standards case INPV is $4.87 billion. The untiered proposal's standard level could result in a change of industry value ranging from −2.7 percent to 3.0 percent, or a change of −$0.13 billion to $0.15 billion for single-section units. For multi-section units, the no-standards case INPV is $11.36 billion. The untiered proposal's standard level could result in a change of industry value ranging from −1.8 percent to 2.2 percent, or a change of −$0.21 billion to $0.25 billion. For the entire industry, the no-standards case INPV is $16.23 billion. The untiered proposal's standard level could result in a change in INPV of −2.1 percent to 2.4 percent, or a change of −$0.34 billion to $0.39 billion. Industry conversion costs total $0.0018 billion.

5. Impact of Any Lessening of Competition

DOE also received comments regarding competition within the manufactured housing industry. GWU stated that DOE should pay particular attention to the prospective effects of the proposed rule on competition within the MH market. It commented that it was unable to find any analyses by the DOJ on market competition regarding the rule (GWU, No. 175 at p. 11). MHARR also asserted that the June 2016 NOPR would have anti-competitive effects and result in highly negative impacts on the industry's small manufacturers. MHARR stated that the June 2016 NOPR would lead to further consolidation in the industry. (MHARR, No. 154 at p. 33, 34)

The authority for the rule proposed in this document is section 413 of EISA (42 U.S.C. 17071), which is a separate authority from that governing appliance standards, *i.e.,* EPCA, as amended (42 U.S.C. 6291−6317). Section 413 of EISA does not require consultation with the DOJ regarding potential anticompetitive effects of the rule, as would be required for an appliance standard rulemaking. As such, DOE did not consult with the DOJ regarding potential anticompetitive impacts of this proposed rule.

DOE considered the impacts of this rulemaking on small manufacturers. In response to concerns related to potential adverse impacts on price-sensitive, low-income purchasers of manufactured homes, DOE is proposing updated standard levels that are different from the June 2016 NOPR levels, upon which MHARR's comment are based. In the updated proposed standards, described in detail in section III.A.2, DOE structured the tiered standard to address affordability concerns for low-income home buyers and for the small manufacturers that serve that segment of the market. Furthermore, DOE conducted additional analysis, found in section V.B.4, to understand the magnitude of upfront cost impacts of

small manufacturers. DOE expects conversion costs to be less than 0.1 percent of average small manufacturer annual revenue. DOE finds this level of investment unlikely to be the driver of industry consolidation or to affect market concentration.

C. Nationwide Impacts

The national impact analysis (NIA) assesses the national energy savings (NES) and the national net present value (NPV) from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards. ''Consumer'' in this context refers to consumers of the product being regulated. DOE calculates the NES and NPV based on projections of annual product shipments, along with the annual energy consumption and total incremental cost data from the LCC analyses.

In the June 2016 NOPR, DOE's NIA projected a net benefit to the nation as a whole as a result of the proposed rule in terms of NES and the NPV of total consumer costs and savings that would be expected as a result of the proposed rule in comparison with the minimum requirements of the HUD Code. DOE calculated the NES and NPV based on annual energy consumption and total construction and lifecycle cost data from the LCC analysis (developed during the MH working group negotiation process), and shipment projections. DOE projected the energy savings, operating cost savings, equipment costs, and NPV of consumer benefits sold in a 30-year period from 2017 through 2046. The analysis also accounted for costs and savings for a manufactured home lifetime of 30 years.

In addition, for the June 2016 NOPR, DOE developed a shipments model to forecast the shipments of manufactured homes during the analysis period. DOE first gathered historical shipments spanning 1990–2013 from a report developed and written by the Institute for Building Technology and Safety and published by the Manufactured Housing Institute.[60] Then, using the growth rate (1.8 percent) in new residential housing starts from the *AEO 2015,* DOE projected the number of manufactured housing shipments from 2014 through 2046 in the no-standards case (no new standards adopted by DOE). For the standards case shipments, DOE used this same growth rate estimate (1.8 percent), but also applied an estimate for price elasticity of demand. Price elasticity of demand (price elasticity) is an economic concept that describes the change of the quantity demanded in response to a change in price. DOE used the price elasticity value of −0.48 (a 10-percent price increase would translate to a 4.8-percent reduction in manufactured home shipments) based on a study published in the Journal of Housing Economics by Marshall and Marsh for estimating standards case shipments.[61]

DOE conducted sensitivity analyses in order to account for the ranges of estimates available for shipment assumptions. The analysis focused on changes to two parameters: The shipment growth rate and the price elasticity of demand. In the first sensitivity analysis, the shipment growth rate was changed to 6.5 percent instead of 1.8 percent based on the trend in actual manufactured home shipments from 2011 to 2014. This growth rate applies to both the no-standards case and standards case shipments. In a second sensitivity analysis, DOE considered a standards case shipment scenario in which the price elasticity is −2.4 (instead of −0.48). This would project a 2.4 percent reduction in shipments based on the projected cost increases in the June 2016 NOPR. DOE based this sensitivity case on previous HUD estimates of −2.4 price elasticity based on a 1992 paper written by Carol Meeks.[11] This would translate to a 12 percent reduction in shipments based on a 5 percent increase in price.

DOE received a number of comments regarding several aspects of the nationwide impacts described in the June 2016 NOPR. The following sections provide a discussion of each of the submitted comments as well as updates to the NIA conducted for this SNOPR.

1. Discussion of Comments and Analysis Updates

a. Shipments Analysis

DOE received numerous comments on the June 2016 NOPR regarding the methodology and assumptions used in the shipments analysis. In the June 2016 NOPR, for the no-standards case shipments, DOE assumed that all current manufactured home shipments reported by MHI are for manufactured homes that are minimally compliant with the HUD Code. NEEA commented that 54 percent of the manufactured homes built in the Pacific Northwest are built to the EPA's ENERGY STAR program specifications (NEEA, No. 190 at p. 4).

Because ENERGY STAR-certified manufactured homes are more efficient than minimally HUD Code-compliant homes, DOE agrees that ENERGY STAR homes should not be accounted for in the no-standard shipments and national impact analyses, so as to avoid overestimating energy savings and NPV benefits to the consumer. In this SNOPR, DOE's NIA analysis is based on the assumption that ENERGY STAR-certified manufactured homes would not provide additional national benefits as a result of this proposed rule, if made final.[62] As a result, the national savings in the SNOPR only accrue to projected no-standards case shipments that are not ENERGY STAR-certified. Further details on this shipment update is discussed in chapter 10 of the SNOPR TSD.

DOE also received comments regarding the volume of manufactured housing shipments in the future. NEEA commented that the manufactured housing market has risen in recent years and it predicts the volume of homes built will be 20–40 percent higher than estimates used in DOE's NOPR analysis. (NEEA, No. 190 at p. 4) Southern Company commented that it believes that the shipment analysis should include a ''spike'' or large increase in shipments in the 2030s to serve as replacements for homes built in the late 1990s and early 2000s, during which time a similar large spike in shipments was observed. (Southern Company, Public Meeting Transcript, No. 148 at p. 104)

DOE acknowledges that there are a variety of factors that could affect future manufactured home shipments. For the June 2016 NOPR, DOE determined the shipment growth rate from the *AEO 2015* projections of new housing starts. The *AEO* projections, focused on U.S. energy markets, are based on results from NEMS, which enables EIA to make projections under internally consistent sets of assumptions. Since the June 2016 NOPR, DOE reviewed the new *AEO 2020* projections, and determined an updated housing start growth rate of 0.3 percent. DOE continues to use the housing start growth rate from *AEO 2020* in the absence of any growth rate information specific to manufactured housing. In addition, DOE has updated the shipment analysis to include the 2015–2019 shipment data provided through MHI, which was the latest data available at the time of the SNOPR analysis. Furthermore, DOE also

[60] See Manufactured Home Shipments by Product Mix (1990–2013), Manufactured Housing Institute (2014).

[61] See Marshall, M. I. & Marsh, T. L. Consumer and investment demand for manufactured housing units. *J. Hous. Econ.* 16, 59–71 (2007).

[62] ENERGY STAR version 2 requirements for manufactured homes can be found at: *https://www.energystar.gov/partner_resources/residential_new/homes_prog_reqs/national_page.*

performed a sensitivity analysis where the shipment growth rate was changed to 6.5 percent based on the trend in actual manufactured home shipments from 2011 to 2014. The results of this analysis are provided in section IV.C.2 of this document.

DOE also recognizes that manufactured homes that reach the end of their useful life may eventually need to be replaced, and DOE agrees with Southern Company that replacement of old manufactured homes does indeed occur in the market and can cause an upshift in shipments. However, the ownership period of a manufactured home may vary drastically between different consumers and different manufactured homes. Furthermore, there may be homeowners who do not purchase a second manufactured home. Therefore, DOE bases future shipments on historical trends and residential housing start growth rates rather than replacements.

Regarding the source of the manufactured housing shipment data, COBA commented that the Institute for Building Technology and Safety (''IBTS'') is the primary source for HUD Code housing data and suggested that DOE contact IBTS directly to guarantee the most accurate data. (COBA, No. 158 at p. 5) DOE determined shipments from the annual production and shipment data provided by MHI.[63] The data source for the shipments provided by MHI is IBTS. Since the June 2016 NOPR, DOE has updated the shipment analysis to include the 2015–2019 shipment data provided through MHI, which was the latest data available at the time of the SNOPR analysis.

DOE also received comments on the June 2016 NOPR regarding the changes currently taking place within the manufactured housing market. COBA commented that the overall distribution of manufactured homes has undergone a paradigm change, where roughly 500 portfolio operators of LLL Communities own the majority of new HUD Code homes. It said this change was not addressed by the MH working group and will greatly affect the cost of implementing the new DOE energy conservation standards. (COBA, No. 158 at p. 3) COBA commented that the sales of HUD Code homes through traditional distribution (via independent MH retailers and other manufacturers) have plummeted in the 21st century with loss of easy access to chattel capital. However, portfolio LLL Community operators have since realized that selling new homes on-site is the best method for success. COBA stated that in 2009, 25 percent of new HUD Code homes were shipped to LLL Communities; in 2015, it was closer to 40 percent, and is predicted to be 75 percent of new homes by 2020. (COBA, No. 158 at p. 7) COBA also stated that these newer large portfolios are very susceptible to price adjustments and are going to be hurt by the increase in price. (COBA, Public Meeting Transcript, No. 148 at p. 14, 27)

DOE appreciates the information regarding shipment distribution provided by COBA. However, DOE's LCC analysis focuses primarily on the effects of the rule on the individual consumers of manufactured homes. This proposed standard provides for a balanced approach regarding increased purchase price of the manufactured home in view of energy cost savings over time for a consumer. DOE's LCC analysis tentative results are provided in section IV.A.2. The LCC analysis applies to all consumers, regardless of whether they purchase the home from a commercial retailer or an onsite community operator.

In addition, DOE's shipment analysis studies the effect of the incremental price increases of the energy conservation standard on the total amount of manufacturer shipments in the United States and does not differentiate on who actually sells the home to consumers. The no-standards case shipments include shipments that are minimally compliant to the HUD Code. Furthermore, DOE's analysis for the standards-case shipments includes a price elasticity factor describing the change in future shipments in response to the energy conservation standards. Section IV.C.1.b provides more details regarding the price elasticity used in the analysis.

In this SNOPR, DOE also had to determine the percentage of the total shipments that would be applicable to each of the tiers analyzed based on HUD zone under the tiered proposal. Accordingly, DOE developed shipments for each of the tiers using the MHS 2019 PUF data discussed in III.A.2.[64] First, DOE estimated that manufactured homes in Census regions (the U.S. Census Bureau divides the country into four census regions) 1, 2 and 4 combined were representative of HUD zone 3 and manufactured homes in Census region 3 were representative of HUD zones 1 and 2. Second, DOE considered that a percentage of manufactured homes placed/sold would shift to less stringent standards, *i.e.,* a percentage of homes from Tier 2 would shift to Tier 1. The inclusion of this shift in the market is to more accurately estimate energy savings (and other downstream results) if the proposed tiered standard approach is finalized. For this analysis, DOE applied a ''substitution effect'' of 20 percent to homes within $1000 of the price threshold ($55,001–$56,000). For example, 20 percent of homes placed/sold in the $55,001–$56,000 range (as provided by the MHS 2019 PUF dataset) would move to Tier 1 and would be subject to less stringent thermal envelope standards. DOE chose a higher-end estimate of 20 percent based on reports that were reviewed for the energy conservation standards rulemaking for residential furnaces. 81 FR 65720, 65772. The reports reviewed included estimates for direct rebound effects of household heating as it relates to more efficient products used more intensively. While the concept of ''rebound effect'' for the residential furnaces rulemaking is different than the ''substitution effect'' that is being considered in this rulemaking, with the lack of any data specific to the rebound effect for manufactured homes, DOE determined that 20 percent is a reasonable proxy for the substitution effect analysis being performed in this SNOPR.

As a result, Table IV.23 provides the corresponding percentage of total manufactured homes placed/sold applicable to each tier based on HUD zone and size. These percentages were applied to the total shipments to determine the shipments for each tier. Further discussion on this analysis is provided in the Chapter 10 of the SNOPR TSD. Without the substitution effect applied, there would be more shipments in the Tier 2 standard for all climate zones, which would increase the national energy savings from the tiered standard.

[63] See Manufactured Home Shipments by Product Mix, Manufactured Housing Institute (2019).

[64] Manufactured Housing Survey, Public Use File (PUF) 2019. *https://www.census.gov/data/datasets/2019/econ/mhs/puf.html.*

TABLE IV.20—SHIPMENT BREAKDOWN BASED ON TIER AND PROPOSED CLIMATE ZONE

	Climate zone 1 or 2		Climate zone 3	
	SS (%)	MS (%)	SS (%)	MS (%)
Tier 1 Standard	53.58	0	57.32	0
Tier 2 Standard	46.42	100.00	42.68	100.00
Total	100.00	100.00	100.00	100.00

DOE requests comment on the shipment breakdown per tier and using a substitution effect of 20 percent on shipments to account for the shift in homes sold to the lower tiered standard. DOE requests comment on whether it should use a different substitution effect value for this analysis—and if so, why. (Please provide data in support of an alternative substitution effect value.)

b. Price Elasticity of Demand

Price elasticity of demand (price elasticity) is an economic concept that describes the change of the quantity demanded in response to a change in price. Price elasticity is typically represented as a ratio of the percentage change in quantity relative to a percentage change in price. It allows DOE to assess the extent to which consumers and retailers are unable or unwilling to purchase new homes as a result of the increased costs. In the June 2016 NOPR, DOE used a price elasticity value of −0.48 to estimate the effect of the proposed rule on manufactured home shipments. This value was sourced from a study by Marshall and Marsh.[65]

DOE received several comments on the June 2016 NOPR regarding the price elasticity that was used in the NOPR. MHARR stated that the −0.48 value was published in 2007 prior to the collapse of the housing market in 2008–2009. (MHARR, Public Meeting Transcript, No. 148 at p. 112) Southern Company and MHI expressed that the elasticity value of −0.48 seemed too low, particularly considering that a large part of the manufactured housing market is low-income households. Southern Company indicated that an elasticity value of –1 would be more intuitive. (Southern Company, Public Meeting Transcript, No. 148 at p. 110) MHI stated that HUD uses an elasticity value of −2.4 instead, which would yield a much greater decrease in production as a result of this standard. MHI indicated that both values are outdated, and that DOE may be underestimating the impact of the proposed rule. MHI suggested that DOE and HUD develop a new elasticity measure that is more up to date and accurately measures price sensitivity from manufacturers and retailers. (MHI, No. 182 at p. 5) MHCC also stated that the June 2016 NOPR analysis underestimates the reduction in production levels due to the proposed rule by using −0.48, which they deemed too low. (MHCC, No. 162 at p. 2)

DOE reviewed the Meeks study cited by HUD, as well as various others, and concluded that the Marshall and Marsh elasticity value of −0.48 was the most reliable figure. The Meeks study was published in 1993 and is based on manufactured housing shipments as a proxy for consumer demand.[66] The data from the study ranges from 1961 to 1989 and found an overall price elasticity of −2.4. The Meeks study used a one-stage regression model, similar to a study by Gates in 1984 which found elasticities from −3.0 to −2.5.[67] A study in 1994 by Kavanaugh re-evaluated the methods behind the Gates study, using a two-stage regression instead of one stage. Using shipment data from 1972 to 1989, the Kavanaugh study reported a price elasticity estimate of −0.7.[68]

Marshall and Marsh used the number of new manufactured homes placed for residential use as a proxy for consumer demand and also separated short-term consumer behavior from long-term influences. As part of their paper, Marshall and Marsh reviewed all the aforementioned studies (including Meeks', Gates', and Kavanaugh's studies) to determine the inputs into their model. They used national level data from similar sources to the Meeks, Gates, and Kavanaugh studies for their consumer demand model. Marshall and Marsh estimated the price elasticity of demand for manufactured homes at −0.48 using a two-stage regression model and concluded that consumers in general are not so price sensitive and are likely willing to accept incremental higher prices for improvements in cost efficiency. For the NIA, DOE determined the Marshall and Marsh study is still the most recent estimate of consumer demand based on price changes for manufactured housing and maintains the proposed usage of the −0.48 elasticity value. In recognition of the range of estimates in the housing literature, DOE also retained −2.4 as a sensitivity analysis. As discussed previously, DOE is proposing Tier 1 of the tiered standard to address concerns about affordability for low-income consumers. DOE estimates that based on a price elasticity of −0.48, the SNOPR would result in a loss in demand and availability of about 53,329 homes (single section and multi-section combined) for the tiered standard. Out of the 53,329 homes in the tiered standard, the majority of the reduction is in Tier 2 (93 percent) vs. Tier 1 (7 percent). Within Tier 1, DOE estimates a 0.52 percent reduction (essentially no reduction) in availability due to Tier 1 standards for low income purchasers. As a sensitivity, DOE also considered a price elasticity of demand of −2.4 instead of −0.48. Further discussion on this sensitivity is provided in Section 10.4 of Chapter 10 of the TSD. Table IV.1 provides a summary of the change in shipments from baseline for the tiered standards for a price elasticity of −0.48 and −2.4 to reflect the people who do not buy a manufactured home under the standards case because they are price-sensitive.

c. Net Present Value

DOE received a comment concerning the discount rates used to calculate the NPV. GWU commented that it has concerns regarding the 3-percent and 7-percent discount rate used by DOE in the annualized benefits and costs calculation in the June 2016 NOPR. GWU stated that DOE's 3-percent and 7-percent discount rates were too low and that a more realistic discount rate, such as chattel loan rates, would reflect a much lower benefit to consumers. (GWU, No. 175 at p. 5)

[65] See Marshall, M.I. & Marsh, T.L. Consumer and investment demand for manufactured housing units. *J. Hous. Econ.* 16, 59–71 (2007).

[66] See Meeks, C., 1992, Price Elasticity of Demand for Manufactured Homes: 1961–1989.

[67] See Gates, H., 1984. Price Elasticity of Demand for Manufactured Homes. Manufactured Housing Institute.

[68] See Kavanaugh, DC, Anderson, D.M., Marsh, T.L., Lee, A.D., Onisko, S., 1994. Key Elements Affecting Manufactured Home Household Investments in Energy-Efficiency: An Empirical Analysis.

DOE generally uses real discount rates of 3 percent and 7 percent to discount future costs and savings to present values.[69] The 3- and 7-percent discount rates are based on Circular A–4 issued by the Office of Management and Budget (OMB) as guidance on the development of regulatory analysis as required by Executive Order (E.O.) 12866.[70] The 7-percent rate is the established estimate of the average rate of return, before tax, to private capital in the U.S. economy. The 3-percent rate is called the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.[71] These real discount rates are used to calculate annualized benefits and costs in DOE rulemakings in order to perform cross-industry comparisons in a standardized manner. In the SNOPR, DOE maintains discount rates of 3 percent and 7 percent for the NPV and the annualized benefits and costs. Additionally, as discussed in section IV.A.1.c, DOE uses a discount rate based on the chattel loan interest rate in the LCC analysis.

d. Other Comments

DOE also received another comment that was not specific to any of the previous topics regarding nationwide impacts. NPGA commented that it appreciated DOE's use of full-fuel cycle analysis. It also supported the estimated reduction of pollutants and greenhouse gases for both site and upstream emissions. (NPGA, No. 171 at p.1) DOE appreciates NPGA's comment, and continues to use the full-fuel cycle analysis in this SNOPR.

2. Results

This section provides the tentative results for the projected nationwide impact analyses, including the NES and NPV. In this SNOPR, DOE updated the energy efficiency measures analyzed as described in section III.E.2.b. DOE also updated all inputs to the NES and NPV based on the updated *AEO 2020.* This includes updates to the housing starts growth rate, inflation rates, energy prices, energy prices growth rates, and full-fuel cycle energy factors. In addition, DOE also updated the shipment analysis to include the 2015–2019 MHI shipments and exclude any ENERGY STAR shipments to avoid overestimating energy savings. Furthermore, for the tiered proposal, DOE had to determine shipments per tier, as described in section IV.C.1.a, by implementing a substitution effect of shifting Tier 2 shipments to Tier 1 for the tiered proposal. Lastly, the analyses include updates to the average price of a manufactured home, and fuel type distributions. Further details on the updated inputs are discussed in chapters 8, 10, and 11 of the SNOPR TSD.

DOE notes that the NES does not account for the energy savings for the people who do not buy a manufactured home under the standards case because they are price-sensitive. As such, NES only accounts for savings for those that are able to purchase a manufactured home. The NES is calculated based on the same number of homes purchased under both the standards and no standards case such that there are no energy savings attributed to less homes purchased.

Table IV. reflects the NES results over a 30-year analysis period under the SNOPR on a primary energy savings basis. Primary energy savings apply a factor to account for losses associated with generation, transmission, and distribution of electricity. Primary energy savings differ among the different climate zones because of differing energy conservation requirements in each climate zone and different shipment projections in each climate zone.

TABLE IV.20—CUMULATIVE NATIONAL ENERGY SAVINGS OF MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME

	Tiered standards		Untiered standard	
	Single-section (quads)	Multi-section (quads)	Single-section (quads)	Multi-section (quads)
Climate Zone 1	0.213	0.591	0.303	0.591
Climate Zone 2	0.164	0.467	0.243	0.467
Climate Zone 3	0.300	0.463	0.376	0.463
Total	0.677	1.521	0.921	1.521

Table IV.21 illustrates the cumulative NES over the 30-year analysis period for the tiered proposals on an FFC energy savings basis. FFC energy savings apply a factor to account for losses associated with generation, transmission, and distribution of electricity, and the energy consumed in extracting, processing, and transporting or distributing primary fuels. NES values differ among the different climate zones because of differing energy efficiency requirements in each climate zone and different shipment projections in each climate zone.

TABLE IV.21—CUMULATIVE NATIONAL ENERGY SAVINGS, INCLUDING FULL-FUEL-CYCLE OF MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME

	Tiered standards		Untiered standard	
	Single-section (quads)	Multi-section (quads)	Single-section (quads)	Multi-section (quads)
Climate Zone 1	0.222	0.616	0.316	0.616
Climate Zone 2	0.172	0.491	0.254	0.491
Climate Zone 3	0.324	0.499	0.405	0.499

[69] DOE relies on a range of discount rates in monetizing emission reductions as discussed in section IV.D.2 of this document.

[70] *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[71] Office of Management and Budget, Circular A–4, September 2003.

TABLE IV.21—CUMULATIVE NATIONAL ENERGY SAVINGS, INCLUDING FULL-FUEL-CYCLE OF MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME—Continued

	Tiered standards		Untiered standard	
	Single-section (quads)	Multi-section (quads)	Single-section (quads)	Multi-section (quads)
Total	0.718	1.606	0.976	1.606

Without the substitution effect applied, the total cumulative FFC energy savings for the tiered standards would increase by 0.2 percent.

Table IV.22 and Table IV.23 illustrate the NPV of consumer benefits over the 30-year analysis period under the tiered proposals for a discount rate of 7 percent and 3 percent, respectively. The NPV of manufactured homeowner benefits differ among the different climate zones because there are different upfront costs and operating cost savings associated with each climate zone and different shipment projections in each climate zone. For the primary tiered proposal, all climate zones have a positive NPV for both discount rates under this SNOPR.

TABLE IV.22—NET PRESENT VALUE OF MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME AT A 7% DISCOUNT RATE

	Tiered standards		Untiered standard	
	Single-section (billion 2020$)	Multi-section (billion 2020$)	Single-section (billion 2020$)	Multi-section (billion 2020$)
Climate Zone 1	$0.22	$0.47	$0.24	$0.46
Climate Zone 2	0.08	0.08	0.00	0.06
Climate Zone 3	0.42	0.36	0.26	0.35
Total	0.72	0.90	0.49	0.87

TABLE IV.23—NET PRESENT VALUE OF MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME AT A 3% DISCOUNT RATE

	Tiered standards		Untiered standard	
	Single-section (billion 2020$)	Multi-section (billion 2020$)	Single-section (billion 2020$)	Multi-section (billion 2020$)
Climate Zone 1	$0.70	$1.69	$0.85	$1.63
Climate Zone 2	0.38	0.79	0.29	0.73
Climate Zone 3	1.34	1.50	1.12	1.44
Total	2.42	3.98	2.26	3.80

Table IV.24 shows the tentative projected benefits and costs to the manufactured homeowner associated with the SNOPR, expressed in terms of annualized values.

TABLE IV.24—ANNUALIZED BENEFITS AND COSTS TO MANUFACTURED HOME HOMEOWNERS UNDER THE SNOPR

	Discount rate (%)	Monetized (million 2020$/year)		
		Primary estimate **	Low estimate **	High estimate **
Tiered Standards				
Benefits *				
Operating (Energy) Cost Savings	7	$509	$471	$554
	3	774	701	858
Costs *				
Incremental Purchase Price Increase	7	359	352	385
	3	427	407	464
Net Benefits/Costs *				
	7	150	119	169
	3	347	294	394

TABLE IV.24—ANNUALIZED BENEFITS AND COSTS TO MANUFACTURED HOME HOMEOWNERS UNDER THE SNOPR—Continued

	Discount rate (%)	Monetized (million 2020$/year)		
		Primary estimate **	Low estimate **	High estimate **
Untiered Standard				
Benefits *				
Operating (Energy) Cost Savings	7	565	523	615
	3	859	778	951
Costs *				
Incremental Purchase Price Increase	7	440	429	471
	3	530	503	576
Net Benefits/Costs *				
	7	125	94	144
	3	329	275	375

* The benefits and costs are calculated for homes shipped in 2023–2052.
** The Primary, Low, and High Estimates utilize forecasts of energy prices from the *AEO 2020* Reference case, Low Economic Growth case, and High Economic Growth case, respectively.

DOE also estimated the deadweight loss associated with the proposed rule stemming from the reduced shipments in the standards case scenario. Deadweight loss is a cost to society as a whole generated by shifting the market away from the no-standards case equilibrium. If the supply curve is perfectly elastic, then the deadweight loss of an energy conservation standard is entirely borne by consumers and not producers. The deadweight loss is equivalent to one-half the incremental price multiplied by the reduction in total shipments, discounted over the 30-year analysis. If, however, the supply curve's slope near equilibrium is similar in magnitude to the demand curve, then the deadweight loss is equivalent to the incremental price multiplied by the reduction in total shipments, discounted over the 30-year analysis.

DOE does not have data on the supply curve elasticity, therefore DOE estimated the deadweight loss for the proposed standards using a price elasticity of −0.48.

DOE tentatively estimates that the discounted total deadweight loss for the standards based on Tier 1 range from $0.8 to $1.5 million (2020$, discounted at 3 percent) and $0.4 to $0.9 million (2020$, discounted at 7 percent). DOE tentatively estimates that the discounted total deadweight loss for the standards based on Tier 2 from $75.4 to $150.9 million (2020$, discounted at 3 percent) and $43.9 to $87.8 million (2020$, discounted at 7 percent). DOE tentatively estimates that the discounted total deadweight loss for the untiered standard range from $103.1 to $206.2 million (2020$, discounted at 3 percent) and $60 to $120 million (2020$, discounted at 7 percent).

DOE requests comment on the calculation of deadweight loss presented above and the extent to which there are market failures in the no-standards case.

DOE considered two sensitivity analyses relating to shipments. First, DOE considered a shipment scenario in which the growth rate is 6.5 percent (instead of 0.3 percent) based on the trend in actual manufactured home shipments from 2011 to 2014. This growth rate applies to both the no-standards case and standards case shipments. DOE's primary scenario is based on the residential housing start data from *AEO 2020.* The sensitivity analysis calculates the increase in NES and NPV associated with a much larger future market for manufactured homes. Table IV.25 summarizes the results of the sensitivity analysis. A detailed description of the sensitivity analysis is provided in appendix 11A of the SNOPR TSD.

TABLE IV.25—SHIPMENTS GROWTH RATE SENSITIVITY ANALYSIS NES AND NPV RESULTS

	National energy savings (full fuel cycle quads)	Net present value 3% discount rate (billion 2020$)	Net present value 7% discount rate (billion 2020$)
Tiered Standard			
0.3% Shipment Growth (primary scenario)	2.32	$6.40	$1.62
6.5% Shipment Growth	8.13	20.12	4.35
Untiered Standards			
0.3% Shipment Growth (primary scenario)	2.58	6.07	1.36
6.5% Shipment Growth	9.04	19.10	3.66

In a second sensitivity analysis, DOE considered a standards case shipment scenario in which the price elasticity is −2.4 (instead of −0.48). HUD has used an estimate of −2.4 in analyses of revisions to its regulations [72] promulgated at 24 CFR part 3282 based on a 1992 paper written by Carol Meeks.[73] DOE's primary scenario is based on a study published in 2007 in the *Journal of Housing Economics.* The sensitivity analysis calculates the decrease in NES and NPV associated with a larger decrease in shipments resulting from the more negative price elasticity value. See Table IV.26 for results of the sensitivity analysis. A detailed description of the sensitivity analysis is provided in appendix 11A of the SNOPR TSD.

TABLE IV.26—PRICE ELASTICITY OF DEMAND SENSITIVITY ANALYSIS NES AND NPV RESULTS

	National energy savings (full-fuel cycle quads)	Net present value 3% discount rate (billion 2020$)	Net present value 7% discount rate (billion 2020$)
Tiered Standards			
−0.48 Price Elasticity (primary scenario)	2.32	$6.40	$1.62
−2.4 Price Elasticity	2.12	5.90	1.51
Untiered Standard			
−0.48 Price Elasticity (primary scenario)	2.58	6.07	1.36
−2.4 Price Elasticity	2.31	5.46	1.23

D. Nationwide Energy Savings and Emissions Benefits

1. Emissions Analysis

DOE estimates environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. DOE bases these estimates on a 30-year analysis period of manufactured home shipments, accounting for a 30-year home lifetime. DOE's analysis estimates reductions in emissions of six pollutants associated with energy savings: Carbon dioxide (CO_2), mercury (Hg), nitric oxide and nitrogen dioxide (NO_X), sulfur dioxide (SO_2), methane (CH_4), and nitrous oxide (N_2O). These reductions are referred to as ''site'' emissions reductions. Furthermore, DOE estimates reductions due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. Together, site emissions reductions and upstream emissions reductions account for the FFC.

As in the June 2016 NOPR, DOE estimated emissions reductions based on emission factors for each pollutant, which depend on the type of fuel associated with energy savings (electricity, natural gas, liquefied petroleum gas, fuel oil). The analysis of power sector emissions of CO_2, NO_X, SO_2, and Hg uses marginal emissions factors that were derived from data in AEO 2020.[74] Full details of this methodology are described in chapter 13 of the SNOPR TSD.

Because the onsite operation of manufactured homes may require combustion of fossil fuels and results in emissions of CO_2, NO_X, and SO_2 at the manufactured home sites where this combustion occurs, DOE also accounted for the reduction in these site emissions and the associated upstream emissions due to the standards. Site emissions of the above gases were estimated using emissions intensity factors from an EPA publication.[75] The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis. As discussed previously in section IV.C.2, the energy savings calculated does not account for the energy savings for the people who do not buy a manufactured home under the standards case because they are price-sensitive, but only accounts for savings for those that are able to purchase a manufactured home. The energy savings is calculated based on the same number of homes purchased under both the standards and no standards case such that there are no energy savings attributed to less homes purchased. After calculating the total reduction of emissions, DOE estimated the monetized value associated with the reduction of these emissions, as discussed in section IV.D.2 of this document.

2. Monetizing Emissions Impacts

As part of the analysis of the impacts of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X and SO_2 that are expected to result from the proposed energy standards. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for the standards. This section summarizes the basis for the values used for monetizing the emissions benefits in this SNOPR.

a. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the social cost (''SC'') of each pollutant (*e.g.,* SC-CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict,

[72] For example, see *http://www.regulations.gov/#!documentDetail;D=HUD-2014-0033-0001.*

[73] Meeks, C., 1992, Price Elasticity of Demand for Manufactured Homes: 1961 to 1989.

[74] See Energy Information Administration, Annual Energy Outlook 2019 with Projections to 2050 (2019), available at *https://www.eia.gov/outlooks/aeo/pdf/AEO2019.pdf.*

[75] U.S. Environmental Protection Agency. External Combustion Sources. In *Compilation of Air Pollutant Emission Factors.* AP–42. Fifth Edition. Volume I: Stationary Point and Area Sources. Chapter 1. Available at *https://www.epa.gov/aiR-emissions-factors-and-quantification/ap-42-compilation-aiR-emissions-factors.*

environmental migration, and the value of ecosystem services.

DOE used the estimates for the social cost of greenhouse gases (''SC-GHG'') from the most recent update of the Interagency Working Group on Social Cost of Greenhouse Gases, United States Government (IWG) working group, from ''Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990.'' (February 2021 TSD). DOE has determined that the estimates from the February 2021 TSD, as described more below, are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of the reductions of emissions anticipated from the proposed rule.

The SC-GHG estimates in the February 2021 TSD are interim values developed under Executive Order (E.O.) 13990 for use until an improved estimate of the impacts of climate change can be developed based on the best available science and economics. The SC-GHG estimates used in this analysis were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, an interagency working group (IWG) that included DOE, the EPA and other executive branch agencies and offices used three integrated assessment models (IAMs) to develop the SC-CO_2 estimates and recommended four global values for use in regulatory analyses. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

The SC-CO_2 estimates were first released in February 2010 and updated in 2013 using new versions of each IAM. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC-CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC-CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide, and recommended specific criteria for future updates to the SC-CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process (National Academies 2017). On January 20, 2021, President Biden issued Executive Order 13990, which directed the IWG to ensure that the U.S. Government's (USG) estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the estimates currently used by the USG and publishing interim estimates within 30 days of E.O. 13990 that reflect the full impact of GHG emissions, including taking global damages into account, which resulted in the issuance of the February 2021 TSD. More information on the basis for the IWG's interim values may be found in the IWG's Technical Support Document.[76]

DOE's derivations of the SC-CO_2, SC-N_2O, and SC-CH_4 values used for this SNOPR are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these pollutants are presented in section IV.3.b of this document.

Social Cost of Carbon

The SC-CO_2 values used for this NOPR were generated using the values presented in the 2021 update from the IWG. Table IV.27 shows the updated sets of SC-CO_2 estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in Appendix 14–A of the SNOPR TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC-CO_2 values, as recommended by the IWG.[77] These SC-CO_2 estimates are the same as those used in the June 2016 NOPR except adjusted for inflation to 2020 dollars. The June 2016 NOPR provides further detail of DOE's SC-CO_2 analysis for the June 2016 NOPR. See 81 FR 39791.

TABLE IV.27—ANNUAL SC-CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per Metric Ton CO_2]

Year	Discount rate			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
2020	14	51	76	152
2025	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

In calculating the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2021 interagency report, adjusted to 2020$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SC-CO_2 cases specified, the values for emissions in 2020 were $14, $51, $76, and $152 per metric ton avoided (values expressed in 2020$). DOE derived values after 2050 based on the trend in 2010–2050 in each of the four cases in the IWG update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC-CO_2 value for that year in each of the four cases. To calculate a present value

[76] See Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990,* Washington, DC, February 2021. (*https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethane NitrousOxide.pdf?source=email).*

[77] For example, the TSD discusses how the understanding of discounting approaches suggests that discount rates appropriate for intergenerational analysis in the context of climate change may be lower than 3 percent.

of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC-CO_2 values in each case.

Social Cost of Methane and Nitrous Oxide

The SC-CH_4 and SC-N_2O values used for this SNOPR were generated using the values presented in the 2021 update from the IWG.[78] Table IV.28 shows the updated sets of SC-CH_4 and SC-N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in Appendix 14–A of the SNOPR TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC-CH_4 and SC-N_2O values, as recommended by the IWG.

TABLE IV.28—ANNUAL SC-CH_4 AND SC-N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton]

Year	SC-CH_4 (discount rate and statistic)				SC-N_2O (discount rate and statistic)			
	5% (Average)	3% (Average)	2.5% (Average)	3% (95th percentile)	5% (Average)	3% (Average)	2.5% (Average)	3% (95th percentile)
2020	670	1500	2000	3900	5800	18000	27000	48000
2025	800	1700	2200	4500	6800	21000	30000	54000
2030	940	2000	2500	5200	7800	23000	33000	60000
2035	1100	2200	2800	6000	9000	25000	36000	67000
2040	1300	2500	3100	6700	10000	28000	39000	74000
2045	1500	2800	3500	7500	12000	30000	42000	81000
2050	1700	3100	3800	8200	13000	33000	45000	88000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC-CH_4 and SC-N_2O estimates for that year in each of the cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC-CH_4 and SC-N_2O estimates in each case.

b. Monetization of Other Air Pollutants

For the SNOPR, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using benefit per ton estimates based on air quality modeling and concentration-response functions conducted for the Clean Power Plan final rule. EPA reported values for NO_X (as $PM_{2.5}$) and SO_2 for 2020, 2025, and 2030 using discount rates of 3 percent and 7 percent. DOE developed values specific to the sector for manufactured housing using a method described in appendix 14B of the SNOPR TSD. For this analysis DOE used linear interpolation to define values for the years between 2020 and 2025 and between 2025 and 2030; for years beyond 2030 the value is held constant.

DOE estimated the monetized value of NO_X and SO_2 emissions reductions from site use of gas in manufactured homes using benefit per ton estimates from the EPA's ''Technical Support Document Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 17 Sectors'' (''EPA TSD''). Although none of the sectors refers specifically to residential and commercial buildings, the sector called ''area sources'' would be a reasonable proxy for residential and commercial buildings. ''Area sources'' represents all emission sources for which states do not have exact (point) locations in their emissions inventories. Because exact locations would tend to be associated with larger sources, ''area sources'' would be fairly representative of small dispersed sources like homes and businesses. The EPA TSD provides high and low estimates for 2016, 2020, 2025, and 2030 at 3- and 7-percent discount rates. DOE primarily relied on the low estimates to be conservative.

DOE multiplied the emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

3. Discussion of Comments

DOE received a number of comments regarding several aspects of the nationwide environmental benefits described in the June 2016 NOPR. The following sections provide a discussion of each of the submitted comments, including the changes that DOE has made in the methodology and assumptions.

a. Social Cost of Carbon

DOE received several comments on the development of, and the use of the SC-CO_2 values in DOE's analysis in the June 2016 NOPR. A group of trade associations led by the U.S. Chamber of Commerce objected to DOE's continued use of the SC-CO_2 in the cost-benefit analysis and stated that the SC-CO_2 calculation should not be used in any rulemaking until it undergoes a more rigorous notice, review, and comment process. (U.S. Chamber of Commerce., No. 181 at p. 4) The Cato Institute also criticized DOE's use of SC-CO_2 estimates on the basis that they are subject to considerable uncertainty. The Cato Institute criticized several aspects of the determination of the SC-CO_2 values by the IWG as being discordant with the best climate science, highly sensitive to input parameters and scope of the models, and not reflective of climate change impacts. The Cato Institute stated that until integrated assessment models (IAMs) are made consistent with what it stated is mainstream climate science, the SC-CO_2 should be barred from use in this and all other Federal rulemakings. (Cato Institute, No. 180 at pp. 1–4, 15–16). MHARR stated that the global benefits calculated via the SC-CO_2 in the analysis are not only unreliable and arbitrary, but also compare the monetary benefits to the world to a rule affecting less than 10 percent of the domestic

[78] See Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990,* Washington, DC, February 2021. *https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

housing market. (MHARR, No. 154 at p. 32).

In contrast, the Joint Advocates stated that only a partial accounting of the costs of climate change (those most easily monetized) can be provided, which inevitably involves incorporating elements of uncertainty. The Joint Advocates commented that accounting for the economic harms caused by climate change is a critical component of sound cost—benefit analyses of regulations that directly or indirectly limit greenhouse gases. The Joint Advocates stated that several executive orders direct Federal agencies to consider non-economic costs and benefits, such as environmental and public health impacts. (Joint Advocates, No. 147 at pp. 2–3) Furthermore, the Joint Advocates argued that without an SC-CO_2 estimate, regulators would by default be using a value of zero for the benefits of reducing carbon pollution, thereby implying that carbon pollution has no costs. The Joint Advocates stated that it would be arbitrary for a Federal agency to weigh the societal benefits and costs of a rule with significant carbon pollution effects but to assign no value at all to the considerable benefits of reducing carbon pollution. (Joint Advocates, No. 147 at p. 3).

The Joint Advocates stated that assessment and use of the IAMs in developing the SC-CO_2 values has been transparent. The Joint Advocates further noted that the Government Accountability Office found that the IWG's processes and methods used consensus-based decision making, relied on existing academic literature and models, and took steps to disclose limitations and incorporate new information. The Joint Advocates stated that repeated opportunities for public comment demonstrate that the IWG's SC-CO_2 estimates were developed and are being used transparently. (Joint Advocates, No. 147 at p. 4) The Joint Advocates stated that (1) the IAMs used reflect the best available, pee*R*-reviewed science to quantify the benefits of carbon emission reductions; (2) uncertainty is not a valid reason for rejecting the SC-CO_2 analysis, and (3) the IWG was rigorous in addressing uncertainty inherent in estimating the economic cost of pollution. (Joint Advocates, No. 147 at pp. 5, 17–18, 18–19) The Joint Advocates added that the increase in the SC-CO_2 estimate in the 2013 update reflects the growing scientific and economic research on the risks and costs of climate change, but is still very likely an underestimate of the SC-CO_2. (Joint Advocates, No. 147 at p. 4) The Joint Advocates stated that recent research suggests that CO_2 fertilization is overestimated and may be canceled out by negative impacts on agriculture. (Joint Advocates, No. 147 at p. 16).

DOE emphasizes that the SC-GHG analysis presented in this SNOPR and TSD was performed in support of the cost-benefit analyses required by Executive Order 12866, and is provided to inform the public of the impacts of emissions reductions resulting from this proposed rule. The SC-GHG estimates were not factored into DOE's determination of whether the proposed rule could be cost-effective under section 413 of EISA 2007.

As noted previously, DOE has updated the SC-CO_2 analysis in this SNOPR using interim estimated values issued by the IWG established under Executive Order 13990. DOE has determined that the estimates from the February 2021 TSD are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of CO_2 related to the reductions of emissions resulting from this proposed rule. The SC-CO_2 estimates used in this analysis were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, an interagency working group (IWG) that included DOE and other executive branch agencies and offices was established to ensure that agencies were using the best available science and to promote consistency in the SC-CO_2 values used across agencies. The February 2021 TSD provides a complete discussion of the IWG's initial review conducted under E.O. 13990.

First, as the IWG affirmed, a global perspective is essential for social cost of greenhouse gases (SC-GHG) estimates because climate impacts occurring outside U.S. borders can directly and indirectly affect the welfare of U.S. citizens and residents. Thus, U.S. interests are affected by the climate impacts that occur outside U.S. borders. Examples of affected interests include: Direct effects on U.S. citizens and assets located abroad, international trade, tourism, and spillover pathways such as economic and political destabilization and global migration. In addition, assessing the benefits of U.S. GHG emissions reductions requires consideration of how those actions may affect emissions reductions by other countries, as those international actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. Therefore, in analyzing the potential impacts of this proposed rule DOE focuses on a global measure of SC-GHG. As noted in the February 2021 TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating SC-GHG values based on purely domestic damages, and explore ways to better inform the public of the full range of carbon impacts, both global and domestic. As a member of the IWG, DOE will likewise continue to follow developments in the literature pertaining to this issue.

Second, as the IWG found, the use of the social rate of return on capital (7 percent under current OMB Circular A–4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC-GHG. Consistent with the findings of the National Academies (2017) and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context (IWG 2010, 2013, 2016a, 2016b), and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

While the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC-GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 TSD, the IWG has determined that it is appropriate to revert to the same set of four values drawn from the SC-GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and subject to public comment. As explained in the February 2021 TSD, this update reflects the immediate need to have an operational SC-GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

DOE acknowledges that there are a number of challenges in attempting to assess the incremental economic impacts of CO_2 emissions. Some uncertainties are captured within the analysis, while other areas of

uncertainty have not yet been quantified in a way that can be modeled. The February 2021 TSD presents the quantified sources of uncertainty in the form of frequency distributions, and discusses the sources of uncertainty that have not yet been quantified and are thus not reflected in these estimates. The modeling limitations do not all work in the same direction in terms of their influence on the SC-CO_2 estimates. However, the IWG has recommended that, taken together, the limitations suggest that the interim SC-CO_2 estimates used in this proposed rule likely underestimate the damages from CO_2 emissions. DOE agrees with the IWG's approach. Despite the limits of both quantification and monetization, SC-CO_2 estimates can be useful in estimating the social benefits of reducing CO_2 emissions. Although any numerical estimate of the benefits of reducing carbon dioxide emissions is subject to some uncertainty, that does not relieve DOE of its obligation under E.O. 12866 to attempt to factor those benefits into its cost-benefit analysis. Moreover, the IWG's SC-CO_2 estimates are well supported by the existing scientific and economic literature. As a result, DOE used the IWG's SC-CO_2 estimates in quantifying the social benefits of reducing CO_2 emissions. Specifically, DOE estimated the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SC-CO_2 values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

b. Monetization of Methane and Nitrous Oxide

In the June 2016 NOPR, DOE also estimated monetary benefits for NO_X emissions under the proposed rule. Estimates of the monetary value of reducing NO_X from stationary sources ranged from $489 to $5,023 per metric ton (2015$). DOE calculated monetary benefits using an intermediate value for NO_X emissions of $2,755 per metric ton (in 2015$), and real discount rates of 3 and 7 percent. DOE received several comments on emissions monetization.

The Joint Advocates commented that DOE acknowledges that its proposed standards will reduce significant quantities of non-carbon dioxide greenhouse gases, including methane, and has estimated monetary benefits for NO_X emissions under the proposed rule. The Joint Advocates commented that DOE should include the Social Cost of Methane in the estimated monetary benefits. (Joint Advocates, No. 147 at pp. 19–21) The Joint Advocates stated that the EPA and other agencies have begun using a methodology developed to specifically measure the Social Cost of Methane—namely, the Marten et al. approach [79]—in recent proposed rulemakings. This approach builds on the methodology and assumptions used by the IWG to develop the SC-CO_2, but also accounts for other factors that are unique to methane. Overall, the Joint Advocates commented that the Marten et al. methodology provides reasonable, direct estimates that reflect updated evidence and provide consistency with the Government's accepted methodology for estimating the SC-CO_2. The Joint Advocates commented that DOE should use the Social Cost of Methane to more accurately reflect the true benefits of the standards and to enhance the rigor and defensibility of the final rule.

As noted previously, DOE has updated its analysis to account for the social cost of methane and nitrous oxide consistent with the SC-CH_4 and SC-N_2O estimates presented in the February 2021 TSD. DOE has determined that the estimates from the February 2021 TSD are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of CH_4 and NO_2 related to the reductions of emissions resulting from this proposed rule.. The SC-CH_4 and SC-N_2O values used for this SNOPR are presented in Table IV.28.[80] DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC-CH_4 and SC-N_2O estimates for that year in each of the cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC-CH_4 and SC-N_2O estimates in each case. See chapter 14 of the TSD for further discussion.

4. Results

a. Emissions Analysis

In this SNOPR DOE updated its analysis from the 2016 NOPR based on the results of the national energy savings discussed in section IV.C.2. DOE also updated its analysis to utilize emission factors derived from data in the *AEO 2020*.[81] The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2020* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available at the time of preparation of *AEO 2020,* including the emissions control programs discussed in the following paragraphs.[82]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous eastern States and DC are also limited under the Cross-State Air Pollution Rule (''CSAPR''), which created an allowance-based trading program that operates along with the Title IV program in those States and DC. 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions, and went into effect as of January 1, 2015. *AEO 2020* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016, 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of implementation of the Mercury and Air Toxics Standards (''MATS'') for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (''HAP''), and also

[79] Marten, A.L., Kopits, E.A., Griffiths, C.W., Newbold, S.C., and A. Wolverton. 2015. Incremental CH_4 and N_2O Mitigation Benefits Consistent with the U.S. Government's SC-CO2 Estimates. *Climate Policy.* 15(2): 272–298 (published online, 2014).

[80] See Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990,* Washington, DC, February 2021. *https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[81] See Energy Information Administration, Annual Energy Outlook 2020 with Projections to 2050 (2020), available at *https://www.eia.gov/outlooks/aeo/pdf/AEO2020%20Full%20Report.pdf.*

[82] For further information, see the Assumptions to *AEO2020* report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at *https://www.eia.gov/outlooks/aeo/assumptions/* (last accessed July 6, 2020).

established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. To continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation will generally reduce SO_2 emissions.

CSAPR also established limits on NO_X emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those States covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such a case, NO_X emissions would remain near the limit even if electricity generation goes down. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_X emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that energy conservation standards will not reduce NO_X emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *AEO 2020* data to derive NO_X emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2020,* which incorporates the MATS.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA.[83] The FFC upstream emissions are estimated based on the methodology described in chapter 13 of the SNOPR TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

Table IV.29 reflects the emissions reductions for both single-section and multi-section manufactured homes.

TABLE IV.29—EMISSIONS REDUCTIONS AS A RESULT OF THE SNOPR

Pollutant	Single-section	Multi-section
Tiered Standards Site Emissions Reductions		
CO_2 (million metric tons)	31.7	67.7
Hg (metric tons)	0.063	0.146
NO_X (thousand metric tons)	18.3	37.3
SO_2 (thousand metric tons)	12.8	27.7
CH_4 (thousand metric tons)	1.86	4.14
N_2O (thousand metric tons)	0.35	0.74
Upstream Emissions Reductions		
CO_2 (million metric tons)	3.1	6.32
Hg (metric tons)	3.42E–4	7.67E–04
NO_X (thousand metric tons)	39.7	81.7
SO_2 (thousand metric tons)	0.32	0.64
CH_4 (thousand metric tons)	221	463
N_2O (thousand metric tons)	0.016	0.033
Total Emissions Reductions		
CO_2 (million metric tons)	34.8	74.0
Hg (metric tons)	0.064	0.147
NO_X (thousand metric tons)	58	119
SO_2 (thousand metric tons)	13.1	28.3
CH_4 (thousand metric tons)	223	467
N_2O (thousand metric tons)	0.37	0.78
Untiered Standard Site Emissions Reductions		
CO_2 (million metric tons)	42.4	67.7
Hg (metric tons)	0.087	0.146
NO_X (thousand metric tons)	24.0	37.3
SO_2 (thousand metric tons)	17.2	27.7
CH_4 (thousand metric tons)	2.51	4.14

[83] Available at *www2.epa.gov/climateleadership/centeR-corporate-climate-leadership-ghg-emission-factors-hub.*

TABLE IV.29—EMISSIONS REDUCTIONS AS A RESULT OF THE SNOPR—Continued

Pollutant	Single-section	Multi-section
N_2O (thousand metric tons)	0.47	0.74
Upstream Emissions Reductions		
CO_2 (million metric tons)	4.09	6.32
Hg (metric tons)	4.65E–04	7.67E–04
NO_X (thousand metric tons)	52.5	81.7
SO_2 (thousand metric tons)	0.42	0.64
CH_4 (thousand metric tons)	293	463
N_2O (thousand metric tons)	0.021	0.033
Total Emissions Reductions		
CO_2 (million metric tons)	46.4	74.0
Hg (metric tons)	0.087	0.147
NO_X (thousand metric tons)	76.5	119
SO_2 (thousand metric tons)	17.6	28.3
CH_4 (thousand metric tons)	296	467
N_2O (thousand metric tons)	0.49	0.78

b. Monetization of Emissions

DOE estimated the global social benefits of GHG emission reductions expected from this final rule using the SC-GHG estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990* (IWG 2021) that would be expected to result from the SNOPR as discussed in IV.D.2 DOE has determined that the estimates from the February 2021 TSD are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts of GHG related to the reductions of emissions resulting from this proposed rule. These SC-GHG estimates are the same as those used in the June 2016 NOPR except adjusted for inflation to 2020 dollars. Table IV. presents the global values of the CO_2 emissions reduction.

TABLE IV.30—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME

	SC-CO_2 Case (million 2020$)			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Tiered Standards				
Single Section	$259.8	$1,173.3	$1,963.4	$3,614.2
Multi Section	553.6	2,498.8	4,180.3	7,696.9
Total	813.4	3,672.1	6,143.6	11,311.1
Untiered Standard				
Single Section	$347.1	$1,567.0	$2,621.9	$4,826.8
Multi Section	553.6	2,498.8	4,180.3	7,696.9
Total	900.7	4,065.8	6,802.1	12,523.7

Similarly, DOE has updated the quantified total climate benefits to estimate monetary benefits likely to result from the reduced emissions of CH_4 and N_2O, consistent with the interim estimates in the February 2021 TSD. DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC-CH_4 and SC-N_2O estimates for that year in each of the two cases. Table IV.30 presents the value of the CH_4 emissions reduction, and Table IV.31 presents the value of the N_2O emissions reduction.

TABLE IV.30—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME

[Million 2020$]

	SC-CH_4 case			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Tiered Standards				
Single Section	$83.4	$270.4	$401.4	$720.2
Multi Section	175.1	567.3	842.0	1,511.0
Total	258.5	837.7	1,243.4	2,231.2
Untiered Standard				
Single Section	110.9	359.4	533.5	957.4
Multi Section	175.1	567.3	842.0	1,511.0
Total	286.0	926.7	1,375.6	2,468.4

TABLE IV.31—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME

[Million 2020$]

	SC-N_2O case			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Tiered Standards				
Single Section	$1.12	$4.94	$8.15	$13.16
Multi Section	2.35	10.33	17.04	27.52
Total	3.48	15.27	25.19	40.68
Untiered Standard				
Single Section	1.49	6.55	10.81	17.45
Multi Section	2.35	10.33	17.04	27.52
Total	3.85	16.88	27.85	44.97

In this SNOPR, DOE also updated the monetization of NO_X and SO_2 emissions reductions from both electricity generation and direct use from manufactured homes. For this analysis, DOE used linear interpolation to define values for the years between 2020 and 2025 and between 2025 and 2030; for years beyond 2030 the value is held constant. Full details of this methodology are described in chapter 14 of the SNOPR TSD. DOE multiplied the NO_X and SO_2 emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate. Table IV.32 and Table IV.33 presents the results.

TABLE IV.32—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME

[Million 2020$]

	3% discount rate (high)	7% discount rate (high)	3% discount rate (low)	7% discount rate (low)
Tiered Standards				
Single Section	$338.9	$117.9	$149.0	$52.4
Multi Section	676.5	235.6	297.1	104.8
Total	1,015.4	353.4	446.0	157.2
Untiered Standard				
Single Section	442.9	154.1	194.6	68.6

TABLE IV.32—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME—Continued

[Million 2020$]

	3% discount rate (high)	7% discount rate (high)	3% discount rate (low)	7% discount rate (low)
Multi Section	676.5	235.6	297.1	104.8
Total	1,119.4	389.7	491.7	173.3

TABLE IV.33—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR MANUFACTURED HOMES PURCHASED 2023–2052 WITH A 30-YEAR LIFETIME

[Million 2020$]

	3% discount rate (high)	7% discount rate (high)	3% discount rate (low)	7% discount rate (low)
Tiered Standards				
Single Section	$549.3	$189.3	$240.9	$84.8
Multi Section	1,128.6	387.8	493.8	174.5
Total	1,677.9	577.0	734.7	259.3
Untiered Standard				
Single Section	723.9	249.2	317.2	111.8
Multi Section	1,128.6	387.8	493.8	174.5
Total	1,852.5	637.0	811.0	286.3

DOE has not considered the monetary benefits of the reduction of Hg for this SNOPR.

E. Total Benefits and Costs

DOE has tentatively determined that under either proposal the benefits to the Nation of the standards (energy savings, consumer LCC savings, positive NPV of consumer benefit, and emission reductions) outweigh the burdens (loss of INPV, LCC increases for some homeowners of manufactured housing, and price-sensitive consumers who do not purchase manufactured homes). The tentative projected total benefits and costs (from the manufactured homeowner's perspective) associated with the SNOPR, expressed in terms of annualized values, is presented in Table I.9 (See Section I.E), and is explained in greater detail in section IV and in chapter 15 of the SNOPR TSD.[84]

[84] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2016, the year used for discounting the net present value of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of CO_2 reductions. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2020 that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the proposed standards for manufactured housing are intended to address are as follows:

(1) Under current federal standards, manufactured homes typically conserve less energy than comparably built site-built and modular homes,

(2) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(3) In some cases, the benefits of more efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when a product or design decision is made by a building contractor or building owner who does not pay the energy costs.

(4) There are external benefits resulting from improved energy efficiency of products or equipment that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming.

The Administrator of the Office of Information and Regulatory Affairs (''OIRA'') in the OMB has determined that the regulatory action in this document is a significant regulatory action under section (3)(f) of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(B) of the E.O., DOE has provided to OIRA: (1) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (2) an assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate. DOE has included these documents in the rulemaking record.

In addition, the Administrator of OIRA has determined that the regulatory action is an ''economically'' significant

regulatory action under section (3)(f)(1) of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of the E.O., DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments can be found in the technical support document for this rulemaking and are summarized in the tables below.

TABLE V.1—SUMMARY OF ECONOMIC BENEFITS AND COSTS TO MANUFACTURED HOME HOMEOWNERS UNDER THE PROPOSED STANDARDS

Benefits	Net present value (billion 2020$)		Discount rate (%)
	Tiered	Untiered	
Consumer Operating Cost Savings	$5.5	$6.1	7.
	14.3	15.9	3.
GHG Reduction (using avg. social costs at 5% discount rate) *	1.1	1.2	5.
GHG Reduction (using avg. social costs at 3% discount rate) *	4.5	5.0	3.
GHG Reduction (using avg. social costs at 2.5% discount rate) *	7.4	8.2	2.5.
GHG Reduction (using 95th percentile social costs at 3% discount rate) *	13.6	15.0	3.
NO_X Reduction	0.2	0.2	7.
	0.4	0.5	3.
SO_2 Reduction	0.3	0.3	7.
	0.7	0.8	3.
Total Benefits	7 to 19.5	7.8 to 21.6	7 plus GHG range.
	10.5	11.6	7.
	20.0	22.2	3.
	16.6 to 29.1	18.4 to 32.2	3 plus GHG range.
Costs			
Consumer Incremental Product Costs †	3.9	4.7	7.3
	7.9	9.6	3.
Total Net Benefits			
Including GHG and Emissions Reduction Monetized Value	3.1 to 15.6	3 to 16.9	7 plus GHG range.
	6.6	6.9	7.
	12.1	12.6	3.
	8.7 to 21.2	8.7 to 22.6	3 plus GHG range.

Note: This table presents the costs and benefits associated with manufactured homes shipped in 2023–2052.

* The benefits from GHG reduction were calculated using global benefit-per-ton values. See section IV.D.2 of this document for more details.

** Total Benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. In the rows labeled ''7% plus GHG range'' and ''3% plus GHG range,'' the consumer benefits and NO_X and SO_2 benefits are calculated using the labeled discount rate, and those values are added to the GHG reduction using each of the four GHG social cost cases.

† The incremental costs include incremental costs associated with principal and interest, mortgage and property tax for the analyzed loan types.

TABLE V.2—ANNUALIZED BENEFITS AND COSTS TO MANUFACTURED HOME HOMEOWNERS UNDER THE PROPOSED STANDARDS

Benefits	Net present value (billion 2020$)		Discount rate (%)
	Tiered	Untiered	
Consumer Operating Cost Savings	509	565	7.
	774	859	3.
GHG Reduction (using avg. social costs at 5% discount rate)*	70	77	5.
GHG Reduction (using avg. social costs at 3% discount rate)*	231	256	3.
GHG Reduction (using avg. social costs at 2.5% discount rate)*	354	392	2.5.
GHG Reduction (using 95th percentile social costs at 3% discount rate)*	693	767	3.
NO_X Reduction	13	14	7.
	23	25	3.
SO_2 Reduction	21	23	7.
	37	41	3.
Total Benefits	613 to 1,236	679 to 1,369	7 plus GHG range.
	773	858	7.
	1,065	1,181	3.
	904 to 1,527	1,003 to 1,693	3 plus GHG range.
Costs			
Consumer Incremental Product Costs †	359	440	7.

TABLE V.2—ANNUALIZED BENEFITS AND COSTS TO MANUFACTURED HOME HOMEOWNERS UNDER THE PROPOSED STANDARDS—Continued

Benefits	Net present value (billion 2020$)		Discount rate (%)
	Tiered	Untiered	
	427	530	3.
Total Net Benefits			
Including GHG and Emissions Reduction Monetized Value	254 to 877	239 to 929	7 plus GHG range.
	414	418	7.
	638	651	3.
	477 to 1,100	473 to 1,163	3 plus GHG range.

Note: This table presents the costs and benefits associated with manufactured homes shipped in 2023–2052.

* The benefits from GHG reduction were calculated using global benefit-per-ton values. See section IV.D of this document for more details.

** Total Benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. In the rows labeled ''7% plus GHG range'' and ''3% plus GHG range,'' the consumer benefits and NO_X and SO_2 benefits are calculated using the labeled discount rate, and those values are added to the GHG reduction using each of the four GHG social cost cases.

† The incremental costs include incremental costs associated with principal and interest, mortgage and property tax for the analyzed loan types.

DOE has also reviewed this proposed regulation pursuant to E.O. 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in E.O. 12866. To the extent permitted by law, agencies are required by E.O. 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed rule is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') and a final regulatory flexibility analysis (''FRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990 (Feb. 9, 2003) DOE has made its procedures and policies available on the Office of the General Counsel's website (*https://energy.gov/gc/office-general-counsel*). DOE has prepared the following updated IRFA for the products that are the subject of this rulemaking.

1. Need for, and Objectives of, the Rule

EISA requires DOE to regulate energy conservation in manufactured housing, an area of the building construction industry traditionally regulated by HUD. HUD has regulated the manufactured housing industry since 1976, when it first promulgated the HUD Code. Among other provisions, EISA directs DOE to consult with the Secretary of HUD, who may seek further counsel from the Manufactured Housing Consensus Committee (MHCC); and to base the energy conservation standards on the most recent version of the IECC, except where DOE finds that the IECC is not cost effective or where a more stringent standard would be more cost effective, based on the impact of the IECC on the purchase price of manufactured housing and on total lifecycle construction and operating costs. (42 U.S.C. 17071).

2. Significant Issues Raised in Response to the IRFA

DOE received comments from the Office of Advocacy at the U.S. Small Business Administration (''Advocacy'') and other interested parties on the manufactured housing June 2016 NOPR regarding small businesses. These comments are addressed in this section.

Advocacy stated that DOE published an IRFA that did not comply with the RFA's requirement to quantify or describe the economic impact that the proposed regulation might have on small entities. (Advocacy, No. 177 at p. 2) Advocacy stated that DOE failed to include large costs such as conversion costs and test procedure compliance costs. Advocacy also stated that compliance and enforcement costs (redesign costs, plant modifications, re-costing and sourcing new materials, inspections, approvals, consulting fees, and employee training) are major costs to small businesses and should be included and analyzed in the proposed rule (Advocacy, No. 177 at p. 3).

In the June 2016 NOPR IRFA DOE estimated the impacts on small

manufacturers based on the general industry analysis. In this updated IRFA, DOE expands its analysis to include a more detailed review of the burdens and compares costs to small manufacturer revenue to determine whether those costs are significant. DOE included product conversion costs, based on the expected number of model plans that need to be redesigned as a result of this proposed rule, and capital conversion costs, based on the cost of additional equipment needed to produce compliant homes. In the June 2016 NOPR, DOE estimated costs manufacturers would incur from test procedures as proposed in a separate rulemaking. As discussed, this SNOPR does not include cost estimates related to test procedures, as any such costs will be addressed separately. The test procedure NOPR for manufactured housing was published on November 9, 2016. 81 FR 78733.

Advocacy requested that DOE present and analyze significant alternatives, and adopt a regulatory alternative to the proposed standard that will minimize the economic impact to small manufacturers (Advocacy, No. 177 at pp. 2–4). Further, Advocacy expressed concern that the proposed rule would have a significant impact on small manufacturers. Advocacy stated it takes longer for small manufacturers to recover investments, because they must spread similar redesign investments over a lower volume of units than larger competitors. (Advocacy, No. 177 at p. 2) Additionally, MHARR commented that the proposed rule will have a particularly negative impact on the smaller producers in terms of regulatory cost burdens. (MHARR, Public Meeting Transcript, No. 148 at p. 13) The MHCC commented that DOE has not adequately addressed the impact of the proposed rule on small manufacturers, stating that small manufacturers may not be able to compete in the marketplace due to economies of scale afforded to large manufacturers that are able to purchase materials in volume at discounted rates not available to smaller manufacturers. The MHCC noted that DOE did not certify that the proposed rule would not have a significant impact on small manufacturers. (MHCC, No. 162 at p. 2).

In the June 2016 NOPR, DOE quantified the number of small businesses that have a direct compliance burden and estimated the magnitude of the compliance burden based on industry average conversion costs. In this updated IRFA, DOE expands its analysis to include a more detailed review of the burdens, an analysis of the costs specific to small manufacturers, and a comparison of these costs to small manufacturer revenue to determine whether those costs are significant. This analysis can be found in section V.B.4 of the updated IRFA. Additionally, DOE includes a review of alternatives to this proposal in section V.B.5 of the IRFA. DOE recognizes that new standards can create cost uncertainty for small businesses, but the updated analysis finds that the expected investments are less than 0.1 percent of revenues for small manufacturers (see section V.C.4). While small manufacturers may need to spread these costs over a lower volume of shipments than larger competitors, DOE finds this level of investment unlikely to change the level of industry competition or be a driver of industry consolidation.

Advocacy commented that DOE's estimate of $2,423 and $3,745 price increases for single- and multi-section manufactured homes is extremely low and does not accurately reflect the baseline cost, nor the dealer and retail markups. Advocacy expressed that even a modest increase in the price of manufactured housing will prevent many potential consumers from obtaining financing, which would severely impact small manufacturers' consumer base. Further, Advocacy stated that dominant businesses in the manufactured home industry can sell manufactured homes at cost or offer energy rebates to their consumers to offset the increased price of energy efficient homes. Advocacy stated that small businesses cannot absorb the added cost to comply with the proposed regulation. (Advocacy, No. 177 at p. 3).

In response to the June 2016 NOPR, certain parties commented that DOE's estimated incremental cost to the consumer were too low, whereas other interested parties stated that the estimates were too high (see section IV.A.1.g for a full discussion). During the June 2016 NOPR public meeting, MHI stated that it represents small manufacturers and that the cost analysis used by the MH working group included small, medium, and large manufacturers. (MHI, Public Meeting Transcript, No. 148 at pp. 85–86). DOE confirmed MHI represented multiple small manufacturers through its publicly-available manufacturer membership list.[85] Additionally, as described in section IV.A.1.g of the SNOPR, DOE took steps to validate incremental costs of production materials through published data. As a result, the incremental cost figures provided by the MH working group in the course of the negotiated consensus process are understood to be representative for manufacturers of all sizes.

MHARR stated that DOE's analysis contains financial information from 10–K filings that are likely from larger industry corporations. (MHARR, No. 154 at p. 33) Table 12.1 of the SNOPR Technical Support Document (TSD) summarizes the financial parameters DOE used in its analysis of manufacturer impacts. The Department makes uses of all public and private financial information made available. DOE invites stakeholders to provide additional financial data to be considered in the analysis.

MHARR referenced a SBA report to make the case that federal regulation generally has a disproportionately negative impact on smaller businesses in any industry. (MHARR, No. 154 at pp. 33). As noted in the NOPR, DOE recognizes that the rulemaking will have costs to small manufacturers. In this SNOPR, DOE includes a tiered proposal which is based on a tiered structure that would minimize impacts on the most cost-sensitive segment of manufactured home buyers and on the small manufacturers that serve that market segment. In the updated IRFA (see the ''Description and Estimate of Compliance Requirements'' section below), DOE estimates conversion costs of the updated proposed standard level to be $43,000 per small manufacturer, an amount that is less than 0.1% of average annual revenues.

Lastly, Advocacy recommended that DOE adopt delayed compliance schedules for small manufacturers, stating that more time to comply will allow them to spread costs and manage their limited resources in a way that will minimize the economic impact on their business. (Advocacy, No. 177 at p. 4) In this SNOPR, DOE has proposed a one-year lead time for compliance. As discussed in previous sections, a one-year lead time would allow for coordination of compliance with the DOE requirements and the HUD Code and provide manufacturers flexibility in allocating and managing the resources needed to bring their manufactured homes into compliance. Additionally, a one-year lead-time would allow for the evaluation of industry compliance under the DOE standards before DOE is required to evaluate potential updates based on the next version of the IECC.

[85] MHI Manufacturer Members. *https://www.manufacturedhousing.org/find-a-manufacturer/.*

3. Description and Estimate of the Number of Small Entities Affected

The SBA has set a size threshold for manufacturers of manufactured homes, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (13 CFR part 121) The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *https://www.sba.gov/document/support--table-size-standards.* Manufacturing of manufactured housing is classified under NAICS 321991, ''Manufactured Home (Mobile Home) Manufacturing.'' The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. DOE notes that the initial regulatory flexibility analysis (IRFA) in the 2016 NOPR was based on an employee threshold of 500 employees. 81 FR 42576. The updated IRFA threshold of 1,250 employee reflects the SBA's most recent guidance on the employee threshold for small businesses.

To estimate the number of companies that manufacture manufactured housing covered by this rulemaking, DOE conducted a market survey using publicly available information. DOE first attempted to identify all manufactured housing manufacturers by researching industry trade associations (*e.g.,* MHI [86]) and individual company websites. DOE used market research tools such as Hoovers reports,[87] Glassdoor,[88] and LinkedIn [89] to gather information about the number of employees and manufacturing locations. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers. After a comprehensive list of businesses was created, DOE screened out companies that do not offer manufactured homes affected by this proposed rule, do not meet the definition of a ''small business,'' are foreign owned and operated, or do not manufacture manufactured homes in the United States.

DOE identified 34 manufacturers of manufactured housing affected by this rulemaking. Of these, DOE identified 29 as domestic small businesses.

DOE requests comment on the number of manufacturers of manufactured housing producing home covered by this rulemaking.

4. Description and Estimate of Compliance Requirements

To evaluate impacts facing manufacturers of manufactured housing, DOE estimated both the capital conversion costs (*e.g.,* investments in property, plant, and equipment) and product conversion costs (*e.g.,* expenditures on R&D, testing, marketing, and other non-depreciable expenses) manufacturers would incur to bring their manufacturing facilities and product designs into compliance with the standards as proposed.

To calculate product conversion costs, DOE estimated the number of model-plans manufacturers would need to redesign. Based on input from subject matter experts in the industry, manufacturers would need to update between 200 and 250 plans as a result of the standard. Consulting with subject matter experts in the industry, DOE estimated that each plan would require 3 hours of engineering time to update. Based on data from the Bureau of Labor Statistics, DOE calculated a fully burdened mean hourly wage for a mechanical engineer at $65.63/hour in 2020.[90] Based on these inputs, DOE estimated product conversion costs of approximately $49,000 per manufacturer.

While DOE understands most manufacturers have the necessary equipment to produce manufactured homes that are compliant with the standards as proposed in this document, DOE incorporated capital conversion costs of approximately $3,000 per manufacturer to cover additional work stations, equipment, and tooling that may be needed to support compliance with the standard.

In aggregate, DOE estimates the average small manufacturer would incur $52,000 in conversion costs. Based on data from business databases (*i.e.,* Dunn & Bradstreet and Manta), DOE estimated that small manufacturers of manufactured housing have an average annual revenue of $43.3 million. Per manufacturer conversion costs are less than 0.1 percent of average small business annual revenue. While the proposed standards would require investments on the part of small manufacturers, DOE's calculations show that the conversion costs are small relative to the size of the average small manufacturer.

DOE requests comment on the cost to update model plans and the number of model plans to update as a result of the proposed rule; on the types of equipment and capital expenditures that would be necessitated by the proposal; and the total cost of updating product offerings and manufacturing facilities. DOE requests comment on how these values would differ for small manufacturers. DOE requests comment on its estimate of average annual revenues for small manufacturers of manufactured housing.

5. Significant Alternatives Considered and Steps Taken To Minimize Significant Economic Impacts on Small Entities

In reviewing alternatives to the proposed standards, DOE examined energy conservation standards proposed in the June 2016 NOPR. The June 2016 NOPR was adopted by the MH working group, which consisted of 22 representatives of stakeholders,[91] including representatives of manufacturer trade groups that included small manufacturers. However, in response to concerns related to potential adverse impacts on price-sensitive, low-income purchasers of manufactured homes from the imposition of energy conservation standards on manufactured housing, in this SNOPR DOE is proposing the tiered standard. In the alternative, DOE is also proposing the untiered standard.

DOE evaluated the alternative of adopting a single, untiered standard for manufactured homes that focuses on the building thermal envelope, duct and air sealing, insulation installation, HVAC specifications, service hot water systems, mechanical ventilation fan efficacy, and heating and cooling equipment sizing provisions, based on the 2021 IECC. The untiered standard would apply all manufactured homes,

[86] *https://www.manufacturedhousing.org/admin/template/brochures/949temp.pdf.*

[87] Hoovers. *https://www.hoovers.com/.*

[88] *https://www.glassdoor.com/index.htm.*

[89] *https://www.linkedin.com/.*

[90] *https://www.bls.gov/oes/current/oes172141.htm.*

[91] Selected member of the MH working group were: Bert Kessler, Palm Harbor Homes, Inc.; David Tompos, NTA, Inc.; Emanuel Levy, Systems Building Research Alliance; Eric Lacey, Responsible Energy Codes Alliance; Ishbel Dickens, National Manufactured Home Owners Association (NMHOA); Keith Dennis, National Rural Electric Cooperative Association; Lois Starkey, Manufactured Housing Institute; Lowell Ungar, American Council for an Energy-Efficient Economy; Manuel Santana, Cavco Industries; Mark Ezzo, Clayton Homes, Inc.; Mark Weiss, Manufactured Housing Association for Regulatory Reform; Michael Lubliner, Washington State University Extension Energy Program; Michael Wade, Cavalier Home Builders; Peter Schneider, Efficiency Vermont; Richard Hanger, Housing Technology and Standards; Richard Potts, Virginia Department of Housing and Community Development; Rob Luter, Lippert Components, Inc.; Robin Roy, Natural Resources Defense Council; Scott Drake, East Kentucky Power Cooperative; Stacey Epperson, Next Step Network. DOE and ASRAC members were: Joseph Hagerman (DOE); and John Caskey (ASRAC, National Electrical Manufacturers Association).

regardless of manufacturer retail price. The untiered proposal is expected to result in 2.58 quads of energy savings over the 30-year analysis period.

However, DOE's primary proposal in this SNOPR is the tiered standard. DOE structured this proposal to minimize impacts on the most price-sensitive consumers and manufacturers that sell to those consumers. In the proposal, Tier 1 would apply to manufactured homes with a manufacturer's retail list price of $55,000 or less, and would incorporate building thermal envelope measures based on certain thermal envelope components subject to the 2021 IECC but would limit the incremental purchase price increase to $750 or less. The proposal also sets up a Tier 2 that would apply to manufactured homes with a manufacturer's retail list price greater than $55,000. The Tier 2 standards would be set to stringencies based on the 2021 IECC and likely increase purchase prices by more than $750. The tiered proposal is expected to result in 2.32 quads of energy savings over the 30-year analysis period. The tiered proposal balances the benefits of the energy savings with the potential burdens placed on low-income consumers and on manufacturers that serve those consumers.

C. Review Under the Paperwork Reduction Act

This rulemaking would not include any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act of 1969

DOE is preparing a draft Environmental Impact Statement (EIS) (DOE/EIS–0550) entitled, ''Environmental Impact Statement: Energy Conservation Standards for Manufactured Housing'', pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's Regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), and DOE's NEPA Implementing Procedures (10 CFR part 1021).

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

DOE has examined this action and has determined that it will not pre-empt State law. This action impacts energy efficiency requirements for manufacturers of manufactured homes. Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *https://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE has tentatively concluded that this proposed rule may require expenditures of $100 million or more in one year by the private sector. Such expenditures may include: (1) Updates to product plans and investment in capital expenditures by manufactured home manufacturers in the years between the final rule and the compliance date of the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency manufactured homes, starting at the compliance date for the standards.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under E.O. 12866. The **SUPPLEMENTARY INFORMATION** section of this document and chapter 15 of the TSD for this SNOPR respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law.

In accordance with the statutory provisions discussed in this document, this proposed rule would establish energy conservation standards for manufactured homes based on the most recent IECC, except in cases in which DOE finds that the IECC is not cost-effective, or a more stringent standard would be more cost-effective, based on the impact of the code on the purchase price of manufactured housing and on total life-cycle construction and operating costs, and taking into consideration the design and factory construction techniques of manufactured homes. (42 U.S.C. 17071(b)(1) and 42 U.S.C. 17071(b)(2)(A)) A discussion of the alternatives considered by DOE is presented in chapter 15 of the TSD for this SNOPR.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposal, if finalized as proposed, would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 18, 1988), DOE has determined that this proposal, if finalized as proposed, would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes new energy conservation standards for manufactured housing, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer-reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process for consumer products and industrial equipment under EPCA and the analyses that are typically used and prepared a report describing that peer review.[92] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical, scientific, and business merit; the actual or anticipated results; and the productivity and management effectiveness of programs and/or projects. While the energy conservation standards for manufactured housing in this document have been proposed pursuant to section 413 of EISA (42 U.S.C. 17071) as compared to the appliance standards authority in EPCA (42 U.S.C. 6291–6317), DOE relied on the general analytical process developed and peer-reviewed for the appliance standards. DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses under the Appliance Standards Program and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of

[92] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *https://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peeR-review-report-0.*

programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following website: *https://www.energy.gov/eere/buildings/peer-review.* DOE also has a peer review in process with the National Academy of Sciences and will review any recommendations made therein when the report is available.

M. Materials Incorporated by Reference

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the FTC Chairman concerning the impact of the commercial or industry standards on competition.

DOE is proposing to incorporate by reference the industry standard published by ACCA, titled *Manual J—Residential Load Calculation (8th Edition).* ACCA Manual J is an industry accepted standard for calculating the heating and cooling load associated with a building. DOE is proposing to require building heating and cooling loads to be calculated (for purposes of equipment sizing) in accordance with ACCA Manual J. ACCA Manual J is readily available on ACCA's website at *www.acca.org/.*

DOE is proposing to incorporate by reference the industry standard published by ACCA, titled *Manual S—Residential Equipment Selection (2nd Edition).* ACCA Manual S is an industry accepted standard for calculating the appropriate heating and cooling equipment size for a building. DOE is proposing to require building heating and cooling equipment to be sized in accordance with ACCA Manual S. ACCA Manual S is readily available on ACCA's website at *www.acca.org/.*

DOE is proposing to incorporate by reference the industry standard written by C.C Conner and Z.T. Taylor of Pacific Northwest Laboratory, titled *Overall U-Values and Heating/Cooling Loads—Manufactured Homes.* This industry standard (referred to as the ''Battelle Method'') is an industry accepted method for calculating the overall thermal transmittance of a manufactured home. In instances in which manufacturers demonstrate compliance with the overall thermal transmittance requirement, DOE is proposing to require manufactured housing manufacturers to calculate the overall thermal transmittance of a manufactured home in accordance with this industry standard. This standard is readily available on the U.S. Department of Housing and Urban Development's website at *www.huduser.org/portal/publications/manufhsg/uvalue.html.*

DOE has evaluated these standards and was unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these standards on competition, prior to prescribing a final rule.

VI. Public Participation

A. Participation in the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=64.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this SNOPR, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Requests should be sent by email to: *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be

needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this SNOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via https://www.regulations.gov. The *https://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *https://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *https://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *https://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *https://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *https://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Requests Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE invites comment on whether (1) the manufacturer's retail list price threshold for Tier 1 under the tiered proposal is appropriate, (2) the untiered proposal in this SNOPR is cost-effective, generally, and (3) the untiered proposal is cost-effective for low-income consumers.

2. DOE welcomes comment on approaches for testing, compliance and enforcement provisions for the proposed standards and alternative proposal. DOE also welcomes comments and information related to potential testing, compliance and enforcement under the current HUD inspection and enforcement process, and potential costs of testing, compliance and enforcement of the proposed standards and alternative proposal in this document.

3. DOE requests comment on the use of a tiered approach to address affordability and PBP concerns from HUD, other stakeholders, and the policies outlined in Executive Order 13985. DOE also requests comment regarding whether the price point boundary between the proposed tiers is appropriate, and if not, at what price point should it be set and the basis for any alternative price points. DOE also requests comment on its assumptions regarding the use of high-priced loans (*e.g.,* chattel loans) by low-income purchasers, or other purchasers, of manufactured housing.

4. DOE also requests comment on alternate thresholds (besides price point) to consider for the tiered approach, including a size-based threshold (*e.g.,* square footage or whether a home is single- or multi-section). DOE requests comment on the square footage and region versus sales price data provided in the notice (from MHS PUF 2019) and how that data (or more recent versions of that data) could be used to create either a size-based or region-based threshold instead. DOE further requests input on whether there should be single national threshold as proposed, or whether it should vary based on geography or other factors, and if so, what factors should be considered.

5. DOE requests comment on using the AEO GDP deflator series to adjust the manufacturer's retail list price threshold for inflation. DOE requests comment on whether other time series, including those that account for regional variability, should be used to adjust manufacturer's retail list price.

6. DOE requests comment on whether a one-year lead time would be sufficient given potential constraints that compliance with the DOE standards may initially place on the HUD certification process, and whether a longer lead time (*e.g.,* a three-year lead time) or some other alternative lead-time for this first set of standards (*e.g.,* phased-in over three years, with one-year lead-times thereafter) should be provided.

7. DOE requests comment on its understanding of the definitional changes in the 2018 IECC and the 2021 IECC. DOE also requests comments on its changes to the proposed definitions as compared to those proposed in the June 2016 NOPR.

8. DOE requests comment on incorporating by reference ACCA Manual J, ACCA Manual S, and ''Overall U-Values and Heating/Cooling Loads—Manufactured Homes'' by Conner and Taylor.

9. DOE requests comment on basing the climate zones on the three HUD zones instead of the June 2016 NOPR-proposed four climate zones, or other configuration of climate zones. DOE further requests input on whether energy efficiency requirements should be based on smaller geographic areas than provided with the 3 or 4 zone model.

10. DOE requests comment on the Tier 1 energy conservation standards, which would be applicable to manufactured homes with a manufacturer's retail list price of $55,000 or less. DOE also requests comment on the proposed energy conservation standards based on the most recent version of the IECC for the Tier 2 and untiered standards and the consideration of R–21 sensitivity for exterior wall insulation for climate zones 2 and 3.

11. DOE requests comment on the additional energy efficiency requirements from the 2021 IECC and whether they should apply to manufactured homes, including those that DOE has initially considered as not applicable to manufactured homes. If so, DOE requests comment on how these requirements would apply and the costs and savings associated with these requirements.

12. DOE requests comment on the proposal to not require that exterior ceiling insulation must have uniform thickness or a uniform density.

13. DOE requests comment on the proposal not to limit the total area of glazed fenestration.

14. DOE requests comment on removing the proposed requirement that exterior floor insulation installed must maintain permanent contact with the underside of the rough floor decking.

15. DOE requests comment on the proposed updates to the installation of insulation criteria as it applies to manufactured homes construction only.

16. DOE requests comments on whether there are any of the 2021 IECC updates relevant to manufactured housing that should be considered as part of this rulemaking. Specifically, DOE requests comment on whether the 2021 IECC updates for installation criteria for access hatches and doors, baffles and shafts are applicable to manufactured housing and should be considered in this rulemaking.

17. DOE requests comment on the proposed updates to the air barrier criteria as it applies to manufactured homes construction only. Further, DOE requests comment whether the SNOPR proposal continues to be designed to achieve air leakage sealing requirements of 5 ACH.

18. DOE requests comments on whether there are any of the 2021 IECC updates relevant to manufactured housing that should be considered as part of this rulemaking. Specifically, DOE requests comment on whether the 2021 IECC updates for air barrier criteria for recessed lighting, narrow cavities and plumbing are applicable to manufactured housing and should be considered in this rulemaking. If so, DOE requests comment on whether the requirements would alter the 5 ACH designation.

19. DOE requests comment on the proposal to require that total air leakage of duct systems for all manufactured homes is to be less than or equal to 4 cfm per 100 square feet of conditioned floor area.

20. DOE requests comment on DOE's interpretation of R403.1 and the proposed updates to the thermostat and controls requirements. In addition, DOE requests comments on whether there are any of the 2021 IECC updates relevant to manufactured housing that should be considered as part of this rulemaking.

21. DOE requests comment on DOE's interpretation of R403.5 and the proposed updates to the service hot water requirements. In addition, DOE requests comments on whether there are any of the 2021 IECC updates relevant to manufactured housing that should be considered as part of this rulemaking. Specifically, DOE requests comment on whether the circulating hot water system temperature limit should be included as a requirement.

22. DOE requests comment on the proposal to include the 2021 IECC fan efficacy standard requirements. DOE requests comment on whether any of the fan efficacy requirements are not applicable to manufactured homes.

23. DOE requests comment on whether the HRV and ERV provisions under 2021 IECC for site-built homes are applicable to manufactured homes and whether they would be cost-effective. Specifically, DOE requests comment on costs for the HRV and ERV requirements as it applies to manufactured homes in all climate zones.

24. DOE requests comment on the above ventilation strategies, including (but not limited to) cost, performance, noise, and any other important attributes that DOE should consider, including those related to mitigation measures. While the alternate ventilation approaches are not integrated into the analysis presented as part of this proposal, DOE is giving serious consideration as to whether it should incorporate one or more of these options as part of its final rule based on any additional data and public comments it receives.

25. DOE requests comment on the cost-effectiveness and feasibility of requiring R–20+5 for the exterior wall insulation for climate zone 2 and 3 Tier 2/Untiered manufactured homes. DOE also requests comment on the sensitivity analysis for R–21 that would result in positive LCC savings for all cities.

26. DOE requests comment on the inputs to the conversion cost estimates.

27. DOE requests comment on the shipment breakdown per tier and using a substitution effect of 20 percent on shipments to account for the shift in homes sold to the lower tiered standard. DOE requests comment on whether it should use a different substitution effect value for this analysis—and if so, why. (Please provide data in support of an alternative substitution effect value.)

28. DOE requests comment on the calculation of deadweight loss presented above and the extent to which there are market failures in the no-standards case.

29. DOE requests comment on the number of manufacturers of manufactured housing producing home covered by this rulemaking.

30. DOE requests comment on the cost to update model plans and the number of model plans to update as a result of the proposed rule; on the types of equipment and capital expenditures that would be necessitated by the proposal;

and the total cost of updating product offerings and manufacturing facilities. DOE requests comment on how these values would differ for small manufacturers. DOE requests comment on its estimate of average annual revenues for small manufacturers of manufactured housing.

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 460

Administrative practice and procedure, Buildings and facilities, Energy conservation, Housing standards, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on August 12, 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 August 13, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE proposes to add part 460 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 460—ENERGY CONSERVATION STANDARDS FOR MANUFACTURED HOMES

Subpart A—General

Sec.
460.1 Scope.
460.2 Definitions.
460.3 Materials incorporated by reference.
460.4 Energy conservation standards.

Subpart B—Building Thermal Envelope

460.101 Climate zones.
460.102 Building thermal envelope requirements.
460.103 Installation of insulation.
460.104 Building thermal envelope air leakage.

Subpart C—HVAC, Service Hot Water, and Equipment Sizing

460.201 Duct systems.
460.202 Thermostats and controls.
460.203 Service hot water.
460.204 Mechanical ventilation fan efficacy.
460.205 Equipment sizing.

Authority: 42 U.S.C. 17071; 42 U.S.C. 7101 *et seq.*

Subpart A—General

§ 460.1 Scope.

This subpart establishes energy conservation standards for manufactured homes as manufactured at the factory, prior to distribution in commerce for sale or installation in the field. A manufactured home that is manufactured on or after (date 1 year after the publication date of the final rule amending standards for manufactured homes) must comply with all applicable requirements of this part.

§ 460.2 Definitions.

Adapted from Section R202 of the 2021 IECC and as used in this part—

Access (to) means that which enables a device, appliance or equipment to be reached by ready access or by a means that first requires the removal or movement of a panel or similar obstruction.

Air barrier means one or more materials joined together in a continuous manner to restrict or prevent the passage of air through the building thermal envelope and its assemblies.

Automatic means self-acting or operating by its own mechanism when actuated by some impersonal influence.

Building thermal envelope means exterior walls, exterior floors, exterior ceiling, or roofs, and any other building element assemblies that enclose conditioned space or provide a boundary between conditioned space and unconditioned space.

Ceiling means an assembly that supports and forms the overhead interior surface of a building or room that covers its upper limit and is horizontal or tilted at an angle less than 60 degrees (1.05 rad) from horizontal.

Climate zone means a geographical region identified in § 460.101.

Conditioned space means an area, room, or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned space, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping, or other sources of heating or cooling.

Continuous air barrier means a combination of materials and assemblies that restrict or prevent the passage of air from conditioned space to unconditioned space.

Door means an operable barrier used to block or allow access to an entrance of a manufactured home.

Dropped ceiling means a secondary nonstructural ceiling, hung below the exterior ceiling.

Dropped soffit means a secondary nonstructural ceiling that is hung below the exterior ceiling and that covers only a portion of the ceiling.

Duct means a tube or conduit, except an air passage within a self-contained system, utilized for conveying air to or from heating, cooling, or ventilating equipment.

Duct system means a continuous passageway for the transmission of air that, in addition to ducts, includes duct fittings, dampers, plenums, fans, and accessory air-handling equipment and appliances.

Eave means the edge of the roof that overhangs the face of an exterior wall and normally projects beyond the side of the manufactured home.

Equipment includes material, devices, fixtures, fittings, or accessories both in the construction of, and in the plumbing, heating, cooling, and electrical systems of a manufactured home.

Exterior ceiling means a ceiling that separates conditioned space from unconditioned space.

Exterior floor means a floor that separates conditioned space from unconditioned space.

Exterior wall means a wall, including a skylight well, that separates conditioned space from unconditioned space.

Fenestration means vertical fenestration and skylights.

Floor means a horizontal assembly that supports and forms the lower interior surface of a building or room upon which occupants can walk.

Glazed or glazing means an infill material, including glass, plastic, or other transparent or translucent material used in fenestration.

Heated water circulation system means a water distribution system in which one or more pumps are operated in the service hot water piping to circulate heated water from the water heating equipment to fixtures and back to the water heating equipment.

2021 IECC means the 2021 version of the International Energy Conservation

Code, issued by the International Code Council.

Insulation means material deemed to be insulation under 16 CFR 460.2.

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected onsite is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure. This term includes all structures that meet the above requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to 24 CFR 3282.13 and complies with the construction and safety standards set forth in 24 CFR part 3280. The term does not include any self-propelled recreational vehicle. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions, measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this definition should be interpreted to mean that a manufactured home necessarily meets the requirements of the U.S. Department of Housing and Urban Development Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

Manufacturer means any person engaged in the factory construction or assembly of a manufactured home, including any person engaged in importing manufactured homes for resale.

Manual means capable of being operated by personal intervention.

Opaque door means a door that is not less than 50 percent opaque in surface area.

R-value (thermal resistance) means the inverse of the time rate of heat flow through a body from one of its bounding surfaces to the other surface for a unit temperature difference between the two surfaces, under steady state conditions, per unit area ($h \times ft^2 \times °F/Btu$).

Rough opening means an opening in the exterior wall or roof, sized for installation of fenestration.

Service hot water means supply of hot water for purposes other than comfort heating.

Skylight means glass or other transparent or translucent glazing material, including framing materials, installed at an angle less than 60 degrees (1.05 rad) from horizontal, including unit skylights, tubular daylighting devices, and glazing materials in solariums, sunrooms, roofs and sloped walls.

Skylight well means the exterior walls underneath a skylight that extend from the interior finished surface of the exterior ceiling to the exterior surface of the location to which the skylight is attached.

Solar heat gain coefficient (SHGC) means the ratio of the solar heat gain entering a space through a fenestration assembly to the incident solar radiation. Solar heat gain includes directly transmitted solar heat and absorbed solar radiation that is then reradiated, conducted, or convected into the space.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa.

Thermostat means an automatic control device used to maintain temperature at a fixed or adjustable set point.

U-factor (thermal transmittance) means the coefficient of heat transmission (air to air) through a building component or assembly, equal to the time rate of heat flow per unit area and unit temperature difference between the warm side and cold side air films ($Btu/h \times ft^2 \times °F$).

U_o (overall thermal transmittance) means the coefficient of heat transmission (air to air) through the building thermal envelope, equal to the time rate of heat flow per unit area and unit temperature difference between the warm side and cold side air films ($Btu/h \times ft^2 \times °F$).

Ventilation means the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

Vertical fenestration means windows (fixed or moveable), opaque doors, glazed doors, glazed block and combination opaque and glazed doors composed of glass or other transparent or translucent glazing materials and installed at a slope of greater than or equal to 60 degrees (1.05 rad) from horizontal.

Wall means an assembly that is vertical or tilted at an angle equal to greater than 60 degrees (1.05 rad) from horizontal that encloses or divides an area of a building or room.

Whole-house mechanical ventilation system means an exhaust system, supply system, or combination thereof that is designed to mechanically exchange indoor air with outdoor air when operating continuously or through a programmed intermittent schedule.

Window means glass or other transparent or translucent glazing material, including framing materials, installed at an angle greater than 60 degrees (1.05 rad) from horizontal.

Zone means a space or group of spaces within a manufactured home with heating or cooling requirements that are sufficiently similar so that desired conditions can be maintained using a single controlling device.

§ 460.3 Materials incorporated by reference.

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–2945, *https://www.energy.gov/eere/buildings/appliance-and-equipment-standards-program,* and may be obtained from the other sources in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(a) *ACCA.* Air Conditioning Contractors of America, Inc., 2800 S. Shirlington Road, Suite 300, Arlington, VA 22206, 703–575–4477, *www.acca.org/.*

(1) ANSI/ACCA 2 Manual J–2016 (''ACCA Manual J''), *Manual J–Residential Load Calculation (8th edition),* Copyright 2016. IBR approved for § 460.205.

(2) ANSI/ACCA 3 Manual S–2014 (''ACCA Manual S''), *Manual S–Residential Equipment Selection (2nd Edition),* Copyright 2014. IBR approved for § 460.205.

(b) *PNL.* Pacific Northwest Laboratory, Richland, WA 99352, 800–245–2691, *www.huduser.org/portal/publications/manufhsg/uvalue.html.*

(1) PNL–8006, (''Overall *U*-values and Heating/Cooling Loads—Manufactured Homes''), *Overall U-Values and Heating/Cooling Loads—Manufactured Homes,* C.C. Conner and Z.T. Taylor,

February 1, 1992. IBR approved for § 460.102(d)(1).

(2) [Reserved].

§ 460.4 Energy conservation standards.

(a) *General.* Energy conservation standard tier thresholds presented in paragraphs (b) and (c) of this section must be adjusted to the most recently available Annual Energy Outlook (AEO) gross domestic product (GDP) time series.

(b) *Tier 1.* A manufactured home for which the manufacturer's retail list price is $55,000 or less in real 2019$ (*i.e.,* a Tier 1 manufactured home) must comply with all applicable requirements in subparts B and C of this part.

(c) *Tier 2.* A manufactured home for which the manufacturer retail list price is greater than $55,000 in real 2019$ (*i.e.,* a Tier 2 manufactured home) must comply with all applicable requirements in subparts B and C of this part.

Subpart B—Building Thermal Envelope

§ 460.101 Climate zones.

Manufactured homes subject to the requirements of this subpart must comply with the requirements applicable to one or more of the climate zones set forth in Figure 460.101 and Table 460.101 of this section.

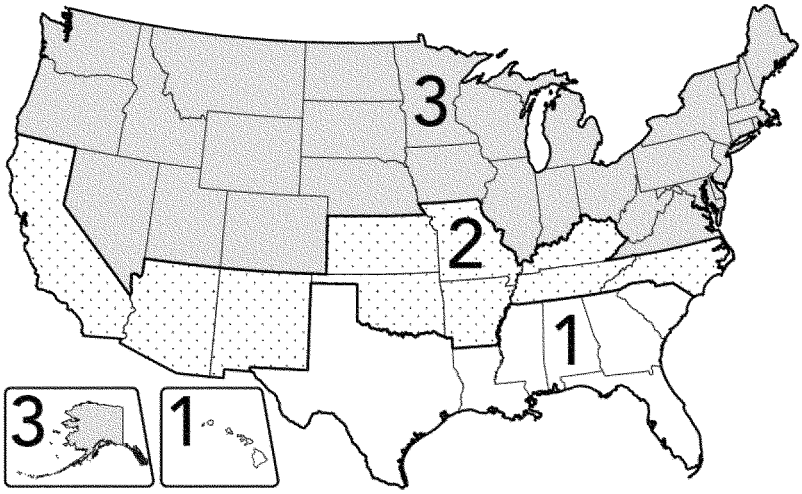

Figure 460.101 Climate Zones

TABLE 460.101—U.S. STATES AND TERRITORIES PER CLIMATE ZONE

Zone 1	Zone 2	Zone 3
Alabama	Arkansas	Alaska
American Samoa	Arizona	Colorado
Florida	California	Connecticut
Georgia	Kansas	Delaware
Guam	Kentucky	District of Columbia
Hawaii	Missouri	Idaho
Louisiana	New Mexico	Illinois
Mississippi	North Carolina	Indiana
South Carolina	Oklahoma	Iowa
Texas	Tennessee	Maine
The Commonwealth of Puerto Rico		Maryland
U.S. Virgin Islands		Massachusetts
		Michigan
		Minnesota
		Montana
		Nebraska
		Nevada
		New Hampshire
		New Jersey
		New York
		North Dakota
		Ohio
		Oregon
		Pennsylvania
		Rhode Island
		South Dakota
		Utah
		Vermont
		Virginia
		Washington
		West Virginia

TABLE 460.101—U.S. STATES AND TERRITORIES PER CLIMATE ZONE—Continued

Zone 1	Zone 2	Zone 3
		Wisconsin Wyoming

§ 460.102 Building thermal envelope requirements.

(a) *Compliance options.* The building thermal envelope must meet either the prescriptive requirements of paragraph (b) of this section or the performance requirements of paragraph (c) of this section.

(b) *Prescriptive requirements.* (1) The building thermal envelope must meet the applicable minimum *R*-value, and the maximum *U*-factor and SHGC, requirements set forth in Tables 460.102–1 and 460.102–2 of this section.

TABLE 460.102–1—TIER 1 BUILDING THERMAL ENVELOPE PRESCRIPTIVE REQUIREMENTS

Climate zone	Exterior wall insulation *R*-value	Exterior ceiling insulation *R*-value	Exterior floor insulation *R*-value	Window *U*-factor	Skylight *U*-factor	Door *U*-factor	Glazed fenestration SHGC
1	13	22	22	1.08	0.75	0.40	0.7
2	13	22	19	0.5	0.55	0.40	0.6
3	19	22	22	0.35	0.55	0.40	Not applicable.

TABLE 460.102–2—TIER 2 BUILDING THERMAL ENVELOPE PRESCRIPTIVE REQUIREMENTS

Climate zone	Exterior wall insulation *R*-value	Exterior ceiling insulation *R*-value	Exterior floor insulation *R*-value	Window *U*-factor	Skylight *U*-factor	Door *U*-factor	Glazed fenestration SHGC
1	13	30	13	0.32	0.75	0.40	0.33
2	20+5	30	19	0.30	0.55	0.40	0.25
3	20+5	38	30	0.30	0.55	0.40	Not applicable.

(2) For the purpose of compliance with the exterior ceiling insulation *R*-value requirement of paragraph (b)(1) of this section, the truss heel height must be a minimum of 5.5 inches at the outside face of each exterior wall.

(3) A combination of *R*-21 batt insulation and *R*-14 blanket insulation may be used for the purpose of compliance with the floor insulation *R*-value requirement of Table 460.102–2, climate zone 3.

(4) An individual skylight that has an SHGC that is less than or equal to 0.30 is not subject to the glazed fenestration SHGC requirements established in paragraph (b)(1) of this section. Adapted from section R402 of the 2021 IECC.

(5) *U*-factor alternatives to *R*-value requirements. Compliance with the applicable requirements in paragraph (b)(1) of this section may be determined using the maximum *U*-factor values set forth in Tables 460.102–3 and 460.102–4, which reflect the thermal transmittance of the component, excluding fenestration, and not just the insulation of that component, as an alternative to the minimum *R*-value requirements set forth in Tables 460.102–1 and 460.102–2, respectively.

TABLE 460.102–3—*U*-FACTOR ALTERNATIVES TO TIER 1 *R*-VALUE REQUIREMENTS

Climate zone	Exterior ceiling *U*-factor		Exterior wall *U*-factor	Exterior floor *U*-factor
	Single-section	Multi-section		
1	0.061	0.057	0.094	0.049
2	0.061	0.057	0.094	0.056
3	0.061	0.057	0.068	0.049

TABLE 460.102–4—*U*-FACTOR ALTERNATIVES TO TIER 2 *R*-VALUE REQUIREMENTS

Climate zone	Exterior ceiling *U*-factor		Exterior wall *U*-factor	Exterior floor *U*-factor
	Single-section	Multi-section		
1	0.045	0.043	0.094	0.078
2	0.045	0.043	0.047	0.056
3	0.038	0.037	0.047	0.032

(c) *Performance requirements.* (1) The building thermal envelope must have a U_o that is less than or equal to the applicable value specified in Tables 460.102–5 and 460.102–6 of this section.

TABLE 460.102–5—TIER 1 BUILDING THERMAL ENVELOPE PERFORMANCE REQUIREMENTS

Climate zone	Single-section U_o	Multi-section U_o
1	0.110	0.109
2	0.091	0.087
3	0.074	0.072

TABLE 460.102–6—TIER 2 BUILDING THERMAL ENVELOPE PERFORMANCE REQUIREMENTS

Climate zone	Single-section U_o	Multi-section U_o
1	0.086	0.082
2	0.062	0.063
3	0.053	0.052

(2) Area-weighted average vertical fenestration *U*-factor must not exceed 0.48 in climate zone 2 or 0.40 in climate zone 3. Adapted from section R402 of the 2021 IECC.

(3) Area-weighted average skylight *U*-factor must not exceed 0.75 in climate zone 2 and climate zone 3. Adapted from section R402 of the 2021 IECC.

(4) Windows, skylights and doors containing more than 50 percent glazing by area must satisfy the SHGC requirements established in paragraph (b)(1) of this section on the basis of an area-weighted average. Adapted from section R402 of the 2021 IECC.

(d) *Determination of compliance with paragraph (c) of this section.* (1) U_o must be determined in accordance with Overall *U*-Values and Heating/Cooling Loads—Manufactured Homes (incorporated by reference; see § 460.3)

(2) [Reserved]

§ 460.103 Installation of insulation.

Insulating materials must be installed according to the insulation manufacturer's installation instructions and the requirements set forth in Table 460.103 of this section, which is adapted from section R402 of the 2021 IECC.

TABLE 460.103—INSTALLATION OF INSULATION

Component	Installation requirements
General	Air-permeable insulation must not be used as a material to establish the air barrier.
Access hatches, panels, and doors	Access hatches, panels, and doors between conditioned space and unconditioned space must be insulated to a level equivalent to the insulation of the surrounding surface, must provide access to all equipment that prevents damaging or compressing the insulation, and must provide a wood-framed or equivalent baffle or retainer when loose fill insulation is installed within an exterior ceiling assembly to retain the insulation both on the access hatch, panel, or door and within the building thermal envelope.
Baffles	Baffles must be constructed using a solid material, maintain an opening equal or greater than the size of the vents, and extend over the top of the attic insulation.
Ceiling or attic	The insulation in any dropped ceiling or dropped soffit must be aligned with the air barrier.
Eave vents	Air-permeable insulations in vented attics within the building thermal envelope must be installed adjacent to eave vents.
Narrow cavities	Batts to be installed in narrow cavities must be cut to fit or narrow cavities must be filled with insulation that upon installation readily conforms to the available cavity space.
Rim joists	Rim joists must be insulated such that the insulation maintain permanent contact with the exterior rim board.
Shower or tub adjacent to exterior wall	Exterior walls adjacent to showers and tubs must be insulated.
Walls	Air permeable exterior building thermal envelope insulation for framed exterior walls must completely fill the cavity, including within stud bays caused by blocking lay flats or headers.

§ 460.104 Building thermal envelope air leakage.

Manufactured homes must be sealed against air leakage at all joints, seams, and penetrations associated with the building thermal envelope in accordance with the component manufacturer's installation instructions and the requirements set forth in Table 460.104 of this section. Sealing methods between dissimilar materials must allow for differential expansion, contraction and mechanical vibration, and must establish a continuous air barrier upon installation of all opaque components of the building thermal envelope. All gaps and penetrations in the exterior ceiling, exterior floor, and exterior walls, including ducts, flue shafts, plumbing, piping, electrical wiring, utility penetrations, bathroom and kitchen exhaust fans, recessed lighting fixtures adjacent to unconditioned space, and light tubes adjacent to unconditioned space, must be sealed with caulk, foam, gasket or other suitable material. The air barrier installation criteria is adapted from section R402 of the 2021 IECC.

TABLE 460.104—AIR BARRIER INSTALLATION CRITERIA

Component	Air barrier criteria
Ceiling or attic	The air barrier in any dropped ceiling or dropped soffit must be aligned with the insulation and any gaps in the air barrier must be sealed with caulk, foam, gasket, or other suitable material. Access hatches, panels, and doors, drop-down stairs, or knee wall doors to unconditioned attic spaces must be weather-stripped or equipped with a gasket to produce a continuous air barrier.
Duct system register boots	Duct system register boots that penetrate the building thermal envelope or the air barrier must be sealed to the subfloor, wall covering or ceiling penetrated by the boot, air barrier, or the interior finish materials with caulk, foam, gasket, or other suitable material.

TABLE 460.104—AIR BARRIER INSTALLATION CRITERIA—Continued

Component	Air barrier criteria
Electrical box or phone box on exterior walls	The air barrier must be installed behind electrical and communication boxes or the air barrier must be sealed around the box penetration with caulk, foam, gasket, or other suitable material.
Floors	The air barrier must be installed at any exposed edge of insulation. The bottom board may serve as the air barrier.
Mating line surfaces	Mating line surfaces must be equipped with a continuous and durable gasket.
Recessed lighting	Recessed light fixtures installed in the building thermal envelope must be sealed to the drywall with caulk, foam, gasket, or other suitable material.
Rim joists	The air barrier must enclose the rim joists. The junctions of the rim board to the sill plate and the rim board and the subfloor must be air sealed.
Shower or tub adjacent to exterior wall	The air barrier must separate showers and tubs from exterior walls.
Walls	The junction of the top plate and the exterior ceiling, and the junction of the bottom plate and the exterior floor, along exterior walls must be sealed with caulk, foam, gasket, or other suitable material.
Windows, skylights, and exterior doors	The rough openings around windows, exterior doors, and skylights must be sealed with caulk or foam.

Subpart C—HVAC, Service Hot Water, and Equipment Sizing

§ 460.201 Duct systems.

Each manufactured home equipped with a duct system, which may include air handlers and filter boxes, must be sealed to limit total air leakage to less than or equal to four (4) cubic feet per minute per 100 square feet of conditioned floor area. Building framing cavities must not be used as ducts or plenums when directly connected to mechanical systems. The duct total air leakage requirements are adapted from section R403 of the 2021 IECC.

§ 460.202 Thermostats and controls.

(a) At least one thermostat must be provided for each separate heating and cooling system installed by the manufacturer. The thermostat and controls requirements are adapted from section R403 of the 2021 IECC.

(b) Programmable thermostat. Any thermostat installed by the manufacturer that controls the heating or cooling system must—

(1) Be capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day and different days of the week;

(2) Include the capability to set back or temporarily operate the system to maintain zone temperatures down to 55 °F (13 °C) or up to 85 °F (29 °C); and

(3) Initially be programmed with a heating temperature set point no higher than 70 °F (21 °C) and a cooling temperature set point no lower than 78 °F (26 °C).

(c) Heat pumps with supplementary electric-resistance heat must be provided with controls that, except during defrost, prevent supplemental heat operation when the heat pump compressor can meet the heating load.

§ 460.203 Service hot water.

(a) Service hot water systems installed by the manufacturer must be installed according to the service hot water manufacturer's installation instructions. Where service hot water systems are installed by the manufacturer, the manufacturer must ensure that any maintenance instructions received from the service hot water system manufacturer are provided with the manufactured home. The service hot water requirements are adapted from section R403 of the 2021 IECC.

(b) Any automatic and manual controls, temperature sensors, pumps associated with service hot water systems must provide access.

(c) Heated water circulation systems must—

(1) Be provided with a circulation pump;

(2) Ensure that the system return pipe is a dedicated return pipe or a cold water supply pipe;

(3) Not include any gravity or thermosyphon circulation systems;

(4) Ensure that controls for circulating heated water circulation pumps start the pump based on the identification of a demand for hot water within the occupancy; and

(5) Ensure that the controls automatically turn off the pump when the water in the circulation loop is at the desired temperature and when there is no demand for hot water.

(d) All hot water pipes—

(1) Outside conditioned space must be insulated to a minimum *R*-value of *R*-3; and

(2) From a service hot water system to a distribution manifold must be insulated to a minimum *R*-value of *R*-3.

§ 460.204 Mechanical ventilation fan efficacy.

(a) Whole-house mechanical ventilation system fans must meet the minimum efficacy requirements set forth in Table 460.204 of this section, except as provided in paragraph (b) of this section. The mechanical ventilation fan efficacy requirements are adapted from section R403 of the 2021 IECC.

TABLE 460.204—MECHANICAL VENTILATION SYSTEM FAN EFFICACY

Fan type description	Airflow rate minimum (cfm)	Minimum efficacy (cfm/watt)
Heat recovery ventilator or energy recovery ventilator	Any	1.2
In-line supply or exhaust fans	Any	3.8
Other exhaust fan	<90	2.8
Other exhaust fan	≥90	3.5

(b) Mechanical ventilation fans that are integral to heating, ventilating, and air conditioning equipment, including furnace fans as defined in § 430.2 of this title, are not subject to the efficiency requirements in paragraph (a) of this section.

§ 460.205 Equipment sizing.

Sizing of heating and cooling equipment installed by the manufacturer must be determined in accordance with ACCA Manual S (incorporated by reference; see § 460.3) based on building loads calculated in accordance with ACCA Manual J (incorporated by reference; see § 460.3). The equipment sizing criteria are adapted from section R403 of the 2021 IECC.

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Part III

Department of Homeland Security

6 CFR Part 158

Cybersecurity Talent Management System; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 158

[Docket No. DHS–2020–0042]

RIN 1601–AA84

Cybersecurity Talent Management System

AGENCY: Department of Homeland Security.

ACTION: Interim final rule; request for comments.

SUMMARY: The U.S. Department of Homeland Security (DHS) is establishing a new talent management system to address DHS's historical and ongoing challenges recruiting and retaining individuals with skills necessary to execute DHS's dynamic cybersecurity mission. The Cybersecurity Talent Management System (CTMS) is a mission-driven, person-focused, and market-sensitive approach to talent management. CTMS represents a shift from traditional practices used to hire, compensate, and develop Federal civil service employees and is designed to adapt to changes in cybersecurity work, the cybersecurity talent market, and the Department's cybersecurity mission. CTMS will modernize and enhance DHS's capacity to recruit and retain mission-critical cybersecurity talent. With CTMS, DHS is creating a new type of Federal civil service position, called a qualified position, and the cadre of those positions and the individuals appointed to them is called the DHS Cybersecurity Service (DHS–CS). CTMS will govern talent management for the DHS–CS through specialized practices for hiring, compensation, and development. Individuals selected to join the DHS–CS will be provided with a contemporary public service career experience, which emphasizes continual learning and contributions to DHS cybersecurity mission execution. This rulemaking adds regulations to implement and govern CTMS and the DHS–CS.

DATES: This rule is effective on November 15, 2021. Comments must be received on or before December 31, 2021.

ADDRESSES: You may submit comments, identified by docket number DHS–2020–0042, using the Federal rulemaking portal at *http://www.regulations.gov.* For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Mr. Travis Hoadley, Department of Homeland Security, Office of the Chief Human Capital Officer: telephone 202–357–8700, email *CTMS@hq.dhs.gov. Legal information:* Ms. Esa Sferra-Bonistalli, Department of Homeland Security, Office of the General Counsel: telephone 202–357–8700, email *CTMS@hq.dhs.gov.*

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Table of Abbreviations

APA—Administrative Procedure Act
CFR—Code of Federal Regulations
CISA—Cybersecurity and Infrastructure Security Agency
CRA—Congressional Review Act
CTMB—Cybersecurity Talent Management Board
CTMS—Cybersecurity Talent Management System
DHS—Department of Homeland Security
DHS–CS—DHS Cybersecurity Service
DHS OCIO—DHS Office of the Chief Information Officer
DOD—Department of Defense
DOD CES—Department of Defense's Cybersecurity Excepted Service
DOD DCIPS—Department of Defense's Civilian Intelligence Personnel System
DOD HQE—DOD Highly Qualified Experts
E.O.—Executive Order
EX—Executive Schedule
FLSA—Fair Labor Standards Act
GAO—Government Accountability Office
GS—General Schedule
HSAC—Homeland Security Advisory Council
IC—Intelligence Community
IC HQE—Intelligence Community Highly Qualified Experts
LCTMS—Local Cybersecurity Talent Market Supplement
OMB—Office of Management and Budget
OPM—Office of Personnel Management
SES—Senior Executive Service
SL/ST—Senior Level/Scientific or Professional
STRL—Scientific and Technology Reinvention Laboratories
§ —Section
U.S.C.—United States Code

I. Executive Summary

For more than a decade, the U.S. Department of Homeland Security (DHS) has encountered challenges recruiting and retaining mission-critical cybersecurity talent. To address those challenges, DHS has re-envisioned Federal civilian talent management for 21st-century cybersecurity work by designing an innovative approach to talent management: The Cybersecurity Talent Management System (CTMS). DHS is establishing CTMS under the authority in section 658 of Title 6 of the United States Code (U.S.C.), which authorizes DHS to create a new approach to talent management exempt from major portions of existing laws governing talent management for much of the Federal civil service.

CTMS is mission-driven, person-focused, and market-sensitive, and it features several interrelated elements, based on leading public and private sector talent management practices. Importantly, CTMS is also based on core Federal talent management principles related to upholding merit, prohibiting certain personnel practices, advancing equity, and providing equal employment opportunity. CTMS is designed to modernize and enhance DHS's capacity to recruit and retain individuals with the skills, called qualifications, necessary to execute the DHS cybersecurity mission. CTMS is also designed to adapt to changes in cybersecurity work, the cybersecurity talent market, and the DHS cybersecurity mission, even as technology, sought-after expertise, and work arrangements change.

With CTMS, DHS is creating a new type of Federal civil service position in the excepted service, called a qualified position. Qualified positions focus on individuals and individuals' qualifications. The cadre of qualified positions and the individuals appointed to them is called the DHS Cybersecurity Service (DHS–CS). The goal of the DHS–CS is to enhance the cybersecurity of the Nation through the most effective execution of the DHS cybersecurity mission. DHS will use CTMS to hire, compensate, and develop DHS–CS employees to reinforce the values of expertise, innovation, and adaptability.

CTMS will also provide DHS–CS employees with a contemporary public service career experience, which emphasizes continual learning and contributions to DHS cybersecurity mission execution.

A. CTMS Elements

To recruit and retain DHS–CS employees, CTMS features interrelated elements that are new processes, systems, and programs that implement new talent management concepts and definitions. Each CTMS element represents a shift from the traditional methods and practices Federal agencies typically use to hire, compensate, and develop civil service talent. Collectively, the CTMS elements form a complete approach to talent management and enable new, specialized talent management practices. CTMS is driven by the DHS cybersecurity mission and informed by internal data about the state of DHS cybersecurity work and talent; it is also informed by external data about trends in the field of cybersecurity and the talent market.

The CTMS elements and their purposes are:

- *Strategic talent planning process* enables CTMS to adapt to changes in cybersecurity work, the cybersecurity talent market, and the DHS cybersecurity mission by aggregating and using relevant information to inform CTMS administration on an ongoing basis. As part of the strategic talent planning process, DHS:
  - Identifies the set of qualifications necessary to perform the work required to execute the DHS cybersecurity mission.
  - conducts analysis of the cybersecurity talent market to identify and monitor employment trends and leading strategies for recruiting and retaining cybersecurity talent.
  - establishes and administers a work valuation system based on qualifications and DHS cybersecurity work, which DHS uses instead of the General Schedule (GS) or other traditional Federal position classification methods to facilitate systematic talent management and addresses internal equity.
- *Talent acquisition system* supports qualifications-based recruitment, assessment, selection, and appointment of DHS–CS employees.
- *Compensation system* provides sufficiently competitive, market-sensitive compensation, while encouraging and recognizing DHS–CS employee contributions, such as exceptional qualifications and mission impact.
- *Deployment program* guides when DHS uses CTMS to recruit and retain talent and operationalizes aspects of the work valuation, talent acquisition, and compensation systems through requirements for designating qualified positions, designating and staffing assignments, work scheduling, and recordkeeping.
- *Performance management program* seeks to improve the effectiveness of DHS–CS employees in executing the cybersecurity mission by ensuring individual accountability and recognizing their mission impact.
- *Career development program* ensures the development of the collective expertise of DHS–CS employees through continual learning, while guiding the career progression of each DHS–CS employee.

The CTMS elements rely on new talent management concepts and definitions:

- *Work and career structures,* are constructs, analogous to General Schedule classes and grades, that DHS establishes under the CTMS work valuation system and uses instead of classes and grades from the General Schedule or other traditional Federal position classification methods. DHS uses work and career structures to support several elements of CTMS,

including the compensation system, and DHS determines applicable work and career structures for a DHS–CS employee as part of selection and appointment under the CTMS talent acquisition system.

- *Mission impact* is the influence an individual has on the execution of the DHS cybersecurity mission by applying qualifications to perform DHS cybersecurity work. DHS determines a DHS–CS employee's mission impact through mission impact reviews under the CTMS performance management program. Mission impact is a factor in DHS–CS employee compensation and development.
- *Mission-related requirements* are characteristics of an individual's expertise or characteristics of cybersecurity work, or both, that are associated with successful execution of the DHS cybersecurity mission. They are determined by officials with appropriate decision-making authority and are a factor in DHS–CS employee compensation, assignment matches, and development.
- *Strategic talent priorities* are priorities for CTMS and the DHS–CS set by the Secretary or the Secretary's designee. Strategic talent priorities are used in administering CTMS and managing the DHS–CS.

B. Administering CTMS & Managing the DHS–CS

The Secretary, or the Secretary's designee, leads CTMS and the DHS–CS with assistance from the Cybersecurity Talent Management Board (CTMB). The CTMB comprises DHS officials representing organizations involved in executing the DHS cybersecurity mission and DHS officials responsible for developing and administering talent management policy. Working together, these officials ensure the most efficient operation of CTMS and the most effective management of the DHS–CS. The Secretary, or the Secretary's designee, and the CTMB administer CTMS and manage the DHS–CS.

The dynamic DHS cybersecurity mission drives CTMS. On an ongoing basis, DHS identifies the functions that execute the DHS cybersecurity mission, the cybersecurity work required by those functions, and the set of qualifications necessary to perform that work. The work identified is called DHS–CS work, and the set of qualifications identified are called CTMS qualifications. Under CTMS, qualifications are individuals' cybersecurity skills, which encompass the full array of work-related characteristics and qualities that distinguish talent.

Qualifications are the core of CTMS and its elements, and on an ongoing basis, DHS updates the set of CTMS qualifications to ensure they continue to reflect the collective cybersecurity expertise DHS requires. DHS establishes work and career structures based on CTMS qualifications, and DHS creates qualified positions based on DHS–CS employees' CTMS qualifications. DHS–CS employees execute the DHS cybersecurity mission by applying their CTMS qualifications to perform DHS–CS cybersecurity work. In administering CTMS to recruit and retain DHS–CS employees, DHS emphasizes individuals' CTMS qualifications and their mission impact.

DHS uses CTMS, instead of another Federal personnel system, when a DHS organization requires talent with CTMS qualifications and DHS determines that the recruitment and retention of such talent would be enhanced by the specialized practices of CTMS.

All individuals interested in serving in the DHS–CS must apply, and DHS proactively recruits individuals at all career stages, from those just beginning a career in cybersecurity to those with years of proven experience working as a cybersecurity technical expert or organizational leader. Recruitment includes proactively communicating with prospective applicants about DHS's unique cybersecurity mission and available public service career opportunities in the DHS–CS.

DHS assesses applicants using standardized instruments and procedures intended to determine the applicants' CTMS qualifications. DHS selects an individual based on the individual's CTMS qualifications.

DHS may appoint a selected individual to a renewable appointment or continuing appointment. A renewable appointment is time-limited, may be renewed multiple times, and may be used for project-based work or other similar purposes. A continuing appointment is not time-limited. The DHS–CS can also include political appointees, called advisory appointees. Regardless of appointment type, new DHS–CS employees are matched with initial assignments based on mission needs and their CTMS qualifications upon appointment.

Compensation for DHS–CS employees includes salaries and additional compensation. DHS provides such compensation in alignment with a CTMS compensation strategy aimed at ensuring sufficiently competitive compensation to recruit and retain the cybersecurity expertise DHS requires. Under CTMS, compensation is based primarily on CTMS qualifications, and DHS has necessary flexibility to adjust aspects of compensation based on market and mission demands.

DHS provides salaries for DHS–CS employees under a market-sensitive salary structure bounded by an overall salary range. This salary range is comprised of a standard range and an extended range for use in limited circumstances. A DHS–CS employee's salary may include a local cybersecurity talent market supplement, analogous to a locality-based comparability payment, to ensure a competitive salary in certain geographic areas.

DHS provides additional compensation for DHS–CS employees mainly in the form of recognition, which includes salary increases called recognition adjustments, cash bonuses called recognition payments, paid time-off called recognition time-off, and honorary awards called honorary recognition. Such recognition is based primarily on DHS–CS employees' mission impact.

CTMS additional compensation also includes payments for special working conditions, which DHS can use to compensate a DHS–CS employee for special working conditions that are determined to be insufficiently accounted for in the employee's salary. For example, such conditions or circumstances include performing certain work involving unusual physical or mental hardship, at unexpected times, or for an uncommon duration of time. Other types of additional compensation available to DHS–CS employees are similar to or the same as existing offerings for many Federal employees: Professional development and training, student loan repayments, allowances in nonforeign areas, as well as traditional Federal employee benefits like holidays, leave, retirement, health benefits, and insurance programs.

Throughout DHS–CS employees' service, DHS considers increasing employees' compensation based primarily on their mission impact. Compensation increases occur mainly through CTMS recognition as either recognition adjustments or recognition payments. CTMS does not feature automatic salary increases or payments; moreover, longevity in position or prior Federal government service are not factors in CTMS compensation.

Each DHS–CS employee's salary is subject to salary limitations, and each DHS–CS employee's aggregate compensation, composed of the employee's salary and certain types of additional compensation, is subject to an aggregate compensation limit. These salary limitations and the aggregate compensation limit implement statutory

requirements from the authority for CTMS in 6 U.S.C. 658.

Career progression in the DHS–CS is based on enhancement of CTMS qualifications and salary progression resulting from recognition adjustments. DHS guides a DHS–CS employee's career and ensures development of the collective expertise of DHS–CS employees through continual learning, which may include a range of recommended and required learning activities. Continual learning and enhancement of CTMS qualifications are integral to a DHS–CS employee's service in the DHS–CS. New assignment opportunities may be an important part of DHS–CS employees' continual learning and enhancement of CTMS qualifications. Through such assignments, DHS–CS employees are able to learn and perform different types of DHS–CS cybersecurity work and customize contemporary career experiences that maximize both their qualifications and their impact on the DHS cybersecurity mission.

C. New 6 CFR Part 158

This rulemaking adds new part 158 to Title 6 of the Code of Federal Regulations (CFR) to implement and govern CTMS and the DHS–CS. New part 158 contains several subparts setting forth the interrelated elements of CTMS that function together as a complete, and innovative, approach to talent management.

D. Costs and Benefits

From FY 2016 through FY 2020, DHS received approximately $49 million of appropriated funding to design and establish CTMS and the resulting DHS–CS. The major costs of CTMS and the DHS–CS are: (1) The cost of talent management infrastructure necessary for the Office of the Chief Human Capital Officer (OCHCO) to design, establish, and prepare to administer CTMS; and (2) the cost of compensating DHS–CS employees hired by DHS organizations using CTMS.

In FY 2021, OCHCO received approximately $13 million of appropriated funding to both finalize the design of CTMS and to establish CTMS. For FY 2022, DHS requested that funding be increased to approximately $16 million both to launch and administer CTMS and to support the management of an expanding population of DHS–CS employees.

The primary benefit of this rule is to ensure the most effective execution of the DHS cybersecurity mission by establishing CTMS to enhance DHS's capacity to recruit and retain cybersecurity talent in the new DHS–CS.

This rulemaking does not directly regulate the public.

II. Basis and Purpose

On December 18, 2014, Congress added a new section to the *Homeland Security Act of 2002* entitled ''Cybersecurity Recruitment and Retention.'' This new section is codified at 6 U.S.C. 658 and grants the Secretary broad authority and discretion to create a new personnel or talent management system for DHS's cybersecurity workforce. The exercise of this authority and discretion is exempt from major portions of existing laws governing talent management for much of the Federal civil service.[1] This exemption allows DHS to re-envision talent management for 21st-century cybersecurity work.

This rule implements 6 U.S.C. 658 and establishes a new talent management system designed based on DHS's dynamic cybersecurity mission. Use of the new system addresses DHS's historical and ongoing challenges recruiting and retaining mission-critical cybersecurity talent.

To implement the authority in 6 U.S.C. 658, Congress requires the Secretary ''shall prescribe regulations'' and to do so in coordination with the Director of the Office of Personnel Management (OPM).[2] This rulemaking fulfills the requirement to prescribe regulations. To fulfill the requirement to coordinate with the Director of OPM, DHS engaged with OPM experts for assistance in understanding the talent management concepts invoked by the language of 6 U.S.C. 658 and to obtain feedback on DHS's design for the new talent management system.

DHS is promulgating this rule as an interim final rule because it is a matter relating to agency management or personnel that is exempt from the rulemaking requirements of the Administrative Procedure Act (APA). Rulemaking requirements of the APA include issuing a notice of proposed rulemaking, providing an opportunity for public comment, and an effective date not less than 30 days after publication of the rule.[3] These requirements, however, do not apply to ''a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.''[4] The *Attorney General's Manual on the Administrative Procedure Act* describes this exemption as one of two ''broad exceptions'' to APA rulemaking requirements,[5] and further characterizes the agency management or exemption as ''self-explanatory.''[6] Similar to the Attorney General's Manual characterization, Federal courts have interpreted the agency management exemption as applying to traditional personnel matters, such as a new personnel system, personnel manuals, and personnel policies.[7]

Although this rulemaking is exempt from the rulemaking requirements of the APA, DHS is seeking public comments on the innovative talent management system. Interested persons are invited to participate in this rulemaking by submitting written comments as described in VI. Public Participation and Request for Comments of this document.

III. Background

Cybersecurity is a matter of homeland security and one of the core missions of DHS. For more than a decade, DHS has encountered challenges recruiting and retaining mission-critical cybersecurity talent. As cybersecurity threats facing the Nation have grown in volume and sophistication, DHS has experienced spikes in attrition and longstanding vacancies in some cybersecurity positions, as well as shortages of certain critical and emerging cybersecurity skills.

In response to DHS's historical and ongoing challenges recruiting and retaining cybersecurity talent, Congress granted the Secretary the authority in 6 U.S.C. 658 to ensure DHS improves its ability to recruit and retain mission-critical cybersecurity talent. Legislative history indicates that Congress granted the authority in 6 U.S.C. 658 in response to a report by the Secretary's Homeland Security Advisory Council (HSAC) recommending DHS receive additional talent management flexibilities similar

[1] 6 U.S.C. 658(b)(1)(B).

[2] 6 U.S.C. 658(b)(6).

[3] 5 U.S.C. 553(b)–(d).

[4] 5 U.S.C. 553(a)(2).

[5] *Attorney General's Manual on the Administrative Procedure Act,* 26. The other broad exemption in the APA, as amended, is for ''any military or foreign affairs function of the United States'' under 5 U.S.C. 553(a)(1).

[6] *Id.* at 27.

[7] *See, e.g., Brodowy* v. *U.S.,* 482 F.3d 1370, 1375–76 (Fed. Cir. 2007) (finding an agency's new personnel management system to be a matter relating to agency management or personnel and exempt from the APA's procedural requirements); *Hamlet* v. *U.S.,* 63 F.3d 1097, 1105 (Fed. Cir. 1995) (holding that an agency personnel manual governing all phases of personnel management relates to matters of agency personnel, and its promulgation was exempt from the APA's procedural requirements); *Stewart* v. *Smith,* 673 F.2d 485, 496–500 (D.C. Cir. 1982) (holding that an agency's hiring policy falls within the APA exception for agency management or personnel).

to those used by the National Security Agency.[8] The HSAC report linked DHS's recruitment and retention challenges to a global shortage of cybersecurity expertise and fierce competition among Federal agencies and the private sector for cybersecurity skills.[9]

The language codified at 6 U.S.C. 658 mirrors the language in 10 U.S.C. 1601–1603, enacted in 1996 for the Department of Defense (DOD), that authorizes DOD's Defense Civilian Intelligence Personnel System (DOD DCIPS).[10] In addition, the language codified at 6 U.S.C. 658 is similar to a separate DOD authority, enacted a year after § 658, and under which DOD has established the DOD Cybersecurity Excepted Service (DOD CES) personnel system for its United States Cyber Command workforce.[11]

Once granted the authority to create a new cybersecurity talent management system free from existing requirements and practices governing Federal talent management, DHS formed a specialized team in early 2016 to design a new cybersecurity talent management system capable of addressing DHS's recruitment and retention challenges. Based on the authority in 6 U.S.C. 658 and DHS's understanding of both the cybersecurity talent landscape and existing Federal talent management practices, DHS concluded it could—and it must—re-envision talent management for 21st-century cybersecurity work. As outlined in required reports to Congress [12] about DHS's plan for and progress toward execution of the authority granted in 6 U.S.C. 658, DHS is using this authority to create an innovative, 21st-century talent management system with solutions for its cybersecurity workforce recruitment and retention challenges.[13] This rule establishes the new talent management system, which is based on leading public and private sector talent management practices and driven by the DHS cybersecurity mission.

A. Authority for a New Cybersecurity Talent Management System

The authority in 6 U.S.C. 658 allows DHS to create a new talent management system exempt from many existing laws governing Federal civilian talent management. Specifically, the Secretary may designate and establish ''qualified positions'' in the excepted service, appoint individuals to those positions, and compensate appointed individuals. *See* 6 U.S.C. 658(b)(1)(A). The Secretary may do this ''without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.'' *See* 6 U.S.C. 658(b)(1)(B). The ''without regard to'' language supersedes all other laws governing appointment, number, classification, or compensation of employees.[14]

The language of 6 U.S.C. 658 uses terms that invoke fundamental talent management concepts. Importantly, the exemption from classification means that DHS can choose how to describe cybersecurity work, including by establishing new constructs to categorize work and new ways of defining positions performing such work, and relatedly, DHS can choose how to value cybersecurity work and positions, including through new compensation structures and practices. DHS has interpreted the authority in 6 U.S.C. 658, as necessary, to fulfill the congressional intent in the legislative history: That DHS address its cybersecurity workforce recruitment and retention challenges and improve its capacity to compete for top cybersecurity talent by exercising greater discretion in hiring and compensating cybersecurity talent.[15]

Although DHS has authority to create a new talent management system free from existing requirements in other laws governing appointment, number, classification, and compensation of Federal employees, Congress provided a few requirements and parameters for exercising that authority. The following discussion in III.A.1 through III.A.3 of this document explains the scope of the Secretary's authority to create a new talent management system.

1. Designate & Establish Qualified Positions

Under 6 U.S.C. 658, DHS has authority to both designate and establish qualified positions. Section 658(a)(5) defines ''qualified position'' as ''a position, designated by the Secretary for the purpose of this section, in which the incumbent performs, manages, or supervises functions that execute the responsibilities of the Department relating to cybersecurity.'' Section 658(b)(1)(A)(i) gives authority to ''establish'' qualified positions and describes qualified positions as positions in the excepted service that the Secretary determines necessary to carry out the responsibilities of the Department relating to cybersecurity. The authority to designate qualified positions includes determining the purpose and use of such qualified positions, as the Secretary determines necessary, for executing DHS's cybersecurity responsibilities.[16] The authority to establish qualified positions

[8] S. Rep. 113–207, *Report of the Committee on Homeland Security and Governmental Affairs, U.S. Senate, to accompany S. 2354,* ''To Improve Cybersecurity Recruitment and Retention,'' (July 14, 2014), 2–3 (''The [Homeland Security Advisory] Council also made a recommendation to Congress: 'Congress should grant the Department [of Homeland Security] human capital flexibilities in making salary, hiring, promotion and separation decisions identical to those used by the National Security Agency for hiring and managing its cybersecurity workforce and other technical experts.' This bill seeks to do just that: It gives the Secretary of Homeland Security similar recruitment and retention authorities for cybersecurity professional as currently possessed by the Secretary of Defense''). Note that S. 2354 is a previous bill, the language of which is now codified at 6 U.S.C. 658.

[9] Homeland Security Advisory Council, U.S. Department of Homeland Security, *CyberSkills Task Force Report* (Fall 2012).

[10] *National Defense Authorization Act for Fiscal Year 1997* Public Law 104–201, Sec. 1632 (Sept. 23, 1996), codified at 10 U.S.C. 1601–1614.

[11] *National Defense Authorization Act for Fiscal Year 2016.* Public Law 114–92, Sec. 1107 (Nov. 25, 2015), codified at 10 U.S.C. 1599f.

[12] *See* 6 U.S.C. 658(b)(4) and 658(c).

[13] U.S. Department of Homeland Security, *Plan for Execution of Authorities: Fiscal Year 2015 Report to Congress,* (May 3, 2016); U.S. Department of Homeland Security, *Annual Report: Usage of Cybersecurity Human Capital Authorities Granted by 6 United States Code § 147,* (May 3, 2016); U.S. Department of Homeland Security, *Annual Report: Usage of Cybersecurity Human Capital Authorities Granted by 6 United States Code § 147,* (Apr.4, 2017); U.S. Department of Homeland Security, *Comprehensive Cybersecurity Workforce Update: FY2018–2019* (July 2020).

[14] *See e.g. Cisneros* v. *Alphine Ridge Group,* 508 U.S. 10 (1993) (construing the use of a ''notwithstanding'' clause, which is similar to the ''without regard to'' clause in 5 U.S.C. 658(b)(1)(B), as superseding all other laws).

[15] *See* S. Rep. 113–207, *Report of the Committee on Homeland Security and Governmental Affairs, U.S. Senate, to accompany S. 2354,* ''To Improve Cybersecurity Recruitment and Retention,'' (July 14, 2014), 1 (stating that the language is now codified at 6 U.S.C. 658, ''would enable DHS to better compete for cybersecurity talent by giving the Secretary of Homeland Security greater discretion than currently possessed when hiring and setting the pay and benefits of DHS cybersecurity employees.''). Also see remarks in the Congressional Record indicating that 6 U.S.C. 658 grants the Secretary talent management flexibilities to better recruit and retain top cybersecurity talent with a faster and more flexible hiring process and more competitive compensation. 160 Cong. Rec. H8945, 8950 (Ms. Norton: ''An amendment introduced by Senator Carper also would add provisions allowing the Department of Homeland Security to recruit and retain cyber professionals by granting authority to hire qualified experts on an expedited basis and to pay them competitive salaries, wages, and incentives''); 160 Cong. Rec. H8945, 8951 (Ms. Clarke: ''The cyber workforce language included in S. 1691 generally does two important things. First, it grants special hiring authority to DHS to bring on board topnotch cyber recruits. The Department desperately needs a more flexible hiring process with incentives to secure talent in today's highly competitive cyber skills market. Second, it requires the Secretary of the Department to assess its cyber workforce'').

[16] ''Designate'' means ''to indicate and set apart for a specific purpose, office, or duty,'' ''to point out the location of,'' ''to distinguish as to class,'' or ''specify, stipulate.'' Merriam-Webster, *https://www.merriam-webster.com/dictionary/designate* (last visited May 25, 2021).

is authority to create qualified positions in the excepted service to carry out DHS's cybersecurity responsibilities.[17]

The authority to designate and establish qualified positions applies without regard to any other provisions of law relating to the number or classification of employees.[18] In the U.S. Code, provisions of law relating to the number of employees may limit the number of positions, or types of positions, or limit the number of employees that may be hired into such positions.[19] Thus, DHS is not limited in the number of qualified positions the Secretary may designate and establish, except by funding constraints and requirements in appropriations for DHS.

Under the exemption relating to classification of employees,[20] DHS is exempt from the General Schedule (GS) position classification system as well as other work valuation systems relying on traditional position classification concepts and methods. ''Classification'' generally is a systematic process of job or work valuation used to describe and value jobs or work and individuals within an organization.[21] In the Federal civil service context, classification most often refers to the GS position classification system, which is the job evaluation system codified at 5 U.S.C. Chapter 51. Chapter 51 provides a definition of the term ''position'' that means ''the work, consisting of the duties and responsibilities, assignable to an employee.''[22] Under the GS position classification system, positions are grouped into classes[23] and grades[24] based on duties, responsibilities, and qualification requirements.[25] Traditional Federal position classification systems based on Chapter 51, including the GS, provide job structures, such as classes and grades, that meaningfully group positions to facilitate systematic management of Federal civilian employees and address internal equity. With the GS or other similar position classification systems, those job structures influence many aspects of talent management, especially compensation, for positions under those systems and employees in those positions.[26]

Under the exemption relating to classification of employees,[27] DHS is exempt from the definition of ''position'' under the GS position classification system and other job or work valuation systems, and how the concept of ''position'' is used under those systems. Section 658 defines and describes qualified positions as positions designated and established by the Secretary as the Secretary determines necessary, and both the definition and description of qualified positions use the general, stand-alone term ''position.''[28] In the U.S. Code, that term does not have a universal meaning or a specific meaning in the excepted service; instead the U.S. Code contains multiple definitions of the term ''position'' for specific purposes.[29]

The authority to designate and establish qualified positions and the exemptions from existing laws provides the Secretary broad discretion to determine how to create and use qualified positions for purposes of carrying out the responsibilities of DHS relating to cybersecurity. In particular, the exemption relating to classification of employees means DHS may determine the use of qualified positions and create such positions as new positions in the excepted service without regard to existing definitions of positions, or how the concept of position is currently used, in management of Federal employees.

As discussed subsequently in III.B of this document, main factors contributing to DHS's challenges recruiting and retaining cybersecurity talent are the focus of existing Federal talent management practices on narrowly-defined and mostly-static jobs or positions instead of individuals and their skills, as well as the inability of current Federal classification methods to effectively describe and account for individuals' cybersecurity skills. Therefore, as discussed further in IV.A.1 of this document, DHS is using the Secretary's broad authority and discretion for designating and establishing qualified positions, and the exemptions from existing laws, to create a new type of Federal civil service position based on individuals and their skills necessary for executing the DHS cybersecurity mission. To do this, DHS is designing CTMS with new processes, systems, and programs to create and use qualified positions based on the DHS cybersecurity mission and individuals' skills necessary to execute that mission. Those processes, systems, and programs are called CTMS elements and include a new work valuation system.

2. Appointment

Under 6 U.S.C. 658, DHS has authority to create new hiring processes for qualified positions without regard to existing requirements and processes for hiring Federal civilian employees. Section 658(b)(1)(A)(ii) gives the Secretary authority to appoint an individual to a qualified position and, under 6 U.S.C. 658(b)(1)(B), this

[17] Legislative history indicates that the authority to ''establish'' positions means to ''create new positions.'' In a report accompanying S. 2354, the language of which is now codified at 6 U.S.C. 658, Congress states that ''the Secretary of Defense may create new positions for cyber personnel'' and references DOD DCIPS authority at 10 U.S.C. 1601–1603. S. Rep. 113–207, *Report of the Committee on Homeland Security and Governmental Affairs, U.S. Senate, to accompany S. 2354,* ''To Improve Cybersecurity Recruitment and Retention,'' (July 14, 2014), 2. In 10 U.S.C. 1601, Congress grants the Secretary of Defense authority to ''establish, as positions in the excepted service, such defense intelligence positions in the Department of Defense as the Secretary determines necessary to carry out the intelligence functions of the Department.''

[18] 6 U.S.C. 658(b)(1)(B). The authority to designate and establish qualified positions also applies without regard to any other provisions of law relating to appointment or compensation of employees.

[19] *See e.g.,* 5 U.S.C. 3131(c) (''The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize . . . a specific number of Senior Executive Service positions for each agency''); *see also* the Federal Employees Pay Act of 1945, Sec. 607 (controlling the number of employees and establishing personnel ceilings within executive branch agencies), repealed Public Law 81–784 (Sept. 1950).

[20] 6 U.S.C. 658(b)(1)(B).

[21] *See* Robert L. Heneman, Ph.D., *Work Evaluation: Strategic Issues and Alternative Methods,* prepared for the U.S. Office of Personnel Management, FR–00–20 (July 2000, Revised Feb. 2002), 2–3 and 11.

[22] 5 U.S.C. 5102(3).

[23] A ''class'' includes all positions ''sufficiently similar'' regarding ''kind or subject-matter of work; level of difficulty and responsibility; and the qualifications requirements of the work; to warrant similar treatment in personnel and pay administration.'' 5 U.S.C. 5102(a)(4).

[24] A ''grade'' includes all classes of position that, ''although different with respect to the kind of subject-matter of work, are sufficiently equivalent as to—level of difficulty and responsibility, and level of qualification requirements of the work; to warrant their inclusion within one range of rates of basic pay in the General Schedule.'' 5 U.S.C. 5102(a)(5).

[25] 5 U.S.C. 5101(2) (requiring grouping of positions into classes and grades based on duties, responsibilities, and qualification requirements).

[26] U.S. Government Accountability Office, *Human Capital: OPM Needs to Improve the Design, Management, and Oversight of the Federal Classification System,* GAO–14–677 (July 2014), 4–6.

[27] 6 U.S.C. 658(b)(1)(B).

[28] 6 U.S.C. 658(a)(5) and (b)(1)(A)(i).

[29] Title 5 of the U.S. Code alone contains multiple definitions of the term position for purposes of specific Chapters, sections, or subsections. The multiple definitions in Title 5 describe ''position'' as duties and responsibilities of a position, types of position, and specific positions occupiable by individuals. *See e.g.,* 5 U.S.C. 5102(a)(3) (defining ''position'' for purposes of the General Schedule to mean ''the work, consisting of duties and responsibilities, assignable to an employee''); 5 U.S.C. 5304(h)(1) (defining ''position'' for purposes of a particular provision regarding locality-based comparability payments as types of positions, including administrative law judges, contract appeals board members, and SES positions); 5 U.S.C. 5531(2) (defining positions for purposes of applying dual pay provisions as a specific position occupiable by an individual, such as a civilian office or civilian positions, including a temporary, part-time, or intermittent position, that is appointive or elective in the legislative, executive, or judicial branch).

appointment authority applies without regard to the provisions of any other law relating to appointment, number, or classification of employees.[30]

The exemption relating to appointment of employees means DHS may appoint individuals to qualified positions without regard to the Title 5 hiring requirements and processes, including procedures for accepting and reviewing applications, making selections, and appointing individuals to positions.[31] Also, the exemption regarding number of employees means there is no statutory limit on the number of qualified positions or number of appointments to such positions. As discussed previously, provisions of the U.S. Code relating to the number of employees may limit the number of positions, or types of positions, or limit the number of employees that may be hired into such positions.[32] Although DHS is not limited in the number of appointments to qualified positions, funding constraints and requirements in DHS appropriations still apply.

The exemption relating to classification of employees, discussed previously, means DHS may also appoint individuals to qualified positions exempt from the GS position classification system and other work valuation systems relying on traditional position classification concepts and methods. In the context of appointments, Chapter 51 and implementing regulations and policy dictate elements of the hiring process for GS positions. For example, OPM classification and qualification standards, policies, and processes [33] establish procedures used for defining, identifying, and evaluating jobs and applicants in order to select individuals for appointment to a GS position.

As discussed subsequently in III.B of this document, main factors contributing to DHS's challenges recruiting and retaining cybersecurity talent are the lack of focus of existing Federal talent management practices on individuals and their skills, as well as fierce competition for those individuals and their skills. Therefore, as discussed further in IV.C of this document, DHS is using the Secretary's appointment authority, and the exemptions from existing laws, to create new hiring processes for qualified positions to recruit and hire individuals with mission-critical skills. To do this, DHS designed strategic recruitment processes based on leading private sector practices and a new skills-based assessment program under a new DHS-specific talent acquisition system.

3. Compensation

Under 6 U.S.C. 658(b), DHS has authority to create a new administrative compensation system covering salaries and other types of compensation. Section 658(b)(1)(A)(iii) gives authority to set compensation for individuals in qualified positions. This § 658 compensation authority includes specific salary authority in § 658(b)(2)(A) to fix the rates of basic pay for qualified positions subject to limitations on maximum rates of pay. The § 658 compensation authority also includes specific additional compensation authority in § 658(b)(3)(A) to provide compensation in addition to basic pay, including benefits, incentives, and allowances.

The § 658 compensation authority applies without regard to any other provisions of law relating to the classification or compensation of employees.[34] As explained previously, the exemption relating to classification of employees exempts the authority in 6 U.S.C. 658 from the GS position classification system and other Federal work valuation systems. In the context of compensation, the GS position classification system describes and groups Federal civil service positions to assign rates of basic pay under the related GS pay system in 5 U.S.C. Chapter 53. Thus, the § 658 compensation authority is exempt from the GS pay system as well as the GS position classification system under both the exemption relating to classification of employees and the exemption relating to compensation of employees.

In addition to laws establishing the GS pay system, the exemption relating to compensation of employees exempts the § 658 compensation authority from other provisions of law relating to compensation, which include: Provisions in 5 U.S.C. Chapter 53 establishing and governing other pay systems; premium pay provisions in 5 U.S.C. Chapter 55 and the minimum wage and overtime pay provisions of the Fair Labor Standards Act (FLSA); provisions in Title 5 regarding monetary awards, incentives, and certain differentials; the limitation on annual aggregate compensation in 5 U.S.C. 5307; and provisions in 5 U.S.C. Chapter 61 governing work schedules, which impacts compensation, especially salary and leave.

The § 658 compensation authority does provide parameters for exercising that authority specific to providing basic pay and providing additional compensation, and those parameters depend on identifying positions that are ''comparable'' to qualified positions designated by the Secretary. For § 658 basic pay, the Secretary must identify comparable positions in DOD and their associated rates of pay, and then fix rates of basic pay for individuals in qualified positions ''in relation to'' those DOD rates of pay.[35] For § 658 additional compensation, if the Secretary provides additional compensation, the Secretary must identify comparable positions authorized by Title 5, and then provide only additional compensation that is ''consistent with, and not in excess of the level authorized for,'' those Title 5 positions.[36]

The language of, and direction in, the § 658 basic pay authority and the § 658 additional compensation authority is ambiguous, including the implicit initial requirement to identify ''comparable positions.'' Statutory language for Federal compensation systems generally is not straight-forward nor unambiguous, and the responsibility of resolving ambiguities in the Federal compensation system context has been characterized as inherently complex.[37]

[30] The authority to appoint an individual to a qualified position also applies without regard to any other provisions of law relating to compensation of employees. 6 U.S.C. 658(b)(1)(B).

[31] *See e.g.,* 5 U.S.C. Chapter 33, Subchapter I.

[32] *See e.g.,* 5 U.S.C. 3131(c) (''The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize . . . a specific number of Senior Executive Service positions for each agency''); *see also* the Federal Employees Pay Act of 1945, Sec. 607 (controlling the number of employees and establishing personnel ceilings within executive branch agencies), repealed Public Law 81–784 (Sept. 1950).

[33] *See* U.S. Office of Personnel Management website, ''Classification & Qualifications,'' *https://www.opm.gov/policy-data-oversight/classification-qualifications/* (last visited May 25, 2021).

[34] 6 U.S.C. 658(b)(1)(B). The § 658 compensation authority also applies without regard to any other provisions of law relating to appointment or number of employees. *Id.*

[35] 6 U.S.C. 658(b)(2)(A).

[36] 6 U.S.C. 658(b)(3)(A).

[37] In 2012, the Comptroller General noted ''the extraordinary complexity of the [F]ederal pay systems and the difficulties we have encountered in attempting to resolve ambiguities arising from pay laws enacted at different times over nearly 70 years ago.'' Comptroller General Opinion, *Pay for Consultants and Scientists Appointed under Title 42,* B–323357 (July 12, 2012) (determining that the pay cap in 5 U.S.C. 5373 is inapplicable to pay for consultants and scientists appointed under 42 U.S.C. 209(f) or (g), but that such pay is limited by an appropriations cap), 1. The Comptroller General referenced a D.C. Circuit case that also noted the inherent complexity in resolving ambiguities in the Federal compensation context. *Id.* That D.C. Circuit case explained that in 1983 there were six discrete Federal civilian pay systems and ''depending on the degree of disaggregation, over forty other, separate pay systems. These pay systems vary considerably in the number of employees covered and method for determining pay.'' *International Organization of Masters, Mates & Pilots* v. *Brown,* 698 F.2d 536, 539

The compensation authority language in 6 U.S.C. 658 is no exception. To implement the § 658 compensation authority, DHS has had to interpret the ambiguous statutory language of the basic pay authority and the additional compensation authority, as discussed in the following three sections of this document: III.A.3.(a) Comparable Positions, III.A.3.(b) Basic Pay, and III.A.3.(c) Additional Compensation.

(a) Comparable Positions

Section 658 does not define or identify comparable positions in DOD, comparable positions authorized by Title 5, nor what makes such positions ''comparable'' to qualified positions. As mentioned previously, and discussed in IV.A of this document, DHS is using the Secretary's broad authority and discretion for designating and establishing qualified positions to create qualified positions as a new type of Federal civil service position based on the DHS cybersecurity mission and individuals' skills necessary to execute that mission. As such, there are no existing positions in DOD nor existing positions authorized by Title 5 that are obvious ''comparable positions'' to this new type of position for the purposes of implementing the § 658 basic pay authority and the § 658 additional compensation authority. Consequently, DHS must determine which positions in DOD, and which positions authorized by Title 5, are comparable to this new type of Federal civil service position.

DHS interprets ''comparable positions'' to mean positions that have characteristics in common with a qualified position. A dictionary definition of the term ''comparable'' can mean ''similar'' or ''capable of being compared;'' however, only the ''similar'' definition provides guidance.[38] Most—if not all—Federal civil service positions are ''comparable'' in the sense that they are capable of being be compared to one another based on some criteria or using a consistent metric. The ability or a process to compare positions does not result in identifying positions in DOD and positions authorized by Title 5 that are ''comparable'' for the purpose of implementing the § 658 basic pay authority and the § 658 additional compensation authority.[39] A dictionary definition of the term ''similar'' is ''alike in substance or essentials'' or ''having characteristics in common.''[40] Thus, positions that are ''comparable'' are ones that are alike in substance or essentials or have characteristics in common.

The main characteristics of a qualified position can be described as a link to the DHS cybersecurity mission and an emphasis on an individual's skills necessary to execute that mission. Thus, ''comparable positions'' in DOD and authorized by Title 5, are those that also have (1) a link to cybersecurity responsibilities of an agency, and (2) an emphasis on an individual's skills necessary to perform cybersecurity work. Some positions in DOD and some positions authorized by Title 5 have these characteristics in common with qualified positions, and thus are ''comparable'' to qualified positions. Note that positions classified using traditional Federal position classification methods, including the GS position classification system, do not emphasize an individual's skills. As explained in III.B.2 of this document, traditional Federal position classification primarily focuses on the work of a position and only minimally accounts for the skills an individual brings to the work of a position and how such skills may influence the performance of work.

Positions in DOD that have or could have a link to cybersecurity responsibilities and an emphasis on an individual's skills, and thus are comparable positions in DOD for purposes of implementing the § 658 basic pay authority, include the following eleven types of positions:

- Senior Level/Scientific or Professional (SL/ST) positions under 5 U.S.C. 5376;
- Senior Executive Service (SES) positions under 5 U.S.C. Chapter 31, Subchapter II;
- Experts and consultants positions under 5 U.S.C. 3109;
- Critical pay positions under 5 U.S.C. 5377;
- DOD CES positions under 10 U.S.C. 1599f;
- DOD DCIPS positions under 10 U.S.C. 1601 *et seq.*;
- DOD highly qualified experts (DOD HQE) positions under 5 U.S.C. 9903;
- Intelligence Community highly qualified experts (IC HQE) under 50 U.S.C. 3024(f)(3)(A)(iii);
- Intelligence Community (IC) critical pay positions under 50 U.S.C. 3024(s);
- Scientific and Technology Reinvention Laboratories (STRL) positions under 10 U.S.C. 2358c; and
- Pilot cybersecurity professional positions under section 1110 of the *National Defense Authorization Act for Fiscal Year 2018.*[41]

Positions ''authorized by [T]itle 5,'' while not clearly defined, at least include positions specifically authorized in Title 5 provisions. Five of the eleven types of comparable positions in DOD are also authorized in Title 5 provisions. Thus, positions authorized by Title 5 that have or could have a link to cybersecurity responsibilities and an emphasis on an individual's skills, and are therefore comparable positions authorized by Title 5 for purposes of implementing the § 658 additional compensation authority, include at least the following types of positions:

- SL/ST positions under 5 U.S.C. 5376;
- SES positions under 5 U.S.C. Chapter 31, Subchapter II;
- Experts and consultants positions under 5 U.S.C. 3109;
- Critical pay positions under 5 U.S.C. 5377; and
- DOD HQE positions under 5 U.S.C. 9903.

(D.C. Cir. 1983), 698 F.2d 536, 538–39 (holding that the pay cap in 5 U.S.C. 5373 applies to government mariners whose pay is set in accordance with prevailing rates and practices in the maritime industry). The Comptroller General also commented: ''The statutory scheme has only become more complex since 1983.'' Comptroller General Opinion, B–323357 at 1.

[38] *United States* v. *Cinemark USA Inc.,* 348 F.3d 569 (6th Cir. 2003) (determining that ''comparable'' has two possible meanings under a dictionary definition: (1) ''similar,'' and (2) ''capable of being compared and concluding that the term ''comparable'' had to mean ''similar'' in order to give substantive meaning to that term).

[39] *Id.* at 573 (explaining: ''While the word 'comparable' can mean 'capable of being compared,' such an interpretation would give the word no substantive content in this context. The other—obviously intended—meaning of 'comparable' is 'similar.' Thus, in ordinary parlance, if the prices at one store or restaurant are ten times those of a competitor, one would not say that the prices are 'comparable,' even though they can obviously be compared'').

[40] Merriam-Webster, *https://www.merriam-webster.com/dictionary/similar* (last visited May 25, 2021).

[41] Public Law 115–91 (Dec. 2017).

It is important to note that the eleven types of comparable positions are each comparable to a qualified position. As such, a qualified position is simultaneously comparable to each of these eleven types of comparable positions. This one-to-many relationship between a qualified position and the eleven types of comparable positions affects how DHS interprets and implements the § 658 basic pay authority and the § 658 additional compensation authority, as discussed in the following two sections, III.A.3.(b) Basic Pay and III.A.3.(c) Additional Compensation.

(b) Basic Pay

Section 658(b)(2)(A) provides the Secretary basic pay authority and parameters for exercising that authority by requiring the Secretary fix rates of basic pay for qualified positions ''in relation to the rates of pay provided for employees in comparable positions in the Department of Defense and subject to the same limitation on maximum rates of pay established for such employees by law or regulation.'' This authority to fix rates of basic pay is authority to create and administer a new salary system with a salary range and policies for setting and adjusting salaries.[42] Under 6 U.S.C. 658(b)(1)(B), the new salary system is exempt from any other laws relating to classification or compensation of employees, including the GS position classification system and the associated GS pay system.[43] The new salary system, however, must adhere to the two parameters in the § 658 basic pay authority regarding rates of pay and maximum rates.

(i) Rates of Pay and Pay Ranges

To ensure salaries under the new salary system are set in relation to the rates of pay provided for employees in comparable positions in DOD,[44] the Department must interpret the ambiguous ''in relation to'' requirement, and apply it using the rates of pay for the eleven types of comparable positions in DOD.

Rates of pay are organized as pay ranges with a minimum rate and maximum rate. The rates of pay provided for the eleven types of comparable positions in DOD are nine different pay ranges established in statute and DOD implementing documents. Because a qualified position is simultaneously comparable to each type of comparable position in DOD, all nine pay ranges are relevant in applying the ''in relation to'' requirement. The nine pay ranges for the eleven types of comparable positions in DOD are as follows:

TABLE 1—PAY RANGES FOR COMPARABLE POSITIONS IN DOD

Pay range		Comparable position in DOD
Minimum rate	Maximum rate	
No minimum [T1]	GS–15 step 10 [T2]	Experts and consultants positions.
GG–7 or pay band 2 [T3]	EX–IV [T4]	DOD CES and DOD DCIPS positions.
n/a	EX–IV [T5]	DOD HQE positions.
120 percent of GS–15 minimum basic pay [T6]	EX–II (with an OPM-certified performance appraisal system, otherwise EX–III) [T7].	SL/ST and SES positions.
Not less than the rate otherwise payable if not determined critical [T8].	EX–I [T9]	Critical pay positions.
n/a	EX–I with Director of National Intelligence approval otherwise EX–II [T10].	IC critical pay positions.
n/a	Vice President's salary [T11]	IC HQE positions.
n/a	150 percent of EX–I [T12]	STRL positions.
n/a	No maximum [T13]	Pilot cybersecurity professional positions.

[T1] 5 U.S.C. 3109(b).

[T2] *Id.* This authority for expert and consultants positions also includes an authority to supersede this maximum rate when specifically authorized by appropriation or other statute.

[T3] DODI 1400.25–V3007, *DOD Civilian Personnel Management System: Cyber Excepted Service (CES) Occupational Structure* (Aug. 15, 2017), 6 (Entry/Developmental Work Level 1 for Professional Work Category in CES Occupational Structure); DODI 1400.25–V2007, *DOD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Compensation Administration* (Apr. 17, 2012), 27 (Entry/Developmental Work Level 1 for Professional Work Category in DCIPS Occupational Structure).

[T4] DODI 1400.25–V3006, *DOD Civilian Personnel Management System: Cyber Excepted Service (CES) Compensation Administration* (Aug. 15, 2017), 4 (''basic rates of pay will comply with the maximum pay limitation of Level IV of the Executive Schedule for basic pay''); DODI 1400.25–V2006, *DOD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Compensation Administration* (Mar. 3, 2012, incorporating changes effective July 6, 2020), 9 (''adjusted basic pay may not exceed the rate of Level IV of the Executive Schedule'').

[T5] 5 U.S.C. 9903(b).

[T6] 5 U.S.C. 5376(b) and 5382.

[T7] *Id.*

[T8] 5 U.S.C. 5377(d).

[T9] *Id.* This authority for critical pay positions also includes an authority to supersede this maximum rate with written approval from the President.

[T10] 50 U.S.C. 3024(s). This authority for IC critical pay positions also includes an authority to supersede this maximum rate with presidential approval.

[T11] ICD 623, *Intelligence Community Directive Number 623, Appointment of Highly Qualified Experts* (Oct. 16, 2008), 4 (''The DNI may set the rate of basic pay for HQEs up to or equal to the salary of the Vice President of the United States (as established by 3 U.S.C. 104)'').

[T12] 10 U.S.C. 2358c(d) s.

[T13] *National Defense Authorization Act for Fiscal Year 2018,* Public Law 115–91, Sec. 1110(f), (Dec. 2017).

[42] Section 658(b)(2)(B) also provides the Secretary discretionary authority for establishing a prevailing rate system, which is not addressed by this rulemaking.

[43] The new salary system is also exempt from any other laws relating to the appointment or number of employees. 6 U.S.C. 658(b)(1)(B).

[44] 6 U.S.C. 658(b)(2)(A).

DHS interprets the ''in relation to'' requirement to mean that the Secretary has discretion to establish and operate a new salary system within the boundaries provided by the nine rate ranges for the eleven types of comparable positions in DOD. Congress has used a similar ''in relation to'' requirement in other compensation authorities, and courts have held that such a requirement provides boundaries for determining appropriate salaries under a compensation authority.[45] The courts also concluded that such a requirement gives the agency head discretion to fill in the details within those boundaries.[46] Legislative history indicates that 6 U.S.C. 658 grants compensation flexibilities to better recruit and retain cybersecurity talent with more competitive compensation.[47]

DHS determines that the boundaries of the new salary system, as provided by the nine rate ranges for the eleven types of comparable positions in DOD, may be from no minimum to 150 percent of EX–I or no maximum. The nine rate ranges, presented in Table 1: Rate Ranges for Comparable Positions in DOD, have several minimum rates, which start at no minimum, and several maximum rates, which range up to 150 percent of EX–I and no maximum. As discussed subsequently in III.B of this document, the competitiveness of compensation, especially salary, is a main factor contributing to DHS's challenges recruiting and retaining cybersecurity talent. Therefore, as discussed further in IV.E.3 of this document, the Department is using the highest maximum rates for the upper boundary for the new salary system.

(ii) Limitations on Maximum Rates and Pay Caps

To ensure salaries under the new salary system are subject to the same limitations on maximum rates for employees in comparable positions in DOD established by law or regulation,[48] DHS must identify the ''limitations on maximum rates'' for the eleven types of comparable positions in DOD, and then apply those same limitations to the new pay system.

Just as 6 U.S.C. 658 does not identify comparable positions in DOD, it does not prescribe or identify the ''limitations on maximum rates of pay'' for those comparable positions. Thus, to implement the ''the same limitations on maximum rates'' requirement in 6 U.S.C. 658, DHS must interpret the phrase ''limitations on maximum rates'' and apply it using the eleven types of comparable positions in DOD.

DHS interprets ''limitations on maximum rates'' to mean salary caps. Congress generally uses the term ''limitation'' within compensation statutes to mean a pay or salary cap. U.S. Code sections using the term ''limitation'' in a compensation context indicate that the term means an amount cap.[49] When used in conjunction with the authority to fix or adjust rates of pay, the term ''limitation'' means a salary cap.[50] These U.S. Code sections also indicate that the term ''limitation'' often specifically refers to the salary cap for administrative pay systems in 5 U.S.C. 5373 or 5306(e).[51] The § 658 basic pay authority is authority to create a new administrative compensation system; however, under the exemption relating to the compensation of employees in § 658(b)(1)(B), the new salary system is exempt from the salary cap in 5 U.S.C. 5373 and 5306(e). The new system must instead comply with the ''same limitations on maximum rates'' requirement in § 658(b)(2)(A).

DHS interprets the ''same limitations on maximum rates'' requirement to mean that the new salary system is subject to the same salary caps applicable to the eleven types of comparable positions in DOD. A maximum rate for a rate range serves as a salary cap. As shown previously in Table 1, the pay ranges for the eleven types of comparable positions in DOD each have at least one maximum rate, except the pay range for pilot cybersecurity professional positions does not include a maximum rate. For the comparable positions in DOD that have more than one maximum rate, only the highest rate serves as a true salary cap because the lower maximum rate can be superseded under certain circumstances, whereas the higher rate serves as the absolute limit for salaries in that rate range. As such, comparable positions in DOD have six different salary caps based on their highest maximum rate. Because a qualified position is simultaneously comparable to each type of comparable position in DOD, all six salary caps are relevant in applying the ''same limitations on maximum rates'' requirement. The six relevant salary caps for the eleven types of comparable positions in DOD are as follows:

TABLE 2—SALARY CAPS FOR COMPARABLE POSITIONS IN DOD

Maximum rate	Comparable position in DOD
GS–15 step 10	Experts and consultants positions.[T1]
EX–IV	DOD CES and DOD DCIPS positions;[T2] and DOD HQE positions.[T3]

[45] *Crawford* v. *U. S.,* 179 Ct. Cl. 128 (1967) *cert. denied* 389 U.S. 1041 (1968) (construing ''in relation to'' in Section 2353(c) of the Overseas Teacher Pay and Personnel Practices Act of 1959 (Pub. L. 86–91), which directed: ''The Secretary of each military department shall fix the rates of basic compensation of teachers and teaching positions in his military department in relation to the rates of basic compensation for similar positions in the United States . . .''); *Homezell Chambers* v. *U.S,* 306 F.Supp. 317 (E.D. Va 1969) (also construing the Section 2353(c) of the Overseas Teach Pay and Personnel Practices Act of 1959); *see also Reinheimer* v. *Panama Canal Co.,* 413 F.2d 153 (5th 1969) (construing ''in relation to'' in section 144(b) of title 2 of the Canal Zone Code (Pub. L. 73–431), which directed salaries for employees of the Panama Canal Zone ''may be established and revised in relation to rates of compensation for the same or similar work performed in the continental United States,'' as not meaning ''equal to'' but instead as indicating some amount of discretion); *Binns* v. *Panama Canal Co.,* 459 F.Supp. 956, 958 (D.C.Z. 1978) (discussing *Reinheimer* as holding that the ''in relation to'' direction in section 144(b) of title 2 of the Canal Zone Code ''allows the relational establishment of wages, and therefore also allows deviations from wage rates which would be identical to those of the same or similar positions in the continental United States'').

[46] *Crawford* v. *U. S.,* 179 Ct. Cl. 128, 139 (1968) (stating that the authority to fix the rates of basic compensation in relation to the rates of basic compensation for similar positions ''merely set the boundaries of the program allowing the Secretary of Defense to fill in the details. Nowhere did Congress fix salaries in Public Law 86–91 [Overseas Teachers Pay and Personnel Act], nor did it define the positions which were to be looked to in the United States as similar to those occupied by the overseas teachers . . . . That the Secretary was vested with discretion to issue regulations governing the fixing of rates of basic compensation follows unmistakably from the grant of authority contained in Section 2352(a)(2) of the Act [which provided the authority to fix rates of basic compensation in relation to other rates of compensation and required implementing regulations]''); *Homezell Chambers* v. *U.S,* 306 F.Supp. 317 (E.D. Va 1969) (affirming the Secretary of Defense's discretion for determining overseas teacher pay).

[47] *See supra* note 15.

[48] 6 U.S.C. 658(b)(2)(A).

[49] *See e.g.,* 5 U.S.C. 5307 (entitled ''Limitation on certain payments'' and providing a general amount cap on total compensation, which is known as the annual aggregate compensation cap); 5 U.S.C. 5547 (entitled ''Limitation on premium pay'' and providing an amount cap on the aggregate of basic pay and premium pay under Title 5); *see also* 5 U.S.C. 5759(c) and 10 U.S.C. 1091(b).

[50] *See e.g.,* 5 U.S.C. 5376 and 5382 (stating that basic pay for SL/ST positions and SES positions is not subject to ''the pay limitation in section 5306(e) or 5373''); *see also* 10 U.S.C. 9414(d); 24 U.S.C. 415(e); and 10 U.S.C. 1587a(e).

[51] *Id.*

TABLE 2—SALARY CAPS FOR COMPARABLE POSITIONS IN DOD—Continued

Maximum rate	Comparable position in DOD
EX–II	SL/ST and SES positions (with an OPM-certified performance appraisal system).[T4]
EX–I	Critical pay positions;[T5] and IC critical pay positions (with Director of National Intelligence approval)[T6]
Vice President's salary	IC HQE positions[T7]
150 percent of EX–I	STRL positions[T8]

[T1] 5 U.S.C. 3109(b).
[T2] DODI 1400.25–V3006, *DOD Civilian Personnel Management System: Cyber Excepted Service (CES) Compensation Administration* (Aug. 15, 2017), 4, and DODI 1400.25–V2006, *DOD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Compensation Administration* (Mar. 3, 2012, incorporating changes effective July 6, 2020), 9.
[T3] 5 U.S.C. 9903(b).
[T4] 5 U.S.C. 5376(b) and 5382.
[T5] 5 U.S.C. 5377(d).
[T6] 50 U.S.C. 3024(s).
[T7] ICD 623, *Intelligence Community Directive Number 623, Appointment of Highly Qualified Experts* (Oct. 16, 2008), 4.
[T8] 10 U.S.C. 2358c(d).

Because the new salary system must set salaries subject to the ''same'' limitations on maximum rates for employees in comparable positions in DOD, each of the six salary caps applies to the new salary system. Congress uses the plural term ''limitations'' in the § 658 basic pay authority, which indicates Congress contemplated, or at least accounted for, the possibility of more than one salary cap; however, Congress is silent on how multiple salary caps might apply to the new salary system.

With the Secretary's broad authority and discretion for designating and establishing qualified positions, determining comparable positions in DOD, establishing a salary system within expansive boundaries, and identifying salary caps to apply to the new salary system, it follows that the Secretary also has implicit authority and discretion for how to apply the six applicable salary caps. In exercising this authority and discretion, the Secretary must ensure the new salary system is subject to the ''same'' salary caps as comparable positions in DOD, and as such, DHS is applying all six salary caps to the new salary system, as discussed further under IV.E.3 of this document.

(c) Additional Compensation

Section 658(b)(3)(A) provides the Secretary discretionary additional compensation authority and parameters for exercising that authority by requiring that any discretionary additional compensation for employees in qualified positions, must be ''consistent with, and not in excess of the level authorized for, comparable positions authorized by [T]itle 5, United States Code.'' Section 658(b)(3)(B) also separately mandates one type of additional compensation, allowances in nonforeign areas, and also mandates that employees in qualified positions are eligible for such allowances under 5 U.S.C. 5941 on the same basis and to the same extent as if the employees were covered under section 5941.

The § 658 additional compensation authority for both discretionary additional compensation and the separate, mandatory allowances in nonforeign areas is exempt under 6 U.S.C. 658(b)(1)(B) from any other laws relating to compensation.[52] Any discretionary additional compensation DHS provides, however, must adhere to the two parameters that such additional compensation is ''consistent with'' comparable positions authorized by Title 5 and not in excess of ''the level authorized for'' such positions.

(i) Consistent With

To provide discretionary additional compensation that is consistent with comparable positions authorized by Title 5, DHS must interpret this ambiguous ''consistent with'' requirement, and apply it using the five types of comparable positions authorized by Title 5. As discussed previously in III.C.3 of this document, comparable positions authorized by Title 5 include SL/ST, SES, Experts and Consultants, Critical Pay, and DOD HQE positions.

Based on Congress's choice of punctuation and syntax, it is clear that discretionary additional compensation must be consistent with comparable positions authorized by Title 5. Section 658(b)(3)(A) directs that any discretionary additional compensation be ''consistent with, and not in excess of the level authorized for, comparable positions authorized by [T]itle 5.'' In section 658(b)(3)(A), the phrase ''and not in excess of the level authorized for'' is set aside by commas and is a non-essential clause that is not necessary for reading the rest of the sentence.[53] The sentence read without the clause states that such additional compensation must be ''consistent with . . . comparable positions authorized by [T]itle 5.'' Congress reads the § 658 additional compensation authority in just this manner in the legislative history when it treats the syntax and punctuation of the ''consistent with'' requirement as purposeful[54] and omits the non-essential clause in describing the authority.[55] A report accompanying a previous bill, the language of which now is codified at 6 U.S.C. 658, does not correct the syntax or punctuation of the language, nor does it directly quote the

[52] The § 658 additional compensation authority is also exempt from any other laws relating to the appointment, number, or classification of employees. 6 U.S.C. 658(b)(1)(B).

[53] Non-essential clauses, a type of non-restrictive element, do not limit the meaning of the words they modify. *See* William Strunk, *The Elements of Style* (1st Ed. 2004), 9 (non-restrictive elements ''do not limit the application of the words on which they depend, but add, parenthetically, statements supplementing those in the principal [elements]'').

[54] Congress has used the same punctuation and syntax of the ''consistent with'' requirement since its creation in the bill enacted as the DOD DCIPS authority; however, the legislative history for the DOD DCIPS authority does not address the ''consistent with'' requirement. The draft bill stated:

(c) Additional Compensation, Incentives, and Allowances—(1) Employees in defense intelligence component positions may be paid additional compensation, including benefits, incentives, and allowances, in accordance with this subpart if, and to the extent, authorized in regulations prescribed by the Secretary of Defense. (2) Additional compensation under this subsection shall be *consistent with, and not in excess of the levels authorized for, comparable positions authorized by [T]itle 5.*

S. 1745 (104th Congress 2d Session, July 10, 1996), Sec. 1132 (proposed for 10 U.S.C. 1590(c)) (emphasis added); H.R. 3230 (104th Congress 2d Session, July 10, 1996), Sec. 1132 (proposed for 10 U.S.C. 1590(c) (also providing for allowances while stationed outside the continental U.S. or in Alaska tied to the allowance under 5 U.S.C. 5941) (emphasis added).

[55] S. Rep. 113–207, *Report of the Committee on Homeland Security and Governmental Affairs, U.S. Senate, to accompany S. 2354,* ''To Improve Cybersecurity Recruitment and Retention,'' (July 14, 2014), 4 (explaining the authority gives DHS authority to ''grant additional compensation, incentives, and allowances consistent with comparable positions authorized by Title 5, United States Code'').

language, but uses slightly different language to describe the requirement that discretionary additional compensation must be consistent with comparable positions authorized by Title 5.[56]

Neither 6 U.S.C. 658 nor the legislative history explain or identify how compensation can be consistent with a position. A dictionary definition of the phrase ''consistent with'' signals that the phrase does not require sameness.[57] A case addressing the phrase ''consistent with'' in a corporate merger agreement confirms that ''consistent with'' does not require sameness, and also indicates that this phrase has meaning only when comparing similar things.[58] Additional compensation and positions are not the same, or even similar things, and are not usually compared.

Moreover, most additional compensation provided under Title 5 depends not on an individual's position, but on whether the individual is an ''employee,'' as defined in Title 5. Under Title 5, most types of additional compensation are available to an employee, regardless of the employee's type of position.[59]

Although the language of the ''consistent with'' requirement is ambiguous and confusing, the entire context of 6 U.S.C. 658 indicates that the ''consistent with'' requirement can be satisfied by basing additional compensation on authorities in Title 5.[60] The heading of the subparagraph providing the discretionary additional compensation authority, and the ''consistent with'' requirement, is ''Additional Compensation Based on Title 5 Authorities.''[61] Therefore, Congress characterizes additional compensation that must be consistent with comparable positions authorized by Title 5 as being based on Title 5 authorities. This characterization is in contrast to the subparagraph heading mandating allowances in nonforeign areas, which is ''Allowances in Nonforeign Areas'' and does not further characterize this type of additional compensation.[62]

Thus, DHS interprets the ''consistent with'' requirement as being satisfied by ensuring any discretionary additional compensation is based on Title 5 authorities, and those Title 5 authorities are provisions regarding any type of additional compensation. In 6 U.S.C. 658(b)(3)(A), Congress identifies three types of additional compensation: Benefits, incentives, and allowances. The terms ''benefits,'' ''incentives,'' and ''allowances'' are not defined in 6 U.S.C. 658, nor in Title 5, but are used in specific chapters, subchapters, and sections of Title 5,[63] along with other terms describing additional compensation under Title 5.[64] Even if a type of Title 5 additional compensation is not necessarily a ''benefit,'' ''incentive,'' or ''allowance,'' Congress gave the Secretary the ability to consider such compensation under the § 658 additional compensation authority by using the term ''including,'' which signals that the list of three possible examples of discretionary additional compensation is not exhaustive.

DHS understands this responsibility to base any discretionary additional compensation on Title 5 provisions as providing DHS discretion over which, if any, types of additional compensation to provide, as well as how to provide them. A base or foundation[65] is not usually the entirety of a thing, but it is instead something on which more is built. Moreover, in contrast to the language mandating allowances in nonforeign areas that explicitly requires following all terms and conditions in Title 5 for those allowances, the language of the discretionary additional compensation authority does not require DHS use the terms and conditions of Title 5 provisions.[66] Congress uses

[56] *Id.* Note that the additional compensation language of then-bill S. 2354 is identical to the language codified in 6 U.S.C. 658(b)(3).

[57] A dictionary definition of ''consistent with'' means ''marked by harmony, regularity, or steady continuity: free from variation or contradiction'' and ''marked by agreement: Compatible–usually used with *with*.'' Merriam-Webster, *www.merriam-webster.com/dictionary/consistent* (last visited May 25, 2021). Variation'' means ''the act or process of varying: the state or fact or being varied'' and ''vary'' means ''to make a partial change in: make different in some attribute or characteristic.'' Merriam-Webster, *https://www.merriam-webster.com/dictionary/variation* (last visited May 25, 2021); *https://www.merriam-webster.com/dictionary/vary* (last visited May 25, 2021). ''Contradiction'' means ''the act or instance of contradicting'' and ''contradict'' means ''to assert the contrary of; take issue with'' and ''to imply the opposite or denial of.'' Merriam-Webster, *https://www.merriam-webster.com/dictionary/contradiction* (last visited May 25, 2021); *https://www.merriam-webster.com/dictionary/contradict* (last visited May 25, 2021). This dictionary definition has limited use because being free from variation, which would not permit partial changes, is different from being free from contradiction, which would not permit anything that is the opposite.

[58] Courts have not had an opportunity to consider this or any other ''consistent with'' requirement in the Federal compensation context. In *Vry* v. *Martine Marietta Materials, Inc.,* 2003 WL 297309 (U.S. Dist Court, D. Minnesota) (2003). a district court held that a company offered compensation and benefits ''at levels consistent with'' prior levels as required by a corporate merger agreement, even though new and prior compensation and benefits levels were not the same. For example, while an employee's salary did not increase as expected, it did not decrease; the 401k plan matching contributions by the old company were dollar-to-dollar up to 4 percent of an employee's contributions, and the new company only matched 50-cents-per-dollar, but up to 7 percent of an employee's salary; pension plans were different, but the new company's plan conferred greater benefits; and health insurance programs differed with the old company offering a high deductible plan with negligible premiums and the new company offering a plan with monthly premiums, 15 percent copays, and no deductible, but both plans imposed similar burdens on the employee and reflect similar and reasonable calculations and allocations of risk from an employee's perspective. 2003 WL 297309. Note, however, that the court was interpreting language that required levels of compensation to be consistent with levels of compensation, which differs from the language in 6 U.S.C. 658 requiring compensation to be consistent with positions.

[59] *See e.g.,* 5 U.S.C. 4502 (making available incentive awards of cash awards, honorary recognition, and time-off awards to an ''employee'' who satisfies other award-specific criteria that do not include position type) and 5 U.S.C. 8333 and 8410 (stating that retirement annuity is available to ''an employee'' who satisfies certain eligibility requirements that do not include position type).

[60] ''Statutory construction . . . is a holistic endeavor.'' *Smith* v. *U.S.,* 508 U.S. 223, 233 (1993). The entire context of a section or statute may clarify meaning of ambiguous language or terminology. *See id.* (''A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible readings produces a substantive effect that is compatible with the rest of the law'').

[61] 6 U.S.C. 658(b)(3)(A). This paragraph heading is also borrowed from the DOD DCIPS authority at 10 U.S.C. 1603(a). This heading was not in the draft bill for the DOD DCIPS authority, but Congress added it when Congress moved the additional compensation authority to its own paragraph before enactment. Originally, Congress included the DOD DCIPS authority for additional compensation and nonforeign allowances in one subsection with the title: ''Additional Compensation, Incentives, and Allowances.'' S. 1745 (104th Congress 2d Session, July 10, 1996), Sec. 1132. Congress eventually moved these compensation authorities to a separate section, codified at 10 U.S.C. 1603, and retained the original subsection title as the new section heading in the enacted version. *Compare* 10 U.S.C. 1603 *and* S. 1745 (104th Congress 2d Session, July 10, 1996), Sec. 1132. In 10 U.S.C. 1603, Congress placed the additional compensation authority in paragraph (a) and added the heading indicating that Congress was granting DOD the authority to offer additional compensation that is based on Title 5 additional compensation provisions.

[62] 6 U.S.C. 658(b)(3)(B).

[63] *See e.g.* 5 U.S.C. Chapter 45 (''Incentive Awards''), Chapter 59 (''Allowances''), and 8903 (''Health benefit plans'').

[64] *See e.g.* 5 U.S.C. 4505a (''Performance-based cash awards''), 5379 (''Student loan repayments''), and 6303–6304 (''Annual leave'').

[65] A dictionary definition of the verb ''based'' means ''to make, form, or serve as a base for'' or ''to find a foundation or basis for.'' Merriam-Webster, *https://www.merriam-webster.com/dictionary/base* (last visited May 25, 2021); *see also* Black's Law Dictionary (5th Ed.) (defining ''basis'' as ''fundamental principle; groundwork; support; the foundation or groundwork of anything; that upon which anything may rest or the principal component parts of a thing'').

[66] Section 658(b)(3)(B) mandates that the Secretary provide an employee in a qualified position an allowance in nonforeign areas under 5 U.S.C. 5941 ''on the same basis and to the same extent as if the employee was an employee covered by such section 5941, including eligibility conditions, allowance rates, and all other terms and conditions in law or regulation.''

entirely different language for the discretionary additional compensation, which signals a different requirement for such additional compensation.[67]

DHS must base any discretionary additional compensation on Title 5 provisions regarding types of additional compensation, and DHS may combine and streamline such provisions as long as it is clear which specific Title 5 provisions serve as the base or foundation for discretionary additional compensation. As discussed subsequently in III.B of this document, the current inability to quickly construct and nimbly adjust competitive total compensation packages is a main factor in DHS's challenges recruiting and retaining cybersecurity talent. Therefore, as discussed further in IV.E of this document, DHS is combining and streamlining several provisions of Title 5 to establish types of additional compensation specific to the new talent management system, as well as providing traditional Federal employee benefits, such as retirement, health benefits, and insurance programs.

(ii) The Level Authorized

To provide additional compensation that is not in excess of the level authorized for comparable positions authorized by Title 5, DHS must identify ''the level'' that applies for the five types of comparable positions authorized by Title 5. The definite article ''the'' in 6 U.S.C. 658(b)(3)(A) limits ''level'' to being a specific level authorized for those comparable positions.

The one, specific level under Title 5 that applies to Title 5 additional compensation for the five types of comparable positions authorized by Title 5 is the aggregate compensation cap in 5 U.S.C. 5307. The aggregate compensation cap limits certain cash payments if, when added to total basic pay, such a payment would cause the employee's annual total pay to exceed level I of the Executive Schedule (EX) or the salary of the Vice President.[68] The cap amount that applies—EX–I or the salary of the Vice President—depends on position type. As discussed previously in III.A.3 of this document, comparable positions authorized by Title 5, at the very least, include SL/ST, SES, experts and consultants, critical pay, and DOD HQE positions. All individuals in such positions that qualify as an ''employee'' are subject to the aggregate compensation cap: The EX–I cap amount applies to experts and consultants positions and critical pay positions,[69] and the Vice President's salary amount cap applies to SL/ST, SES, and DOD HQE positions.[70]

Because discretionary additional compensation must not be in excess of the level authorized for comparable positions authorized by Title 5, such additional compensation when added to the salary of an employee in a qualified position may not cause that employee's aggregate compensation to exceed either EX–I or the Vice President's salary. Both annual aggregate compensation cap amounts are relevant in applying ''the level'' to discretionary additional compensation for qualified positions because both cap amounts apply for the five types of comparable positions authorized by Title 5, and a qualified position is simultaneously comparable to each such type of comparable position.

With the Secretary's broad authority and discretion for designating and establishing qualified positions, for determining comparable positions authorized by Title 5, for deciding whether to provide discretionary additional compensation, including what types and how to provide them, and for identifying the aggregate compensation cap as the level for such additional compensation, it follows that the Secretary also has implicit authority and discretion for how to apply the two cap amounts. In exercising this implicit authority and discretion, the Secretary must ensure that any discretionary additional compensation does not cause aggregate compensation for employees in qualified positions to exceed the applicable amount for that limit, and as such, DHS is applying both annual aggregate compensation cap amounts, as discussed further under IV.E.7 of this document.

B. Need for a New Approach to Cybersecurity Talent Management

To implement the broad authority and discretion in 6 U.S.C. 658, DHS set out to design a cybersecurity talent management system capable of solving DHS's historical and ongoing challenges recruiting and retaining cybersecurity talent. To do so, the specialized design team formed in 2016 analyzed:

- Historical DHS cybersecurity workforce data, including input from current DHS employees and leaders about talent requirements and gaps;
- notable changes to talent management at Federal agencies since the 1970s, including efforts commonly referred to as personnel demonstration projects or alternative personnel or pay systems;
- recommendations since the 1980s from non-profits, academia, and public service experts related to modernizing the Federal civil service and better supporting specialized, technical fields like cybersecurity;
- major trends and market forces affecting contemporary workers in public service and in the field of cybersecurity; and
- leading practices in both the public and private sectors for recruiting and retaining cybersecurity talent.[71]

This analysis confirmed the main factors contributing to DHS's challenges recruiting and retaining cybersecurity talent: (1) The ever-evolving nature of cybersecurity work; (2) an outdated and rigid position classification system; and (3) a generic and inflexible compensation approach based on position classification. Constant, often unpredictable, changes in cybersecurity work require a focus on individuals and their skills instead of a focus on narrowly-defined and mostly-static jobs or positions created for predictable, stable work. Significantly, DHS organizations struggle to effectively describe cybersecurity work using outdated and rigid position classification methods designed to apply generically across government and myriad fields of expertise. DHS organizations also struggle to competitively compensate employees using generic and inflexible compensation structures that are closely linked to those classification methods.

The following discussion in III.B.1 through III.B.3 of this document explains these main factors and DHS's need for a new approach to cybersecurity talent management.

[67] *Russello* v. *U.S.,* 464 U.S. 16, 23 (1983)(''[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion''); *see also Bailey* v. *United States,* 516 U.S. 137, 146 (1995) (''We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning. While a broad reading of ''use'' undermines virtually any function for ''carry,'' a more limited, active interpretation of ''use'' preserves a meaningful role for ''carries'' as an alternative basis for a charge'').

[68] 5 U.S.C. 5307.

[69] 5 U.S.C. 5307(a).

[70] 5 U.S.C. 5307(d)(1); 10 U.S.C. 9903(d)(3) (stating ''[n]otwithstanding any other provision of this section or of section 5307,'' no additional payments may be made to an employee in an HQE position if such payment would cause the employee's total annual compensation to exceed the Vice President's salary).

[71] The specialized DHS team reviewed many studies and reports as part of its analysis. The most relevant reference materials are listed in V. Appendix: Reference Materials of this document.

1. Ever-Evolving Nature of Cybersecurity Work Requires a Focus on the Individual

To adequately accommodate the ever-evolving nature of cybersecurity work, DHS must design and operate a new talent management system with a greater focus on individuals and individuals' skills instead of focusing on narrowly-defined and mostly-static jobs or positions. It is important to note that the term ''skills,'' as used in this document, encompasses a full array of knowledge, skills, abilities, behaviors, aptitudes, competencies, and other characteristics and qualities that distinguish talent.

Cybersecurity work, including the work necessary to execute the dynamic DHS cybersecurity mission, constantly changes as technologies and threats change. Cybersecurity work is knowledge work that requires individuals to apply their skills to solve problems and achieve outcomes, often in unpredictable ways. As cybersecurity work changes, both the skills necessary to perform that work and how those skills are applied to perform that work also change. With cybersecurity work, as with some other types of knowledge work, an individual, because of that individual's specific skills, can have a significant influence on how work activities and tasks are performed as well as the quantity and quality of resulting outcomes for the organization.

Additionally, cybersecurity work is intrinsically multidisciplinary, requiring individuals with a variety of skills associated with multiple academic disciplines and areas of professional specialization. Cybersecurity work is frequently performed in a team format in which individuals combine, and recombine, a variety of skills to generate effective, and potentially novel, solutions to problems. The manner in which they apply their collective skills is unique to the circumstances of each problem and cannot always be anticipated or described in advance. This collaborative work is often performed on an *ad hoc* or project basis.

Notably, there is no singular or standard cybersecurity career path, and work arrangements for cybersecurity talent continue to change. For some contemporary workers, a 30-year Federal career is not desirable, and it is increasingly common for individuals to have careers with multiple significant shifts between employers, fields of work, and types of jobs.[72] A cybersecurity career may include a variety of work arrangements, including part-time work, longer-term jobs or assignments, and project-based work for limited periods of time. Also, collaborative cybersecurity work is often performed entirely through digital means by geographically dispersed individuals.

To succeed amidst such constant changes in cybersecurity work, individuals with cybersecurity skills look for career opportunities that allow them to continually learn in order to keep their expertise current and to acquire new skills.[73] In coming years, the proliferation of machine learning, artificial intelligence, collaborative digital technology, and other advances will continue to transform cybersecurity work, further reinforcing the requirement for individuals performing cybersecurity work to maintain and acquire relevant, valuable cybersecurity skills. As cybersecurity work evolves, some cybersecurity skills can quickly become obsolete, while some new, difficult-to-obtain skills may emerge and become highly prized.

Currently, the demand for cybersecurity talent is high and the supply of cybersecurity talent is low, with studies continuing to document and project dramatic critical skills shortages in terms of hundreds of thousands of employees.[74] With this shifting and growing skills gap, the competition for cybersecurity talent among Federal agencies and the private sector also shifts and grows. With more cybersecurity jobs nationally than qualified candidates, many individuals with sought-after cybersecurity skills are not active job seekers, having secured jobs performing work aligned to their interests.[75] When an individual with uncommon cybersecurity skills accepts a new cybersecurity job, it is often after being pursued by several organizations interested in the individual's cybersecurity expertise.[76]

Private sector employers have adjusted to the evolving nature of cybersecurity work, careers, and work arrangements by adopting new person- and skill-focused talent management practices that enable them to compete for critical talent. Such new practices include: Proactive recruitment to identify and seek out individuals who could be successful at cybersecurity work, even if they have never held a job in the field; eliminating traditional job requirements, like academic degrees, to avoid unnecessarily limiting applicant pools; and providing training to help employees keep skills current.[77]

DHS can address its historical and ongoing challenges recruiting and retaining cybersecurity talent by designing a new talent management system with a focus on the individual and individuals' skills. To do so, DHS must create qualified positions based on individuals and skills. DHS must design and operate recruitment, application, and hiring processes to identify individuals with necessary skills as well as individuals likely to perform DHS cybersecurity work successfully, including those starting their careers who show promise and have an interest in public service. DHS must also design and operate a compensation system providing flexibility to adjust to cybersecurity talent market demands and recognize how employees influence and contribute to the cybersecurity mission. DHS can do this under the authority and exemptions in 6 U.S.C. 658, especially the Secretary's broad authority and discretion for designating and establishing qualified positions and the exemption relating to classification of employees.

2. Outdated, Rigid Position Classification Inadequately Describes Cybersecurity Work

Instead of using position classification methods and related talent management

[72] *See e.g.,* Bernard Marr, *The Future of Work: 5 Important Ways Jobs Will Change the 4th Industrial Revolution,* Forbes, July 15, 2019, available at *https://www.forbes.com/sites/bernardmarr/2019/07/15/the-future-of-work-5-important-ways-jobs-will-change-in-the-4th-industrial-revolution/#3ffd62b754c7* (last visited May 25, 2021); *see also* U.S. Office of Personnel Management, *A Fresh Start for Federal Pay: The Case for Modernization,* (Apr. 2002), 7 and 42.

[73] *Id.*

[74] *See e.g.,* William Crumpler & James A. Lewis, *The Cybersecurity Workforce Gap,* (Jan. 2019) *available at https://www.csis.org/analysis/cybersecurity-workforce-gap* (last visited May 25, 2021); (ISC²), *Strategies for Building and Growing Strong Cybersecurity Teams,* (ISC²) Cybersecurity Workforce Study, 2019, *available at https://www.isc2.org/Research/2019-Cybersecurity-Workforce-Study* (last visited May 25, 2021); Martin C. Libicki et al., *H4CKER5 WANTED: An Examination of the Cybersecurity Labor Market,* National Security Research Division, RAND Corporation (2014) available at *https://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR430/RAND_RR430.pdf* (last visited May 25, 2021).

[75] *Id.*

[76] *See e.g.,* (ISC)², *Hiring and Retaining Top Cybersecurity Talent: What Employers Need to Know About Cybersecurity Jobseekers* (2018), available at *https://www.isc2.org/Research/Hiring-Top-Cybersecurity-Talent* (last visited May 25, 2021).

[77] *See e.g.,* (ISC)², *Strategies for Building and Growing Strong Cybersecurity Teams,* (ISC)² Cybersecurity Workforce Study, 2019, available at *https://www.isc2.org/Research/2019-Cybersecurity-Workforce-Study* (last visited May 25, 2021); Emil Sayegh, *As the End of 2020 Approaches, The Cybersecurity Talent Drought Gets Worse,* Forbes, Sep. 22, 2020, available at *https://www.forbes.com/sites/emilsayegh/2020/09/22/as-the-end-of-2020-approaches-the-cybersecurity-talent-drought-gets-worse/?sh=104825545f86* (last visited May 25, 2021).

practices, DHS must create a new work valuation system that recognizes that cybersecurity work is constantly evolving and that the performance of cybersecurity work is highly dependent on the skills of individuals.

Traditional Federal position classification serves as the foundation for many existing Federal civilian talent management practices and provides structures that influence talent management for much of the Federal civil service across agencies. The design and operation of traditional Federal position classification methods, however, presume that mission requirements, technology, fields of work, and position duties are generally static and stable.[78] Traditional Federal position classification is based on the core concepts that Federal work is largely predictable and can be defined and valued using the same processes regardless of mission, the nature of the work, or the individual performing the work.[79]

Traditional Federal position classification methods are too rigid and outdated for cybersecurity talent management at DHS because they cannot effectively describe and support the ever-evolving cybersecurity work associated with DHS's dynamic cybersecurity mission. Traditional Federal position classification has been the foundation of most Federal civilian talent management practices since the GS position classification system was established in the Classification Act of 1949,[80] which was based on the first law regarding work valuation, the Classification Act of 1923.[81] While the core concepts and major features of the GS position classification system were established almost 100 years ago, they have remained largely unchanged. Notably, classification reform was excluded from the largest transformation of Federal talent management in the last 50 years, the Civil Service Reform Act of 1978.[82]

Traditional Federal position classification primarily focuses on the work of a position and minimally accounts for the individual or the individual's skills, including how the individual's skills may influence the performance of work. For decades scholars and practitioners have discussed the problems with traditional Federal position classification's ability to describe knowledge work,[83] particularly when multiple disciplines are applied by one position or individual and when work assignments change quickly. For example, the U.S. Government Accountability Office (GAO) recently highlighted that, almost since the inception of the GS position classification system in 1949, critics have raised questions about its ability to keep pace with the evolving nature of government work.[84] GAO had previously explained: ''The classification process and standard job classifications were generally developed decades ago when typical jobs were more narrowly defined and, in many cases, were clerical or administrative. However, today's knowledge-based organizations' jobs require a broader array of tasks that may cross over the narrow and rigid boundaries of job classification.'' [85] GAO emphasized that under traditional Federal position classification, ''the resulting job classifications and related pay might not match the actual duties of the job. This mismatch can hamper efforts to fill the positions with the right people.'' [86]

Additionally, position classification standards, which supply the criteria for classifying positions, describe work as it existed and was performed throughout Federal agencies at the time the standards were developed.[87] Rigid position classification standards are not—and have never been—able to adequately support the emerging field of cybersecurity or keep pace with rapid changes in how cybersecurity work is performed. For example, the first position classification standards for the digital computer occupation were published in 1958, but ''rapid changes in technology'' necessitated updates to those newly published standards only one year later in 1959.[88] Decades later in 1989, the Merit System Protection Board highlighted that Federal computer-focused work was subject to more rapid change than work in other fields.[89] Despite such findings, updates to position classification standards related to cybersecurity have remained infrequent, even as technological change has accelerated.[90] Currently, a classification determination using outdated position classification standards dictates a cybersecurity position's salary under Title 5 and such a determination also constricts potential future salary for any individual appointed to the position.[91] Existing position classification methods cannot accommodate or address significant changes in the cybersecurity work of such a position or easily acknowledge changes in the skills needed to perform the work.[92]

[78] U.S. Government Accountability Office reports: *Human Capital: OPM Needs to Improve the Design, Management, and Oversight of the Federal Classification System,* GAO–14–677 (July 2014) 14–18; *Human Capital: Opportunities to Improve Executive Agencies' Hiring Process,* GAO–03–450 (May 2003), 14.

[79] Joseph W. Howe, *History of the General Schedule Classification System,* prepared for the U.S. Office of Personnel Management, Final Report FR–02–25 (Mar. 2002) (Howe Final Report FR–02–25) 8, 91, 93.

[80] Public Law 81–429 (Oct. 28, 1949).

[81] Public Law 67–516 (Mar. 4, 1923). The purpose of the Classification Act of 1949 was to improve the design and administration of the work valuation system from 1923 and improve the pay plan that developed around the 1923 work valuation system. *See* Howe Final Report FR–02–25 at 1. The Classification Act of 1923 was repealed by the Classification Act of 1949, and that Act was repealed in 1966 by the law enacting Title 5 and codifying the provisions of the Classification Act of 1949 in 5 U.S.C. Chapters 51 and 53. *See* Public Law 89–544 (Aug. 1966).

[82] Public Law 95–454 (Oct. 1978); Howe Final Report FR–02–25 at 148 (''The cumulative effect of the new statute and the reorganization [the Civils Service Reform Act of 1978 and the Reorganization Plan No. 2 of 1978] was to change virtually every aspect of personnel management—except for job evaluation under the General Schedule and the Federal Wage System, both of which were untouched by civil service reform'').

[83] Knowledge work involves problem solving and leveraging a worker's knowledge to accomplish the work, which may be in the form of a job, process, task, or goal. Knowledge work is contrasted with manual work that involves simple unskilled motions, and adding knowledge to that manual work influences the way the motions are put together organized and executed. *See* Peter F. Drucker, *Knowledge Worker Productivity: The Biggest Challenge,* 41 California Management Review 79 (Winter 1999).

[84] U.S. Government Accountability Office reports: *Federal Workforce: Talent Management Strategies to Help Agencies Better Compete in a Tight Labor Market,* GAO–19–723T (Sept. 2019), 5; *Priority Open Recommendations: Office of Personnel Management,* GAO–19–322SP (Apr. 2019), 2; and *Human Capital: OPM Needs to Improve the Design, Management, and Oversight of the Federal Classification System,* GAO–14–677 (July 2014), GAO Highlights section.

[85] U.S. Government Accountability Office, *Human Capital: Opportunities to Improve Executive Agencies' Hiring Process,* GAO–03–450 (May 2003), 14.

[86] *Id.*

[87] U.S. Office of Personnel Management, *Introduction to the Position Classification Standards* (2009), 20.

[88] Howe Final Report FR–02–25 at 78.

[89] *Id.* at 283.

[90] *See e.g.,* U.S. Office of Personnel Management, *Job Family Standard for Administrative Work in the Information Technology Group, 2200,* (May 2001, revised Aug. 2003, Sept. 2008, May 2011, Oct. 2018) (documenting that in the first two decades of the 21st-century this classification standard was updated only four times, and before May 2001, the predecessor Computer Specialist Series, GS–334, which covered the majority of two-grade interval work in this field, was last revised in July 1991).

[91] U.S. Office of Personnel Management, *A Fresh Start for Federal Pay: The Case for Modernization,* (Apr. 2002), 27 (''In the Federal Government, job evaluation points = grade = base pay. Under this approach, job evaluation does not simply *inform* base pay; it *dictates* base pay) (emphasis original).

[92] *Id.* (''The [Federal compensation] system's architecture and guidelines do not permit Federal agencies to allow non-classification factors—such as the importance of the work to the employing agency, salaries paid by competing employers, turnover rates, and added value derived from employees acquiring additional competencies

Congress has long recognized the role traditional Federal position classification plays in hampering flexibility and innovation when addressing recruitment and retention challenges. As part of authorizing a series of human capital flexibilities for civilian intelligence organizations in DOD in the 1980s, now consolidated within the DOD DCIPS authority,[93] Congress included an exemption from laws relating to ''classification'' for those DOD organizations.[94] This classification exemption in the DCIPS predecessor authorities is the origin of the similar exemption relating to classification in 6 U.S.C. 658(b)(1)(B).[95] Nearly 40 years ago, in the legislative history for one of the DOD DCIPS predecessor authorities, Congress recognized that the Defense Intelligence Agency ''must be able to compete effectively in the job market for these skills [in foreign intelligence analysis] and offer rewarding career prospects to retain personnel.'' [96] Congress also recognized: ''Intelligence personnel management systems also need to be flexible to adjust to changing intelligence interests as driven by a dynamic world environment.'' [97] In this legislative history, Congress specifically called out the classification exemption stating: ''Classification authority would be granted to permit establishment of compensation based on individual capabilities and to ensure timely assignment and utilization of high quality personnel to meet changing intelligence requirements.'' [98]

The exemption relating to classification in 6 U.S.C. 658 exempts DHS from traditional Federal position classification systems and methods and allows DHS to establish a new work valuation system to serve as a new foundation for new, specialized talent management practices. A new work valuation system must have new structures to adequately describe ever-evolving DHS cybersecurity work. It must also support creating qualified positions based on cybersecurity skills and the individuals with those skills and operating new talent management practices for those positions. Importantly, a new work valuation system is necessary for a new compensation system and must enable and support new practices for providing competitive compensation.

3. Generic, Inflexible Compensation Limits Ability To Compete for Cybersecurity Talent

Instead of existing compensation practices linked to traditional Federal position classification, DHS needs a new, market-sensitive salary system and an agile approach to providing other compensation for cybersecurity talent. Current Federal civilian compensation practices under Title 5 authority are designed to apply and be administered across a range of agencies, missions, and types of work.[99] DHS needs a different compensation approach for the same reasons that DHS needs to create a new work valuation system: To recognize that cybersecurity work is constantly evolving and to recognize that the performance of cybersecurity work is highly dependent on the skills of individuals. Changing the underlying work valuation system of a talent management system also necessitates changing the connected compensation system.[100]

Current compensation approaches for most positions in the Federal civil service are based on the same core concepts as traditional Federal position classification: Federal work is presumed to be largely predictable and able to be described and valued using the same processes regardless of mission, the nature of the work, or the individual performing the work. Such Federal compensation approaches use traditional Federal position classification structures, including classes and grades, to facilitate systematic management of Federal employees and address internal equity among similar positions across Federal agencies.[101] These structures ensure that positions are described and paired with salary rates in a consistent manner using generic salary structures, including the GS pay system, that apply across myriad fields of work and cannot effectively account for an individual's cybersecurity skills or the cybersecurity work an individual performs.[102] For example, the specific requirements for salary progression under the GS pay schedule, including grade and step increases, assume that an employee becomes better at work, more qualified, and more valuable to an agency with each passing year.[103]

As discussed previously, however, cybersecurity work is constantly changing and performance of DHS cybersecurity work depends on individuals with mission-critical skills, which also change as technology and threats change. Moreover, the cybersecurity skills that are the most valuable to DHS today might not be as valuable to DHS in five, ten, or 30 years. For example, DHS, like many cybersecurity employers, now needs individuals with skills related to mobile technology, cloud computing, the Internet of Things, embedded and cyber-physical systems, blockchain, cryptocurrency and ransomware and cyber extortion; the DHS cybersecurity mission did not require all these skills and specializations ten or even five years ago.

Additionally, there is a specific, competitive talent market for cybersecurity that comprises both cybersecurity talent, which is individuals with cybersecurity skills, and cybersecurity employers, including Federal agencies and private sector employers. As discussed previously, the current demand for cybersecurity talent is high, and the supply of cybersecurity talent is low.[104] This relationship between demand for and supply of cybersecurity talent causes competition among employers for top cybersecurity talent, and as a result, individuals with cybersecurity skills, especially uncommon skills, have their choice of employment opportunities.[105]

In competing for top cybersecurity talent, DHS has the advantage of its unique cybersecurity mission. DHS's cybersecurity mission offers DHS cybersecurity talent the opportunity to work across organizations and with key external partners and stakeholders to identify and mitigate national cybersecurity risks. Unfortunately, DHS cannot currently compete with compensation packages offered by many

applicable to the same level of work—to influence base pay, other than by notable exception.'')

[93] The DOD DCIPS authority was a consolidation of two predecessor DOD authorities relating to civilian intelligence personnel in 10 U.S.C. 1604 specific to the Defense Intelligence Agency (DIA) and in 10 U.S.C. 1590 for other civilian intelligence officers and employees. *See National Defense Appropriations Act for Fiscal Year1997* Public Law 104–201, Sec. 1632 and 1633(a) (Sept. 1996).

[94] 10 U.S.C. 1590 (1995) and 10 U.S.C. 1604 (1995).

[95] The DOD DCIPS exemption authority came from those two predecessor DOD authorities, and the § 658 exemption language mirrors the DOD DCIPS exemption authority. *See* 10 U.S.C. 1590 (1995); 10 U.S.C. 1604 (1995); and 10 U.S.C. 1601(b) (2014).

[96] S. Rep. 98–481, *Authorizing Appropriation for Fiscal Year 1985 For Intelligence Activities of the U.S. Government, The Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System (CIARDS), and for other purposes, Report [To accompany S. 2713]* (May 24, 1984), 8.

[97] *Id.*

[98] *Id.* at 9.

[99] *See generally,* U.S. Office of Personnel Management, *A Fresh Start for Federal Pay: The Case for Modernization,* (Apr. 2002), 31–34.

[100] *Id.* at 4–11.

[101] *See generally,* U.S. Office of Personnel Management, *A Fresh Start for Federal Pay: The Case for Modernization,* (Apr. 2002), 26–30.

[102] *Id.*

[103] *Id.*

[104] *See supra* note 74.

[105] *See supra* note 76.

private sector employers. DHS's ability to offer competitive compensation to top cybersecurity talent, including individuals with uncommon, mission-critical skills, is limited by generic Federal salary structures, inflexible rules and practices for setting and adjusting salaries, and inflexible rules and practices for providing other compensation.

In contrast, many private sector employers can offer individuals with cybersecurity expertise competitive starting salaries as well as the possibility of more rapid raises and significant other compensation, such as automatic signing bonuses.[106] Many private sector employers are also able to swiftly adjust their compensation packages to recruit and retain top talent, and they do so with an understanding of their major competitors and those competitors' approaches to compensation. These private sector employers have compensation strategies and techniques with built-in agility to respond to business or market changes.[107]

In addition to salaries, compensation in the cybersecurity talent market includes types of other compensation. DHS could offer other compensation using the existing Federal compensation toolset; however, it is both cumbersome to use and ineffective for constructing market-sensitive compensation packages capable of recruiting highly-skilled cybersecurity talent.[108] That toolset comprises a complex set of separate types of compensation for specific Federal talent management situations and are not intended to form a cohesive set. For example, there are multiple types of incentives and cash payments available,[109] and each type applies to a different recruitment or retention situation and has different rules and requirements, including approvals, amount limitations, and administration processes.[110] This incohesive toolset also is designed to complement generic Federal salary structures, and much like those structures, it is designed to apply and be administered across a range of agencies, missions, and fields of work, and is not intended to be market-sensitive.[111] To construct a competitive compensation package, especially one that is responsive to the talent market, requires piecing together these separate types of compensation and attempting to do so in a timely manner.

The compensation authority in 6 U.S.C. 658, as well as the exemptions relating to classification and compensation, allows DHS to establish a new compensation system to effectively recruit and retain cybersecurity talent by offering competitive compensation. And if DHS is creating a new work valuation system, DHS must create a new compensation approach that is based on that new work valuation system. A new compensation system also must be based on cybersecurity skills, people with those skills, and the value of those skills to DHS. Such an approach to compensation must be informed both by DHS mission needs and trends affecting compensation of individuals with cybersecurity skills in the broader cybersecurity talent market. A new compensation system must provide flexibility to adjust to cybersecurity talent market demands and recognize mission impact, instead of rewarding longevity in position or Federal government service; it must also provide flexibility to consider an individual's total compensation and quickly construct and nimbly adjust a competitive total compensation package.

IV. Discussion of the Rule

To address the Department's historical and ongoing challenges recruiting and retaining cybersecurity talent, DHS is re-envisioning talent management for 21st-century cybersecurity work under the authority in 6 U.S.C. 658. The result is CTMS.

CTMS is a mission-driven, person-focused, and market-sensitive approach to talent management. CTMS relies on new concepts and definitions and features interrelated elements, which are new processes, systems, and programs, that are based on leading public and private sector talent management practices.

CTMS is designed to be responsive to the ever-evolving field of cybersecurity and the dynamic DHS cybersecurity mission. This innovative talent management approach is intended to support and remain aligned to the cybersecurity work that executes the DHS cybersecurity mission, even as technology, relevant expertise, and cybersecurity work arrangements change.

The result of this approach to talent management is the DHS–CS. The DHS–CS comprises qualified positions created under CTMS and employees serving in those positions and covered by CTMS.

The DHS–CS is a new cadre within the broader DHS cybersecurity workforce supporting execution of the DHS cybersecurity mission. The DHS–CS is not intended to replace the DHS civilian employees and United States Coast Guard Military personnel currently performing work relating to cybersecurity.

DHS will first use CTMS and hire the first DHS–CS employees in the Cybersecurity and Infrastructure Security Agency (CISA) and DHS Office of the Chief Information Officer (DHS OCIO). DHS will operate CTMS in work units consistent with its rights and obligations under the Federal Service Labor Management Relations Statute. Additionally, 6 U.S.C. 658(e) prohibits the involuntary conversion of existing DHS employees into the DHS–CS. Accordingly, current DHS employees will not be placed into qualified positions or required to join the DHS–CS. All individuals interested in supporting the DHS cybersecurity mission by serving in the DHS–CS, including current DHS employees, other Federal employees, and private citizens, must apply for employment under CTMS.

DHS is adding a new part 158 to Title 6 of the Code of Federal Regulations to implement and govern CTMS and the DHS–CS. Part 158 contains several subparts setting forth the interrelated CTMS elements that function together as a complete talent management system. The subparts and sections in part 158 contain internal cross-references indicating where one element of the system influences another element.

Subparts A and B of part 158 address the new approach to talent management, new talent management concepts and CTMS-specific definitions, and the

[106] *See generally,* U.S. Office of Personnel Management, *A Fresh Start for Federal Pay: The Case for Modernization,* (Apr. 2002), 4–11, 18.

[107] *Id.* at 6, 18.

[108] *See,* U.S. Office of Personnel Management, *A Fresh Start for Federal Pay: The Case for Modernization,* (Apr. 2002), 4 ("The divergence between the Federal pay system and the broader world of work where the war for talent must be fought has led observers to call for reform of the Federal system. To support achievement of the Government's strategic goals, a new, more flexible system may be called for, one that better supports the strategic management of human capital and allows agencies to tailor their pay practices to recruit, manage, and retain the talent to accomplish their mission").

[109] *See e.g.,* 5 U.S.C. 4502 (providing awards for a suggestion, invention, superior accomplishment or other meritorious effort); 5 U.S.C. 4503 (providing agency awards for special acts); 5 U.S.C. 4505a (providing performance-based awards for GS employees); 5 U.S.C. 4523 (providing foreign language capabilities awards for law enforcement officers); and 5 U.S.C. 5753–5754 (providing recruitment incentives, relocation incentives, and retention incentives).

[110] *See id.* For example, 5 U.S.C. 5753 and 5754 provides incentives for recruitment, relocation, and retention, which are commonly referred to as the "3Rs"; however, the 3Rs have separate requirements for each of specific situations.

[111] *See,* U.S. Office of Personnel Management, *A Fresh Start for Federal Pay: The Case for Modernization,* (Apr. 2002), 12–16.

DHS–CS. Subpart C addresses CTMS and DHS–CS leadership. Subpart D introduces the CTMS element of strategic talent planning that enables CTMS to be mission-driven, person-focused, and market-sensitive. Subparts E, F, G, and H address CTMS elements for acquiring talent, compensating talent, deploying talent, and developing talent, respectively. Subpart I addresses Federal civil service employee rights and requirements that apply under CTMS and in the DHS–CS and Subpart J addresses CTMS political appointments, known as advisory appointments.

New part 158 establishes CTMS and the DHS–CS and the policy framework for both. Part 158 sets the parameters for how DHS will administer CTMS and manage the DHS–CS. Internal DHS policy implementing part 158 will provide operational detail. Part 158 implements the Secretary's authority in 6 U.S.C. 658 and it is the Secretary or the Secretary's designee who establishes and administers CTMS and establishes and manages the DHS–CS. Part 158 also makes clear that it is the Secretary or the Secretary's designee who establishes and administers the CTMS elements, while it is the ''Department'' that operates the elements. As defined in § 158.104, the term ''Department'' means the Department of Homeland Security. In internal DHS policy implementing part 158, the Secretary will, as necessary, delegate authority and designate and delineate roles and responsibilities for specific DHS organizations and officials.

A. New Approach to Talent Management: Subparts A & B

Subpart A in new 6 CFR part 158 addresses the design, establishment, and coverage of CTMS and the DHS–CS, the authority for part 158, and new talent management concepts and CTMS-specific definitions. Subpart B in new part 158 addresses the DHS–CS and sets out the main aspects of the DHS–CS and employment in the DHS–CS.

1. Subpart A—General Provisions

Part 158, subpart A, General Provisions, contains regulations addressing the design and establishment of CTMS. CTMS encompasses the definitions and processes, systems, and programs established under part 158. As stated in § 158.101, CTMS is designed to recruit and retain individuals with the qualifications necessary to execute the DHS cybersecurity mission. CTMS is also designed to adapt to changes in cybersecurity work, the cybersecurity talent market, and the DHS cybersecurity mission.

Along with CTMS, DHS is establishing the DHS–CS. *See* § 158.101. As defined in § 158.104, the DHS–CS comprises all qualified positions designated and established under CTMS and all employees appointed to qualified positions. DHS hires, compensates, and develops DHS–CS employees using CTMS. Section 158.103 explains that part 158 covers CTMS, the DHS–CS, all individuals interested in joining the DHS–CS, all DHS–CS employees, and all individuals involved in managing DHS–CS employees and all individuals involved in any talent management actions using CTMS.

The adaptable design of CTMS enables DHS to manage the DHS–CS with a focus on mission-critical qualifications, even as cybersecurity work, the cybersecurity talent market, and the DHS cybersecurity mission change.

As discussed previously in III.A of this document, the authority in 6 U.S.C. 658, especially the authority and discretion for designating and establishing qualified positions and the exemption from laws relating to classification, enable DHS to create this new mission-driven, person-focused, and market-sensitive approach. As also discussed previously in III.B, DHS needs this new approach for 21st-century cybersecurity work and to address DHS's challenges recruiting and retaining cybersecurity talent.

(a) A New Type of Position: Qualified Positions

Under part 158, ''qualified position'' means CTMS qualifications and DHS–CS cybersecurity work, the combination of which is associable with an employee. *See* § 158.104. The purpose of this conceptual definition of qualified position is to capture the relationship between CTMS qualifications and DHS–CS cybersecurity work: An individual with those qualifications should be able to successfully and proficiently perform that range of cybersecurity work. The cybersecurity work of a qualified position represents a range of potential DHS cybersecurity work, in acknowledgement that qualifications can be applied in a variety of ways to produce a variety of work outcomes, including some that are hard to predict or describe in detail in advance. DHS also uses the term qualified position in the administration and operation of CTMS to refer to the specific qualified position established for a DHS–CS employee upon appointment. A DHS–CS employee's qualified position is the employee's assessed CTMS qualifications and the range of work that employee can successfully and proficiently perform with those qualifications. When DHS documents a DHS–CS employee's qualified position as part of recordkeeping under § 158.706, DHS is documenting that employee's CTMS qualifications and the employee's related range of work.

DHS is creating qualified positions as a new type of Federal civil service position with a focus on individuals and qualifications under the Secretary's authority and discretion for designating and establishing qualified positions and the exemption from laws relating to classification in 6 U.S.C. 658. DHS is not using existing types of positions defined under Chapter 51 position classification, or processes from Title 5 or other laws, to create qualified positions.

As explained previously in III.C.1 of this document, under the authority and exemptions in 6 U.S.C. 658, DHS may determine the use of qualified positions and create such positions as new positions in the excepted service. DHS may do so without regard to existing definitions of positions, and how the concept of position is currently used, in other Federal talent management systems. DHS designates and establishes qualified positions based on the DHS cybersecurity mission and the skills, or qualifications, individuals must possess to execute that mission.

Designating and establishing qualified positions based on the DHS cybersecurity mission and individuals' qualifications implements the statutory definition and description of qualified position. Section 658 defines a qualified position as a position, designated by the Secretary, in which the incumbent performs, manages, or supervises functions that execute the responsibilities of DHS relating to cybersecurity.[112] The statute also describes qualified positions as positions the Secretary, in establishing those positions, determines are necessary to carry out DHS's cybersecurity responsibilities.[113] In both instances, the statute vests substantial discretion in the Secretary to determine which positions are qualified positions under the statute. This rule retains that discretion.

Designating and establishing qualified positions as a new type of position also implements the statutory description of establishing qualified positions, which indicates they may be a type of position or a category that includes several types of positions. The statutory description of establishing qualified positions states

[112] 6 U.S.C. 658(a)(5).

[113] 6 U.S.C. 658(b)(1)(A)(i).

that qualified positions *may include* positions ''formerly identified as'' SL/ST positions and SES positions.[114] The ''formerly identified as'' language identifies SL/ST positions and SES positions as examples of types of positions the Secretary may designate and establish as qualified positions.[115] Thus, qualified positions may be similar to SL/ST positions and SES positions, but these non-exhaustive examples do not limit the Secretary to creating qualified positions only as SL/ST-like positions and SES-like positions.[116]

The Secretary or designee designates and establishes qualified positions in the excepted service as the Secretary or designee determines necessary for the most effective execution of the DHS cybersecurity mission. *See* § 158.203. Designating and establishing qualified positions is discussed further in IV.A.2 of this document.

(b) A New Definition of ''Qualifications''

As mentioned previously, DHS is defining individuals' cybersecurity skills as ''qualifications'' for purposes of designating and establishing qualified positions. Individuals' cybersecurity skills encompass a full array of characteristics and qualities that distinguish talent.

Under part 158, ''qualification,'' means a quality of an individual that correlates with the successful and proficient performance of cybersecurity work, such as capability, experience and training, and education and certification. *See* § 158.104. A capability is a cluster of interrelated attributes that is measurable or observable or both. A capability under CTMS is analogous to a grouping of competencies.[117] Interrelated attributes under CTMS include knowledge, skills, abilities, behaviors, and other characteristics.

DHS must create its own qualifications for its unique cybersecurity mission because the field of cybersecurity currently lacks formal, universal standards for cybersecurity skills on which to base CTMS qualifications. As discussed previously in III.B.1 of this document, cybersecurity skills continue to change at a staggering pace because of the ever-evolving nature of cybersecurity work. This rapid change hampers professionalization in the field of cybersecurity, including the establishment of universal standards for cybersecurity skills.[118] Moreover, DHS's unique cybersecurity mission requires specialized skills and specific combinations of those skills. Therefore, DHS needs to identify, validate, and maintain its own set of qualifications necessary to execute the DHS cybersecurity mission, including the unique functions and responsibilities of DHS organizations.

DHS identifies CTMS qualifications as part of the strategic talent planning process. *See* §§ 158.401 and 158.402. On an ongoing basis, DHS identifies the functions that execute the DHS cybersecurity mission, the cybersecurity work required to perform, manage, or supervise those functions, and the qualifications necessary to perform that work. DHS comprehensively identifies DHS cybersecurity work, and identifies a set of qualifications necessary to perform that work. This comprehensive set of CTMS qualifications reflects the collective expertise necessary to execute the DHS cybersecurity mission.

With the assistance of both industrial and organizational psychologists and DHS cybersecurity experts, DHS identifies, documents, and verifies those qualifications. To ensure CTMS qualifications are appropriately work-related, DHS identifies CTMS qualifications in accordance with appropriate legal and professional guidelines, such as the Uniform Guidelines on Employee Selection Procedures[119] and the Principles for the Validation and Use of Personnel Selection Procedures.[120]

DHS organizes CTMS qualifications into broad categories defined primarily in terms of capabilities, such as general professional capabilities, cybersecurity technical capabilities, and leadership capabilities. Such categories of capabilities are further defined using proficiency standards or scales. Professional capabilities, such as critical analysis, customer orientation, and effective communication, are required in some capacity for all DHS cybersecurity work. Cybersecurity technical capabilities, such as cybersecurity engineering, digital forensics, and vulnerability assessment, are required in different combinations and at different proficiency levels for specific categories of cybersecurity work. For example, individuals performing entry-level cybersecurity work often require very little proficiency in technical capabilities to be successful, and those performing expert-level, highly-specialized work often require a high level of proficiency in one or more technical capabilities to be successful. Cybersecurity work related to leading people and organizations requires leadership capabilities, such as leading change, leading organizations, and resource management, and DHS cybersecurity senior leadership requires the highest levels of proficiency in such capabilities.

CTMS qualifications derived from the dynamic DHS cybersecurity mission are the core of CTMS and its elements. DHS determines which individuals to recruit and retain based on the specific CTMS qualifications they are likely to possess and have been demonstrated to possess. CTMS qualifications are a key component of the work valuation system, the talent acquisition system, the compensation system, the performance management program, and the career development program, each discussed subsequently in this document.

DHS is using qualifications as the core of CTMS and may do so under the Secretary's authority and discretion for designating and establishing qualified positions and the exemption from laws relating to classification in 6 U.S.C. 658.

(c) Other Definitions

In subpart A, § 158.104 defines terms used throughout part 158, several of which incorporate new concepts and are specific to CTMS, like qualified positions and qualifications, discussed

[114] 6 U.S.C. 658(a)(b)(1)(A)(i)(I)–(II).

[115] Congress also explicitly excludes any ''qualified positions'' established under 6 U.S.C. 658 from the definition of ''Senior Executive Position'' under Title 5. 5 U.S.C. 3132 (a)(2)(iii).

[116] While the Secretary has broad authority and discretion to create qualified positions, the Secretary may not create qualified positions from existing DHS positions through the involuntary conversion of positions, and DHS employees serving in those positions, from the competitive service to the excepted service. 6 U.S.C. 658(e).

[117] OPM defines a competency as ''a measurable pattern of knowledge, skills, abilities, behaviors and other characteristics that an individual needs in order to perform work roles or occupational functions successfully.'' Office of Personnel Management, *Delegated Examining Operations Handbook: A Guide for Federal Agency Examining Offices* (June 2019), page 2–13. Examples of competencies include oral communication, flexibility, customer service, and leadership. *Id.*

[118] *See* National Research Council, *Professionalizing the Nation's Cybersecurity Workforce?: Criteria for Decision-Making,* The National Academies Press (2013) available at *https://doi.org/10.17226/18446* (last visited May 25, 2021) (examining workforce requirements for cybersecurity and the segments and job functions in which professionalization is most needed; the role of assessment tools, certification, licensing, and other means for assessing and enhancing professionalization; and emerging approaches, such as performance-based measure).

[119] 29 CFR part 1607 and U.S. Equal Employment Opportunity Commission, *Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures,* EEOC–NVTA–1979–1 (Mar. 1, 1979).

[120] American Psychological Association, *Principles for the Validation and Use of Personnel Selection Procedures,* (5th Ed. Aug. 2018), available at *https://www.apa.org/ed/accreditation/about/policies/personnel-selection-procedures.pdf* (last visited May 25, 2021).

previously. Other new terms and definitions in § 158.104 include the following:

• ''Assignment'' means a description of a specific subset of DHS cybersecurity work and a specific subset of CTMS qualifications necessary to perform that work, the combination of which is associable with a qualified position. This conceptual definition of assignment connects the performance of particular work to broader qualifications and cybersecurity work of a qualified position. DHS also uses the term assignment in the administration and operation of CTMS to refer to and document the details of a DHS–CS employee's current role related to the cybersecurity mission. A DHS–CS employee's assignment is a description of a specific subset of DHS–CS cybersecurity work, a specific subset of the employee's CTMS qualifications, and how the employee is expected to apply those qualifications to perform that work. Assignments are discussed further in IV.A.2 of this document.

• ''CTMB'' means the Cybersecurity Talent Management Board that assists the Secretary, or the Secretary's designee, in administering CTMS and managing the DHS–CS. The Secretary or the Secretary's designee appoints officials to serve on the CTMB and designates the CTMB's Co-Chairs.

• ''Cybersecurity work'' means activity involving mental or physical effort, or both, to achieve results relating to cybersecurity.

• ''DHS–CS cybersecurity work'' means the cybersecurity work identified based on the DHS cybersecurity mission.

• ''DHS cybersecurity mission'' encompasses all responsibilities of DHS relating to cybersecurity and is fully described in § 158.201.

• ''Mission impact'' means a DHS–CS employee's influence on execution of the DHS cybersecurity mission through application of the employee's CTMS qualifications to successfully and proficiently perform DHS–CS cybersecurity work. Mission impact is a factor in DHS–CS employee compensation, performance management, and development. Mission impact is discussed further as part of the compensation system, the performance management program, and the career development program in IV.E and IV.G, of this document respectively.

• ''Anticipated mission impact'' means the influence DHS anticipates an individual to have on execution of the DHS cybersecurity mission based on the individual's CTMS qualifications and application of those qualifications to successfully and proficiently perform DHS–CS cybersecurity work. Anticipated mission impact of an individual selected for appointment to a qualified position can be a factor in providing compensation for that individual, including initial salary and any recognition payment or recognition time-off offered as a signing bonus. Anticipated mission impact is discussed further as part of the compensation system in IV.E of this document.

• ''Mission-related requirements'' means characteristics of an individual's expertise or characteristics of cybersecurity work, or both (including cybersecurity talent market-related information), that are (1) associated with successful execution of the DHS cybersecurity mission, and that are (2) determined by officials with appropriate decision-making authority. Mission-related requirements are relevant for addressing emerging or urgent mission circumstances that are not yet reflected in the set of CTMS qualifications, or that may be temporary in nature, but need to be addressed nonetheless. Mission-related requirements are a factor in salary setting and DHS–CS employee recognition under the compensation system, matching DHS–CS employees with assignments under the deployment program, and guiding DHS–CS employee career progression under the career development program, all discussed subsequently.

• ''Strategic talent priorities'' means the priorities for CTMS and the DHS–CS set by the Secretary or the Secretary's designee on an ongoing basis under § 158.304. The Secretary or the Secretary's designee uses strategic talent priorities for administering CTMS and managing the DHS–CS. Strategic talent priorities inform strategic recruiting under the talent acquisition system, salary setting and DHS–CS employee recognition under the compensation system, matching DHS–CS employees with assignments under the deployment program, and guiding DHS–CS employee career progression under the career development program, all discussed subsequently.

Other terms used throughout part 158 that are not necessarily new, but are defined in § 158.104 specific to CTMS include the following:

• ''Additional compensation'' is several types of CTMS-specific compensation and is described in § 158.603(c) as recognition, other special pay, and other types of compensation such as leave and benefits. Note that benefits for Federal employees provided under Title 5, such as leave and retirement, are usually treated as separate from Federal pay or compensation, but under 6 U.S.C. 658 benefits are explicitly considered compensation.[121]

• Appointment types under CTMS are: ''renewable appointment,'' ''continuing appointment,'' and ''advisory appointment.'' Each type of appointment is analogous to a type of appointment under Title 5 and is discussed further in IV.C.3. of this document.

• ''Cybersecurity talent market'' means the availability, in terms of supply and demand, of talent relating to cybersecurity and employment relating to cybersecurity, including at other Federal agencies such as DOD. DHS analyzes the cybersecurity talent market to identify and monitor employment trends and to identify leading strategies for recruiting and retaining cybersecurity talent. That analysis is part of the strategic talent planning process and informs the compensation system, discussed subsequently.

• ''Salary'' means an annual rate of pay under CTMS and is basic pay for purposes under Title 5. Note that instead of the term basic pay, the term salary is used to describe a DHS–CS employee's annual rate of pay.

• ''Talent management'' means a systematic approach to linking employees to mission and organizational goals through intentional strategies and practices for hiring, compensating, and developing employees. DHS purposefully uses the term talent management for CTMS because of its focus on people and its association with integrated, strategic approaches to recruitment and retention of talent in alignment with organizational goals. This contrasts with traditional Federal terms, such as human resources and personnel management, which are often characterized by tactical execution of administrative processes and compliance activities. Note, however, that a ''talent management action'' under CTMS has the same meaning as ''personnel action'' under Title 5.

• ''Work level'' means a grouping of CTMS qualifications and DHS–CS cybersecurity work with sufficiently similar characteristics to warrant similar treatment in talent management under CTMS. For example, similar characteristics may include level or type of technical expertise or a level or type of leadership responsibility. Work level is one of the work and career structures established by the new work valuation system, and is discussed further in IV.C.3 of this document.

[121] 6 U.S.C. 658(b)(3)(A) (''compensation (in addition to basic pay), including benefits, incentives, and allowances'').

• ''Work valuation'' means a methodology through which an organization defines and evaluates the value of work and the value of individuals capable of performing that work. Under CTMS, DHS uses the new person-focused work valuation system instead of the GS or another traditional Federal position classification system based on 5 U.S.C. Chapter 51.

Other terms used throughout part 158 with definitions set forth in § 158.104 include ''DHS–CS employee,'' and ''DHS–CS advisory appointee,'' and other terms already defined in law, such as ''cybersecurity risk,'' ''cybersecurity threat,'' and ''functions,'' which are defined in Title 6 of the U.S. Code. An additional term defined in § 158.104 is ''CTMS policy,'' which is internal DHS policy, and means DHS's decisions implementing and operationalizing the regulations in part 158, and includes directives, instructions, and operating guidance and procedures for DHS employees.

(d) Authority & Policy Framework

In subpart A, § 158.102 states that 6 U.S.C. 658 is the authority for part 158 and CTMS and explains the scope of that authority. As discussed in III.C of this document, DHS has broad authority to design and establish CTMS as a new approach to talent management and establish the resulting DHS–CS. By statute, the Secretary's authority ''applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.'' *See* 6 U.S.C. 658(b)(1)(B). Consistent with this authority, § 158.102 explains that part 158 supersedes all other provisions of law and policy relating to appointment, number, classification, or compensation of employees that conflict with 6 U.S.C. 658, the regulations in part 158, or CTMS policy implementing part 158. Also, subparts C, D, E, and F each contain a section that lists specific provisions of other laws that, under the exemption in 6 U.S.C. 658 regarding appointment, number, classification, and compensation of employees, are inapplicable under CTMS. *See* §§ 158.405, 158.502, 158.605, and 158.709.

Section 158.102 also explains that some compensation under CTMS is provided in accordance with other provisions of law, including OPM regulations, but that CTMS compensation is only authorized under part 158. Additionally, § 158.102 explains that when some CTMS compensation is provided in accordance with relevant provisions of other laws, including OPM regulations, DHS follows those other provisions to the extent compatible with talent management under CTMS. To maintain the integrity of CTMS, DHS may need to modify application of relevant provisions of other laws regarding compensation for the DHS–CS. This is because some of the terms, or concepts, used in those other relevant provisions are not used under CTMS, and DHS may have to extrapolate between those terms and concepts and CTMS terms and concepts to apply those other provisions.

The regulations in part 158 set up the policy framework for CTMS and the DHS–CS, and DHS administers CTMS and manages the DHS–CS under part 158 and CTMS policy implementing part 158, which is internal DHS policy. *See* § 158.101. If DHS determines additional provisions of other laws or policy concerning Federal employment apply under CTMS, DHS will implement those other laws or policy in CTMS policy. When any talent management situation or emerging issue regarding the DHS–CS needs clarification, DHS will do so in CTMS policy.

Section 158.102 also includes a preservation of authority clause to ensure it is clear that nothing in part 158 shall be deemed or construed to limit the authority under 6 U.S.C. 658 and any further implementation or interpretation of that authority. If DHS determines any such implementation or interpretation necessitates a change in part 158, DHS will issue an amendment to this rule.

2. Subpart B—DHS Cybersecurity Service

Subpart B, DHS Cybersecurity Service, contains regulations addressing the DHS cybersecurity mission and the DHS–CS. Regulations in subpart B also explain the main aspects of employment for DHS–CS employees, including assignments in the DHS–CS. This subpart provides an overview of CTMS from an applicant or DHS–CS employee perspective and provides references to other rule sections for more information. This subpart explains generally the mission-driven, person-focused, market-sensitive approach that DHS is establishing under the authority and exemptions in 6 U.S.C. 658.

(a) Mission

The DHS cybersecurity mission drives talent management under CTMS and § 158.201 describes the DHS cybersecurity mission for purposes of CTMS. This mission encompasses all responsibilities of DHS relating to cybersecurity. It is dynamic to keep pace with the evolving cybersecurity risks and cybersecurity threats facing the Nation and to adapt to any changes in DHS's cybersecurity responsibilities.

As part of establishing CTMS, DHS is also establishing the DHS–CS, the purpose of which is to enhance the cybersecurity of the Nation through the most effective execution of the DHS cybersecurity mission. *See* § 158.202. The DHS–CS comprises all qualified positions designated and established under CTMS and all employees serving in qualified positions.

(b) Qualified Positions

DHS designates qualified positions under the deployment program, described in § 158.701. *See* § 158.203. Designating qualified positions is part of determining whether DHS needs to use CTMS to recruit and retain individuals possessing CTMS qualifications. The process of designating qualified positions is set out in § 158.702. This process, and the deployment program generally, are discussed further in IV.F of this document.

DHS establishes qualified positions under the talent acquisition system, described in § 158.501, by appointing an individual to a previously designated qualified position. *See* § 158.203. DHS establishes and fills qualified positions concurrently. The talent acquisition system, and the processes for assessing, selecting, and appointing an individual, are discussed further in IV.D of this document.

(c) DHS–CS Employees

All employees serving in qualified positions are DHS–CS employees and all DHS–CS employees are in the excepted service. DHS hires, compensates, and develops DHS–CS employees using CTMS. *See* § 158.204. DHS manages the DHS–CS based on DHS–CS core values of expertise, innovation, and adaptability, set out in § 158.305 and discussed subsequently.

DHS–CS employees execute the DHS–CS cybersecurity mission by applying their CTMS qualifications to perform the DHS–CS cybersecurity work of their assignments. *See* § 158.204. Successful and proficient performance of that work results in mission impact, which is defined in § 158.104 as the employee's influence on the DHS cybersecurity mission. DHS reviews and recognizes a DHS–CS employee based on the employee's mission impact. *See* §§ 158.204, 158.630, and 158.805.

DHS provides compensation to DHS–CS employees in alignment with the CTMS compensation strategy, and compensation under CTMS includes both salary and additional

compensation. *See* §§ 158.204, 158.601, and 158.603. Also, DHS strategically and proactively recruits individuals for employment in the DHS–CS, and DHS guides the development and career progression of DHS–CS employees. *See* §§ 158.204, 158.510, and 158.803.

(d) DHS–CS Assignments

As explained in § 158.205, each DHS–CS employee has one or more assignments during the employee's service in the DHS–CS.

Each DHS–CS employee receive an initial assignment upon appointment to a qualified position. *See* §§ 158.205 and 158.703. A DHS–CS employee may later receive a subsequent assignment, but a DHS–CS employee may only have one assignment at a time.

DHS designates and staffs assignments under the deployment program. *See* §§ 158.205 and 158.703. The deployment program, and the processes for designating and staffing assignments, is discussed further in IV.F of this document.

B. CTMS and DHS–CS Leadership: Subpart C

Subpart C, Leadership, sets up the leadership structure for administering CTMS, including the Cybersecurity Talent Management Board (CTMB). Subpart C also contains regulations addressing the influence of the merit system principles on CTMS and the DHS–CS, and establishing strategic talent priorities and DHS–CS core values.

1. Leaders

As stated in § 158.301, the Secretary, or the Secretary's designee, is responsible for administering CTMS and managing the DHS–CS. This includes establishing and maintaining CTMS policy implementing part 158.

The Cybersecurity Talent Management Board (CTMB) assists the Secretary, or the Secretary's designee, in administering CTMS and managing the DHS–CS. *See* § 158.301. The CTMB comprises officials representing DHS organizations involved in executing the DHS cybersecurity mission and officials responsible for developing and administering talent management policy. *See* § 158.302. The Secretary or the Secretary's designee appoints officials to serve on the CTMB and designates the CTMB's Co-Chairs.

The CTMB shapes and monitors CTMS and the DHS–CS. The CTMB periodically evaluates whether CTMS is recruiting and retaining individuals with the qualifications necessary to execute the DHS cybersecurity mission. *See* § 158.302. The CTMB may use information from this evaluation to recommend, or make, adjustments to CTMS, which may include improvements to the administration or operation of CTMS elements and practices. The CTMB may designate an independent evaluator to conduct an evaluation, as necessary.

2. Principles, Priorities, and Core Values

The Secretary or Secretary's designee, with assistance from the CTMB, administers CTMS and manages the DHS–CS based on: Talent management principles that address merit system principles, advancing equity, and equal employment opportunity; strategic talent priorities for CTMS and the DHS–CS; and DHS–CS core values. These principles, priorities, and core values are set out in §§ 158.303 through 158.305.

As stated in § 158.303, CTMS is designed and administered based on the core Federal talent management principles of merit and fairness embodied by the merit system principles in 5 U.S.C. 2301(b). While CTMS is an innovative approach to talent management, featuring new, specialized practices not present in many Federal civilian personnel systems, CTMS remains a merit system in which Federal employment is based on merit and individual competence instead of political affiliation, personal relationships, or other non-merit factors. CTMS features elements and practices for acknowledging individuals' qualifications and ensuring individuals are treated equitably based on merit and for ensuring DHS–CS employees are managed in the public interest. Additionally, the prohibited personnel practices in 5 U.S.C. 2302(b) apply to CTMS and the individuals covered by CTMS.

In addition to the influence of the merit system principles and application of prohibited personnel practices, CTMS is designed, and administered, and DHS manages the DHS–CS, in accordance with applicable anti-discrimination laws and policies. *See* § 158.303. Talent management actions under CTMS that materially affect a term or condition of employment must be free from discrimination. *See* § 158.303. Through such commitment to anti-discrimination, DHS aims to reinforce the design of CTMS as a merit system, in which *all* individuals, including those belonging to underserved communities that have been denied consistent and systematic fair, just, and impartial treatment in cybersecurity and Federal employment historically, are treated equitably and without discrimination. In alignment with Executive Order 13985, underserved communities for which DHS seeks to ensure equal employment opportunity include Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

Under § 158.304, the Secretary or Secretary's designee, with assistance from the CTMB, sets strategic talent priorities for CTMS and the DHS–CS on an ongoing basis using a variety of information. Importantly, information from strategic talent planning is used to set strategic talent management priorities. As discussed subsequently, this is information that is generated by the strategic talent planning process and its underlying processes, as well as information from administering CTMS. Setting strategic talent priorities based on the types of information aggregated in strategic talent planning ensures that such priorities reflect the latest strategic information about the DHS cybersecurity mission, cybersecurity work, and the cybersecurity talent market. Other information used in setting strategic talent priorities is information from DHS financial planning and strategic planning, and DHS priorities outside of CTMS and the DHS–CS. Strategic talent priorities are reviewed and updated to ensure that CTMS is administered and the DHS–CS is managed in a manner that addresses the latest DHS priorities, which may include making adjustments based on new mission or market demands.

Under part 158, strategic talent priorities inform overall administration of CTMS and management of the DHS–CS, as well as specifically influence strategic recruiting under the CTMS talent acquisition system, DHS–CS employee recognition under the CTMS compensation system, matching DHS–CS employees with assignments under the CTMS deployment program, and guiding DHS–CS employee career progression under the CTMS career development program.

The Secretary or Secretary's designee, with assistance from the CTMB, also administers CTMS and manages the DHS–CS using DHS–CS core values. As set out in § 158.305, those values are expertise, innovation, and adaptability. These core values reinforce the design and purpose of CTMS: Adapting to changes in cybersecurity work, the cybersecurity talent market, and the

DHS cybersecurity mission. DHS–CS employees require expertise, innovation, and adaptability to keep pace with the ever-evolving nature of cybersecurity work and DHS's dynamic cybersecurity mission, as well as to remain competitive in the talent market. These core values, and managing the DHS–CS using them, also underscores the expectation of continual learning for DHS–CS employees. DHS–CS core values influence the CTMS performance management program and CTMS career development program, and are embedded in the CTMS compensation strategy, all discussed subsequently.

C. Strategic Talent Planning: Subpart D

Subpart D, Strategic Talent Planning, contains regulations addressing how DHS establishes and administers a strategic talent planning process to enable CTMS to adapt to changes in cybersecurity work, the cybersecurity talent market, and the DHS cybersecurity mission. The strategic talent planning process comprises several processes and systems by which DHS identifies CTMS qualifications and DHS–CS cybersecurity work, analyzes the cybersecurity talent market, and describes and values DHS–CS cybersecurity work, while also aggregating information to inform the overall administration of CTMS and management of the DHS–CS. *See* § 158.401.

The design of CTMS, especially the strategic talent planning process, implements the Secretary's broad discretion to determine how to create and use qualified positions, discussed previously in III.A.1 of this document.

1. DHS–CS Cybersecurity Work & CTMS Qualifications Identification

As discussed previously, CTMS qualifications are the core of CTMS, and CTMS qualifications are derived from the DHS cybersecurity mission. DHS identifies CTMS qualifications as part of the strategic talent planning process. As part of the strategic talent planning process, DHS identifies the functions that execute the DHS cybersecurity mission, as well as the cybersecurity work required to perform, manage, or supervise those functions, and the set of qualifications necessary to perform that work. *See* § 158.301. On an ongoing basis, DHS updates this comprehensive set of CTMS qualifications to ensure it reflects the dynamic DHS cybersecurity mission and the collective expertise necessary to execute that mission.

Also, as discussed previously, DHS identifies CTMS qualifications in accordance with applicable legal and professional guidelines governing the assessment and selection of individuals. Doing so ensures the qualifications identified are appropriately work-related and do not disproportionately or improperly impact protected individuals or groups.

2. CTMS Talent Market Analysis

As part of the strategic talent planning process, DHS conducts analysis of the cybersecurity talent market on an ongoing basis. *See* § 158.403. The analysis includes reviewing data on cybersecurity talent across the Nation such as aggregated salary and total compensation data in compensation surveys.[122] As part of market analysis, DHS makes compensation comparisons and considers salaries as well as types of additional compensation, including bonuses and benefits. By examining total compensation or total rewards, which may also include non-monetary, work-life balance benefits, DHS is better able to more accurately compare features of the CTMS compensation system with features of the total compensation or total rewards programs of other cybersecurity employers, including private sector organizations.

DHS conducts analysis of the cybersecurity talent market using generally recognized compensation principles and practices. *See* § 158.403. Such principles and practices include fundamental concepts and analytical methods often integrated into formal courses of study for compensation practitioners.[123] Such principles and practices are also outlined in publications, intended to support compensation practitioners when establishing a compensation philosophy, conducting competitive compensation analysis, and developing compensation structures and processes.[124] Using these compensation principles and practices ensures the design and administration of compensation addresses DHS organizational goals and complies with legal requirements, including those prohibiting discrimination in compensation.

DHS uses analysis of the cybersecurity talent market to identify and monitor trends in both employment for and availability of talent related to cybersecurity, including variations in the cost of talent or the cost of living in local cybersecurity talent markets, or both. Local cybersecurity talent markets are described in § 158.612 as the cybersecurity talent markets in geographic areas defined by DHS and are discussed further in IV.D. of this document. DHS analyzes average cost of talent because such cost can vary significantly in different local cybersecurity talent markets. Similarly, variations in cost of living can significantly influence how organizations compensate cybersecurity employees in specific locations. DHS also uses analysis of the cybersecurity talent market to identify leading strategies for recruiting and retaining talent related to cybersecurity.

3. CTMS Work Valuation & Work and Career Structures

As part of the strategic talent planning process, DHS uses a new, DHS-specific work valuation system to define and value DHS–CS cybersecurity work, with a focus on qualifications necessary to perform that work. *See* § 158.404. As discussed previously in III.A.1 of this document, under the authority in 6 U.S.C. 658 DHS may create a new person-focused work valuation system. Although DHS is exempt from traditional Federal position classification under 6 U.S.C. 658, including the GS position classification system, DHS is choosing to use a work valuation system to establish structures to facilitate systematic management of DHS–CS employees and address internal equity. Like traditional Federal position classification that influences many aspects of talent management, especially compensation, the CTMS work valuation system also influences many aspects of talent management under CTMS.

Like traditional Federal position classification, the CTMS work valuation system is a method of work valuation, but features different core concepts and different practices. The GS position classification system is a system of ''job

[122] *See e.g.,* Pearl Meyer, *2020 Cyber Security Salary Survey,* available for purchase at *https://www.pearlmeyer.com/knowledge-share/research-report/2020-cyber-security-compensation-survey* (last visited May 25, 2021).

[123] *See e.g.,* eCornell, *Compensation Studies Cornell Certificate Program,* available at *https://ecornell.cornell.edu/certificates/human-resources/compensation-studies/* (last visited May 25, 2021); SHRM, *Foundations of Compensation,* available at *https://store.shrm.org/Foundations-of-Compensation* (last visited May 25, 2021); and WorldatWork, *Certified Compensation Professional,* available at *https://www.worldatwork.org/certification/Certified-compensation-professional* (last visited May 25, 2021).

[124] *See e.g.,* Barry Gerhart and Jerry Newman, *Compensation* (13th Ed. 2020) available for purchase at *https://www.mheducation.com/highered/product/compensation-gerhart-newman/M9781260043723.toc.html* (last visited May 25, 2021); WorldatWork, *The WorldatWork Handbook of Total Rewards: A Comprehensive Guide to Compensation, Benefits, HR & Employee Engagement* (2nd Ed.) available for purchase at *https://www.worldatwork.org/product/physical/the-worldatwork-handbook-of-total-rewards* (last visited May 25, 2021).

evaluation'' that describes work by delineating it into jobs defined in terms of duties, responsibilities, and qualification requirements of a position.[125] As explained previously in III.B.2 of this document, the GS position classification system accounts only minimally for the individual or the individual's skills, including how the individual's skills may influence the performance of work. Although GS position classification is based on duties, responsibilities, and qualification requirements of positions,[126] ''the framers of the [GS] job evaluation system meant the qualifications requirements inherent in the work—an abstract concept—not the qualifications of specific individuals.'' [127]

The CTMS work valuation system is a system of ''work evaluation'' [128] that describes cybersecurity work in more flexible, holistic terms with a focus on the qualifications of individuals necessary to perform DHS cybersecurity work. Creating a new system of work valuation, instead of ''job evaluation,'' recognizes that ''jobs have become more flexible, dependent upon the job incumbent,'' and that work evaluation or valuation ''is a more encompassing concept than job evaluation and better captures contributions of the job, person, or team.'' [129]

The CTMS work valuation system is a person-focused work valuation system that DHS uses to determine the value or worth of a DHS–CS employee to DHS based on the employee's qualifications.[130] This is in contrast to traditional Federal position classification or work valuation methods that determine the value or worth of positions based on the duties and responsibilities of the positions, regardless of the person in the position.[131] The design of the CTMS work valuation system reflects that the DHS cybersecurity mission is dynamic, cybersecurity work is constantly evolving, and that individuals and their qualifications significantly influence how cybersecurity work is performed. Especially for cybersecurity work, an individual can dramatically alter how work is performed, including the tactics, techniques, and procedures brought to bear and the quality and quantity of outcomes produced.

The CTMS work valuation system is based on the set of CTMS qualifications and the DHS–CS cybersecurity work identified in the strategic talent planning process. *See* § 158.404. The work valuation system recognizes that critical qualifications come and go with individuals, not positions, and that individuals and the qualifications they possess significantly influence how cybersecurity work is performed. Individuals, through their respective and collective qualifications, influence how problems are tackled, how long initiatives take, and how effective new solutions are.

DHS uses the work valuation system to establish work and career structures, such as work levels, titles, ranks, and specializations. *See* § 158.404. DHS establishes such work and career structures by grouping and valuing qualifications and categories of qualifications based on criticality to the DHS cybersecurity mission. DHS uses these CTMS work and career structures instead of GS classes and grades and other traditional Federal position classification job structures. Much like the classes and grades established by the GS position classification system, the work and career structures support a variety of aspects of systematic talent management under CTMS.

DHS uses the work and career structures to organize other elements of CTMS and to ensure those other elements maintain a consistent focus on qualifications. DHS uses such work and career structures to describe and categorize DHS–CS employees, qualified positions, assignments, and cybersecurity work. For example, the description of an individual's qualified position includes a work level, such as early-career or executive, and a title, such as Cybersecurity Specialist or Cybersecurity Executive.

Importantly, DHS uses the work and career structures as part of the CTMS compensation system, discussed subsequently, in determining compensation for individuals in qualified positions with a focus on CTMS qualifications. For example, in setting an individual's initial salary, DHS considers applicable work and career structures, including the individual's work level. *See* § 158.620.

DHS may also use the work and career structures for budget and fiscal purposes related to administering CTMS and managing the DHS–CS. *See* § 158.404. This is analogous to how agencies use GS grades and occupations to inform resource planning processes.

As discussed in III.A.1 of this document, the authority in 6 U.S.C. 658 to create a new talent management system is exempt from the GS position classification system, and other work valuation systems relying on position classification based on 5 U.S.C. Chapter 51. As such, § 158.405 states that Chapter 51 and related laws do not apply under CTMS or to the DHS–CS or to talent management under CTMS.

4. Informing CTMS Administration and DHS–CS Management

DHS aggregates information generated in the processes and systems that are part of the strategic talent planning process in order to inform all other CTMS elements. *See* § 158.401. Incorporating this information from the strategic talent planning process into the other CTMS elements ensures that those elements reflect a strategic understanding of internal issues affecting employees in the DHS–CS as well as external issues affecting cybersecurity employment generally in the cybersecurity talent market.

For example, information about CTMS qualifications from the strategic talent planning process ensures that the talent acquisition system remains focused on the qualifications most critical for the DHS cybersecurity mission, including newly-identified qualifications that DHS had not recruited and assessed talent for previously. Also, information from analysis of the cybersecurity talent market ensures other elements of CTMS reflect an understanding of the cybersecurity talent market and serve to enable DHS to better recruit and retain top cybersecurity talent for employment in the DHS–CS.

As part of strategic talent planning, DHS also aggregates information from administering CTMS under the other

[125] National Academy of Public Administration, *Modernizing Federal Classification: An Opportunity for Excellence* (July 1991), xix–xx.

[126] 5 U.S.C. 5101(2).

[127] Joseph W. Howe, *History of the General Schedule Classification System,* prepared for the U.S. Office of Personnel Management, Final Report FR–02–25 (Mar. 2002), 20.

[128] *Id.*

[129] Robert L. Heneman, Ph.D., *Work Evaluation: Strategic Issues and Alternative Methods,* prepared for the U.S. Office of Personnel Management, FR–00–20 (July 2000, Revised Feb. 2002), 2.

[130] The new work valuation system is similar to a rank-in-person work valuation system, which determines the value or worth of an employee to the organization based on the employee's skills. *See* U.S. Government Accounting Office, *Description of Selected Systems for Classifying Federal Civilian Positions and Personnel,* GGD–84–90 (July 1984), 5 (''Assigning Value to Persons''). The new work valuation system, however, does not maintain a seniority-based or time-based promotion process like rank-in-person systems. *See* Harry J. Thie et al, *Future Career Management Systems for U.S. Military Officers,* Santa Monica, CA: RAND Corporation, MR–470–OSD, prepared for the Office of the Secretary of Defense (1994), 89–95 available at *https://www.rand.org/pubs/monograph_reports/MR470.html* (last visited May 25, 2021).

[131] U.S. Government Accounting Office, *Description of Selected Systems for Classifying Federal Civilian Positions and Personnel,* GGD–84–90 (July 1984), 1–2 (''The GS and FWS [Federal Wage Schedule] are rank-in-position methods that assess the value of the job rather than the job occupant'') and 5 (''Assigning Value to Positions'').

CTMS elements and uses that information to inform CTMS elements. *See* § 158.401. Using information from administering CTMS in this manner ensures that the interrelated elements of CTMS function together as a complete talent management system. A common, comprehensive set of information about the current state of the administration of CTMS informs each respective element of CTMS, resulting in coherent, intentional practices for hiring, compensating, and developing DHS–CS employees. For example, information from the CTMS deployment program might indicate that the set of CTMS qualifications does not effectively capture the expertise required for some DHS cybersecurity work, and DHS needs to update the set of qualification under the strategic talent planning process. Similarly, information from the deployment program, such as assignments that are difficult to staff, can assist DHS in measuring the effectiveness of the talent acquisition system.

D. Acquiring Talent: Subpart E

Subpart E, Acquiring Talent, contains regulations establishing the CTMS talent acquisition system, which involves strategic and proactive recruitment, qualifications assessment, and selection and appointment. The talent acquisition system aligns with DHS's design for creating and using qualified positions under CTMS and implements the appointment authority in 6 U.S.C. 658, discussed previously in III.A.2 of this document. Under that authority, and the exemptions from laws relating to appointment, number, and classification, DHS is creating a new talent acquisition system with a focus on CTMS qualifications, finding individuals who likely possess those qualifications, and hiring those who demonstrate that they do.

1. CTMS Talent Acquisition System

The CTMS talent acquisition system provides DHS with an enhanced ability to identify and hire individuals with CTMS qualifications. The talent acquisition system comprises strategies, programs, and processes for strategically recruiting individuals, assessing qualifications of individuals, and considering and selecting individuals for employment in the DHS–CS and appointment to qualified positions. *See* § 158.501. The talent acquisition system reflects an emphasis on seeking out individuals likely to possess CTMS qualifications and then verifying individuals' qualifications before matching those individuals with DHS–CS cybersecurity work and finalizing selections.

DHS establishes and administers the talent acquisition system in accordance with applicable legal and professional guidelines governing the assessment and selection of individuals. *See* § 158.501. Those guidelines are the same guidelines DHS uses for ensuring qualifications identified as part of the strategic talent planning process are work-related, as discussed previously. Legal and professional guidelines used for the talent acquisition system also include the Standards for Educational and Psychological Testing.[132] Such guidelines provide frameworks for proper design and use of selection procedures based on established scientific findings and generally recognized professional practices. Such guidelines also contain principles to assist employers in complying with Federal laws prohibiting discriminatory employment practices.

Recruiting, assessing, selecting, and appointing talent under the talent acquisition system represents a shift from existing Federal hiring practices for other Federal civil service positions. As discussed previously in III.A.2 of this document, the authority in 6 U.S.C. 658 to create a new talent acquisition system is exempt from any other provision of law relating to appointment of employees, including veterans' preference requirements, as well as other provisions of law relating to number or classification of employees. As such, § 158.502 lists existing laws relating to the process of appointing an individual that do not apply under CTMS, to the DHS–CS, or to talent management under CTMS.

2. Strategic Recruitment

Under the CTMS talent acquisition system, DHS strategically and proactively recruits individuals likely to possess CTMS qualifications. *See* §§ 158.510 and 158.511. DHS develops strategies for publicly communicating about the DHS cybersecurity mission and the DHS–CS, and for recruiting individuals for employment in the DHS–CS.

DHS develops and updates CTMS recruitment strategies based on CTMS qualifications, DHS–CS cybersecurity work, and strategic talent priorities. Developing and updating recruitment strategies in this manner ensures CTMS recruitment efforts remain effective in supporting execution of the dynamic DHS cybersecurity mission and furthering DHS goals, such as the advancement of diversity and inclusion in DHS's cybersecurity workforce.

In developing and implementing CTMS recruitment strategies, DHS may collaborate with other organizations and groups, including other Federal agencies, institutions of higher education, and national organizations such as veterans service organizations. DHS recognizes that such partnerships can be critical to identifying individuals with desired qualifications and encouraging those individuals to apply. As part of diversity and inclusion recruitment efforts, DHS anticipates collaborating with professional associations and institutions of higher education, including historically Black colleges and universities and other minority-serving institutions, including Hispanic-serving institutions, Tribal colleges and universities, and Asian American and Native American Pacific Islander-serving institutions. Through such collaboration, DHS aims to (1) reinforce the design of CTMS as a merit system, which provides equitable treatment; and (2) advance the hiring of people from all backgrounds and representing a diverse set of perspectives, including individuals belonging to traditionally underrepresented or underserved groups. In alignment with Executive Order 13985, CTMS recruitment strategies focus on reaching underrepresented and underserved groups, including Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

Additionally, collaborating with DOD, the Department of Veterans Affairs, and groups such as veteran service organizations helps DHS to consider the availability of preference eligibles for appointment to qualified positions as required by 6 U.S.C. 658. As discussed previously DHS may create new hiring processes for appointing individuals to qualified positions; however under 6 U.S.C. 658(b)(1)(B), DHS may only appoint an individual to a qualified position after taking into consideration the availability of preference eligibles for appointment to the position.[133] As used in 6 U.S.C. 658, the term ''preference eligible'' has the same

[132] American Psychological Association, *The Standards for Educational and Psychological Testing,* (2014 Ed.), available for purchase at *https://www.apa.org/science/programs/testing/standards* (last visited May 25, 2021).

[133] 6 U.S.C. 658(b)(1)(A)(ii).

meaning as that term is defined under Title 5.[134]

The requirement in 6 U.S.C. 658 to consider the availability of preference eligibles for appointment is different from veteran preference requirements in the Title 5 that mandates specific priorities, procedures, and rules for preference eligibles in hiring.[135] The term ''preference eligible'' for Title 5 purposes, is associated with the concept of ''veterans' preference,'' which gives advantage to certain veterans and related individuals for appointments to Federal civilian positions in order to recognize the sacrifice and economic loss suffered by a citizen who has served the Nation in uniform and prevent such citizens from being penalized for their time in military service when seeking Federal employment.[136] Congress defines ''veterans' preference requirement'' in 5 U.S.C. 2302(e) clarifying that the concept of veterans' preference applies to hiring as well as to other aspects of civil service staffing, such as retention. Congress, however, does not use the term ''veterans' preference'' in the § 658 appointment authority. Moreover, the § 658 appointment authority is exempt from other provisions of law relating to appointment of employees, which includes Title 5 hiring processes and related veterans' preference requirements.[137]

Although the § 658 appointment authority is exempt from veterans' preference requirements, the Secretary must consider the availability of preference eligibles for appointment, and DHS intends to honor the public policy purposes of veterans' preference. DHS recognizes that many preference eligibles and veterans likely possess the qualifications needed to support the DHS cybersecurity mission, especially those that received cybersecurity-focused active duty training and experience.

DHS considers the availability of preference eligibles for appointment to qualified positions, and provides such individuals advantage in the CTMS talent acquisition system, through strategic recruitment. *See* § 158.510. The new talent acquisition system includes strategic recruitment strategies aimed specifically at recruiting and hiring preference eligibles and other veterans, including individuals with military service experience who might not meet the statutory definition of preference eligibles. Strategic recruitment of preference eligibles and veterans includes identifying preference eligibles and members of the larger veteran community, proactively communicating to them about the DHS–CS, and encouraging their applications. DHS may tailor and refine CTMS recruitment strategies targeting preference eligibles and veterans to ensure such strategies further DHS's existing commitment to veteran recruitment, hiring, and representation within the DHS workforce. As a result of CTMS strategic recruitment efforts, DHS anticipates preference eligibles and veterans to be well represented in the population of individuals ready to be selected and appointed to qualified positions, and matched with assignments in the DHS–CS. Note that because veterans' preference requirements do not apply under CTMS, it is unnecessary to examine prohibited personnel practices relating to veteran preference requirements under the CTMS talent acquisition system.

In addition to developing and implementing CTMS recruitment strategies and collaborating with other organizations and groups, DHS uses a variety of other sources to identify individuals or groups of individuals for recruitment. *See* § 158.511. CTMS policy implementing CTMS outreach and sourcing will address communication of opportunities for employment in the DHS–CS, communication of application processes to individuals being recruited or applying for employment; and acceptance and treatment of applications for employment in the DHS–CS, including minimum application requirements established under this subpart. Outreach and sourcing under CTMS is likely use a variety of sources of information and communication channels, such as social media tools and key industry conferences, to connect with individuals and share information.

Under § 158.512, DHS may provide payment or reimbursement to prospective DHS–CS employees for travel to and from pre-employment interviews, which may include participating in an assessment process under the CTMS assessment program. Reimbursement for any such interview expenses are in accordance with existing laws, 5 U.S.C. 5706b and the Federal Travel Regulations at 41 CFR chapters 301–304, governing such reimbursement.

3. Qualifications-Based Assessment, Selection & Appointment

Under the CTMS talent acquisition system, DHS determines individuals' qualifications under the CTMS assessment program and make selections for, and appointments to, qualified positions based on individuals' demonstrated CTMS qualifications. *See* § 158.520. Any individual interested in employment in the DHS–CS must participate in the CTMS assessment program and meet applicable rating or scoring thresholds in the assessment processes in which that individual participates. To be eligible for selection and appointment, an individual must also meet Federal employment eligibility requirements and satisfy applicable employment-related criteria. *See* § 158.521.

(a) CTMS Assessment Program

The CTMS assessment program is designed to efficiently and accurately determine individuals' qualifications. *See* § 158.520. The assessment program includes one or more assessment processes based on CTMS qualifications. Each assessment process compares the qualifications of an individual to CTMS qualifications. The assessment program is designed to measure qualifications for individuals at all career stages, from those just beginning a career in cybersecurity to those with years of proven experience working as a cybersecurity technical expert or organizational leader. The assessment program is also designed to reduce reliance on subjective decision-making and avoid potential bias through systematic approaches to assessing qualifications with objectivity and fairness.

The assessment program focuses on requiring applicants to demonstrate their qualifications at a particular work level. Applicants choose the work level for which they wish to be considered. For applicants who are experienced cybersecurity professionals, this includes choosing the cybersecurity technical areas in which they are

[134] 6 U.S.C. 658(a)(4); 5 U.S.C. 2108(3).

[135] *Compare* 6 U.S.C. 658(b)(1)(A)(ii) and 5 U.S.C. 3309–3320.

[136] U.S. Office of Personnel Management website, *Veterans Service,* ''Veterans' Preference in Appointments,'' *www.opm.gov/policy-data-oversight/veterans-services/vet-guide-for-hr-professionals/.*

[137] *Wilks* v. *Department of the Army,* 91 M.S.R.P 70 (2002) (determining that because DOD's authority under 10 U.S.C. 1601 applies ''without regard to the provisions of any other law relating to the appointment . . . of employees,'' then ''Title 5 provisions relating to veterans' preference appointment rights do not factor into the selections'' under that authority); *see also Young* v. *Fed. Mediation & Conciliation Service,* 93 M.S.P.R. 99, ¶ 8 (2002) (''The Office of Personnel Management has written that when an agency is authorized to make appointment without regard to the civil service laws, the agency is thereby empowered to make such appointment 'without regard to the usual competitive or civil service laws, *including veterans' preference.'* 58 FR 131919, 13192 (Mar. 10, 1993)'' (emphasis original)).

interested and for which they wish to be assessed.

CTMS assessment processes are formal and multi-part, which means an applicant may need to participate in one or more standardized instruments and procedures intended to measure the applicant's qualifications and proficiency in those qualifications. Such standardized instruments and procedures include a variety of tools. Examples of such standardized instruments and procedures include written knowledge tests, computer adaptive tests, work simulations, and structured interviews.

As part of a CTMS assessment process, DHS also may use demonstrations of qualifications, such as rewards earned from a cybersecurity competition, publication of peer-reviewed cybersecurity research, or a patented cybersecurity invention or discovery. The use of such demonstrations provides additional options for DHS to assess individuals who possess expertise beyond that expected of most applicants and enables rapid assessment of such individuals' qualifications.

DHS develops and administers each assessment process, including those that use standardized instruments and procedures, in accordance with applicable legal and professional guidelines governing the assessment and selection of individuals. Such legal and professional guidelines are the same guidelines mentioned previously that DHS uses to establish and administer the CTMS acquisition system.

In order to maintain the objectivity and integrity of the CTMS assessment program, DHS does not release assessment program materials except as otherwise required by law. *See* § 158.520. Circumstances required by law under which DHS would release assessment materials include providing individuals with their own testing results. While DHS maintains control and security over assessment materials, DHS makes available information to assist individuals in understanding the purpose of and preparing for participating in the assessment program.

In addition to participating in the CTMS assessment program, any individual interested in employment in the DHS–CS must meet employment eligibility requirements and satisfy certain employment-related criteria. *See* § 158.521. Employment eligibility criteria are U.S. citizenship requirements and Selective Service System requirements. Employment-related criteria includes fitness standards for Federal employment and related security requirements, geographic mobility requirements, and other criteria related to any aspect of appointment to or employment in the DHS–CS. *See* § 158.521. DHS provides written notice of any applicable employment-related criteria as part of an offer of appointment to a qualified position, and an individual must accept and satisfy those criteria to be appointed. DHS–CS employees must continue to satisfy and maintain applicable employment-related criteria. Employment-related criteria may change over time and DHS–CS employees may be required to accept any changes in that criteria to maintain employment in the DHS–CS. Also, DHS may disqualify an individual from consideration or appointment to the DHS–CS for providing false information to the Department, and other conduct described in § 158.521.

(b) DHS–CS Appointments

DHS selects an individual for employment in the DHS–CS based on the individual's qualifications as determined under the CTMS assessment program. *See* § 158.522. Through an individual's participation in the assessment program, DHS determines both an individual's CTMS qualifications and the DHS–CS cybersecurity work the individual should be able to perform successfully and proficiently.

In addition to the providing preference eligibles advantage in the CTMS talent acquisition system through specific strategic recruitment strategies, as previously discussed, DHS again considers the availability of preference eligibles for appointment to qualified positions when selecting an individual for employment in the DHS–CS. *See* § 158.522. Through individuals' participation in the assessment program, DHS may encounter cases where more than one individual who have met applicable rating or scoring thresholds are undergoing final consideration based on their demonstrated CTMS qualifications. When a selection is imminent and final consideration includes both preference eligibles and non-preference eligibles, the Department carefully reviews the demonstrated CTMS qualifications of such individuals, weighs any applicable strategic talent priorities, and regards an individual's status as a preference eligible as a positive factor in accordance with CTMS policy.

DHS appoints a selected individual to a qualified position under the authority in 6 U.S.C. 658. All such appointments are in the excepted service and an individual who accepts an appointment to a qualified position voluntarily accepts an appointment in the excepted service. No qualified position may be established through the non-competitive conversion of a current Federal employee from an appointment made outside the authority in 6 U.S.C 658. *See* § 158.522.

An appointment under CTMS to the DHS–CS is one of three types: A renewable appointment, a continuing appointment, or an advisory appointment. *See* §§ 158.104, 158.522 and 158.523. A renewable appointment is a time-limited appointment to a qualified position for up to three years. A renewable appointment is analogous to a time-limited appointment under Title 5, except a renewable appointment may be renewed more than once for time periods up to three years, subject to any limitation in CTMS policy regarding the number of renewals. A continuing appointment is an appointment to a qualified position without a specific time limit and is analogous to a permanent appointment under Title 5. An advisory appointment is a political appointment to a qualified position governed by part 158, subpart J, which addresses advisory appointments and DHS–CS advisory appointees generally. An advisory appointment is treated like a Schedule C appointment under Title 5, except regarding appointment and compensation, which are done under CTMS talent acquisition and compensation systems. *See* §§ 158.1001–158.1003. DHS may change an unexpired renewable appointment to a continuing appointment for a DHS–CS employee receiving a salary in the standard range, subject to any additional limitation in CTMS policy. As discussed subsequently, a DHS–CS employee receiving a salary in the extended range must be and must remain serving in a renewable appointment while receiving a salary in the extended range.

DHS may use CTMS renewable appointments to appoint reemployed annuitants and individuals providing uncompensated service, which is gratuitous service. *See* § 158.523. Individuals appointed in this manner serve at the will of the Secretary. DHS may only appoint individuals to provide uncompensated service if the individual would otherwise be eligible to receive a salary under CTMS that is equivalent to or higher than EX–IV because such uncompensated service is solely for the purpose of experts providing DHS senior leaders with specialized advising. As such, the Secretary or designee must approve the appointment of each individual providing uncompensated service by name and the individual

must be appointed to a renewable appointment only.

DHS may also use CTMS appointments to appoint DHS–CS employees being restored to duty. *See* § 158.523. In accordance with 5 CFR part 353, which addresses restoration to duty from uniformed service or compensable injury, DHS restores to duty a DHS–CS employee who is a covered person described in 5 CFR 353.103.

A DHS–CS employee serves in the same qualified position for the duration of employment in the DHS–CS. *See* § 158.522. In this manner, CTMS, as a person-focused approach to talent management, allows for a DHS–CS employee's qualified position to evolve over time as the employee's career progresses. CTMS does not require a DHS–CS employee to change positions in order for DHS to acknowledge enhancements to the employee's CTMS qualifications or to recognize the employee with greater levels of compensation. A DHS–CS employee may also have the opportunity to perform different DHS–CS cybersecurity work or a different assignment, including an expanded subset of related work, without needing to change positions. DHS–CS employees do not progress through their careers at DHS based on longevity in a qualified position or through promotions. Career progression under CTMS is based on enhancement of CTMS qualifications and salary progression resulting from recognition adjustments. *See* § 158.803.

As discussed previously in III.B.1 of this document, there is no singular or standard career path for individuals with cybersecurity skills, and the CTMS talent acquisition system specifically accounts for this by ensuring former DHS–CS employees can easily return to the DHS–CS. The design of CTMS recognizes the possibility that talent might leave the DHS–CS and desire to return to the DHS–CS at a later point in time. To facilitate future service in the DHS–CS by former DHS–CS employees, under § 158.525 DHS aims to maintain communication with former DHS–CS employees and to provide opportunities for former DHS–CS employees to be considered for appointment again to qualified positions. DHS also aims to acknowledge any enhancements to former DHS–CS employees' qualifications while outside of the DHS–CS, which might affect salaries for such former employees upon return to the DHS–CS.

Under § 158.525, a former DHS–CS employee must participate again in the CTMS assessment program unless DHS determines otherwise based on relevant factors. DHS must assess that former DHS–CS employee's qualifications again, unless relevant factors indicate that an assessment is unnecessary. Such assessment ensures that DHS has the latest information about the individual's qualifications, which can influence salary and other aspects of talent management under CTMS. Factors which might make assessment unnecessary include time elapsed since last appointment and similarity of cybersecurity work performed since leaving the DHS–CS. For example, a new assessment would likely be unnecessary if only a few months have passed since the former DHS–CS employee's last appointment to a qualified position.

Appointment to a renewable or continuing appointment of a former DHS–CS advisory appointee, or other political appointee as defined by OPM, may be subject to additional requirements, including coordination with OPM under laws governing conversion of political appointees to non-political excepted service positions. Appointment of a former DHS–CS employee to an advisory appointment is governed by part 158, subpart J.

As required in 6 U.S.C. 658(d), all individuals appointed under CTMS serves an initial service period that constitutes a probationary period of three years beginning on the date of appointment. *See* § 158.524. Service in the DHS–CS counts toward completion of a current initial service period, but service in an appointment outside of the DHS–CS does not count. Because of the new approach to talent management under CTMS, including the new person-focused work valuation system and the new talent acquisition system, service in other Federal appointments are not be deemed equivalent or automatically credited as such. Also, service as a DHS–CS advisory appointee, as a reemployed annuitant in a qualified position, or providing uncompensated service in the DHS–CS do not count towards completion of an initial service period for any subsequent service in the DHS–CS. *See* § 158.524. Service as a DHS–CS advisory appointee, as a reemployed annuitant, or providing uncompensated service is qualitatively different than other service in the DHS–CS, either due to its policy-making nature or specialized advising status or the Federal retiree status of the individual. DHS addresses computations of initial service periods in CTMS policy, including accounting for less than full-time work schedules and certain absences that may affect computation of a DHS–CS employee's initial service period.

E. Compensating Talent: Subpart F

Subpart F, Compensating Talent, contains regulations addressing the CTMS compensation system, including the CTMS salary system and CTMS additional compensation. The compensation system implements the compensation authority in 6 U.S.C. 658, discussed previously in III.A.3 of this document. Under that authority in 6 U.S.C. 658 and the exemption from laws relating to classification and compensation, DHS is creating a new compensation system with a focus on CTMS qualifications, individuals with those qualifications, and the value of those qualifications to DHS.

1. CTMS Compensation System

The CTMS compensation system provides DHS with an enhanced ability to establish and adjust overall compensation for the DHS–CS based on the individual's qualifications, national and local cybersecurity talent market trends, and DHS–CS employees' mission impact. The compensation system includes the CTMS salary system and CTMS additional compensation, both discussed subsequently. *See* §§ 158.601 and 158.602.

DHS establishes and administers the compensation system based on a compensation strategy. *See* §§ 158.601 and 158.602. The CTMS compensation strategy establishes four goals for the compensation system. *See* § 158.601. Those goals provide a framework for ongoing, methodical review and maintenance of the compensation system. These goals also guide use of the compensation system for recruitment and retention purposes.

The first goal is to ensure the compensation of DHS–CS employees is sufficiently competitive to recruit and retain individuals possessing CTMS qualifications *See* § 158.601. As discussed previously in III.B of this document, the competitiveness of compensation is a main factor contributing to DHS's challenges recruiting and retaining cybersecurity talent. To further this compensation strategy goal, DHS determines whether compensation is sufficiently competitive by conducting cybersecurity talent market analysis to understand if it needs to adjust aspects of compensation, such as salary ranges, to account for trends in the cybersecurity talent market. In addition, DHS aims to maintain sufficiently competitive compensation by analyzing data regarding the effectiveness of CTMS in recruiting and retaining DHS–CS employees, including the degree to

which application abandonment, appointment offer rejection, and employee attrition rates can be attributed to individuals' dissatisfaction with compensation.

The second goal under the CTMS compensation strategy is to value, encourage, and recognize exceptional qualifications and mission impact; excellence and innovation in the performance of cybersecurity work; and continual learning to adapt to evolving cybersecurity risks and cybersecurity threats. *See* § 158.601. As discussed previously in III.B of this document, main factors contributing to DHS's challenges recruiting and retaining cybersecurity talent are the lack of focus of existing Federal talent management practices on individuals and their skills, as well as fierce competition for those individuals and their skills. This compensation strategy goal aligns to the DHS–CS core values of expertise, innovation, and adaptability, described in § 158.305, and focuses the compensation system on individuals' qualifications and competing for those qualifications. The DHS–CS best fulfills its purpose of enhancing the cybersecurity of the Nation when DHS–CS employees are focused on: Enhancing qualifications and impacting the DHS cybersecurity mission; producing quality work products and developing new methods to perform cybersecurity work; and continually learning to counter emerging or novel risks and threats. Compensating employees to support and foster such outcomes helps to ensure the DHS–CS fulfills its purpose and ensure that compensation under CTMS reinforces the core values of the DHS–CS.

The third goal under the CTMS compensation strategy is to acknowledge the unpredictable nature of cybersecurity work and the expectation that all DHS–CS employees occasionally work unusual hours and extended hours, as needed, to execute the DHS cybersecurity mission, especially in response to exigent circumstances and emergencies. *See* § 158.601. As discussed previously in III.B of this document, cybersecurity work is knowledge work that requires individuals to apply their skills to solve problems and achieve outcomes, often in unpredictable ways. Toward this compensation strategy goal, DHS–CS employees are salaried and are not considered hourly employees. Accordingly, under the compensation system, each DHS–CS employee receives a salary. Such a salary accounts for the unpredictable nature of cybersecurity work and the expectation that DHS–CS employees occasionally work unusual and extended hours, and DHS–CS employees are expected to successfully and proficiently perform cybersecurity work in exchange for the compensation provided in their salaries and are not entitled to more compensation for occasionally working unusual and extended hours in order to perform that work. Under CTMS, Title 5 premium pay provisions, overtime pay provisions of the FLSA, and most Title 5 compensatory time-off provisions do not apply. *See* § 158.605. Instead, CTMS utilizes the CTMS salary system and types of additional compensation intended to ensure DHS–CS employees are compensated appropriately for their qualifications and impact on the DHS cybersecurity mission. Under the CTMS, DHS monitors hours worked by DHS–CS employees using the CTMS work scheduling system described in § 158.705, and hours worked is important for administering salary and is a factor in providing some types of additional compensation. DHS can address employees' mission impact through recognition payments under § 158.632, and DHS can address special working conditions, including circumstances that exceed the expectation of occasional unusual and extended hours, under the CTMS special working conditions payment program described in § 158.642.

The fourth goal under the CTMS compensation strategy is to reflect an understanding of the cybersecurity talent market, including leading compensation practices and trends and current work expectations and arrangements, an understanding of the concepts of internal and external equity, and an understanding of the concepts of total compensation and total rewards. *See* § 158.601. As discussed previously in III.B of this document, there is a specific, competitive talent market for cybersecurity that comprises cybersecurity employers, including Federal agencies and private sector employers, and cybersecurity talent, which is individuals with cybersecurity expertise. In a field as dynamic as cybersecurity, DHS cannot establish a static approach to compensation and assume it will remain competitive enough over time to recruit and retain individuals with the qualifications necessary to execute the DHS cybersecurity mission. DHS must maintain an understanding of compensation in the cybersecurity talent market, and in designing and adjusting aspects of CTMS compensation, DHS must attempt to make like comparisons between the total compensation packages offered by employers in the cybersecurity talent market and DHS–CS employees' salaries and additional compensation, including the complete set of traditional Federal employee benefits. DHS must also ensure its approach to compensation remains informed by changes in how individuals might expect and prefer to perform cybersecurity work, as well as work opportunities commonly available at employers in the cybersecurity talent market. Therefore, DHS may need to consider how it offers work arrangements, such as part-time work schedules and project-based and remote work, and DHS may need to customize CTMS compensation and compensation administration to such arrangements.

DHS also establishes and administers the compensation system based on information from strategic talent planning, generally recognized compensation principles and practices, and strategic talent priorities. § 158.602. The CTMS compensation strategy, together with the talent market analysis from strategic talent planning, ensures that the compensation system provides a market-sensitive approach to compensation, enabling DHS to better compete for top cybersecurity talent. The generally recognized principles and practices are the same principles and practices, discussed previously, that DHS uses for conducting talent market analysis. Using these principles and practices for the compensation system ensures the design and administration of CTMS compensation addresses DHS organizational goals and complies with legal requirements, including those prohibiting discrimination in compensation.

Compensating DHS–CS employees using a new market-sensitive compensation system guided by a compensation strategy intended to keep DHS competitive when recruiting and retaining cybersecurity talent represents a shift from existing Federal compensation practices for other Federal civil service positions. As discussed previously in III.A.3 of this document, the authority in 6 U.S.C. 658 to create a new compensation system is exempt from any other provision of law relating to compensation of employees, as well as from other provisions of law relating to classification. As such, § 158.605 lists existing laws relating to compensation that do not apply under CTMS, to the DHS–CS, or to talent management under CTMS. The laws listed in § 158.605 include provisions in 5 U.S.C Chapter 53 establishing and governing other pay systems; premium pay provisions in 5 U.S.C. Chapter 55 and the minimum wage and overtime pay provisions of the FLSA; provisions

in Title 5 regarding monetary awards, incentives, and certain differentials; the limitation on annual aggregate compensation in 5 U.S.C. 5307; and provisions in 5 U.S.C. Chapter 61 governing work schedules.

2. DHS–CS Employee Compensation

Compensation for DHS–CS employees is salary and additional compensation. *See* § 158.603. As defined in § 158.104, salary means an annual rate of pay under CTMS. Compensation for DHS–CS advisory appointees also is salary and additional compensation under CTMS, subject to additional requirements and restrictions. Subpart J, discussed subsequently, addresses compensation for DHS–CS advisory appointees.

A DHS–CS employee receives a salary under the CTMS salary system. *See* § 158.603. A DHS–CS employee providing uncompensated service, however, does not receive a salary. A DHS–CS employee's salary may include a local cybersecurity talent market supplement, which, as discussed subsequently, is similar to locality-based comparability payments under Title 5.

In addition to salary, DHS–CS employees, except those providing uncompensated service, may receive additional compensation. As defined in § 158.104, additional compensation is several types of compensation described in § 158.603(c). CTMS additional compensation includes: CTMS recognition, such as recognition payments; other special payments under CTMS; and other compensation provided in accordance with relevant provisions of laws, including leave and benefits. The types of additional compensation are set out in separate sections in subpart F.

CTMS additional compensation implements the discretionary additional compensation authority in 6 U.S.C. 658(b)(3)(a). As previously discussed in III.A.3 of this document, DHS interprets this additional compensation authority as requiring DHS to base any discretionary CTMS additional compensation on Title 5 provisions regarding types of additional compensation, and DHS may combine and streamline such provisions as long as it is clear which specific Title 5 provisions serve as the base or foundation for CTMS additional compensation. As discussed previously in III.B of this document, the current inability to quickly construct and nimbly adjust competitive total compensation packages is a main factor in DHS's challenges recruiting and retaining cybersecurity talent. Therefore, DHS is combining and streamlining several provisions of Title 5 to establish types of additional compensation specific to the new talent management system, as well as providing traditional Federal employee benefits, such as retirement, health benefits, and insurance programs.

For CTMS additional compensation, DHS is creating a new toolset based on Title 5 authorities for additional compensation. The CTMS toolset provides a cohesive set of tools tailored to the mission-driven, person-focused, market-sensitive design of CTMS.

The new toolset has three categories: CTMS recognition, other special pay under CTMS, and other CTMS compensation provided in accordance with relevant provisions of other laws. CTMS recognition, described in §§ 158.630–158.634, comprises three types of additional compensation, which are recognition payments, recognition time-off, and honorary recognition. CTMS recognition is based on Title 5 authorities for cash awards and incentives, performance-based awards, time-off awards, and honorary awards.

The category of other special pay under CTMS comprises four types of additional compensation: CTMS professional development and training, described in § 158.640, based on Title 5 authorities for training and professional development; CTMS student loan repayments, described in § 158.641, based on Title 5 authorities for student loan repayments; CTMS special working conditions payments, described in § 158.642, based on Title 5 authorities for certain payments; and CTMS allowances in nonforeign areas, described in § 158.643, as mandated in 6 U.S.C 658(b)(3)(B).

The category of other CTMS compensation provided in accordance with relevant provisions of other laws includes other traditional types of additional compensation authorized in Title 5, such as holidays, leave, and benefits, described in §§ 158.650–158.655, that DHS is authorizing under 6 U.S.C. 658.

DHS provides additional compensation in alignment with the CTMS compensation strategy and under the separate sections in subpart E that govern each type of additional compensation. Those separate sections, each discussed subsequently, set out the requirements and eligibility for each type of additional compensation, as well as the provisions of Title 5 on which each type of CTMS additional compensation is based.

A DHS–CS employee, except one providing uncompensated service, may receive any type of additional compensation in combination with any other type of additional compensation, subject to the requirements and eligibility criteria in the separate sections governing each type of additional compensation and the CTMS aggregate compensation limit, discussed subsequently.

3. CTMS Salary System

The CTMS compensation system includes a salary system, which comprises at least one salary structure, a process for providing local cybersecurity talent market supplements, and a framework for administering salary under CTMS. *See* § 158.610. DHS establishes and administers the CTMS salary system with the goals of maintaining sufficiently competitive salaries for DHS–CS employees for recruitment and retention purposes and equitable salaries among DHS–CS employees. These goals align with the compensation strategy in § 158.601 and with the talent management principles of merit and fairness in § 158.303. With the salary system, DHS addresses external equity between the DHS–CS and the cybersecurity talent market so that DHS can compete for cybersecurity talent, and DHS does so through the CTMS compensation strategy that ensures consideration of the cybersecurity talent market. With the salary system, DHS also addresses internal equity within the DHS–CS through the work valuation system. Internal equity for salaries among DHS–CS employees is one outcome of the work and career structures established under the work valuation system; DHS aims to maintain equitable salaries for DHS–CS employees in the same work level and with similar qualifications and mission impact.

In addition to the goals of external and internal equity, DHS also establishes and operates the salary system within the boundaries provided by the CTMS salary range.

(a) CTMS Salary Range

The CTMS salary range comprises a standard range, which has an upper limit of the Vice President's salary ($255,800 in 2021), and an extended range for use in limited circumstances, which has an upper limit of 150 percent of EX–I ($332,100 in 2021). *See* § 158.613.

The salary range implements the basic pay authority in 6 U.S.C. 658(b)(2)(a) regarding rates of pay. As discussed previously in III.A.3 of this document, DHS interprets this basic pay authority to mean that the boundaries of the new

salary system, as provided by the nine rate ranges for the eleven types of comparable positions in DOD, may be from no minimum to 150 percent of EX–I or no maximum. As discussed previously in II.B of this document, the competitiveness of compensation, especially salary, is a main factor contributing to DHS's challenges recruiting and retaining cybersecurity talent. Therefore, the Department is using the highest maximum rates for the upper boundary for the new salary system

DHS is setting the upper boundary for the salary system at the Vice President's salary ($255,800 in 2021), with an additional upper boundary of 150 percent of EX–I. As discussed previously in III.A.3 of this document, the rate range for one comparable position in DOD [138] does not provide a maximum rate and DHS could apply this to mean that there is no upper boundary for the CTMS salary system. Instead, to ensure some certainty in establishing the range for the salary system and assist in standardizing and controlling employee costs, DHS is applying a specific maximum rate as the upper boundary for the CTMS salary range. The highest maximum rate provided for a comparable position in DOD is 150 percent of EX–I; [139] however, to provide consistency across the CTMS compensation system, DHS is applying the maximum rate of the Vice President's salary [140] as the standard boundary for the CTMS salary range. Applying the Vice President's salary as the standard boundary provides one limit amount that applies across CTMS compensation: The Vice President's salary is also the highest CTMS aggregate compensation limit, which restricts some types of additional compensation, as discussed subsequently. Additionally, because types of CTMS additional compensation, such as CTMS recognition payments, are subject to the aggregate compensation cap, any DHS–CS employee receiving a salary higher than the Vice President's salary, could not receive such additional compensation. DHS uses the higher salary limit of 150 percent of EX–I or the extended range, but only for only limited circumstances.

Because the CTMS salary range implements the boundaries for the CTMS salary system provided by rate ranges for comparable positions in DOD, if the rate ranges for comparable positions in DOD change, DHS adjusts the CTMS salary range as necessary.

The standard range applies unless the Secretary or designee invokes the extended range for specific DHS–CS employees serving in renewable appointments. *See* § 158.613. The extended range encompasses all salary amounts above the standard range's upper limit of the Vice President's salary ($255,800 in 2021) and up to 150 percent of EX–I ($332,100 in 2021). Because the extended range contains such high salary amounts, DHS is limiting its use to ensure DHS only relies on these salary amounts as necessary and in a way that incorporates a time-limit to ensure the need for such salaries is reassessed. Because a renewable appointment is a time-limited appointment to a qualified position that may be renewed, requiring that any DHS–CS employee receiving a salary in the extended range must be in a renewable appointment ensures that the use of the extended range is similarly time-limited, but also similarly renewable.

To invoke the extended range for specific DHS–CS employees, the Secretary must determine based on the CTMS compensation strategy, that the employee's qualifications, the employee's mission impact, and mission-related requirements warrant adjusting the employee's salary beyond the standard range. *See* § 158.613. Also, the Secretary or designee must approve a salary in the extended range for each such DHS–CS employee by name. To receive a salary in the extended range, the employee must either already be in a renewable appointment, or the employee must accept a renewable appointment. While any DHS–CS employee is receiving a salary in an amount in the extended range, DHS may not change that employee's appointment to a continuing appointment. To invoke the extended range for new DHS–CS employees, the Secretary or designee must make a similar determination for that individual and approve the appointment of the individual by name. *See* § 158.513. That individual must be appointed to a renewable appointment only and while that individual is receiving a salary in an amount in the extended range, DHS may not change that individual's appointment to a continuing appointment at any time.

(b) CTMS Salary Structure

DHS provides salaries to DHS–CS employees under a CTMS salary structure. DHS establishes and administers at least one CTMS salary structure based on the compensation strategy and the same information, principles and practices, and priorities on which the CTMS compensation system is based. *See* § 158.611.

A salary structure is bounded by the CTMS salary range and includes subranges. *See* § 158.611. The subranges are associated with work levels, which are one of the work and career structures established by the work valuation system. Each subrange is associated with at least one work level. For example, one salary subrange might be associated with a work level for entry-level employees in the DHS–CS, but another subrange might be associated with a work level for certain senior expert employees and executive employees in the DHS–CS.

A salary structure also incorporates CTMS salary limitations and may incorporate other salary and cost control strategies. *See* § 158.614. CTMS salary limitations set the maximum salary for the subranges. Other salary and cost control strategies, such as control points, assist with standardization and prediction of employee costs.

The CTMS salary limitations implement the basic pay authority in 6 U.S.C. 658(b)(2)(a) regarding limitations on maximum rates of pay. As discussed previously in III.A.3 of this document, DHS interprets this basic pay authority to mean that the CTMS salary system is subject to the same salary caps applicable to the eleven types of comparable positions in DOD. Also as discussed previously in III.A.3, the applicable salary caps are six caps ranging from GS–15, step 10 to 150 percent of EX–I, and DHS has discretion for how to apply those six caps to the salary system. The highest salary cap, 150 percent of EX–I, is also the upper boundary for the extended range, and as such is the cap for the entire CTMS salary system. DHS is applying the five remaining salary caps as CTMS salary limitations for the subranges. The CTMS salary limitations are: GS–15, step 10 (excluding locality pay or any other additional pay), EX–IV, EX–II, EX–I, and the Vice President's salary. *See* § 158.614. DHS incorporates the CTMS salary limitations into a salary structure by assigning the limitations, in ascending order, to the subranges of the salary structure. The result is that each subrange receives a salary limitation that is greater than or equal to the salary maximum of that subrange. *See*

[138] DOD pilot cybersecurity professional positions do not have a maximum rate. *National Defense Authorization Act for Fiscal year 2017,* Public Law 15–91, Sec. 1110(f), (Dec. 2017).

[139] Provided for DOD STRL positions in 10 U.S.C. 2358c(d).

[140] Provided for IC HQE positions under 50 U.S.C. 3024(f)(3)(A)(iii) and ICD 623, *Intelligence Community Directive Number 623, Appointment of Highly Qualified Experts* (Oct. 16, 2008), 4.

§ 158.611. If the salary caps for comparable positions in DOD change in the future, DHS will adjust the CTMS salary limitations as necessary. DHS may also establish other limitations on maximum rates of salary, in addition to these CTMS salary limitations. *See* § 158.514.

DHS may adjust a CTMS salary structure based on the compensation strategy and the same information, principles and practices, and priorities with which DHS establishes and administers the salary structure. *See* § 158.611. The purpose of considering adjustments to a salary structure, including its subranges, is to determine whether the salaries provided under that salary structure remain sufficiently competitive in alignment with the compensation strategy and the goals of the salary system. DHS might find, for example, that one salary subrange is lagging behind the cybersecurity talent market based on a trend of rising salaries for specific qualifications, and therefore, DHS might make adjustments to that subrange, such as increasing the salary minimum for that subrange. DHS may review and adjust a CTMS salary structure annually, and may also do so sooner than annually as the Secretary or designee determines necessary.

(c) CTMS Local Cybersecurity Talent Market Supplement

As part of the CTMS salary system, DHS is establishing a process for providing a local cybersecurity talent market supplement (LCTMS). *See* § 158.612. DHS may provide a LCTMS to a DHS–CS employee in a specific geographic location to ensure the employee receives a sufficiently competitive salary, which is the purpose of a LCTMS and a goal of the compensation strategy and salary system. Much like locality-based comparability payments under 5 U.S.C. 5304, a LCTMS is intended to address geographic compensation disparities and a LCTMS does so through local cybersecurity talent market supplement percentages.

A local cybersecurity talent market is the cybersecurity talent market in a geographic area that DHS defines based on analysis of the cybersecurity talent market, and that may incorporate the definitions of localities under 5 U.S.C. 5304. *See* § 158.612. For defining such geographic areas, DHS may rely on localities established or modified under 5 U.S.C. 5304 but may need to adjust the boundaries of such localities to match specific cybersecurity talent markets. DHS may also define geographic areas for local cybersecurity talent markets separate from the localities covered by 5 U.S.C. 5304, especially if such localities do not align to the cybersecurity talent markets in which DHS competes for cybersecurity talent.

A local cybersecurity talent market supplement percentage is a percentage DHS assigns to a local cybersecurity talent market to increase the amount of salaries for DHS–CS employees provided under a salary structure in that local cybersecurity talent market. *See* § 158.612. This percentage increases the amount of a salary to account for the difference between the salary as determined under a CTMS salary structure and what DHS determines to be a sufficiently competitive salary for that local cybersecurity talent market.

DHS determines whether a LCTMS is necessary in a local cybersecurity talent market based on the compensation strategy and the same information, principles and practices, and priorities on which the CTMS compensation system is based and that DHS uses to establish and adjust a CTMS salary structure. *See* § 158.612. Based on that strategy and same information, principles and practices, and priorities, DHS may establish and periodically adjust any local cybersecurity talent markets and local cybersecurity talent market supplement percentages. An adjustment to a local cybersecurity talent market supplement percentage may include termination when DHS determines it is no longer necessary for the purpose of a LCTMS.

DHS determines eligibility for a LCTMS under § 158.612 and CTMS policy implementing that section. Under § 158.612, a DHS–CS employee is eligible for a LCTMS if the employee's official worksite is located in a local cybersecurity talent market with an assigned local cybersecurity talent market supplement percentage for the salary structure under which the employee's salary is provided. Thus, a DHS–CS employee's official worksite location and the salary structure for the employee's salary are both factors in eligibility for a LTCMS. DHS may have more than one salary structure, but a LCTMS may not be required for all salary structures to ensure sufficiently competitive salaries. Any LCTMS a DHS–CS employee receives terminates when the employee's official worksite is no longer in a local cybersecurity talent market with an assigned local cybersecurity talent market supplement percentage, or the salary structure under which the employee's salary is provided no longer has an assigned local cybersecurity labor market supplement, or both.

A LCTMS is limited by applicable CTMS salary limitations. A DHS–CS employee may not receive any portion of a LCTMS that would cause that employee's salary to exceed applicable CTMS salary limitations, but may receive the portion of the LCTMS up to the applicable limitations. A DHS–CS employee also cannot receive a LCTMS that would cause the employee's salary to be in the CTMS extended range unless the Secretary invokes the extended range for that employee.

Any LCTMS a DHS–CS employee receives is part of the employee's salary and as such a LCTMS is basic pay for purposes under Title 5, such as civil service retirement. A LCTMS, however, is not basic pay for purposes of determining pay under Title 5 provisions addressing a reduction in pay as an adverse action, and a reduction in salary for a DHS–CS employee because of a change in any LCTMS, including a change in amount or termination of a LCTMS, for that employee is not an adverse action under 5 U.S.C. 7512. *See* §§ 158.612. Decisions regarding such supplements are based on geographic location and calculations for providing such a supplement. This is similar to changes in locality-based comparability payments under Title 5 because under Title 5 a change in an employee's official worksite to a different locality pay area may serve to reduce that employee's basic pay, but is not a reduction in basic pay for the purposes of 5 U.S.C. 7512 because locality-based comparability payments are not considered basic pay for those purposes.[141]

(d) CTMS Salary Administration

The CTMS salary system includes a framework for salary administration that addresses setting salaries and adjusting salaries under CTMS, and administering CTMS salaries under relevant provisions of other laws. *See* §§ 158.620–158.622. Although the CTMS salary system is exempt from other laws relating to compensation of employees, under the authority and exemptions in 6 U.S.C. 658, DHS is setting up a new compensation system and salary system, and the new systems must integrate with existing pay administration procedures and infrastructure, such as information technology support systems, used by Federal agencies to process and ensure employees receive their earned compensation.

DHS sets the salary for an individual accepting an appointment to a qualified position within a subrange of a CTMS salary structure as part of selection and appointment of the individual. DHS sets

[141] 5 CFR 531.610.

an individual's initial salary based on: The individual's CTMS qualifications; applicable work and career structures, including the individual's initial work level; the individual's anticipated mission impact; mission-related requirements; and strategic talent priorities set by CTMS leadership. *See* § 158.620.

As discussed previously, CTMS qualifications are the core of CTMS, and setting salary based on qualifications ensures a focus on the value of those qualifications to DHS. Work and career structures group and value qualifications, and work level is one such grouping for purposes of similar treatment in talent management and which addresses internal equity among DHS–CS employees' salaries. DHS determines an individual's CTMS qualifications under the CTMS assessment program and determines applicable work and career structures as part of selection and appointment of the individual.

A goal of the DHS–CS is the most effective execution of the DHS cybersecurity mission, and therefore a DHS–CS employee's mission impact is an important part of the employee's value or worth to DHS. As such the employee's anticipated mission impact is a factor in setting initial salary. DHS determines individuals' anticipated mission impact using information from the application and assessment processes.

Mission-related requirements are relevant for addressing emerging or urgent mission circumstances, and for setting salaries with information about mission-related requirements, such as a need for talent that understands a novel technology related to an urgent cybersecurity threat. Mission-related requirements, as defined in § 158.104, are characteristics of an individual's expertise or characteristics of cybersecurity work, or both, including highly-specialized expertise and cybersecurity talent market-related information, that are associated with successful execution of the DHS cybersecurity mission, and that are determined by officials with appropriate decision-making authority. Strategic talent priorities are part of the design and administration of CTMS and the CTMS compensation system, and setting initial salaries based on such priorities ensures salaries also reflect DHS and CTMS leadership priorities and goals for the DHS–CS.

DHS may set the salary for an incoming DHS–CS employee without regard to any prior salaries of the individual, including any basic pay while serving in a previous Federal appointment and any previous salary as a DHS–CS employee for a returning, former DHS–CS employee. *See* § 158.620. This emphasizes that DHS uses the CTMS compensation system to set DHS–CS employee salaries based on individuals' value or worth in relationship to the DHS cybersecurity mission. This also serves to reduce reliance on salary history information that may reflect systematic bias and historical salary discrimination.

Under CTMS, DHS adjusts a DHS–CS employee's salary by providing a LCTMS or a recognition adjustment, or both. *See* § 158.621. A recognition adjustment is an adjustment to a DHS–CS employee's salary and is based primarily on the employee's mission impact. *See* §§ 158.630 and 158.631. DHS determines the mission impact of a DHS–CS employee, individually or as part of group of DHS–CS employees or both, using mission impact reviews, which are part of the CTMS performance management program described in § 158.802 and discussed subsequently. In providing a recognition adjustment, DHS may also consider mission-related requirements and strategic talent priorities for the same reasons DHS considers them for setting salaries. A recognition adjustment does not alter any LCTMS for that employee. While a LCTMS is part of a receiving DHS–CS employee's salary, a recognition adjustment does not alter the percentage of a LCTMS.

A DHS–CS employee may not receive a recognition adjustment that would cause the employee's salary to exceed the CTMS salary range or a CTMS salary limitation applicable to the subrange for that employee's salary. *See* § 158.631. A DHS–CS employee may not receive a recognition adjustment that would cause the employee's salary to be in the extended range, unless the Secretary or designee invokes the extended range for that employee, as discussed previously.

DHS does not provide DHS–CS employees with any automatic salary increases or any salary increases based on length of service in the DHS–CS or service in any position outside the DHS–CS. CTMS is not a longevity-based approach to talent management, and career progression in the DHS–CS is not based on length of service in the DHS–CS or the Federal government. Providing a recognition adjustment or a LCTMS is the only means for adjusting a DHS–CS employee's salary.

If, however, DHS adjusts a salary structure that results in an increase to the salary minimum for one or more subranges of the salary structure, DHS adjusts the salary for any affected DHS–CS employee. *See* 158.621. For a DHS–CS employee receiving a salary in an affected subrange at the affected salary minimum, DHS adjusts the employee's salary to reflect the adjustment to the salary structure and the new salary minimum for the affected subrange. Such a salary adjustment is not considered a recognition adjustment.

Under CTMS, a recognition adjustment is not a promotion for any purpose under Title 5. *See* § 158.631. Salary progression resulting from recognition adjustments is only one part of a DHS–CS employee's career progression. Career progression in the DHS–CS is based on both enhancement of CTMS qualifications and salary progression. *See* § 158.803. Enhancement of CTMS qualifications is one component of career progression in the DHS–CS in alignment with the DHS core values of expertise, innovation, and adaptability and in alignment with the compensation strategy. DHS expects DHS–CS employees to strive to enhance individual expertise through continual learning and anticipate and adapt to emergent and future cybersecurity risks. Additionally, as part of the compensation strategy, DHS values, encourages, and recognizes exceptional qualifications and mission impact, and DHS adjusts DHS–CS employees' salaries in recognition of their mission impact.

In order to integrate CTMS salary administration with existing pay administration procedures and infrastructure used by Federal agencies, DHS administers salaries of DHS–CS employees in accordance with relevant provisions of other laws governing pay administration for Federal civil service employees. DHS administers salaries under CTMS in accordance with the 5 CFR part 550 generally and U.S. Code sections enumerated in § 158.622. Because 5 CFR part 550 addresses administration of other types of compensation and not just salary administration, § 158.622 also lists the provisions of 5 CFR part 550 that do not apply to CTMS. Those provisions of 5 CFR part 550 address types of premium pay [142] and compensatory time-off for travel, which as discussed previously, do not apply under CTMS.

DHS also administers DHS–CS employee salaries based on consideration of each employee's work schedule under the CTMS work scheduling system, described in § 158.705 and discussed subsequently,

[142] Subpart A of 5 CFR part 550 addresses types of premium pay and administration of such pay, including a biweekly maximum earning limitation, known as a biweekly pay cap. Under § 158.622, and § 158.605, Subpart A, including application of the biweekly pay cap, does not apply to CTMS.

and may convert a DHS–CS employee's salary into an hourly rate, biweekly rate, or other rate as necessary to ensure accurate operation of existing pay administration procedures and infrastructure. *See* § 158.622. In converting salaries to an hourly, biweekly, or other rate, DHS may need to consider the hours worked and any leave taken by an employee to ensure proper payment of salary.

4. CTMS Recognition

The CTMS compensation system comprises the CTMS salary system and CTMS additional compensation, and CTMS recognition is a main aspect of both. With CTMS recognition, DHS recognizes and rewards DHS–CS employees, in alignment with the CTMS compensation strategy and CTMS performance management program, based primarily on mission impact.

CTMS recognition includes four types of recognition: Recognition adjustments, recognition payments, recognition time-off, and honorary recognition. *See* §§ 158.631–158.634. As discussed previously, DHS adjusts DHS–CS employees' salaries through recognition adjustments. The other three types of CTMS recognition—payments, time-off, and honorary—are additional compensation.

Like recognition adjustments, DHS provides recognition payments, recognition time-off, and honorary recognition, based primarily on a DHS–CS employee's mission impact. *See* §§ 158.630 and 158.632–158.634. DHS determines the mission impact of a DHS–CS employee, individually or as part of group of DHS–CS employees or both, using mission impact reviews, which are part of the CTMS performance management program described in § 158.802 and discussed subsequently. In providing recognition payments, recognition time-off, and honorary recognition, DHS may also consider mission-related requirements and strategic talent priorities for the same reasons DHS may consider these in providing a recognition adjustment and for setting initial salaries.

DHS may also use CTMS recognition, in the form of recognition payments and recognition time-off, as part of recruiting new DHS–CS employees. DHS may need to offer a recognition payment as a signing bonus to ensure that an individual's compensation package is sufficiently competitive and to incentivize the individual to serve in the DHS–CS. DHS provides recognition to an incoming DHS–CS employee based on the incoming employee's CTMS qualifications, the incoming employee's anticipated mission impact, mission-related requirements, and strategic talent priorities. *See* § 158.630. DHS bases recognition for an incoming DHS–CS employee on these for the same reasons DHS considers them for setting initial salaries.

DHS determines eligibility for CTMS recognition under §§ 158.630–158.634 and CTMS policy. As stated in § 158.630, a DHS–CS employee is ineligible to receive CTMS recognition if DHS determines the employee's performance is unacceptable, as defined in 5 U.S.C. 4301(3) or the employee receives an unacceptable rating of record under CTMS performance management, or DHS determines the employee has engaged in misconduct. A DHS–CS employee should only be recognized if the employee's performance is acceptable. Similarly, a DHS–CS employee should not be recognized if engaging in misconduct. For these same reasons, DHS may defer providing recognition if DHS is in the process of determining whether a DHS–CS employee's performance is unacceptable or whether the employee has engaged in misconduct. *See* § 158.630. CTMS policy will address other eligibility criteria for CTMS recognition.

In addition to eligibility criteria, CTMS policy will also address requirements for documenting the reason and basis for providing CTMS recognition, appropriate levels of review and approval, and any limitations on recognitions, among other matters necessary for administering CTMS recognition.

CTMS recognition payments, recognition time-off, and honorary recognition are based on Title 5 authorities. As discussed previously in III.A.3 of this document, under the § 658 additional compensation authority DHS may combine and streamline provisions of Title 5 regarding types of additional compensation, as long as it is clear on which specific Title 5 provisions CTMS additional compensation is based. Sections 158.632 through 158.634 list the Title 5 authorities on which CTMS recognition payments, recognition time-off, and honorary recognition are based. Each of these types of recognition is discussed subsequently.

(a) CTMS Recognition Payments

A CTMS recognition payment is a lump-sum payment, an installment payment, or recurring payments of up to a percentage of the receiving DHS–CS employee's salary: Up to 20 percent, or up to 50 percent with approval of the Secretary or designee. *See* § 158.632. DHS may offer a recognition payment to an incoming DHS–CS employee as part of an offer for employment in the DHS–CS. A recognition payment for an incoming DHS–CS employee is up to 20 percent of the incoming employee's initial salary and is provided upon appointment. *See* § 158.632.

CTMS recognition payments are based on Title 5 authorities providing seven types of cash awards and incentives: 5 U.S.C. 4502 providing cash awards for a suggestion, invention, superior accomplishment or other meritorious effort,[143] 5 U.S.C. 4503 providing agency awards for special acts,[144] 5 U.S.C. 4505a and 5384 providing performance-based cash awards,[145] 5 U.S.C. 4507 and 4507a providing presidential rank awards,[146] and 5 U.S.C. 5753 and 5754 providing recruitment incentives, relocation incentives, and recruitment incentives.[147] These Title 5 authorities

[143] Under 5 U.S.C. 4502, an agency may provide a cash award up to $10,000 or a cash award up to $25,000 with OPM approval for a suggestion, invention, superior accomplishment, or other meritorious effort.

[144] Under 5 U.S.C. 4503, an agency may pay a cash award to an employee who provides a suggestion, invention, superior accomplishment, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork, or performs a special act or service in the public interest in connection with or related to the employee's official employment.

[145] Under 5 U.S.C. 4505a, an employee whose most recent performance rating was at the fully successful level or higher may be paid a cash award up to 10 percent of the employee's salary, or up to 20 percent of the employee's salary if the agency determines that exceptional performance by the employee justifies such an award. Under 5 U.S.C. 5384, employees in SES positions may receive a performance award for at least fully successful performance during the employee's most recent performance appraisal. Such performance awards are at least 5 percent, and up to 20 percent, of the recipient's annual basic pay.

[146] Under 5 U.S.C. 4507 and 4507a, employees in SES and SL/ST may receive presidential ranks of meritorious executive or distinguished executive or meritorious senior professional or distinguished senior professional, and the recipient is entitled to a cash award of 20 percent of the recipient's annual basic pay for meritorious ranks and 35 percent of the recipient's annual basic pay for distinguished ranks.

[147] Under 5 U.S.C. 5753 an agency can provide a recruitment incentive when a position is likely to be difficult to fill in the absence of such a bonus. Under 5 U.S.C. 5753 an agency can provide a relocation incentive when an individual is a newly appointed employee or is a current employee and moves to a new position in the same geographic area or must relocate to accept a position in a different geographic area. Under 5 U.S.C. 5754, an agency can provide a retention incentive to an employee when the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and the agency determines that, in absence of a retention bonus, the employee would be likely to leave the Federal service; or for a different position in the Federal service. Recruitment, relocation, and retention incentives for an individual can be up to 25 percent

Continued

provide cash awards and incentives in recognition of employee efforts and performance, and can help with employee recruitment and retention. CTMS recognition payments serve the same purposes, but under the overall approach to talent management and compensation under CTMS. DHS uses recognition payments to recognize and reward DHS–CS employees, especially for their mission impact. The Title 5 authorities on which CTMS recognition is based provide some of the existing Federal compensation tools, which as discussed previously in III.B of this document, are cumbersome to use, ineffective for constructing market-sensitive compensation packages, and are not intended to form a cohesive toolset. CTMS recognition payments combines and streamlines these existing tools to align with the CTMS design and to allow for greater flexibility and agility in providing competitive total compensation packages.

For recognition payments, DHS is establishing a maximum amount as a percentage of a DHS–CS employee's salary because most of the Title 5 authorities, on which recognition payments are based, provide a limit for cash payments as a percentage of annual basic pay. Performance-based cash awards range from a minimum of 5 percent under 5 U.S.C. 5382 to a maximum of 20 percent under 5 U.S.C 4505a and 5382. Presidential rank awards are either 20 percent or 35 percent, and recruitment, relocation, and retention incentives have no minimum but have a maximum of 25 percent without special approval. The maximum percentage amount for these Title 5 awards and incentives, ranges from 20 percent to 50 percent, so DHS is establishing the percentage amounts for recognition payments as up to 20 percent without special approval, and up to 50 percent with approval from the Secretary or the Secretary's designee. Also, because recognition payments have budget implications, requiring special approval for amounts exceeding 20 percent of a DHS–CS employee's salary helps to ensure proper oversight of such additional compensation.

DHS requires a service agreement as part of providing a recognition payment for an incoming DHS–CS employee and may require a service agreement as part of providing a recognition payment to a current DHS–CS employee. *See* § 158.632. Service agreements can help ensure DHS gets, for a minimum amount of time, the benefit of the reasons DHS is providing the recognition payment.

Also, acceptance of a recognition payment constitutes agreement for Federal government use of any idea, method, device, or similar that is the basis of the payment. *See* § 158.632. This mirrors the requirement in 5 U.S.C. 4502(c) that acceptance of a Title 5 cash award constitutes an agreement that the use by the government of an idea, method, or device for which the award is made does not form the basis of a future claim of any nature against the government by the employee or the employee's heirs or estate. As necessary, DHS may provide a recognition payment to a former DHS–CS employee or to the legal heirs or estate of a DHS–CS former employee in accordance with 5 U.S.C. 4505, which provides for paying a Title 5 cash award to a former employee, or the former employee's heirs or estate.

A recognition payment is not salary under CTMS nor basic pay for purposes under Title 5, *see* § 158.632, even if paid in an amount that would have been salary but for an applicable salary limitation as incorporated in a salary structure. Under 6 U.S.C. 658, compensation is either salary or additional compensation, and CTMS recognition payments are additional compensation. In cases where a DHS–CS employee's salary is limited because of a CTMS salary limitation, DHS may determine that the employee should instead receive a recognition payment as part of an effort to ensure the individual's compensation is sufficiently competitive for the individual's expertise and mission impact. Any such payment, made in part to address a truncated salary, would be a recognition payment, not salary, and therefore, not basic pay under Title 5.

For DHS–CS employees, recognition payments are in lieu of the seven types of Title 5 cash awards and incentives on which recognition payments are based. *See* § 158.632. DHS–CS employees and incoming DHS–CS employees are ineligible for those seven types of cash awards and incentives because recognition payments replace those types of Title 5 awards and incentives for DHS–CS employees.

(b) CTMS Recognition Time-Off

CTMS recognition time-off is time-off from duty without charge to leave or loss of compensation for use by the recipient within a designated timeframe. *See* § 158.633. CTMS recognition time-off is based on Title 5 authorities providing time-off awards,[148] which provide paid time-off in recognition of employee efforts or accomplishments. CTMS recognition time-off serves a similar purpose, but under the overall approach to talent management and compensation under CTMS. DHS uses recognition time-off to recognize and reward DHS–CS employees, especially for their mission impact. CTMS recognition time-off is similar to Title 5 time-off but is specific to CTMS and can be an important part of a total compensation package for both recruiting and retention.

As part of providing a DHS–CS employee recognition time-off, DHS designates the timeframe for use of the time-off award. The designated timeframe for recognition time-off may not exceed the equivalent of 26 biweekly pay periods, and all recognition time-off must also be recorded in a timekeeping system to ensure accurate operation of existing salary and leave administration procedures. *See* § 158.633. These requirements mirror procedures for use of Title 5 time-off awards under 5 U.S.C. 4502(e).[149] Twenty-six biweekly pay periods is one calendar year for pay and leave administration purposes for Federal employees.

Also, as part of an offer for employment in the DHS–CS, DHS may offer an incoming DHS–CS employee up to 40 hours of recognition time-off for that new employee to use within the employee's first year of employment in the DHS–CS. *See* § 158.633. As part of recruiting new DHS–CS employees, DHS may need to offer recognition time-off to ensure that an individual's compensation package is sufficiently competitive and to incentivize the individual to serve in the DHS–CS. DHS may require a service agreement as part of providing recognition time-off for an incoming DHS–CS employee.

Recognition time-off may not be converted to a cash payment or any other type of time-off or leave with pay. *See* § 158.633. This requirement mirrors the same requirement for Title 5 time-off awards in 5 CFR 451.104(f) because an important feature of a time-off award is that providing such awards does not require additional funding or cash disbursement similar to a cash award.

of the recipient's annual basic pay, or up to 50 percent of the recipient's annual basic pay with OPM approval.

[148] Under 5 U.S.C. 4503(e) and 5 CFR part 451.104, an agency may grant employees time off from duty, without loss of pay or charge to leave, as an award in recognition of superior accomplishment or other personal effort that contributes to the quality, efficiency, or economy of Government operations.

[149] *See also Timekeeper Instructions on Time Off Awards,* available at *https://www.aphis.usda.gov/mrpbs/hr/pay_leave_tod/downloads/award_faq.pdf* (last visited May 25, 2021).

A recognition time-off award is in lieu of time-off awards under Title 5 on which recognition time-off is based. *See* § 158.633. DHS–CS employees and incoming DHS–CS employees are ineligible for those Title 5 time-off awards because CTMS recognition time-off replaces Title 5 time-off awards for DHS–CS employees.

(c) CTMS Honorary Recognition

As part of CTMS recognition, DHS may establish one or more honorary recognition programs to provide honorary recognition to DHS–CS employees. *See* 158.634. CTMS honorary recognition is based on honorary recognition provided under the provisions of 5 U.S.C. 4503,[150] which describes how the head of an agency may incur necessary expense for the honorary recognition of an employee for certain acts and contributions. CTMS honorary recognition serves a similar purpose for DHS–CS employees, but under the overall approach to talent management and compensation under CTMS. DHS uses CTMS honorary recognition to recognize and reward DHS–CS employees, especially for their mission impact. CTMS honorary recognition is similar to Title 5 honorary recognition but is specific to CTMS.

Unlike other CTMS recognition, a DHS–CS employee may be eligible to receive both CTMS honorary recognition and any honorary recognition under 5 U.S.C. 4503 and 5 CFR part 451. Some honorary recognition programs developed under Title 5 authority are designed to recognize employees hired and compensated using a variety of statutory authorities. Thus, all eligible DHS employees, including DHS–CS employees, covered by those Title 5 honorary recognition programs may receive recognition under such programs. As with honorary recognition under 5 U.S.C. 4503, DHS may incur necessary expenses for CTMS honorary recognition. *See* § 158.634.

5. Other Special Payments Under CTMS

Under the CTMS compensation system, DHS provides other types of additional compensation in the form of professional development and training, student loan repayments, payments for special working conditions, and allowances in nonforeign areas. Offering allowances in nonforeign areas is mandated by 6 U.S.C. 658 as a type of additional compensation. Such allowances are not specific to CTMS and are provided to DHS–CS employees under 5 U.S.C. 5941. The other types of additional compensation are also not salary under CTMS nor basic pay for purposes under Title 5. Under 6 U.S.C. 658, compensation is either salary or additional compensation, and CTMS professional development and training, CTMS student loan repayments, and CTMS special working conditions, as well as allowances in nonforeign areas, are all additional compensation.

These types of CTMS additional compensation, except allowances in nonforeign areas, are specific to CTMS and are based on Title 5 authorities. As discussed previously in III.A.3 of this document, under the § 658 additional compensation authority DHS may combine and streamline provisions of Title 5 regarding types of additional compensation, as long as it is clear on which specific Title 5 provisions CTMS additional compensation is based. Sections 158.640–158.642 lists the Title 5 authorities on which CTMS professional development and training, student loan repayments, and payments for special working conditions are based. Each of these other special payments under CTMS is discussed subsequently.

(a) CTMS Professional Development and Training

Under CTMS, DHS provides DHS–CS employees with opportunities, payments, and reimbursements for professional development and training. *See* § 158.640. CTMS professional development and training is based on Title 5 provisions providing training and professional development opportunities, payments, and reimbursements: 5 U.S.C. 3396 providing sabbaticals,[151] 5 U.S.C. 4107 providing academic degree training,[152] 5 U.S.C. 4109 providing expenses of training,[153] 5 U.S.C. 4110 providing expenses of attendance at meetings,[154] and 5 U.S.C. 5757 providing payment of expenses to obtain professional credentials.[155] Like these provisions of Title 5, CTMS professional development and training provide professional development and training opportunities, payments, and reimbursements for DHS–CS employees, but under the overall approach to talent management and compensation under CTMS. CTMS professional development and training is similar to the training and professional development opportunities, payments, and reimbursements under Title 5, but is specific to CTMS and tailored to CTMS design. This type of compensation can be an important piece of a total compensation package, especially for cybersecurity talent looking to keep their expertise current and to acquire new skills.

DHS provides CTMS professional development and training opportunities, payments, and reimbursements in alignment with the CTMS career development program described in § 158.802 and discussed subsequently. With the career development program, DHS guides the career progression of DHS–CS employees, which includes enhancement of qualifications, and ensures development of the collective expertise of DHS–CS employees through continual learning. CTMS professional development and training is one means of enhancing qualifications and providing opportunities for continual learning.

DHS also provides CTMS professional development and training in alignment with CTMS compensation strategy. CTMS professional development and training is considered part of a total compensation package for a DHS–CS employee, reflecting an understanding of the concepts of total compensation and total rewards in alignment with the CTMS compensation strategy. Professional development and training, even those opportunities not assigned a specific monetary value, can be a valuable part of an employment opportunity with the DHS–CS and a DHS–CS employee's career progression.

CTMS policy will address eligibility criteria and requirements for documenting the reason and basis for providing professional development and training opportunities, payments, and reimbursements, among other matters necessary for administering CTMS professional development and training.

[150] Under 5 U.S.C. 4503, an agency may incur necessary expense for the honorary recognition of an employee who provides a suggestion, invention, superior accomplishment, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork, or performs a special act or service in the public interest in connection with or related to the employee's official employment.

[151] Under 5 U.S.C. 3396, an agency head may grant a career SES employee a sabbatical not to exceed 11 months to permit that employee to engage in study or uncompensated work experience that will contribute to the employee's development and effectiveness.

[152] Under 5 U.S.C. 4107, an agency may select and assign an employee to academic degree training and pay or reimburse the costs of that training.

[153] Under 5 U.S.C. 4109, an agency may pay an employee while the employee attends training and may pay or reimburse the employee for all or a part of the necessary expenses of training, including travel and per diem, moving expenses, tuition, books, and other fees.

[154] Under 5 U.S.C. 4110, an agency may pay for the expenses of an employee attending certain meetings.

[155] Under 5 U.S.C. 5757, an agency may pay the expenses of an employee to obtain professional credentials.

In addition to CTMS professional development and training, a DHS–CS employee may receive training and professional development under the provisions of Title 5 on which CTMS professional development and training is based, if the employee is eligible under those provisions. Many programs and courses developed under Title 5 authority are intended for employees hired and compensated under several different statutory authorities. Thus, all eligible DHS employees, including DHS–CS employees, covered by such programs and courses may participate in them.

(b) CTMS Student Loan Repayments

Under CTMS and in alignment with the CTMS compensation strategy, DHS may provide a student loan repayment to a DHS–CS employee up to $16,500 per employee per calendar year and a total of $90,000 per employee. *See* § 158.641. CTMS student loan repayments are based on 5 U.S.C. 5379, which provides student loan repayments to certain Federal employees. CTMS student loan repayments serve the same purpose, but under the overall approach to talent management and compensation under CTMS. CTMS student loan repayments are similar to student loan repayments under Title 5, but are specific to CTMS and tailored to CTMS design.

While DHS offers CTMS student loan repayments under the authority in 6 U.S.C 658, DHS provides CTMS student loan repayments in accordance with 5 U.S.C. 5379 and 5 CFR part 537, with some exceptions. DHS applies different maximum payment and cap amounts, different minimum service period lengths, and expanded eligibility criteria from those under 5 U.S.C. 5379 and 5 CFR part 537. The Title 5 student loan repayment program is a useful tool in recruiting and retaining employees, but the program must align with the approach to talent management under CTMS and the CTMS compensation system, which aims to address factors in DHS's challenges recruiting and retaining cybersecurity talent. As discussed previously in III.B of this document, the competitiveness of compensation, including total compensation packages, is a main factor in DHS's challenges recruiting and retaining cybersecurity talent. Therefore, DHS is including student loan repayments under CTMS as a recruitment and retention tool and is increasing the payment amount and cap amounts for CTMS student loan repayments.

For CTMS student loan repayments, DHS is setting the maximum payment amounts to reflect the increased costs of higher education since Congress last amended the maximum rates under 5 U.S.C. 5379. Student loan repayments under 5 U.S.C. 5379 are capped at $10,000 per employee per year and $60,000 total per employee.[156] This statutory authority was originally enacted in 1990 and was originally capped at $6,000 per employee per year and $40,000 total per employee.[157] In 2003, Congress increased the payment caps to $10,000 per employee per year and $60,000 total per employee in a stand-alone Act for the sole purpose of increasing the cap.[158] In increasing the annual cap by 67 percent [159] and the aggregate cap by 50 percent [160] (effective January 2004), Congress stated that the purpose of the 2003 cap increase was to ''reflect[ ] an increase in annual college tuition costs since the enactment of the original statute in 1991.'' [161] Congress has not updated the cap amount since 2003,[162] and Congress also did not provide specific data for the increase in annual college tuition costs in 2003.

Under § 158.641, the annual cap for CTMS student loan repayments is $16,500 and the aggregate cap is $90,000, in alignment with Congress' last cap increase in 2003. Based on the U.S. Bureau of Labor Statistics Consumer Price Indexes for Tuition and Fees,[163] college tuition and fixed fees increased 129 percent from 1990, when the authority for student loan repayments was originally enacted, to 2003, when Congress increased the payment caps.[164] Therefore, Congress increased the annual payment cap 67 percent and the aggregate payment cap 50 percent when costs of higher education had increased 129 percent (from 1990 to 2003). From 2003 to 2020, college tuition and fixed fees increased 125 percent.[165] It follows that because such costs have increased another 120 percent (from 2003 to 2020), the caps could similarly be increased again another 67 percent and 50 percent, respectively. As such, the CTMS student loan repayment amount per employee per year may be up to $16,500 (a 65 percent increase to have a dollar amount rounded to the nearest 500 for the cap amount) [166] and the CTMS student loan repayment amount total per employee may be up to $90,000 (a 50 percent increase).[167] *See* § 158.641.

Each DHS–CS employee receiving a CTMS student loan repayment must have a service agreement with a minimum service period, but unlike under Title 5 there is no standard length of minimum service period. *See* § 158.641. Instead the length of minimum service periods will be determined under CTMS policy and based on the amount of the repayment to provide flexibility to match the service period to the loan repayment amount. Currently, an employee receiving a student loan repayment under 5 U.S.C. 5379 must have a service agreement and that service agreement must be a minimum of three years, regardless of the amount of repayment.

Because CTMS is a different approach to talent management and the CTMS compensation system is a wholly different approach to compensating

[156] 5 U.S.C. 5379(b)(2).

[157] Public Law 101–510, Sec. 1206(b)(1) (Nov. 1990).

[158] Public Law 108–123, Sec. 2 (Nov. 2003); *see also,* Public Law 108–136 Sec. 1123(a) (Nov. 2003) (providing a duplicative increase from $6,000 to $10,000 per year).

[159] $10,000 (Title 5 student loan repayment annual cap in 2003) − $6,000 (Title 5 student loan repayment annual cap in 1990) = $4,000; $4,000 ÷ $6,0000 = 66.67%.

[160] $60,000 (Title 5 student loan repayment aggregate cap in 2003) − $40,000 (Title 5 student loan repayment aggregate cap in 1990) = $20,000; $20,000 ÷ $40,000 = 50%.

[161] S. Rep. 108–109, *Report Together with Additional View of the Committee on Governmental Affairs United States Senate to accompany S. 926,* ''To Amend Section 5379 of Title 5, United States Code, to Increase the Annual and Aggregate Limits on Student Loan Repayments by Federal Agencies,'' (July 21, 2003), 1.

[162] The student loan repayment authority in 5 U.S.C. 5379 was last amended in 2008 to include parts of the legislative branch in the definition of ''agency,'' but the cap was not addressed. Public Law 110–437, Sec. 502 (Oct. 2008). *See also* Public Law 106–398, Sec. 1122(a) (Oct. 2000) (updating definition of ''student loan'' in the first amendment to the student loan repayment authority since enactment).

[163] Available at *https://www.bls.gov/cpi/factsheets/college-tuition.htm* (last visited May 25, 2021).

[164] The index for January 1990, the first month of the year the student loan repayment authority was enacted, was 169.8, and for January 2003, when Congress increased the payment caps, was 388.6, for a total percent change of 129 percent (388.6 − 169.8 = 218.8; 218.8 ÷ 169.8 = 128.9%). U.S. Bureau of Labor Statistics, ''College tuition and fees in U.S. city average, all urban consumers, not seasonally adjusted'' available at *https://data.bls.gov/timeseries/CUUR0000SEEB01?output_view=data* (last visited May 25, 2021).

[165] The index for January. 2003, when Congress increased the payment caps for student loan repayments, was 388.6, and in January. 2020, was 874.769, for a total percent change of 125 percent (874.769 − 388.6 = 486.169; 486.169 ÷ 388.6 = 125.1%). *Id.*

[166] If increasing the annual cap amount by 67%, the CTMS student loan repayment per employee annual cap would be $16,700 ($10,000 × 67% = $6,700; $10,000 + $6.700 = $16,700). Rounding $16,700 to the nearest 500 results in $16,500, which is a 65% increase ($16,500 (CTMS student loan repayment per employee annual cap) − $10,000 (Title 5 student loan repayment annual cap since 2003) = $6,500; $6,500 ÷ $10,000 = 65%).

[167] $90,000 (CTMS student loan repayment per employee aggregate cap) − $60,000 (Title 5 student loan repayment aggregate cap since 2003) = $30,000; $30,000 ÷ $60,000 = 50%.

employees, DHS expects to use CTMS student loan repayments differently, and expects to need more flexibility regarding minimum service periods when considering the total compensation packages of individuals. This includes adjusting the minimum service period in relationship to the amount of student loan repayment provided. As such, under § 158.641, DHS may set minimum service periods for CTMS student loan repayments commensurate with the repayment amount.

All DHS–CS employees, except those providing uncompensated service and DHS advisory appointees, may be eligible to receive a CTMS student loan repayment. *See* § 158.641. This includes DHS–CS employees serving in a renewable appointment, which as discussed previously is a time-limited appointment to a qualified position. Under 5 CFR 537.104(a), only some employees serving in time-limited appointments can be eligible for Title 5 student loan repayments, and the duration of appointment is a factor. Because appointment under CTMS differ from appointments under Title 5 in types, purposes, and durations, a CTMS student loan repayment is available to eligible DHS–CS employees in renewable appointments. Note, however, that DHS ensures that a service agreement minimum service period does not exceed a DHS–CS employee's appointment duration.

Other eligibility for a student loan repayment under § 158.641 aligns with eligibly criteria under 5 U.S.C. 5379 and 5 CFR part 537. As such, a DHS–CS employee is ineligible to receive a CTMS student loan repayment if DHS determines the employee's performance is unacceptable, as defined in 5 U.S.C. 4301(3), or the employee receives an unacceptable rating of record, or DHS determines the employee has engaged in misconduct. *See* § 158.641. CTMS policy will address other eligibility criteria for CTMS loan repayments.

CTMS policy will also address requirements for documenting the reason and basis for providing a CTMS student loan repayment, appropriate levels of review and approval, among other matters necessary for administering CTMS student loan repayments.

(c) CTMS Special Working Conditions Payments

Under CTMS, another type of additional compensation that is available to DHS–CS employees is a payment for special working conditions. A payment for special working conditions is a payment of up to 25 percent of the receiving DHS–CS employee's salary as computed for a designated work period or series of work periods. *See* § 158.642. A CTMS payment for special working conditions is based on Title 5 authorities providing several types of payments: 5 U.S.C. 5545 providing night, standby and hazardous duty differentials,[168] 5 U.S.C. 5546 providing pay for Sunday and holiday work,[169] and 5 U.S.C. 5757 providing extended assignment incentives.[170] *See* § 158.642. These Title 5 authorities compensate Federal employees for work performed at night, on Sundays and holidays, for standby duty requiring employees to remain at or within the confines of employees' duty stations, for the performance of hazardous duty or duty involving physical hardship, and for extended assignments in atypical locations.[171] These Title 5 authorities provide compensation for special or nonregular working conditions, and CTMS special working conditions payments serve that same purpose for the DHS–CS, but under the overall approach to talent management and compensation under CTMS. DHS uses special working conditions payments to address special working conditions that are specific to cybersecurity work. The Title 5 authorities on which CTMS recognition is based provide some of the existing Federal compensation tools, which as discussed previously in III.B of this document, are cumbersome to use, ineffective for constructing market-sensitive compensation packages, and are not intended to form a cohesive toolset. Additionally, these Title 5 authorities do not effectively account for the unpredictable nature of cybersecurity work, including specific conditions DHS–CS employees may encounter. CTMS special working conditions payments combine and streamline these existing tools to align with the CTMS design, including the CTMS compensation and salary systems. CTMS special working conditions payments allow for greater flexibility and agility than the Title 5 tools in providing competitive compensation, especially for conditions specific to cybersecurity work that are insufficiently accounted for in a DHS–CS employee's salary.

DHS provides any special working conditions payments under a special working conditions payment program. *See* § 158.642. A special working conditions program addresses special working conditions or circumstances that are otherwise unaccounted for or the Department determines are accounted for insufficiently in DHS–CS employees' other types of additional compensation and salary. DHS aims to provide DHS–CS employees with sufficiently competitive compensation, and DHS anticipates that working conditions may emerge that DHS may not have sufficiently accounted for in DHS–CS employees' compensation, especially their salaries. A special working conditions payments program enables DHS to adjust the additional compensation of DHS–CS employees to specifically address working conditions that DHS had not previously anticipated and accounted for, or DHS determines have been insufficiently accounted for, in DHS–CS employees' salaries.

Special working conditions under § 158.642 include when a supervisor or other appropriate official requires a DHS–CS employee to perform cybersecurity work determined to involve unusual physical or mental hardship, or performing work at atypical locations, at unexpected times, or for an uncommon duration of time exceeding the expectation that all DHS–CS employees occasionally work unusual hours and extended hours, as needed, to execute DHS's cybersecurity mission. *See* § 158.642. For example, several DHS–CS employees with expertise in cybersecurity incident response might be required to work a substantial amount of time, including at night and beyond their minimum hours of work, in response to a cybersecurity incident affecting critical infrastructure. DHS might establish a special working conditions payment program to cover such conditions and provide payments

[168] Under 5 U.S.C. 5545, an employee is entitled to receive an additional 10 percent of the employee's basic pay for regularly scheduled work between 6pm and 6am, an additional percentage up to 25 percent of the employee's basic pay for regularly scheduled standby duty, and a differential up to 25 percent of the employee's basic pay for certain duty involving unusual physical hardship or hazard.

[169] Under 5 U.S.C. 5546, an employee is entitled to receive an additional 25 percent of the employee's basic pay for regularly scheduled work on a Sunday and an additional 100 percent of the employee's basic pay for certain work performed on a Federal holiday.

[170] Under 5 U.S.C. 5757, an agency may pay an employee a payment of 25 percent of the employee's basic pay or $15,000, whichever is greater, to retain that employee for a longer period in certain locations.

[171] U.S. Office of Personnel Management websites: *Pay & Leave: Pay Administration* ''Fact Sheet: Premium Pay (Title 5),'' *https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/premium-pay-title-5/* (last visited May 25, 2021); *Frequently Asked Questions: Pay & Leave* ''Hazardous Duty Pay,'' *https://www.opm.gov/FAQS/topic/payleave/index.aspx?cid=c4c7e7ca-48be-4650-bbc8-6ec08e8fd479* (last visited May 25, 2021); *Policy, Data, Oversight: Pay & Leave* ''Fact Sheet: Extended Assignment Incentives,'' *https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/extended-assignment-incentives/* (last visited May 25, 2021).

to acknowledge the special conditions as well as the mission impact of employees required to perform work under such conditions. Special working conditions may also involve both unusual physical or mental hardship and performing work such that it exceeds the expectation of occasionally working unusual and extended hours.

DHS establishes any special working conditions program in alignment with the CTMS compensation strategy and determines whether to establish, adjust, or cancel a special working conditions payment program based on information from the CTMS work scheduling system and strategic talent planning. *See* § 158.642. Using information from the work scheduling system ensures that a determination about a special working conditions program is made with an understanding of hours worked by DHS–CS employees and potential divergence from expected schedules. The CTMS compensation strategy, together with the talent market analysis from strategic talent planning, ensures that a special working conditions payment program reflects information about current compensation practices of other cybersecurity employers. *See* § 158.642. Given the ever-evolving nature of cybersecurity work, fierce competition for cybersecurity talent, and variety of compensation practices used by private sector cybersecurity employers, discussed previously in II.B of this document, DHS needs the flexibility to analyze the working conditions of DHS–CS employees as they arise, and if necessary, address them by providing additional compensation.

For special working conditions payments, DHS is establishing a maximum amount as a percentage of a DHS–CS employee's salary computed for a work period or series of work periods because the Title 5 authorities, on which special working conditions payments are based, all provide a limit for cash payments as a percentage of annual basic pay computed as an hourly rate. The percentage of basic pay under these Title 5 authorities is: 10 percent for nightwork; up to 25 percent for standby duty and for performance of hazardous duty or duty involving physical hardship; 25 percent for Sunday work; 25 percent for extended assignments; and 100 percent for holiday work.[172] These percentages range from 10 percent to 100 percent, with most maximum percentages as 25 percent or up to 25 percent, so DHS is establishing the percent amount for a special working conditions payment as up to 25 percent. Additionally, DHS applies the 25 percent maximum for a special working conditions payment based on computing the receiving DHS–CS employee's salary for a work period, which as defined in § 158.705 is the equivalent of a biweekly pay period. DHS applies the payment maximum in this manner because administration of payments under the Title 5 authorities, on which special working conditions payments are based, involves computation of the receiving employees' basic pay for a specific time-period, usually on an hourly basis.

DHS determines eligibility for a payment for special working conditions under § 158.642 and CTMS policy. Under § 158.642, if a DHS–CS employee receives a payment for special working conditions, the employee is not automatically eligible or entitled to receive any additional such payments. Also, a DHS–CS employee receiving a salary equal to or greater than EX–IV is ineligible to receive a payment under this section. This ineligibility reflects that such additional payments are not necessary for DHS–CS employee receiving high salaries, and it also mirrors restrictions in Title 5 that make Federal employees receiving salaries under Title 5 greater than EX–IV ineligible for certain types of Title 5 additional compensation.[173] CTMS policy will address other eligibility criteria for CTMS special working conditions payment.

In addition to eligibility criteria, CTMS policy implementing the special working conditions payment program will address requirements for documenting the reason and basis for providing a special working conditions payment, and appropriate approval authorities, among other matters necessary for establishing and operating the program. *See* § 158.642.

A special working conditions payment is in lieu of the types of Title 5 payments on which it is based. *See* § 158.642. DHS–CS employees are ineligible for those types of Title 5 payments because special working conditions payments replace those types of Title 5 payments for DHS–CS employees. Additionally, some of those types of Title 5 payments are considered premium pay and, as discussed previously, Title 5 premium pay generally does not apply under CTMS.

(d) CTMS Allowances in Nonforeign Areas

Another type of additional compensation available to DHS–CS employees is an allowance in nonforeign areas under 5 U.S.C. 5941. *See* § 158.643. Section 5941 provides a cost of living allowance for certain Federal employees stationed outside of the continental United States or in Alaska and such an allowance can be up to 25 percent of the receiving employee's basic pay. As discussed previously in III.C.3 of this document, 6 U.S.C. 658(b)(3)(B) mandates this type of additional compensation, and also mandates that employees in qualified positions are eligible for such allowances under 5 U.S.C. 5941 on the same basis and to the same extent as if the employees were covered under section 5941, including eligibility conditions, allowance rates, and all other terms and condition in law or regulation. CTMS does just that in § 158.643, which states a DHS–CS employee is eligible for and may receive an allowance under 5 U.S.C. 5941 and implementing regulations in 5 CFR part 591, subpart B on the same basis and to the same extent as if the employee is an employee covered by those authorities.

6. Other Compensation Provided in Accordance With OPM Regulations

Under the CTMS compensation system, DHS is providing DHS–CS employees other types of additional compensation, including leave and other benefits. While DHS offers these other types of additional compensation under the authority in 6 U.S.C 658, DHS provides them in accordance with relevant provisions of other laws that apply to most Federal civil service employees. Many of these other types of additional compensation were established for Federal civilian employees decades ago for purposes still relevant to the talent management approach under CTMS, and these other types of additional compensation are administered using well-established processes DHS does not need to adjust for CTMS. As such, in §§ 158.650, 158.652, and 158.653, DHS provides DHS–CS employees holidays, compensatory time-off for religious purposes, and traditional Federal employee benefits, including retirement, health benefits, and insurance programs, as well as transportation subsidies, in accordance with relevant provisions in Title 5.

In § 158.651, for leave under CTMS, DHS provides DHS–CS employees all the types of leave available to other Federal employees, including annual

[172] 5 U.S.C. 5545–5546.

[173] *See* 5 CFR 534.408 (prohibiting members of the SES from receiving Title 5 premium pay, including overtime pay, and compensatory time in lieu of overtime may).

leave, sick leave, family and medical leave, and other paid leave, in accordance with 5 U.S.C. Chapter 63 and 5 CFR part 630. Although DHS provides leave for DHS–CS employees in accordance with these provisions of law, DHS modifies application of those laws regarding annual leave accumulation to maintain the integrity of CTMS and consistency of the approach to talent management under this part.

For annual leave accumulation under CTMS, DHS will determine DHS–CS employees accumulation amounts under 5 U.S.C. 6304, which permits most Federal employees to accumulate 30 days of annual leave in one year and certain Federal government senior employees, including employees in SL/ST and SES positions, to accumulate 90 days of annual leave in one year.[174] Under this Title 5 annual leave accumulation structure, the 90-day annual leave accumulation amount is reserved for certain employees, including employees in SL/ST and SES positions, with salary rates that exceed 120 percent of GS–15.

Under CTMS, DHS may apply a 90-day accumulation amount to DHS–CS employees receiving a salary that exceeds 120 percent of GS–15. *See* § 158.651. As discussed previously in III.A.3 of this document, a qualified position is comparable to SL/ST and SES positions, and as such DHS could apply a 90-day accumulation amount to all DHS–CS employees. DHS is not doing this, however, because a higher accumulation amount has potential implications for paying out leave when an employee separates from Federal service. Instead, DHS is mirroring the Title 5 accumulation structure by reserving the 90-day accumulation amount for DHS–CS employees receiving a salary at or above the minimum salary for SL/ST and SES positions.

DHS administers leave under CTMS in accordance with relevant provisions of other laws referenced in §§ 158.651 and 158.655 and in CTMS policy implementing leave for DHS–CS employees. As such, in accordance with 5 U.S.C. 6308, annual leave and sick leave accrued to the credit of a current Federal employee who is appointed to a qualified position without a break in service of more than three calendar days will be transferred to the employee's credit, and any leave balance for a DHS–CS employee departing the DHS–CS will be addressed in accordance with 5 CFR 630.209 and 630.501. *See* § 158.651.

In § 158.654, DHS is providing DHS–CS employees other types of payments, including severance pay, lump-sum leave pay outs, voluntary separation incentive payments, reservist differentials, and other similar allowances, differentials, and incentives, in accordance with relevant provisions of other laws governing those types of payments. To ensure DHS can offer any other type of additional compensation that becomes available to Federal civil service employees in the future, § 158.654 states that DHS will also provide other payments similar to those listed in § 155.654 and described in CTMS policy as being authorized under this part and provided in accordance with relevant provisions of other laws.

Although DHS provides the types of payments listed in § 158.654 in accordance with relevant provisions of other laws under the authority in 6 U.S.C. 658, DHS may need to modify application of those relevant provisions of law to maintain the integrity of CTMS and consistency of the approach to talent management under this part. This is because some of the terms used in the relevant provisions of law are not used under CTMS, or a different term is used, and DHS may have to extrapolate between the terms in the relevant provision of law and CTMS concepts. For example, CTMS includes a ''part-time schedule'' and ''contingent schedule,'' but Title 5 does not use such terms.

Section 158.655 lists several clarifications for how CTMS terms and concepts relate to relevant provisions of other laws. For example, § 158.655 explains a ''part-time schedule'' and ''contingent schedule'' are treated as ''part-time career employment'' and ''intermittent employment,'' respectively, as defined in Title 5. Section 158.655 also explains that for purposes of compensation administration authorized under §§ 158.650–158.654, DHS may convert the salary of a DHS–CS employee into an hourly rate, biweekly rate, or other rate and administer compensation based on consideration of the DHS–CS employee's work schedule. To ensure accurate administration of compensation, including leave, for DHS–CS employees in accordance with relevant provisions of Title 5, DHS may need to account for and record leave and other compensation earned and charged on an hourly basis.[175]

Also, § 158.655 clarifies that if, in administering compensation under §§ 158.650–158.654, DHS determines it is necessary to clarify the relationship between those sections and the relevant provisions of law referenced in those sections and any other relevant provisions of other laws, DHS will address the issue in new or revised CTMS policy. Thus, if DHS needs to modify application of those relevant provisions of law relating to compensation for the DHS–CS to maintain the integrity of CTMS and consistency of the approach to talent management under this part, DHS will capture any such modified application in CTMS policy.

7. CTMS Aggregate Compensation Limit

The CTMS compensation system includes the CTMS aggregate compensation limit, which restricts certain additional compensation a DHS–CS employee may receive in a calendar year. *See* § 158.604. Under CTMS, a DHS–CS employee's aggregate compensation is the employee's salary plus certain types of CTMS additional compensation. The aggregate compensation limit prohibits a DHS–CS employee from receiving any portion of a payment for certain types of CTMS additional compensation if that portion would cause the employee's aggregate compensation to exceed the limit.

The CTMS aggregate compensation limit implements the additional compensation authority in 6 U.S.C. 658(b)(3) regarding the level authorized for such compensation. As discussed previously in III.A.3 of this document, DHS interprets this additional compensation authority to mean that CTMS additional compensation is subject to the aggregate compensation cap in 5 U.S.C. 5307. As also discussed in III.A.3 of this document, this Title 5 aggregate compensation cap has two cap amounts, and the Secretary has discretion for how to apply the two cap amounts to CTMS additional compensation. DHS is applying both cap amounts as the CTMS annual aggregate compensation limit.

The CTMS aggregate compensation limit is one of the two amounts referenced in 5 U.S.C. 5307(d)(1): EX–I ($221,400 in 2021) or the Vice

[174] Under 5 U.S.C. 6304, other Federal employees stationed outside of the United States can accumulate 45 days of annual leave.

[175] *See e.g.,* 5 U.S.C. 5504 (providing computation of pay for biweekly pay periods); 5 CFR 630.206 (establishing a minimum charge for leave as one hour); U.S. General Accounting Office, *Maintaining Effective Control over Employee Time and Attendance Reporting,* GAO–03–352G (Jan. 2003), 6 (''Most federal civilian employees are paid on an hourly basis (or fractions of an hour) and earn and charge leave on that basis . . . . To provide a basis for pay, leave, and benefits, the records [of the time an employee works] should include aggregate regular time, other time (*e.g.,* overtime credit hours or compensatory time off), and leave'').

President's salary amount ($255,800 in 2021). *See* § 158.604. CTMS additional compensation when added to salary of a DHS–CS employee may not cause that employee's aggregate compensation to exceed either EX–I or the Vice President's salary, whichever is applicable to that employee.

The applicable CTMS aggregate compensation limit amount for a DHS–CS employee depends on the salary subrange for that individual's salary and the aggregate compensation amount assigned to that subrange. DHS will apply the CTMS aggregate compensation limit amounts in ascending order to the subranges in a CTMS salary structure. DHS will assign one of the two limit amounts to each subrange in a CTMS salary structure such that each subrange has an aggregate compensation limit that is greater than or equal to the salary maximum of that subrange. For example, a hypothetical subrange with a salary maximum of $225,000 is assigned the aggregate compensation limit of the Vice President's salary ($255,800 in 2021). A DHS–CS employee is not permitted to receive payment of certain types of additional compensation if that payment would cause the employee's aggregate compensation to exceed the applicable limit amount for that employee.

Application of the CTMS aggregate compensation limit to DHS–CS employee compensation is based on the Title 5 aggregate compensation cap in 5 U.S.C. 5307 but is tailored to the CTMS compensation system. Under 5 U.S.C. 5307, an employee's aggregate compensation includes the employee's salary, plus any locality-based comparability payments, and certain types of additional compensation under Title 5.[176] A DHS–CS employee's aggregate compensation is the employee's salary, including any LCTMS, and certain types of additional compensation. *See* § 158.604. Like locality-based comparability payments under 5 U.S.C. 5304, which are subject to the Title 5 aggregate compensation cap,[177] a LCTMS is considered part of a DHS–CS employee's salary for purposes of applying the CTMS aggregate compensation limit.

The types of CTMS additional compensation subject to the CTMS aggregate compensation limit are similar to or are the same types of compensation covered by the Title 5 aggregate compensation cap. The types of CTMS additional compensation considered part of a DHS–CS employee's aggregate compensation, and subject to the applicable aggregate compensation cap, are: Recognition payments, payments for special working conditions, payments for certain allowances and differentials under CTMS, and other similar payments described in CTMS policy. *See* § 158.604.

Recognition payments, which are based on awards and incentives under Title 5, are subject to the CTMS aggregate compensation limit, and this mirrors how Title 5 treats those awards and incentives under the Title 5 annual aggregate compensation cap.[178] A recognition payment for a DHS–CS employee may be truncated if it would cause the employee's aggregate compensation to exceed the CTMS aggregate compensation limit applicable to that employee. In such a scenario, the DHS–CS employee forfeits any portion of a payment causing the employee's aggregate compensation to exceed that limit. *See* § 158.604.

Special working conditions payments are also subject to and may be limited by the CTMS aggregate compensation limit. *See* § 158.542. As discussed previously, special working conditions payments are based on Title 5 authorities providing several types of payments, which are subject to the Title 5 aggregate compensation cap.[179] Some of the types of payments listed in § 158.654, which are provided in accordance with OPM regulations, are also subject to and may be limited by the CTMS aggregate compensation limit, which aligns with how these other payments are treated under the Title 5 aggregate compensation cap.[180]

Aggregate compensation under CTMS excludes all other CTMS additional compensation, which mirrors application of the Title 5 aggregate compensation cap. CTMS professional development and training opportunities, payments, and reimbursements are excluded from the CTMS aggregate compensation limit, which mirrors how Title 5 training and professional development is treated under the Title 5 aggregate compensation cap.[181] CTMS student loan repayments are also excluded from the CTMS aggregate compensation limit because student loan repayments under Title 5 are not part of aggregate compensation under Title 5.[182] Also, CTMS allowances in nonforeign areas, which will be provided on the same basis as the same allowance under Title 5, are not subject to the CTMS aggregate compensation limit because Title 5 allowances in nonforeign areas are excluded from the Title 5 aggregate compensation limit.[183]

The main difference between the CTMS aggregate compensation limit and the Title 5 aggregate compensation cap, other than the necessary differences to tailor it to the CTMS compensation system, is that the CTMS aggregate compensation limit is a true limit. Once a DHS–CS employee's aggregate compensation reaches the applicable limit amount for that employee, any unpaid amounts of those types of additional compensation subject to the aggregate compensation limit do not roll over into the next calendar year. Under the Title 5 aggregate compensation cap, amounts of similar additional compensation under Title 5 that would cause the employee's aggregate compensation to exceed the cap are unpayable in that calendar year but become payable in the next calendar year.[184] Under the CTMS aggregate compensation cap, a DHS–CS employee may not receive any portion of a payment for additional compensation subject to the applicable aggregate compensation limit that would cause the employee's aggregate compensation in any calendar year to exceed that limit amount, and the DHS–CS employee forfeits any such portion of a payment. *See* § 158.604.

If DHS underestimates or overestimates a DHS–CS employee's aggregate compensation in a calendar year, DHS may make a corrective action. *See* § 158.604. Such a corrective action would be necessary if an applicable limit amount changed, resulting in a DHS–CS employee receiving some additional compensation in excess of the applicable limit amount for that employee. A corrective action would also be necessary if DHS limited or prohibited an employee's aggregate compensation incorrectly. Corrective actions may include the Secretary or designee waiving a debt to the Federal government for a DHS–CS employee under 5 U.S.C. 5584, if warranted, or making appropriate corrective payments to a DHS–CS employee.

F. Deploying Talent: Subpart G

Subpart G Deploying Talent, includes regulations addressing the CTMS deployment program. Under the

[176] *See also* 5 CFR 530.202, definition of aggregate compensation.

[177] 5 CFR 530.202, definition of basic pay.

[178] 5 CFR 530.202, definition of aggregate compensation paragraphs (4)–(5); and 5 CFR 451.304(c).

[179] 5 CFR 530.202, definition of aggregate compensation paragraph (3).

[180] 5 CFR 530.202, definition of aggregate compensation.

[181] *Id.*

[182] *Id.* paragraph (14)(v).

[183] *Id* paragraph (14)(vi).

[184] *See* 5 CFR 530.204.

deployment program, DHS determines whether DHS needs to use CTMS to recruit and retain individuals possessing CTMS qualifications. *See* § 158.701. The process of designating qualified positions involves determining both when DHS organizations need individuals with CTMS qualifications and when using CTMS would likely enhance recruiting and retaining those individuals.

Under the deployment program, DHS also operationalizes aspects of other CTMS elements. *See* § 158.701. The deployment program operationalizes aspects of the work valuation system by documenting applicable work and career structures for qualified positions and assignments.

The deployment program operationalizes aspects of the talent acquisition system by providing requirements for documenting qualified positions established under the talent acquisition system and for matching newly hired DHS–CS employees with initial assignments. Under the deployment program, DHS also determines operational aspects of a newly appointed DHS–CS employee's appointment and assignment, such as the new employee's work schedule and duration of the assignment.

The deployment program operationalizes aspects of the compensation system by providing requirements for determining a DHS–CS employee's official worksite and work schedule, both of which relate to and affect compensation for DHS–CS employees. Whether a DHS–CS employee is eligible for a local cybersecurity market supplement as part of the employee's salary depends on the employee's official worksite location, as does a DHS–CS employee's eligibility for a CTMS allowance in nonforeign areas. Additionally, DHS considers a DHS–CS employee's work schedule when reviewing work conditions or circumstances that may warrant providing a payment under the CTMS special working conditions payment program. Administration of a DHS–CS employee's salary and leave is also connected to the employee's work schedule and hours worked.

Because the deployment program operationalizes aspects of the work valuation system, talent acquisition system, and compensation system, § 158.709 states that the provisions of law relating to classification, appointment, and compensation listed in §§ 158.405, 158.502 and 158.605 do not apply under CTMS, to the DHS–CS, or to talent management under CTMS, including the CTMS deployment program.

1. CTMS Deployment Program

Under the CTMS deployment program, DHS sets out the procedures for collaboration across DHS organizations to designate qualified positions and designate and staff assignments, as well as procedures to determine and document DHS–CS employees' official worksites, administer a work scheduling system, and perform necessary recordkeeping. *See* § 158.701.

Under the deployment program, DHS: Establishes procedures for designating qualified positions in DHS organizations; designates and staffs assignments; determines and documents a DHS–CS employee's official worksite; administers a work scheduling system; and performs necessary recordkeeping, including documenting qualified positions and assignments. *See* § 158.701. Each of these aspects of the deployment program are discussed subsequently.

2. Designating Qualified Positions

Under the CTMS deployment program, DHS designates qualified positions when one or more DHS organizations requires individuals with CTMS qualifications to ensure the most effective execution of the DHS cybersecurity mission and the recruitment and retention of such individuals would be enhanced through use of CTMS. *See* § 158.702. DHS organizations have a range of existing talent management practices they can use to hire, compensate, and develop talent under other statutory authorities and Federal personnel systems. CTMS is specifically designed to recruit and retain talent with CTMS qualifications, so determining that such qualifications are needed by a DHS organization is one factor indicating that using CTMS might benefit the organization. In addition, CTMS features new talent management practices specifically designed to address DHS's challenges recruiting and retaining cybersecurity talent. For circumstances in which a DHS organization is effectively recruiting and retaining certain cybersecurity talent without CTMS, a shift to CTMS's new talent management practices may not be necessary or efficient.

The process of designating qualified positions involves DHS organizations requesting use of CTMS, following requirements for using CTMS, and ensuring availability of information necessary to designate qualified positions. *See* § 158.702. DHS organizations considering using CTMS must ensure they understand the specialized design of CTMS, including differences from existing talent management practices; identify how they anticipate using CTMS to address their unique recruitment and retention challenges or goals; and consider their organizational readiness to use CTMS to hire, compensate, and develop DHS–CS employees. When first using CTMS, DHS organizations have to address a variety of operational requirements, including determining key officials for approval of talent management actions. CTMS policy will address procedures for requesting use of CTMS, requirements for DHS organizations using CTMS, and the necessary information for designating qualified positions.

Designating qualified positions may result in establishing one or more new qualified positions or identifying and staffing one or more assignments, or both. *See* § 158.702. As part of designating qualified positions, DHS considers the collective expertise of DHS–CS employees and the possibility of hiring new talent under the talent acquisition system. DHS might identify one or more existing DHS–CS employees with the CTMS qualifications needed for a new assignment or assignments and who are available to match to the assignment or assignments. Alternatively, DHS might decide to hire new talent with the needed CTMS qualifications. In the process of hiring new talent, DHS determines the number of new DHS–CS employees and the corresponding work levels or combination of work levels necessary to satisfy the talent need. For example, DHS might decide a particular talent need could be addressed only by a new DHS–CS employee at the expert level. DHS might determine that another talent need could be addressed either by one new DHS–CS employee at the expert level or several new DHS–CS employees at the entry level.

Because designating qualified positions may result in establishing a new qualified position, designating qualified positions also involves budget and fiscal considerations. *See* § 158.702.

3. Designating and Staffing Assignments

The CTMS deployment program also establishes procedures for designating and staffing DHS–CS assignments. *See* § 158.703. DHS designates assignments by defining combinations of DHS–CS cybersecurity work and CTMS qualifications that can be associated with one or more qualified positions. *See* § 158.703. Designating assignments may result from designating qualified positions, as discussed previously in this document. CTMS policy will

address procedures for DHS organizations to designate assignments.

DHS staffs DHS–CS assignments by matching DHS–CS employees with assignments, either as an initial assignment for an incoming DHS–CS employee or a subsequent assignment for a current DHS–CS employee. *See* § 158.703. DHS matches a DHS–CS employee with an assignment based on alignment of the employee's CTMS qualifications with the specific subset of CTMS qualifications of an assignment. *See* § 158.703.

For initial assignments, DHS matches an individual with an assignment upon appointment to a qualified position based on such alignment. When matching an individual with an initial assignment, DHS may also consider input from the individual, input from DHS organizations, mission-related requirements determined by DHS officials with appropriate decision-making authority, and strategic talent priorities set by CTMS leadership. Considering this other input and information, in addition to CTMS qualifications, ensures the match reflects the best fit for the individual and ensure DHS strategically staffs assignments in alignment with priorities and goals for the DHS–CS.

When matching a DHS–CS employee with a subsequent assignment, DHS may also consider input from the employee; input from DHS organizations, especially the primary DHS organization of the employee's current assignment; information about the employee from the CTMS performance management program and the CTMS career development program; mission-related requirements; and strategic talent priorities. *See* § 158.703. Considering this other information and input in matching DHS–CS employees with subsequent assignments ensures the match reflects the best fit for the DHS–CS employee and the best use of the DHS–CS employee's expertise to support the DHS cybersecurity mission.

DHS develops and continually updates strategies for communicating with DHS–CS employees about subsequent assignment opportunities, in alignment with the career development program and based on information from development reviews. *See* § 158.601. These strategies ensure that DHS–CS employees have opportunities to express interest in different cybersecurity work and DHS–CS assignments, including those that may assist them in enhancing their qualifications, and helps to foster a culture of continual learning within DHS–CS.

A DHS–CS employee may have multiple assignments throughout the employee's service in a qualified position but only has one assignment at a time. Under CTMS, DHS–CS employees may continue assignments for years or shift assignments periodically to gain exposure to new work or apply their qualifications in different mission areas. The number and variety of assignments an employee has while in the DHS–CS will vary based on that employee's interests, strategic talent priorities, and how the employee's qualifications change over time.

A DHS–CS employee's subsequent assignments may have a different primary DHS organization and worksite than the employee's initial assignment. For example, a DHS–CS employee may have an initial assignment in DHS OCIO, but later have a subsequent assignment in CISA. While that DHS–CS employee's assignment and primary DHS organization changes, the employee is still part of the DHS–CS and still has the same qualified position.

Occasionally, if necessary, DHS may direct a subsequent assignment for a DHS–CS employee. *See* § 158.708. Certain directed subsequent assignments expected to last six months or more require appropriate notice and consultation with the affected DHS–CS employee. Directed subsequent assignments expected to last less than six months is considered temporary, and as such do not require the same formal notice procedures.

For directed subsequent assignments expected to last six months or more with an official worksite in the DHS–CS employee's current commuting area, DHS provides the employee at least 30 calendar days written notice. *See* § 158.708. This timeframe is intended to provide the DHS–CS employee with sufficient notice of the anticipated change to consider and plan for associated adjustments to the employee's commute and other work-related routines.

For directed subsequent assignments expected to last six months or more with an official worksite outside of the DHS–CS employee's current commuting area, DHS consults with that employee on the reasons for the assignment and the employee's preferences regarding the proposed change in assignment. *See* § 158.708. DHS also provides that employee written notice at least 90 calendar days before the effective date of the directed subsequent assignment. This timeframe, modeled after similar reassignments in the SES,[185] is intended to provide the DHS–CS employee with sufficient notice of the anticipated change to consider and plan for significant associated adjustments, including potential changes of residence and development of a new commute and other work-related routines. The written notice requirements for directed subsequent assignments can only be waived by the DHS–CS employee matched to the assignment. For directed subsequent assignments, DHS also pays or reimburses appropriate expenses under and in accordance the Federal Travel Regulations at 41 CFR Chapter 301–302.

4. Official Worksite

The CTMS deployment program includes the procedures for determining and documenting official worksites for DHS–CS employees. *See* § 158.704. Those procedures are modeled after 5 CFR 531.605, which governs determining the official worksite for GS employees in geographic areas defined for purposes of GS locality payments. Because 5 CFR 531.605 does not apply to DHS–CS employees, DHS is creating the procedures in § 158.704 through which DHS determines a DHS–CS employee's official worksite for purposes of administering compensation. A DHS–CS employee's official worksite is especially important for determining eligibility for CTMS local cybersecurity talent market supplements and CTMS allowances in nonforeign areas.

Under CTMS, a DHS–CS employee's official worksite is the geographic location where the employee regularly performs cybersecurity work or where the employee's cybersecurity work is based. In determining a DHS–CS employee's official worksite, DHS considers telework, variation in location where the employee performs cybersecurity work, or other temporary situations affecting the location where the employee performs cybersecurity work. Given the variety of work arrangements possible for DHS–CS employees as they perform the work of their assignments, there may be situations in which the location where a DHS–CS employee performs work varies or is not consistent. In such cases, DHS may need to review a DHS–CS employee's specific work arrangement to determine the employee's official worksite.

DHS documents a DHS–CS employee's official worksite as part of

[185] 5 CFR 317.901 (providing 60-days notice for reassignments outside of an employee's current commuting area). DHS has extended the timeframe in recognition that CTMS will be used to manage all DHS–CS employees, including individuals just beginning a career in cybersecurity.

documenting the employee's appointment and updates that documentation to reflect changes in the employee's official worksite, as necessary. DHS documents changes in a DHS–CS employee's official worksite only when such changes are expected to last, or do last, for six months or more. Such changes expected to last less than six months are considered temporary in alignment with the Federal Travel Regulations at 41 CFR chapter 301. DHS addresses temporary changes, as necessary, using the Federal Travel Regulations.

5. Work Scheduling

Under the CTMS deployment program, DHS is establishing and administering a work scheduling system for DHS–CS employees. The CTMS work scheduling system accounts for the unpredictable nature of cybersecurity work. The work scheduling system also allows DHS to ensure that the performance of cybersecurity work is not constrained or impeded by rigid scheduling rules and structures designed for more predictable types of work or for administration of types of compensation, such as Title 5 premium pay and overtime pay under the FLSA, that are not part of the CTMS compensation system.

The work scheduling system ensures agility for DHS in scheduling cybersecurity work and the availability of DHS–CS employees to perform the cybersecurity work associated with their assignments. *See* § 158.705. The work scheduling system, including associated work schedule types and requirements, enables scheduling the work of DHS–CS employees with enough flexibility to address a variety of mission circumstances, while also ensuring that DHS–CS employees are available to perform work at required times. The work scheduling system also ensures clear expectations for DHS–CS employees about when they are expected to perform work and flexibility for DHS–CS employees in scheduling and performing such work. *See* § 158.705. Such flexibility for DHS–CS employees allows DHS to offer a variety of work arrangements that may appeal to cybersecurity talent. The work scheduling system provides DHS organizations, DHS–CS employees, and their supervisors with options for scheduling and performing work throughout a work period. These options includes different types of schedules, procedures for determining and updating a DHS–CS employee's work schedule, and requirements for communicating about anticipated work hours to ensure DHS–CS employees and their supervisors maintain a shared understanding of work schedules and how employees' intend to meet work schedule requirements. Additionally, the work scheduling system ensures accurate recording of, accounting for, and monitoring of hours worked by DHS–CS employees as required by applicable Federal personnel and payroll recordkeeping standards. *See* § 158.705.

CTMS includes new definitions specific to the CTMS work scheduling system. For example, ''work period'' means a two-week period of 14 consecutive days that begins on a Sunday and ends on a Saturday, and is the equivalent of a biweekly pay period. *See* § 158.705. Increasingly, existing Federal civilian compensation administration has become linked to the biweekly pay periods and the CTMS work scheduling system acknowledges this linkage between how DHS–CS employees perform work and how they are compensated. Another example of a new definition specific to the CTMS work scheduling system is ''minimum hours of work,'' which means the minimum number of hours that a DHS–CS employee is required to work, or account for with time-off, during a work period, and is the equivalent to the term ''basic work requirement'' defined in 5 U.S.C. 6121. *See* § 158.705. A DHS–CS employee's minimum hours of work determines the employee's biweekly salary payment for the applicable work period. A DHS–CS employee's minimum hours of work depends on the employee's schedule.

The CTMS work scheduling system features three main types of schedules: Full-time, part-time, and contingent. *See* § 158.705. A full-time schedule, which is 80 hours per work period, is most similar to a full-time schedule under Title 5. A part-time schedule, which is a specified number of hours less than 80 hours per work period, is most similar to part-time career employment under Title 5. A contingent schedule is an irregular number of hours up to 80 hours per work period and is intended for cases when cybersecurity work is sporadic and cannot be regularly scheduled in advance. A DHS–CS employee on a contingent schedule does not have a minimum hours of work requirement, but has a maximum number of 80 hours per work period and a maximum number of total hours throughout the employee's appointment that is determined at the time of appointment. A contingent schedule is most similar to an intermittent schedule under Title 5. For DHS–CS employees with both part-time and contingent schedules, DHS closely monitors hours worked over time and considers, with input from the employee and the employee's supervisor, whether changes to another schedule type are necessary and appropriate.

A DHS–CS employee's work schedule, and any minimum hours of work, is determined at the time of appointment and recorded as part of documenting the employee's qualified position. *See* § 158.705. A DHS–CS employee's work schedule and minimum hours of work may change during the employee's service in the DHS–CS and DHS records any such updates in the documentation associated with the employee's qualified position.

All DHS–CS employees are expected to perform DHS–CS cybersecurity work associated with their assignments, especially in response to exigent circumstances and emergencies, including cybersecurity incidents. *See* § 158.705. This may require cybersecurity work to be performed at unexpected times or for more hours than the minimum number of hours associated with the employees' schedules. Hours worked by a DHS–CS employee that exceed that employee's minimum hours of work do not affect the employee's salary nor result in any automatic eligibility for or entitlement to compensation, including any type of additional compensation. *See* § 158.705.

DHS monitors the hours worked and reported by DHS–CS employees for purposes of managing the DHS–CS, including considering any changes to DHS–CS employees' schedules, and administering compensation, including assisting in consideration of any payment under a CTMS special working conditions program. *See* § 158.705. As mentioned previously, DHS considers a DHS–CS employee's work schedule when reviewing work conditions or circumstances that may warrant providing a payment under a special working conditions payment program.

DHS–CS employees with full-time and part-time schedules are expected to work at least their minimum hours of work. *See* § 158.705. If the hours actually worked by the employee are less than the employee's minimum hours of work, the employee must use time-off or must be placed in an appropriate non-pay status to account for the difference between hours actually worked by the employee and the employee's minimum hours of work.

A DHS–CS employee's hours worked directly impacts the employee's compensation. A DHS–CS employee's hours worked is important for salary administration generally and is a factor in providing CTMS special working

conditions payments, holidays, leave, and compensatory time-off for religious purposes. *See* § 158.705. In alignment with the CTMS compensation strategy, the CTMS work scheduling system acknowledges the unpredictable nature of cybersecurity work and the expectation that DHS–CS employees occasionally work unusual hours and extended hours, as needed, to execute the DHS cybersecurity mission, especially in response to exigent circumstances and emergencies. The work scheduling system also reflects an understanding of the cybersecurity talent market, especially current work expectations and arrangements used by other employers. Through the CTMS work scheduling system, DHS is able to accurately administer DHS–CS employees' salaries, including based on DHS–CS employees' hours worked, to ensure that DHS employees receive sufficiently competitive compensation designed for their recruitment and retention.

DHS will implement the work scheduling system in CTMS policy and may establish other work scheduling requirements for DHS–CS employees, including designated days, hours, core hours, or limits on the number of work hours per day. The flexibility to establish other work scheduling requirements allows DHS to adjust to and effectively manage changes linked to the unpredictable nature of cybersecurity work, and respond to work arrangements used by other cybersecurity employers.

6. DHS–CS Recordkeeping

Under the CTMS deployment program, DHS creates records of a DHS–CS employee's employment in the DHS–CS. *See* § 158.706. DHS documents qualified positions and assignments, as well as other necessary recordkeeping, and updates those documents and records as necessary.

DHS documents a qualified position by documenting an individual's appointment to a qualified position. *See* § 158.076. Documentation of an individual's qualified position includes a description of the individual's CTMS qualifications and DHS–CS cybersecurity work that can be performed through application of those qualifications. Such documentation also includes applicable work and career structures, such as the individual's work level. Documentation of an individual's qualified positions also includes the individual's salary, current assignment, official worksite, and work schedule.

As discussed previously and stated in § 158.522, a DHS–CS employee serves in the same qualified position for the duration of employment in the DHS–CS, regardless of any changes to the employee's assignments, including primary DHS organizations or official worksite. DHS updates the documentation associated with a DHS–CS employee's qualified position to reflect changes affecting the employee's qualified position, such as enhancements to CTMS qualifications, any subsequent assignment, changes to applicable work and career structures, and changes to official worksite or work schedule. Such a change in documentation does not change the DHS–CS employee's qualified position or indicate that DHS has appointed the employee to a different qualified position.

Recordkeeping under CTMS also includes documenting assignments. Documentation of an assignment includes specific assignment information that describes the DHS–CS cybersecurity work activities of the assignment. *See* § 158.706. DHS also documents the timeframe of the assignment, the DHS organization to which the DHS–CS employee is assigned for the duration of the assignment, personnel security requirements for the assignment, location of the assignment, requirements and information related to work schedule, and information related to the performance management program (*e.g.,* information relevant for appraisal reviews, mission impact reviews, and development reviews such as goals and standards for evaluating performance). CTMS assignment information is similar to information contained in a series of artifacts commonly produced under Title 5, including a position description, performance plan, and individual development plan.

Updates to the documentation associated with a DHS–CS employee's qualified position also are not a promotion, transfer, or reassignment for any other purpose under 5 U.S.C. or 5 CFR, except as necessary for recordkeeping purposes only. *See* § 158.706. CTMS does not contain promotions, transfers, or reassignments as defined in Title 5 because they are actions defined based on talent management concepts that are inapplicable and not compatible with CTMS.[186]

While CTMS does not include certain Title 5 concepts, DHS may need to use certain Title 5 terms for recordkeeping purposes to ensure talent management actions for DHS–CS employees are administered and documented properly. DHS uses existing Federal personnel recordkeeping processes, standards, requirements, and systems of record, which use Title 5 terms, for personnel records related to employees in the DHS–CS. To accommodate the new approach to talent management under CTMS, DHS may need to use those Federal personnel recordkeeping processes, standards, requirements, and systems of record differently from how DHS uses them to support other existing personnel systems. For example, although a change in a DHS–CS assignment does not constitute a reassignment for purposes of Title 5, DHS may process a change in assignment for a DHS–CS employee as a ''reassignment'' and generate associated records, even though existing Federal personnel recordkeeping guidance defines ''reassignment'' as a change from one position to another position.[187] CTMS policy will address the integration of CTMS talent management actions with existing Federal personnel recordkeeping process, standards, requirements, and systems of record. *See* § 158.706

7. Details and Opportunities Outside of the DHS–CS

DHS may detail DHS–CS employees outside of DHS. *See* § 158.707. Detailing a DHS–CS employee outside of DHS under the CTMS deployment system may result in enhanced qualifications of the employee upon return to DHS. Additionally, detailing a DHS–CS employee may contribute to executing the DHS cybersecurity mission. For example, DHS is responsible for the security of the *.gov* domain and detailing a DHS–CS employee to another agency to support that agency with its *.gov* security would contribute to carrying out DHS's responsibilities.

DHS may approve a variety of details and external opportunities for DHS–CS employees under existing provisions of Title 5 and other laws governing details outside of DHS. *See* § 158.707. When detailing a DHS–CS employee under those other laws, DHS will abide by all terms and conditions of those laws. As such, only DHS–CS employees in continuing appointments may be assigned under the Intergovernmental Personnel Act because such

[186] *See e.g.* 5 CFR 210.102(b)(11) (defining ''promotion'' generally under Title 5 to mean a change to a higher grade when both the old and the new positions are under the GS or under the same type graded wage schedule); 5 CFR 531.203 (defining ''promotion'' for purposes under the GS to mean a GS employee's movement from one GS grade to a higher GS grade).

[187] U.S. Office of Personnel Management, *Guide to Processing Personnel Action* (Mar. 2017), page 14–4.

appointments are analogous to the types of appointments eligible for assignment under that Act.[188] Given the unique CTMS work valuation system and talent acquisition system, individuals in other Federal personnel systems or from outside of the Federal government may not be detailed to a qualified position in the DHS–CS. *See* § 158.707.

G. Developing Talent: Subpart H

Subpart H, Developing Talent, includes regulations addressing performance management and development of DHS–CS employees and establishes two elements of CTMS: The performance management program and the career development program. DHS uses the CTMS performance management program to: Establish and maintain individual accountability among DHS–CS employees; manage, recognize, and develop performance of DHS–CS employees; and improve effectiveness in executing the DHS cybersecurity mission. *See* § 158.802. DHS uses the CTMS career development program to guide career progression of DHS–CS employees, ensure development of the collective expertise of DHS–CS employees, and ensure continued alignment between DHS–CS employee qualifications and the set of CTMS qualifications. *See* § 158.803. The authority in 6 U.S.C 658 does not impact existing laws regarding performance management and career development, and DHS is establishing the CTMS performance management program under 5 U.S.C. Chapter 43 and 5 CFR part 430. DHS is establishing the CTMS career development program under 5 U.S.C. Chapter 41 and 5 CFR 410 and 430.

DHS is establishing the CTMS performance management program and the CTMS career development program in alignment with the DHS–CS's core values and the goals of the CTMS compensation strategy. This alignment reinforces the core values of expertise, innovation, and adaptability, and underscores the expectation of continual learning for DHS–CS employee performance and development. DHS–CS employees must ensure that their CTMS qualifications remain fresh as technology and threats as well as cybersecurity techniques and tactics change.

Alignment with the goals of the CTMS compensation strategy ensures that DHS manages DHS–CS employee performance with a focus on those goals of exceptional CTMS qualifications and mission impact, excellence and innovation in the performance of DHS–CS cybersecurity work, and continual learning. This focus aligns with opportunities for additional compensation, such as CTMS recognition, which is based primarily on mission impact, as discussed previously.

Alignment with the CTMS compensation strategy goal of continual learning is particularly important for performance management and career development. Such alignment reinforces that DHS–CS employees are expected to enhance their CTMS qualifications, which ultimately contributes to mission impact as DHS–CS employees apply those enhanced qualifications to perform DHS–CS cybersecurity work. The goal of continual learning also supports career progression, which is based on enhancements to CTMS qualifications and salary progression as discussed subsequently.

1. CTMS Performance Management Program

Performance management under 5 U.S.C. Chapter 43 and 5 CFR part 430 is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals.[189] Under 5 CFR 430.102, improving organizational effectiveness in the accomplishment of an agency's missions and goals should be integrated with other agency processes including individual accountability, recognition and development. To emphasize the linkage between individual accountability, recognition, and development in improving organizational effectiveness, the CTMS performance management program implements the systematic process of performance management for DHS–CS employees with three ongoing reviews: Appraisal reviews, development reviews, and mission impact reviews. *See* §§ 158.802, 158.804–158.806.

Collectively, the three ongoing reviews are designed to foster and encourage the improvement of organizational effectiveness in the accomplishment of agency mission and goals through individual accountability, contributions to the mission, and employee development, all of which are fundamental to performance management under 5 CFR part 430. CTMS appraisal reviews target individual accountability. CTMS development reviews focus on continual learning, and mission impact reviews serve as a critical intersection point for the other two reviews. As part of CTMS mission impact reviews, DHS analyzes and describes a DHS–CS employee's influence on the execution of the DHS cybersecurity mission through the application of the DHS–CS employee's CTMS qualifications to perform DHS–CS cybersecurity work. In turn, DHS uses the results of mission impact reviews to support decisions relating to the type and amount of CTMS recognition a DHS–CS employee may receive.

To complete the three reviews under the CTMS performance management program, DHS may collect information and input on a periodic or ongoing basis from the DHS–CS employee being reviewed, other DHS–CS employees, the employee's supervisor, and other appropriate officials. *See* § 158.802. Periodic or ongoing gathering of information and input from such individuals ensures that DHS has sufficient information from individuals familiar with a DHS–CS employee's CTMS qualifications and performance of DHS–CS work through one or more assignments. Such information and input enable DHS to make informed determinations and take appropriate talent management actions related to all three types of reviews under the CTMS performance management program.

DHS conducts CTMS appraisal reviews using a performance appraisal program, established specifically for DHS–CS employees, that fulfills the specific requirements for appraisal reviews under 5 CFR 430. DHS uses the CTMS appraisal program to review and evaluate the performance of DHS–CS employees, and to ensure DHS–CS employees' individual accountability. *See* § 158.804. The appraisal program for DHS–CS employees includes one or more progress reviews, as defined in 5 CFR 430.203, and an appraisal that results in a rating of record, as defined in 5 CFR 430.203. DHS addresses unacceptable performance, as defined in 5 U.S.C. 4301(3), under the provisions of 5 CFR part 432 or part 752.

As mentioned previously, a DHS–CS employee is ineligible to receive CTMS recognition if DHS determines a DHS–CS employee's performance is unacceptable or the employee receives an unacceptable rating of record. *See* §§ 158.630 and 158.804. For the same reasons, a DHS–CS employee may also be excluded from mission impact reviews. *See* 158.804. Mission impact reviews serve as a basis for decisions about CTMS recognition, and a DHS–CS

[188] *See* 5 CFR part 334; U.S. Office of Personnel Management website *Policy, Data Oversight: Hiring Information, https://www.opm.gov/policy-data-oversight/hiring-information/intergovernment-personnel-act/#url=Provisions* (last visited May 25, 2021).

[189] 5 CFR 430.102.

employee should not be recognized if the employee's performance is unacceptable.

CTMS mission impact reviews are used to evaluate a DHS–CS employee's mission impact throughout the employee's service in a qualified position and to generate a mission impact summary at least annually. *See* § 158.805. Mission impact reviews capture DHS–CS employee mission impact on an ongoing basis. Application of a DHS–CS employee's CTMS qualifications to successfully and proficiently perform DHS–CS cybersecurity work results in mission impact attributable to that employee. In reviewing a DHS–CS employee's mission impact, individually or as part of a group or both, DHS considers a variety of factors such as: Superior application of qualifications to perform DHS–CS cybersecurity work; significant enhancements to qualifications; special contributions to cybersecurity technologies, techniques, tactics, or procedures; and notable improvements to execution of the DHS cybersecurity mission.

Mission impact reviews are closely connected to CTMS compensation. Capturing, encouraging, and recognizing DHS–CS employee mission impact is part of how DHS manages the DHS–CS based on the DHS–CS's core values and in alignment with the goals of the compensation strategy as previously discussed. As a result of mission impact reviews, DHS makes distinctions among DHS–CS employees to support decisions related to CTMS recognition.

CTMS development reviews are used to review a DHS–CS employee's career progression throughout the employee's service in the DHS–CS. *See* § 158.806. As described under § 158.803, career progression in the DHS–CS is based on enhancement of CTMS qualifications and salary progression resulting from recognition. DHS uses development reviews to generate a development summary at least annually for each DHS–CS employee, and development summaries may include plans for the learning and career progression of a DHS–CS employee or group of DHS–CS employees. DHS may conduct development reviews concurrently with mission impact reviews.

As part of development reviews, DHS may compare, categorize, and rank DHS–CS employees to support decisions related to professional development and training, as well as subsequent assignments. *See* § 158.806. Information from development reviews can help DHS determine which types of trainings would benefit DHS–CS employees the most. Such information is also useful in tailoring professional development offerings for DHS–CS employees. DHS may also use information from development reviews in matching DHS–CS employees to subsequent assignments. Certain subsequent assignments may assist DHS–CS employees in maintaining and enhancing their CTMS qualifications, including through exposure to specific types of cybersecurity work. As mentioned previously, under the deployment program, DHS communicates with DHS–CS employees about such subsequent assignment opportunities.

Development reviews connect the CTMS performance management program and the CTMS career development program. Development reviews are the primary means by which DHS determines the extent to which DHS–CS employees have enhanced their CTMS qualifications and thus assist DHS in guiding career progression for DHS–CS employees under the career development program.

2. CTMS Career Development Program

DHS is establishing and administering the CTMS career development program to guide DHS–CS employee career progression, ensure development of the collective expertise of DHS–CS employees through continual learning, and ensure the continued alignment between the qualifications of DHS–CS employees and the set of CTMS qualifications. *See* § 158.803. The career development program is closely linked to the CTMS performance management program and DHS will use development reviews from the performance management program as part of the career development program.

Career progression in the DHS–CS is based on enhancement of CTMS qualifications and salary progression resulting from recognition adjustments. *See* § 158.803. Enhancement of CTMS qualifications is one component of career progression in the DHS–CS. DHS needs the collective expertise of the DHS–CS to keep pace with the continual evolution of cybersecurity work. Salary progression is another component of career progression in the DHS–CS. As DHS–CS employees progress through their careers, DHS recognizes DHS–CS employees' advances through recognition adjustments. As mentioned previously, CTMS is not a longevity-based personnel system, and career progression in the DHS–CS is not based on length of service in the DHS–CS or the Federal government.

Under the CTMS career development program, DHS guides career progression of DHS–CS employees using development strategies based on information from development reviews, mission-related requirements, and strategic talent priorities. *See* § 158.803. DHS aims to guide the career progression of DHS–CS employees to ensure that DHS–CS employees are prepared to execute the DHS cybersecurity mission, including into the future.

Reviewing and encouraging DHS–CS employee career progression is part of how DHS manages the DHS–CS based on the DHS–CS's core values and in alignment with the goals of the compensation strategy as previously discussed. Reviewing and encouraging excellence, innovation, and continual learning through professional development and training opportunities and certain subsequent assignments ensures DHS–CS employees are recognized for such progression. DHS needs the collective expertise of the DHS–CS to keep pace with the ever-evolving nature of cybersecurity work, cybersecurity risks, and cybersecurity threats, and development reviews help foster and encourage a DHS–CS with similarly evolving expertise.

The career development program emphasizes continual learning. DHS needs the collective expertise of the DHS–CS to keep pace with the evolution of cybersecurity work and the dynamic DHS cybersecurity mission. DHS also needs to ensure the DHS–CS collective expertise reflects the set of CTMS qualifications. The career development program, and its emphasis on continual learning, assists DHS in accomplishing this.

DHS establishes, maintains, and communicates criteria for continual learning for DHS–CS employees. Such criteria include recommended and required learning activities, such as: Completion of a specific course of study; completion of mission-related training defined in 5 CFR 410.101; performance of certain cybersecurity work as part of DHS–CS assignments; and participation in opportunities for CTMS professional development and training. *See* § 158.803. DHS aims to utilize all available opportunities for DHS–CS employee development, including opportunities under CTMS and under Title 5. Such opportunities may include subsequent assignments, details outside of DHS, and training and professional development under Title 5, such as academic degree training under 5 U.S.C. 4107.

DHS verifies a DHS–CS employee's enhancement of CTMS qualifications, which may include review by the CTMB or assessment using standardized

instruments and procedures designed to measure the extent to which a DHS–CS employee has enhanced the employee's qualifications. DHS–CS employees may also participate in a formal assessment process for DHS to verify enhancement of CTMS qualifications.

H. Federal Employee Rights and Requirements & Advisory Appointments: Subparts I & J

Subpart I contain regulations addressing Federal civil service employee rights and requirements that apply under CTMS and in the DHS–CS. Subpart J addresses CTMS political appointments, known as advisory appointments. These subparts clarify application to DHS–CS employees of certain protections and requirements for Federal employees and describe employment in the DHS–CS for DHS–CS advisory appointees.

1. Subpart I—Employee Rights, Requirements, and Input

Subpart I, Employee Rights, Requirements, and Input, contains regulations establishing a program for addressing DHS–CS employee input specific to the DHS–CS and a DHS–CS employee's employment. Subpart I also clarifies that certain requirements and protections for Federal employees apply for DHS–CS employees.

DHS–CS employees retain rights and access to processes that may be relevant to employment in the DHS–CS. The provisions of 5 U.S.C. Chapter 75 and 5 U.S.C. 4303 regarding adverse actions and 5 U.S.C. Chapter 35, Subchapter I regarding reductions in force apply to talent management actions under CTMS. *See* § 158.901. Also, DHS–CS employees retain rights, as provided by law, to seek review of employment-related actions before third parties, such as the Equal Employment Opportunity Commission, Merit Systems Protection Board, Office of Special Counsel and Department of Labor. *See* § 158.901. Additionally, back pay remains available under 5 U.S.C. 5596 for unjustified or unwarranted talent management actions, and such actions have the same meaning as personnel actions in 5 U.S.C. 2302(a)(2). *See* § 158.901.

Like other Federal officers and employees, DHS–CS employees are employees covered by the Ethics in Government Act section 101(f)(3), and are subject to the criminal conflict of interest rules as well as government ethics requirements. *See* § 158.902. These include: criminal conflict of interest provisions in 18 U.S.C. 201–209; Ethics in Government Act, as amended, and implementing regulations in 5 CFR, Chapter XVI, Subchapter B; Supplemental Standards of Conduct for Employees of the Department of Homeland Security in 5 CFR part 4601; and DHS policy. *See* § 158.902. Under these ethics requirements, DHS–CS employees must seek approval for certain outside activities, comply with ethics program requirements, and other applicable laws, including post-government employment restrictions. *See* § 158.902.

In addition to the rights and access to processes outside of CTMS, DHS–CS employees also have access to an employee input program under CTMS. DHS is establishing a program for DHS–CS employees to express employment-related concerns and recommendations for enhancing CTMS administration and DHS–CS management. *See* § 158.903. The CTMS employee input program provides a process for DHS–CS employees to request review of certain talent management actions. DHS will implement this program in CTMS policy, and that policy will address the talent management actions covered by the program and the process for expressing input.

One purpose of the employee input program is to establish opportunities for DHS–CS employees to raise, and have addressed, employment-related concerns without formal litigation. The program, however, does not replace opportunities for redress with relevant third parties, mentioned previously. CTMS policy implementing the employee input program will describe how the program interacts with these other third-party redress avenues.

Another purpose of the employee input program is to provide a process for DHS–CS employees to provide feedback on CTMS and the DHS–CS. This feedback will help the CTMB evaluate whether the CTMS is fulfilling the purpose of its design to recruit and retain individuals with the qualifications necessary to execute the DHS cybersecurity mission. As discussed previously, CTMS has several interrelated elements that function together. Feedback from DHS–CS employees is critical, and the employee input program provides an opportunity for DHS–CS employees to be heard and share their thoughts about the operation of CTMS, including hiring, compensation, and development practices that could be improved. The CTMB may use information from the employee input program for its periodic review of CTMS administration and operation.

2. Subpart J—Advisory Appointments

Subpart J, Advisory Appointments, addresses political appointees under CTMS who serve in advisory appointments. An advisory appointment is an appointment to a qualified position that: The Secretary determines is of a policy-determining, policy-making, or policy advocating character or involves a close or confidential working relationship with the Secretary or other key appointed officials; does not have a salary set by statute; and is not required to be filled by an appointment by the President. *See* § 158.1001. DHS–CS advisory appointees are treated similar to other political appointees except regarding appointment and compensation. *See* §§ 158.1001–158.1003. DHS–CS advisory appointees are appointed to a qualified position through an advisory appointment, instead of a Schedule C position or non-career SES position. Compensation for DHS–CS advisory appointees are set under the CTMS compensation system, instead of under the GS, the SES, or other Federal pay system.

An advisory appointment may not be used for an appointment for which salary is set by statute; DHS sets salaries for all advisory appointees under the CTMS compensation system. DHS leadership positions that are established in statute and have a salary in the Executive Schedule set by statute are not covered by advisory appointments. DHS positions required to be filled by appointment by the President also are not covered by advisory appointments.

To treat advisory appointees like other political appointees for talent management purposes other than appointment and compensation, an advisory appointment is treated as an appointment to a Schedule C position under 5 CFR 213.3301. *See* § 158.1001. The provisions of OPM regulations governing talent management for Schedule C positions apply to advisory appointments, except appointment and compensation is governed by subpart J. DHS also tracks and coordinates advisory appointments with the Executive Office of the President and OPM, as is done with other political appointments. Employment restrictions that apply to other political appointees also apply to advisory appointees as if the advisory appointee was in a Schedule C position. For example, Executive Order 13989 requiring an ethics pledge from political appointees will apply to advisory appointees.

Appointment to an advisory appointment includes the individual participating in the CTMS assessment

program. *See* § 158.1002. As discussed previously in this document, DHS determines individuals' qualifications under the CTMS assessment program, and CTMS qualifications are organized into broad categories defined primarily in terms of capabilities, such as general professional capabilities, cybersecurity technical capabilities, and leadership capabilities. DHS anticipates that the assessment processes for advisory appointments address all such categories, with a focus on both the technical and policy advisory roles of advisory appointees.

The Secretary or designee must approve the appointment of an individual to an advisory appointment by name, and all advisory appointees serve at the will of the Secretary. *See* § 158.1002. Like other political appointments, an advisory appointment terminates no later than the end of the term of the U.S. President under which the advisory appointee was appointed, and a DHS–CS advisory appointee may be removed at any time. The provisions of 5 U.S.C. Chapter 75 regarding adverse actions do not apply to talent management actions taken under this part for a DHS–CS advisory appointee because of the confidential, policy-determining, policy-making, or policy-advocating character of an advisory appointment.

Advisory appointments to qualified positions are limited and capped at a total number established by the Secretary or the Secretary's designee under § 158.1002. This cap reflects that noncareer appointments to SES positions are generally limited to 25 percent of the agency's number of total SES positions, and Schedule C positions are limited in total number under OPM direction.[190] Like Schedule C positions under 5 CFR 213.3301, DHS may not use an advisory appointment solely or primarily for the purpose of detailing any individual to the White House. *See* § 158.1002.

Once appointed, an advisory appointee in the DHS–CS is treated like other political appointees for all talent management purposes, except compensation. Like other DHS–CS employees, an advisory appointee receives a salary under the CTMS salary system, unless the appointee is providing uncompensated service. *See* § 158.1003. An advisory appointee may receive a salary in the standard range only because, as discussed previously, DHS uses the extended range for limited circumstances only. Like other political appointees, compensation for an advisory appointee is subject to guidance from the Administration on compensation for political appointees.

Like political appointees in Schedule C positions who may receive a promotion and GS grade increase, and political appointees in non-career SES positions who may receive a performance-based pay adjustment, an advisory appointee may receive salary adjustments in the form of recognition adjustments. Like a political appointee in a Schedule C position who may receive locality pay under the GS, an advisory appointee may receive a local cybersecurity talent market supplement. Like other DHS–CS employees, DHS administers salary and other compensation, including leave, for an advisory appointee based on consideration of the advisory appointee's work schedule under the CTMS work scheduling system. DHS also may convert an advisory appointee's salary into an hourly, biweekly, or other rate as necessary to ensure accurate operation of existing pay administration procedures and infrastructure, as mentioned previously.

An advisory appointee, unless providing uncompensated service, may also receive CTMS additional compensation, but only as provided in subpart J. Like other DHS–CS employees, additional compensation for advisory appointees is subject to and may be limited by the CTMS aggregate compensation cap. Additional compensation for advisory appointees is also subject to and may be limited by prohibitions, guidance, and other provision of law governing awards to political appointees, including 5 U.S.C. 4508 prohibiting awards to political appointees during a Presidential election period, and other restrictions and requirements in CTMS policy. Restrictions on additional compensation for advisory appointees aligns with general restrictions on certain types of compensation for political appointees across the Federal government, such as OPM guidance to agencies restricting discretionary awards, bonuses, and similar payments for Federal employees serving under political appointments.[191]

Like other types of political appointees who may receive monetary and other awards, advisory appointees may receive CTMS recognition payments, CTMS recognition time-off, and CTMS honorary recognition, subject to prohibitions, guidance, and other provision of law governing compensation for political appointees. An individual being appointed to an advisory appointment, however, may not receive any recognition as part of an offer of employment because other political appointees are prohibited from receiving recruitment incentives.[192]

An advisory appointee may receive CTMS professional development and training; however, unlike other DHS–CS employees, an advisory appointee may not receive any payment or reimbursement for costs of academic degree training or expenses to obtain professional credentials, including examinations to obtain such credentials. As discussed previously, CTMS professional development and training is based, in part, on payment of expenses to obtain professional credentials under 5 U.S.C. 5757, which prohibits such payments for any employee occupying or seeking to qualify for appointment to any position that is excepted from the competitive service because of the confidential, policy-determining, policy-making, or policy-advocating character of the position. Similarly, an advisory appointee is ineligible for CTMS student loan repayments, which as discussed previously are based on student loan repayment provisions of Title 5, and political appointees are ineligible to receive Title 5 student loan repayments.[193]

Like other political appointees in non-career SES positions and Schedule C positions, advisory appointees may receive types of compensation, including leave and benefits, authorized under CTMS and provided in accordance with provisions of Title 5. An advisory appointee, however, may not receive a CTMS special working conditions payment under a special working conditions payment program because of the nature of an advisory appointment: A political appointment, especially one with a close and confidential working relationship with the Secretary or other key appointed officials, involves different expectations about working conditions than the

[190] Committee on Homeland Security and Government Affairs, U.S. Senate (114th Congress, 2d Session), *Policy and Supporting Positions* (Dec. 1, 2016), Appendices 2 and 4, *available at https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf* (last visited May 25, 2021).

[191] *See e.g.,* U.S. Office of Personnel Management, CPM 2010–14, ''Guidance on Freeze on Discretionary Awards, Bonuses, and Similar Payment for Federal Employees Serving under Political Appointments'' (Aug. 2010), available at *https://chcoc.gov/content/guidance-freeze-discretionary-awards-bonuses-and-similar-payments-federal-employees-serving* (last visited May 25, 2021); U.S. Office of Personnel Management, C–19–24, ''Guidance on Awards for Employees and Agency Workforce Fund Plan'' (July 2019) available at *https://chcoc.gov/content/guidance-awards-employees-and-agency-workforce-fund-plan* (last visited May 25, 2021).

[192] *See* 5 CFR 575.104.

[193] *See* 5 CFR 537.104(b).

appointment of other DHS–CS employees.

An advisory appointee may receive CTMS allowances in nonforeign areas under 5 U.S.C. 5941 like other DHS–CS employees because under 6 U.S.C. 658(b)(3)(B) mandates that all employees in qualified positions ''shall be eligible'' for such allowances on the same basis and to the same extent as if the employee in the qualified positions was covered by 5 U.S.C. 5941. A CTMS allowance in nonforeign areas for an advisory appointee, however, is subject to prohibitions, guidance, and other provision of law governing compensation for political appointees.

V. Appendix: Reference Materials

The following are the most relevant reference materials reviewed by a specialized DHS team as part of designing CTMS to solve DHS's historical and ongoing challenges recruiting and retaining cybersecurity talent:

- William Crumpler & James A. Lewis, *The Cybersecurity Workforce Gap,* Center for Strategic & International Studies, (Jan. 2019) *available at https://www.csis.org/analysis/cybersecurity-workforce-gap* (last visited May 25, 2021).
- Peter F. Drucker, *Knowledge Worker Productivity: The Biggest Challenge,* 41 California Management Review 79 (Winter 1999).
- Robert L. Heneman, Ph.D., *Work Evaluation: Strategic Issues and Alternative Methods,* prepared for the U.S. Office of Personnel Management, FR–00–20 (July 2000, Revised Feb. 2002).
- Homeland Security Advisory Council, U.S. Department of Homeland Security, *CyberSkills Task Force Report* (Fall 2012).
- Joseph W. Howe, *History of the General Schedule Classification System,* prepared for the U.S. Office of Personnel Management, FR–02–25 (Mar. 2002).
- (ISC)[2],
  - *Hiring and Retaining Top Cybersecurity Talent: What Employers Need to Know About Cybersecurity Jobseekers* (2018), available at *https://www.isc2.org/Research/Hiring-Top-Cybersecurity-Talent* (last visited May 25, 2021).
  - *Strategies for Building and Growing Strong Cybersecurity Teams,* (ISC)[2] Cybersecurity Workforce Study (2019), available at *https://www.isc2.org/Research/2019-Cybersecurity-Workforce-Study* (last visited May 25, 2021).
- Martin C. Libicki et al, *H4CKER5 WANTED: An Examination of the Cybersecurity Labor Market,* National Security Research Division, RAND Corporation (2014) available at *https://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR430/RAND_RR430.pdf* (last visited May 25, 2021).
- Bernard Marr, *The Future of Work: 5 Important Ways Jobs Will Change the 4th Industrial Revolution,* Forbes, July 15, 2019, available at *https://www.forbes.com/sites/bernardmarr/2019/07/15/the-future-of-work-5-important-ways-jobs-will-change-in-the-4th-industrial-revolution/#3ffd62b754c7* (last visited May 25, 2021).
- Susan Milligan, *HR 2025: 7 Critical Strategies to Prepare for the Future of HR,* HR Magazine, Oct. 29, 2018 available at *https://www.shrm.org/hr-today/news/hr-magazine/1118/Pages/7-critical-strategies-to-prepare-for-the-future-of-hr.aspx* (last visited May 25, 2021).
- National Academy of Public Administration,
  - *Revitalizing Federal Management: Managers and Their Overburdened Systems* (Nov. 1983).
  - *Modernizing Federal Classification: An Opportunity for Excellence* (July 1991).
  - *The Transforming Power of Information Technology: Making the Federal Government an Employer of Choice for IT Employees,* Summary Report (Aug. 2001).
  - *Recommending Performance-Based Federal Pay. A Report by the Human Resources Management Panel* (May 2004).
  - *Transforming the Public Service: Progress Made and the Work Ahead* (Dec. 2004).
  - *Building a 21st Century Senior Executive Service* (Mar. 2017).
  - *No Time to Wait: Building a Public Service for the 21st Century* (July 2017).
  - *No Time to Wait, Part 2: Building a Public Service for the 21st Century* (Sep. 2018).
- National Commission on Military, National, and Public Service, *Inspired to Serve,* (Mar. 2020).
- National Research Council, *Professionalizing the Nation's Cybersecurity Workforce?: Criteria for Decision-Making,* The National Academies Press (2013) available at *https://doi.org/10.17226/18446* (last visited May 25, 2021).
- Partnership for Public Service,
  - *Cyber In-Security: Strengthening the Federal Cybersecurity Workforce* (July 2009).
  - *Cyber In-Security II: Closing the Federal Talent Gap* (Apr. 2015).
- Emil Sayegh, *As the End of 2020 Approaches, The Cybersecurity Talent Drought Gets Worse,* Forbes, Sep. 22, 2020, available at *https://www.forbes.com/sites/emilsayegh/2020/09/22/as-the-end-of-2020-approaches-the-cybersecurity-talent-drought-gets-worse/?sh=104825545f86* (last visited May 25, 2021).
- Society for Human Resource Management, *The New Talent Landscape: Recruiting Difficulty and Skills Shortages* (June 2016), available at *https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Pages/Talent-Landscape.aspx* (last visited May 25, 2021).
- Harry J. Thie et al, *Future Career Management Systems for U.S. Military Officers,* Santa Monica, CA: RAND Corporation, MR–470–OSD, prepared for the Office of the Secretary of Defense (1994) available at *https://www.rand.org/pubs/monograph_reports/MR470.html* (last visited May 25, 2021).
- U.S. Cyberspace Solarium Commission,
  - U.S. Cyberspace Solarium Commission Report (Mar. 2020).
  - Growing a Stronger Federal Cyber Workforce, CSC White Paper #3 (Sep. 2020).
- U.S. Department of Homeland Security, *DHS Cybersecurity Workforce Strategy: Fiscal Years 2019–2023.*
- U.S. Government Accountability Office,
  - *Description of Selected Systems for Classifying Federal Civilian Positions and Personnel,* GGD–84–90 (July 1984).
  - *Human Capital: Opportunities to Improve Executive Agencies' Hiring Process,* GAO–03–450 (May 2003).
  - *Human Capital: Implementing Pay for Performance at Selected Personnel Demonstration Projects,* GAO–04–83, (Jan. 2004).
  - *Human Capital: Federal Workforce Challenges in the 21st Century,* GAO–07–556T (Mar. 2007).
  - *Human Capital: OPM Needs to Improve the Design, Management, and Oversight of the Federal Classification System,* GAO–14–677 (July 2014).
  - *Federal Workforce: Sustained Attention to Human Capital Leading Practices Can Help Improve Agency Performance,* GAO–17–627T, (May 2017).
  - *Federal Workforce: Key Talent Management Strategies for Agencies to Better Meet Their Missions,* GAO–19–181 (Mar. 2019).
  - *Priority Open Recommendations: Office of Personnel Management,* GAO–19–322SP (April 2019).
  - *Federal Workforce: Talent Management Strategies to Help Agencies Better Compete in a Tight Labor Market,* GAO–19–723T (Sep. 2019).
- U.S. Office of Personnel Management,
  - *A Fresh Start for Federal Pay: The Case for Modernization,* (April 2002).
  - *Alternative Personnel Systems in the Federal Government: A Status Report on Demonstration Projects and Other Performance-Based Pay Systems,* (Dec. 2007).
  - *Introduction to the Position Classification Standards* (2009).
- U.S. Merit Systems Protection Board,
  - *Attracting the Next Generation: A Look at Federal Entry-Level New Hires* (Jan. 2008).
  - *In Search of Highly Skilled Workers: A Study on the Hiring of Upper Level Employees From Outside the Federal Government* (Feb. 2008).
  - *Job Simulations: Trying Out for a Federal Job* (Sep. 2009).
- Sheldon Whitehouse et al, *From Awareness to Action: A Cybersecurity Agenda for the 45th President,* Report of the CSIS Cyber Policy Task Force, Center for Strategic & International Studies (Jan. 2017), available at *https://www.csis.org/analysis/awareness-action* (last visited May 25, 2021).

VI. Public Participation and Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written comments on this interim final rule. Comments that will provide the most assistance to DHS will reference a specific portion of the interim final rule, explain the reason for any suggestion or recommended change, and include data, information, or authority that supports such suggestion or recommended change. DHS will review all comments received on this interim final rule, but may choose not to post off-topic, inappropriate, or duplicative comments. To submit a comment:

- Go to *http://www.regulations.gov* and follow the instructions for submitting comments for docket number DHS–2020–0042. If your material cannot be submitted using *http://www.regulations.gov,* contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternative instructions.
- All submissions received must include the agency name and docket number for this rulemaking.
- Comments posted to *http://www.regulations.gov* are posted without change and will include any personal information provided. For more information about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

VII. Statutory and Regulatory Requirements

DHS developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below is a summary of the analysis based on these statutes or E.O.s.

A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is one of agency management and personnel. While such rules are not considered rules subject to review by OMB under E.O. 12866,[194] OMB has reviewed it consistent with the principles of that Order. This rule does not impose costs or burdens on the private sector. The additional government expense to operate and maintain CTMS in the future is projected to be $12 to $17 million, annually.

An assessment of potential costs and benefits follows.

1. Background and Purpose

CTMS is a new mission-driven, person-focused, and market-sensitive approach to talent management featuring several interrelated elements. Each of the CTMS elements (strategic talent planning process, talent acquisition system, compensation system, deployment program, performance management program, and career development program) represent a shift from the talent management methods and practices Federal agencies traditionally use to manage Federal civil service talent. CTMS is designed to recruit and retain individuals with the skills, called qualifications, necessary to execute the DHS cybersecurity mission. CTMS is also designed to adapt to changes in cybersecurity work, the cybersecurity talent market, and the DHS cybersecurity mission over time. With CTMS, DHS is creating a new type of Federal civilian position, called a qualified position, and the cadre of those positions and the individuals appointed to them is called the DHS–CS. DHS organizations will use CTMS when they need to recruit and retain talent with CTMS qualifications and DHS determines the recruitment and retention of such talent would be enhanced by specialized CTMS practices for hiring, compensation, and development.

The DHS organizations using CTMS will provide for the compensation of new DHS–CS employees they hire, and OCHCO, which contains the specialized team responsible for designing CTMS, will assist those DHS organizations as they hire, compensate, and develop those new DHS–CS employees. The Cybersecurity and Infrastructure Security Agency (CISA) and the DHS Office of the Chief Information Officer (DHS OCIO) will be the first to use CTMS and hire new DHS–CS employees. In early FY 2022, CISA and DHS OCIO plan to use CTMS for approximately 150 priority hires.

2. CTMS Costs: Designing, Establishing, and Administering CTMS

To design CTMS and prepare for its establishment and administration, OCHCO needed the talent management infrastructure necessary to conceive of and plan for DHS to use a new approach to Federal civilian talent management. Most importantly, OCHCO needed individuals with a variety of highly specialized talent management expertise in areas ranging from industrial and organizational (I/O) psychology and compensation design to Federal talent management policy and employment law. Such expertise was necessary to design each of the interrelated elements of CTMS as well as prepare for their respective administration. All CTMS elements, especially those reflecting the greatest shifts from existing Federal talent management methods and practices, required effort to envision, including a variety of research and planning activities to translate ideas into specialized hiring, compensation, and development practices DHS could begin to use. This preparation required DHS to review existing talent management business processes in use across DHS organizations and formulate adjustments to ensure the effective administration of CTMS and its elements. Notable adjustments involved reviewing approval and recordkeeping procedures for talent management actions as well as operation of existing information technology support systems, such as the DHS personnel and payroll system.

In fiscal year (FY) 2016, Congress began providing OCHCO with funding to design and establish CTMS. The table below summarizes the funding Congress provided OCHCO for CTMS from FY 2016 through FY 2021; it also outlines how OCHCO used the funding to design and prepare to administer each CTMS element.

[194] E.O. 12866, sec. 3(d) (excluding from the definition of ''regulation'' or ''rule'' subject to the E.O. requirements, ''regulations or rules that are limited to agency organization, management, or personnel matters'').

TABLE 3—FUNDING OCHCO RECEIVED FOR CTMS FROM FY 2016–FY 2021

[$ millions]

	Strategic talent planning process			Talent acquisition system	Compensation system	Deployment program	Performance management program	Career development program	Total by FY	% Total by FY
	Identification of work and qualifications	Talent market analysis	Work valuation system							
FY 2016	0.85	0.16	0.26	0.37	0.3	0.2	0.23	0.2	2.57	5
FY 2017	0.99	0.2	0.31	0.47	0.36	0.26	0.37	0.37	3.34	7
FY 2018	1.58	0.76	0.91	6.21	0.9	0.68	0.91	0.55	12.5	25
FY 2019	0.99	0.43	0.87	1.37	0.79	0.53	0.62	0.46	6.07	12
FY 2020	0.98	0.31	0.55	5.5	0.76	1.41	1.25	0.81	11.58	23
FY 2021	0.91	0.72	0.41	4.59	1.97	1.86	1.91	1.13	13.49	27
Total by Element	6.31	2.59	3.31	18.51	5.08	4.94	5.29	3.52	49.55	100
% Total by Element	13	5	7	37	10	10	11	7	100	.....

As shown in Table 3, OCHCO used approximately 37 percent of the funding received from FY 2016 through FY 2021 for the talent acquisition system, which required extensive industrial and organizational (I/O) psychology research to develop, validate, and test assessment processes, including simulations of DHS–CS cybersecurity work intended to test CTMS qualifications. OCHCO also used a total of approximately 25 percent of the FY 2016 through FY 2021 funding on parts of the strategic talent planning process, each of which are critical to the administration of several CTMS elements. Each of the remaining elements was associated with less than 11 percent of the funding received from FY 2016 through FY 2021.

For FY 2022, DHS has requested a budget increase of approximately $2.3 million above FY 2021 funding to cover expected enhancements to the talent acquisition and compensation systems. Additional spending, to be split evenly between these two elements, is intended to ensure that DHS can effectively use CTMS to source and assess more applicants, hire more DHS–CS employees, and monitor and adjust the compensation of those employees. Currently, DHS is planning with DHS organizations for a second phase of hiring to begin in FY 2022 and to include at least 350 new DHS–CS employees.

Notably, OCHCO used 74 percent and 26 percent of the FY 2016 through FY 2021 funding on contract support and OCHCO Federal team salaries and benefits, respectively. Much of the design of CTMS and its elements required temporary, start-up expertise, which was most efficiently secured via contract. In FY 2022, DHS anticipates initial start-up investments required to establish CTMS will be complete. DHS anticipates annual costs of operating CTMS in future years to range from approximately $12 million to $17 million, depending on the number of DHS organizations using CTMS, the growth of the population of DHS–CS employees, and the magnitude of adjustments to CTMS required as a result of changes in the cybersecurity talent market and the DHS cybersecurity mission. Simultaneously, DHS expects a larger proportion of annual CTMS administration costs to be dedicated to the salaries and benefits of Federal employees responsible for administering CTMS and supporting both DHS organizations using CTMS and the DHS–CS employees hired by them.

3. CTMS & DHS–CS Costs: Compensating and Retaining DHS–CS Employees

The costs of compensating DHS–CS employees with salaries and additional compensation are not accounted for in the funding OCHCO has received for CTMS. DHS organizations will cover the costs of compensating DHS–CS employees and any related expenses incurred after the selection of those employees. Costs for compensating DHS–CS employees will be constrained by the amount budgeted for DHS's compensation expenditures, as is the case for existing Federal civilian employees in positions established and managed under other existing Federal personnel systems.

OCHCO will work closely with DHS organizations to establish qualified positions in the DHS–CS and support the hiring, compensation, and development their DHS–CS employees. In addition, DHS organizations will commit to funding new qualified positions and DHS–CS employees prior to hiring. Such funding commitments will be based on hiring plans, including cost estimates, established by DHS organizations with assistance from OCHCO. In planning for the cost of qualified positions and DHS–CS employees, DHS will use a consistent cost estimating methodology, much like DHS uses to describe and estimate employee costs under other existing Federal personnel systems. In alignment with the new CTMS compensation system, the new cost estimating methodology will account for four new cost factors: Salary, salary adjustments (called recognition adjustments), cash bonuses (called recognition payments), and training.

Under CTMS, DHS sets salaries based on assessment of an individual's CTMS qualifications. Salaries for DHS–CS employees may include a local cybersecurity talent market supplement, intended to account for differences in the cost of talent in specific local cybersecurity talent markets, which are geographic areas defined by DHS. Salary adjustments under CTMS are based primarily on a DHS–CS employee's mission impact, and DHS makes such adjustments based on an understanding of current compensation practices in the broader cybersecurity talent market, including the salary rates of other employers.

CTMS additional compensation includes recognition payments based primarily on DHS–CS employees' mission impact, and DHS also provides such payments based on an understanding of current compensation practices in the broader cybersecurity talent market. Under CTMS, continuous learning is a critical aspect of DHS–CS employees' career progression, so the new cost estimating methodology includes training costs to ensure DHS organizations have requisite funding allocated to invest in the development of their DHS–CS employees. Remaining position costs, such as benefits, General Services Administration rent, and equipment, have been incorporated into the cost estimating methodology based on established rates DHS uses to estimate employee costs under other existing Federal personnel systems.

This rulemaking may have future distributional effects on the DHS budget regarding funding for positions and employees. At the launch of CTMS, a DHS organization establishing a new qualified position in the DHS–CS will cover the cost of that qualified position using existing funding. DHS organizations will need to review available funding and position vacancies when creating qualified positions in the DHS–CS to account for cost differences between qualified positions and positions previously defined using other Federal personnel systems. Because CTMS reflects shifts from existing talent management practices and methods, including those for compensation, DHS anticipates that the costs of qualified positions will vary from the costs a DHS organization previously projected for vacant positions based on the talent management practices of other existing personnel systems. These cost differences may require DHS organizations to adjust strategies for filling vacancies. In some cases, certain vacancies may need to remain unfilled to ensure sufficient funding for one or more DHS–CS qualified positions reflecting higher total costs than previously estimated. In other cases, a DHS organization may realize cost savings as it is able to hire highly-skilled DHS–CS employees with lower compensation and total costs than the organization previously projected using other existing Federal personnel systems. For example, a DHS organization might have planned to hire an experienced cybersecurity expert given previous recruiting challenges, but with CTMS, the organization may be able to hire, competitively compensate, and quickly develop a DHS–CS employee just beginning a career in cybersecurity.

4. CTMS & DHS–CS Benefits: Enhancing the Cybersecurity of the Nation

Cybersecurity is a matter of homeland security and one of the core missions of DHS. For more than a decade, DHS has encountered challenges recruiting and retaining mission-critical cybersecurity talent. During that time, as cybersecurity threats facing the Nation have grown in volume and sophistication, DHS has experienced spikes in attrition and longstanding vacancies in some cybersecurity positions. To address the DHS's ongoing challenges recruiting and retaining cybersecurity talent, DHS is establishing CTMS under the authority in 6 U.S.C. 658.

The main benefit of this rulemaking is enhancing the Nation's cybersecurity by enhancing DHS's capacity to recruit and retain top cybersecurity talent to execute the DHS cybersecurity mission. The DHS–CS employees hired, compensated, and developed using CTMS are expected to impact execution of the DHS cybersecurity mission, including by applying their CTMS qualifications to successfully and proficiently perform DHS–CS cybersecurity work. Given the ever-evolving nature of cybersecurity threats and risks, future costs of CTMS and the DHS–CS cannot be projected with certainty, and similarly, the benefits of CTMS and the DHS–CS cannot be estimated with certainty. While difficult for DHS to quantify in advance, the cybersecurity work performed by DHS–CS employees is anticipated to result in efficiencies in DHS cybersecurity mission execution. In the course of DHS–CS employees performing their work, DHS also anticipates that they will make contributions to cybersecurity technologies, techniques, tactics, or procedures, which will benefit both DHS and the Nation more broadly.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, DHS is not required to prepare a regulatory flexibility analysis for this rule.

C. Congressional Review Act

This rule is not covered by the Congressional Review Act (CRA), codified at 5 U.S.C. 801–808, because it is excluded from the definition of a ''rule'' under that Act. Under the CRA, certain rules are subject to requirements concerning congressional review of those rules. A ''rule'' for purposes of the CRA, however, does not include ''any rule relating to agency management or personnel.'' 5 U.S.C. 804(3)(B). As discussed in II. Basis and Purpose, this rule implementing a new talent management system for a subset of DHS's cybersecurity workforce is a matter relating to agency management or personnel. As such, this rule is excluded from the definition of ''rule'' under the CRA and is thus not subject to the CRA's requirements.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. Because this rule does not impose any Federal mandates on State, local, or Tribal governments, in the aggregate, or the private sector, and because this rule is exempt from written statement requirements under 2 U.S.C. 1532(a), this rule does not contain such a written statement.

E. E.O. 13132 (Federalism)

A rule has implications for federalism under E.O. 13132 if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Because this rule implements a new talent management system and only addresses DHS personnel matters, DHS determined in accordance with E.O. 13132 that this rule does not have federalism implications warranting the preparation of a federalism summary impact statement.

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

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

G. E.O. 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

H. National Environmental Policy Act

DHS analyzed this rule under Department of Homeland Security Management Directive 023–01 Rev. 01 and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual), which establishes the procedures DHS uses to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* and the Council on Environmental Quality (CEQ) regulations implementing NEPA

codified at 40 CFR parts 1500–1508. The CEQ regulations allow Federal agencies to establish categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1507.3(e)(2)(ii), 1501.4. Categorical exclusions established by DHS are set forth in Appendix A of the Instruction Manual. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)–(c). Instruction Manual section V.B(2)(a)–(c).

This rule implements a new talent management system with specialized practices for hiring, compensating, and developing cybersecurity talent to support the Department's cybersecurity mission. Because this rule is limited to agency management and personnel matters, it clearly falls within the scope of DHS categorical exclusions A1 (Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel) and A3(a) (Promulgation of rules of a strictly administrative or procedural nature), set forth in Appendix A of the Instruction Manual. This rule also is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this action is categorically excluded and no further NEPA analysis is required.

I. National Technology Transfer and Advance Act

The National Technology Transfer and Advancement Act, codified at 15 U.S.C. 272 note, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, DHS did not consider the use of voluntary consensus standards.

J. E.O. 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630.

K. E.O. 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

Executive Order 13045 requires agencies to consider the impacts of environmental health risk or safety risk that may disproportionately affect children. DHS has analyzed this rule under E.O. 13045 and determined it is not a covered regulatory action. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

L. E.O. 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

DHS has analyzed this rule under E.O. 13211 and has determined that it is not a ''significant energy action'' under that order because although it is a ''significant regulatory action'' under E.O. 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the Administrator of OMB's Office of Information and Regulatory Affairs has not designated it as a significant energy action.

M. Paperwork Reduction Act

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Any collection of information under this rule will be under existing collections of information concerning Federal hiring and Federal employment.

List of Subjects in 6 CFR Part 158

Administrative practice and procedure, Employment, Government employees, Reporting and recordkeeping requirements, and Wages.

■ For the reasons discussed in the preamble, DHS adds 6 CFR part 158 as follows:

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Authority : 6 U.S.C. 658.

Subpart H also issued under 5 U.S.C. Chapters 41 and 43; 5 CFR parts 410 and 430.

Subpart A—General Provisions

§ 158.101 Purpose.

(a) *Cybersecurity Talent Management System.* This part contains regulations establishing the Cybersecurity Talent Management System (CTMS) and the resulting DHS Cybersecurity Service (DHS–CS). CTMS is designed to recruit and retain individuals with the qualifications necessary to execute the DHS cybersecurity mission and is also designed to adapt to changes in cybersecurity work, the cybersecurity talent market, and the DHS cybersecurity mission.

(b) *DHS Cybersecurity Service.* Under this part, the Secretary or designee establishes and manages the DHS Cybersecurity Service (DHS–CS) described in subpart B of this part.

(c) *Regulations & policy.* The regulations in this part provide the policy framework for establishing and administering CTMS, and establishing and managing the DHS–CS. The Secretary or designee implements this part through CTMS policy defined in § 158.104.

§ 158.102 Scope of authority.

(a) *Authority.* This part implements the Secretary's authority in 6 U.S.C. 658 and governs talent management involving the individuals described in § 158.103.

(b) *Other laws superseded.* Unless explicitly stated otherwise in this part or explicitly provided otherwise by Congress, this part supersedes all other provisions of law and policy relating to appointment, number, classification, or compensation of employees that the Secretary deems are incompatible with the approach to talent management under this part. For compensation authorized under this part, the Department provides all such compensation under the authority in 6 U.S.C. 658, and also provides some types of such compensation in accordance with relevant provisions of other laws, including provisions in 5 U.S.C. and 5 CFR, to the extent compatible with the approach to talent management under this part.

(c) *Preservation of authority.* Nothing in this part shall be deemed or construed to limit the Secretary's authority in 6 U.S.C. 658.

§ 158.103 Coverage.

(a) *Talent management.* This part covers:

(1) Establishing and administering CTMS; and

(2) Establishing and managing the DHS–CS.

(b) *Individuals.* This part applies to any individual:

(1) Being recruited for employment under this part;

(2) Applying for employment under this part;

(3) Serving in a qualified position under this part;

(4) Managing, or participating in the management of, any DHS–CS employee under this part, including as a supervisor or any other employee of the Department who has the authority to take, direct others to take, recommend, or approve any talent management action under this part; or

(5) Serving on the Cybersecurity Talent Management Board described in § 158.302.

§ 158.104 Definitions.

As used in this part:

Additional compensation means the compensation described in § 158.603(c).

Advisory appointment means an appointment to a qualified position under subpart J of this part.

Annuitant has the same meaning as that term in 5 CFR 553.102.

Anticipated mission impact means the influence the Department anticipates an individual will have on execution of the DHS cybersecurity mission based on the individual's *CTMS qualifications* and application of those qualifications to successfully and proficiently perform *DHS–CS cybersecurity work.*

Assignment means a description of a specific subset of *DHS–CS cybersecurity work* and a specific subset of *CTMS qualifications* necessary to perform that work, the combination of which is associable with a qualified position.

Break in service means the time when an employee is no longer on the payroll of a Federal agency.

Continuing appointment means an appointment for an indefinite time period to a qualified position.

CTMS policy means the Department's decisions implementing and operationalizing the regulations in this part, and includes directives, instructions, and operating guidance and procedures.

CTMS qualifications means *qualifications* identified under § 158.402(c).

Cybersecurity incident has the same meaning as the term ''incident'' in 6 U.S.C. 659.

Cybersecurity risk has the same meaning as that term in 6 U.S.C. 659.

Cybersecurity Talent Management Board or *CTMB* means the group of officials described in § 158.302.

Cybersecurity Talent Management System or *CTMS* means the approach to talent management, which encompasses the definitions, processes, systems, and programs, established under this part.

Cybersecurity talent market means the availability, in terms of supply and demand, of talent relating to cybersecurity and employment relating to cybersecurity, including at other Federal agencies such as the Department of Defense.

Cybersecurity threat has the same meaning as that term in 6 U.S.C. 1501(5).

Cybersecurity work means activity involving mental or physical effort, or both, to achieve results relating to cybersecurity.

Department or *DHS* means the Department of Homeland Security.

DHS cybersecurity mission means the cybersecurity mission described in § 158.201. As stated in that section, the DHS cybersecurity mission encompasses all responsibilities of the Department relating to cybersecurity.

DHS Cybersecurity Service or *DHS–CS* means the qualified positions designated and established under this part and the employees appointed to those positions under this part.

DHS–CS advisory appointee means a DHS–CS employee serving in an advisory appointment under this part.

DHS–CS cybersecurity work means *cybersecurity work* identified under § 158.402(b).

DHS–CS employee means an *employee* serving in a qualified position under this part.

Employee has the same meaning as that term in 5 U.S.C. 2105.

Excepted service has the same meaning as that term in 5 U.S.C. 2103.

Executive Schedule means the pay levels described in 5 U.S.C. 5311.

Former DHS–CS employee means an individual who previously served, but is not currently serving, in a qualified position.

Functions has the same meaning as that term in 6 U.S.C. 101(9).

Mission impact means a DHS–CS employee's influence on execution of the DHS cybersecurity mission by applying the employee's CTMS qualifications to successfully and proficiently perform DHS–CS cybersecurity work.

Mission-related requirements means characteristics of an individual's expertise or characteristics of cybersecurity work, or both (including cybersecurity talent market-related information), that are associated with successful execution of the DHS cybersecurity mission, and that are determined by officials with appropriate decision-making authority.

Preference eligible has the same meaning as that term in 5 U.S.C. 2108.

Qualification means a quality of an individual that correlates with the successful and proficient performance of cybersecurity work, such as capability, experience and training, and education and certification. A capability is a cluster of interrelated attributes that is measurable or observable or both. Interrelated attributes include knowledge, skills, abilities, behaviors, and other characteristics.

Qualified position means *CTMS qualifications* and *DHS–CS cybersecurity work,* the combination of which is associable with an employee.

Renewable appointment means a time-limited appointment to a qualified position.

Salary means an annual rate of pay under this part and is basic pay for purposes under 5 U.S.C. and 5 CFR. The salary for a DHS–CS employee is described in § 158.603.

Secretary means the Secretary of Homeland Security.

Secretary or designee means the *Secretary* or an official or group of officials authorized to act for the Secretary in the matter concerned.

Strategic talent priorities means the priorities for CTMS and the DHS–CS set under § 158.304.

Supervisor means an *employee* of the Department who has authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, or to effectively recommend such actions. A supervisor for a DHS–CS employee may be a DHS–CS employee or may be an employee of the Department serving in a position outside the DHS–CS.

Talent management means a systematic approach to linking employees to mission and organizational goals through intentional strategies and practices for hiring, compensating, and developing employees.

Talent management action has the same meaning as the term *personnel action* in 5 U.S.C. 2302(a)(2) for applicable actions, and the terms *talent management action* and *personnel action* may be used interchangeably in this part.

Veteran has the same meaning as that term in 5 U.S.C. 2108.

Work level means a grouping of *CTMS qualifications* and *DHS–CS cybersecurity work* with sufficiently similar characteristics to warrant similar treatment in talent management under this part.

Work valuation means a methodology through which an organization defines and evaluates the value of work and the value of individuals capable of performing that work.

Subpart B—DHS Cybersecurity Service

§ 158.201 Cybersecurity mission.

Cybersecurity is a matter of homeland security and one of the core missions of the Department. Congress and the President charge the Department with responsibilities relating to cybersecurity and grant the Secretary and other officials authorities to carry out those cybersecurity responsibilities. The Department's cybersecurity mission is dynamic to keep pace with the evolving cybersecurity risks and cybersecurity threats facing the Nation and to adapt to any changes in the Department's cybersecurity responsibilities. The DHS cybersecurity mission encompasses all responsibilities of the Department relating to cybersecurity.

§ 158.202 DHS Cybersecurity Service (DHS–CS).

The Secretary or designee establishes and manages the DHS–CS to enhance the cybersecurity of the Nation through the most effective execution of the DHS cybersecurity mission.

§ 158.203 Positions in the DHS–CS.

(a) *Qualified positions.* The Secretary or designee designates and establishes qualified positions in the excepted service as the Secretary or designee determines necessary for the most effective execution of the DHS cybersecurity mission.

(b) *Designating qualified positions.* The Secretary or designee designates qualified positions under the deployment program, described in § 158.701, as part of determining when the Department uses CTMS to recruit and retain individuals possessing CTMS qualifications.

(c) *Establishing qualified positions.* The Secretary or designee establishes a qualified position under the talent acquisition system, described in § 158.501 of this part, by the appointment of an individual to a qualified position previously designated.

§ 158.204 Employees in the DHS–CS.

(a) *DHS–CS employees.* DHS–CS employees serve in the excepted service, and the Department hires, compensates, and develops DHS–CS employees using CTMS.

(b) *Mission execution and assignments.* DHS–CS employees execute the DHS cybersecurity mission by applying their CTMS qualifications to perform the DHS–CS cybersecurity work of their assignments.

(c) *Mission impact and recognition.* Application of a DHS–CS employee's CTMS qualifications to successfully and proficiently perform DHS–CS cybersecurity work results in mission impact attributable to that employee. The Department reviews a DHS–CS employee's mission impact as described in § 158.805, which may result in recognition as described in § 158.630.

(d) *Compensation.* In alignment with the compensation strategy described in

§ 158.601, the Department provides compensation to a DHS–CS employee as described in § 158.603.

(e) *Recruitment and development.* The Department strategically and proactively recruits individuals as described in § 158.510 and develops DHS–CS employees under the career development program, described in § 158.803, that emphasizes continual learning.

(f) *Core values.* The Department uses the core values, described in § 158.305, to manage the DHS–CS.

§ 158.205 Assignments in the DHS–CS.

(a) *Assignments generally.* Each DHS–CS employee has one or more assignments during the employee's service in the DHS–CS. The Department designates and staffs assignments under the deployment program, described in § 158.701.

(b) *Initial and subsequent assignments.* The Department matches an individual appointed to a qualified position with an initial assignment as described in § 158.703(c). The Department may match DHS–CS employees with one or more subsequent assignments as described in § 158.703(d).

Subpart C—Leadership

§ 158.301 Administering CTMS and Managing the DHS–CS.

(a) The Secretary or designee is responsible for administering CTMS and managing the DHS–CS, including establishing and maintaining CTMS policy.

(b) The Cybersecurity Talent Management Board (CTMB) is responsible for assisting the Secretary or designee in administering CTMS and managing the DHS–CS.

(c) The Secretary or designee, with assistance from the CTMB, administers CTMS and manages the DHS–CS based on:

(1) Talent management principles described in § 158.303;

(2) Strategic talent priorities described in § 158.304; and

(3) DHS–CS core values described in § 158.305.

§ 158.302 Cybersecurity Talent Management Board (CTMB).

(a) *Purpose.* As part of assisting the Secretary or designee in administering CTMS and managing the DHS–CS, the CTMB periodically evaluates whether CTMS is recruiting and retaining individuals with the qualifications necessary to execute the DHS cybersecurity mission.

(b) *Composition.* The CTMB comprises:

(1) Officials representing DHS organizations involved in executing the DHS cybersecurity mission; and

(2) Officials responsible for developing and administering talent management policy within the Department.

(c) *Membership.* The Secretary or designee:

(1) Appoints officials to serve as members of the CTMB;

(2) Designates the Co-Chairs of the CTMB; and

(3) Ensures CTMB membership fulfills the membership requirements in this section and includes appropriate representation, as determined by the Secretary or designee, from across the Department.

(d) *Operation.* The Secretary or designee establishes the CTMB and minimum requirements for CTMB operation.

(e) *External Assistance.* The CTMB may periodically designate an independent evaluator to conduct an evaluation of CTMS.

§ 158.303 Talent management principles.

(a) *Merit system principles.* CTMS is designed and the Secretary or designee, with assistance from the CTMB, administers CTMS based on the principles of merit and fairness embodied in the merit system principles in 5 U.S.C. 2301(b).

(b) *Prohibited personnel practices.* Any employee of the Department who has the authority to take, direct others to take, recommend, or approve any talent management action under this part must comply with 5 U.S.C. 2302(b) regarding talent management actions under this part.

(c) *Equal employment opportunity principles.* CTMS is designed and the Secretary or designee, with assistance from the CTMB, administers CTMS and manages the DHS–CS in accordance with applicable anti-discrimination laws and policies. Thus, talent management actions under this part that materially affect a term or condition of employment must be free from discrimination.

§ 158.304 Strategic talent priorities.

The Secretary or designee, with assistance from the CTMB, administers CTMS and manages the DHS–CS based on strategic talent priorities, which the Secretary or designee sets on an ongoing basis using:

(a) Information from strategic talent planning described in § 158.401(c);

(b) The Department's financial and resources planning functions, including the functions described in 6 U.S.C. 342(b);

(c) The Department's comprehensive strategic planning, including the plan described in 5 U.S.C. 306; and

(d) Departmental priorities.

§ 158.305 DHS–CS core values.

The Secretary or designee, with assistance from the CTMB, manages the DHS–CS based on the following core values:

(a) Expertise, including enhancing individual and collective expertise regarding cybersecurity through continual learning;

(b) Innovation, including pursuing new ideas and methods regarding cybersecurity work and cybersecurity generally; and

(c) Adaptability, including anticipating and adjusting to emergent and future cybersecurity risks and cybersecurity threats.

Subpart D—Strategic Talent Planning

§ 158.401 Strategic talent planning process.

(a) *Purpose.* On an ongoing basis, the Secretary or designee engages in a strategic talent planning process to ensure CTMS adapts to changes in cybersecurity work, the cybersecurity talent market, and the DHS cybersecurity mission.

(b) *Process.* The Secretary or designee establishes and administers a strategic talent planning process that comprises:

(1) Identifying DHS–CS cybersecurity work and CTMS qualifications based on the DHS cybersecurity mission as described in § 158.402;

(2) Analyzing the cybersecurity talent market as described in § 158.403;

(3) Describing and valuing DHS–CS cybersecurity work under the work valuation system described in § 158.404; and

(4) Ensuring CTMS administration and DHS–CS management is continually informed by current, relevant information as described in paragraph (c) of this section.

(c) *Informing CTMS administration and DHS–CS management.* The Secretary or designee aggregates information generated in the processes described in paragraphs (b)(1) through (3) of this section and information from administering CTMS, and uses that aggregated information to inform all other CTMS processes, systems, and programs under this part.

§ 158.402 DHS–CS cybersecurity work and CTMS qualifications identification.

On an ongoing basis, the Secretary or designee analyzes the DHS cybersecurity mission to identify:

(a) The functions that execute the DHS cybersecurity mission;

(b) The cybersecurity work required to perform, manage, or supervise those functions; and

(c) The set of qualifications, identified in accordance with applicable legal and professional guidelines, necessary to perform that work.

§ 158.403 Talent market analysis.

On an ongoing basis, the Secretary or designee conducts an analysis of the cybersecurity talent market, using generally recognized compensation principles and practices to:

(a) Identify and monitor trends in both employment for and availability of talent related to cybersecurity, including variations in the cost of talent in local cybersecurity talent markets, defined in § 158.612(b)(1), or variations in the cost of living in those markets, or both; and

(b) Identify leading strategies for recruiting and retaining talent related to cybersecurity.

§ 158.404 Work valuation system.

(a) The Secretary or designee establishes and administers a person-focused work valuation system to facilitate systematic management of the DHS–CS and to address internal equity among DHS–CS employees. The work valuation system is designed to reflect that:

(1) The DHS cybersecurity mission is dynamic;

(2) Cybersecurity work is constantly evolving; and

(3) Individuals, through application of their qualifications, significantly influence how cybersecurity work is performed.

(b) The work valuation system is based on:

(1) CTMS qualifications; and

(2) DHS–CS cybersecurity work.

(c) The Department uses the work valuation system to establish work and career structures, such as work levels, titles, ranks, and specializations, and the Department uses these work and career structures for purposes of talent management under this part, such as:

(1) Describing and categorizing DHS–CS employees, qualified positions, and assignments;

(2) Assessing and selecting individuals for appointment to qualified positions; and

(3) Compensating DHS–CS employees under this part, including establishing and administering one or more salary structures, described in § 158.611.

(d) The Department may also use the work and career structures described in paragraph (c) of this section for budget and fiscal purposes related to administering CTMS and managing the DHS–CS.

§ 158.405 Exemption from General Schedule position classification.

The provisions of 5 U.S.C. Chapter 51 regarding classification and 5 CFR part 511 regarding classification under the General Schedule, among other similar laws, do not apply under CTMS, to the DHS–CS, or to talent management involving the individuals described in § 158.103.

Subpart E—Acquiring Talent

Talent Acquisition System

§ 158.501 Talent acquisition system.

(a) The Secretary or designee establishes and administers a talent acquisition system, in accordance with applicable legal and professional guidelines governing the assessment and selection of individuals, to identify and hire individuals possessing CTMS qualifications.

(b) The talent acquisition system comprises the strategies, programs, and processes described in this subpart and in CTMS policy for proactively and strategically recruiting individuals, assessing qualifications of individuals, and considering and selecting individuals for employment in the DHS–CS and appointment to qualified positions.

§ 158.502 Exemption from other laws regarding appointment.

The provisions of the following laws, among other similar laws, do not apply under CTMS, to the DHS–CS, or to talent management involving the individuals described in § 158.103:

(a) The following provisions of 5 U.S.C.:

(1) Section 3320 regarding selection and appointment in the excepted service; and

(2) Chapter 51 regarding classification; and

(b) The following provisions of 5 CFR:

(1) Part 211 regarding veteran preference;

(2) Part 302 regarding employment in the excepted service (except § 302.203 regarding disqualifying factors);

(3) Part 352 regarding reemployment rights (except subpart C regarding detail and transfer of Federal employees to international organizations); and

(4) Part 511 regarding classification under the General Schedule.

Sourcing and Recruiting

§ 158.510 Strategic recruitment.

(a) On an ongoing basis, the Department develops and implements strategies for publicly communicating about the DHS cybersecurity mission and the DHS–CS and for proactively recruiting individuals likely to possess CTMS qualifications.

(b) The Department develops and implements strategies described in paragraph (a) of this section based on:

(1) CTMS qualifications and DHS–CS cybersecurity work; and

(2) Strategic talent priorities.

(c) In developing and implementing strategies described in paragraph (a) of this section, the Department may collaborate with:

(1) Other Federal agencies including the Department of Defense, the Office of Personnel Management, and the Department of Veterans Affairs;

(2) Institutions of higher education, as defined in 20 U.S.C. 1001, including historically Black colleges or universities, as described in 20 U.S.C. 1061(2), and other minority-serving institutions, as described in 20 U.S.C. 1067q(a);

(3) National organizations, including veterans service organizations recognized by the Department of Veterans Affairs, and professional associations chartered by Congress under 36 U.S.C. Part B; and

(4) Other similar organizations and groups.

(d) The Department considers the availability of preference eligibles and veterans for appointment under this part, and develops and implements specific strategies to proactively recruit such individuals.

§ 158.511 Outreach and sourcing.

(a) The Department uses a variety of sources, including publicly available information, to identify individuals or groups of individuals for recruitment under this subpart.

(b) CTMS policy implementing this subpart addresses:

(1) Communication of opportunities for employment in the DHS–CS;

(2) Communication of the application processes to individuals being recruited under this part or applying for employment under this part; and

(3) Acceptance and treatment of applications for employment in the DHS–CS, including minimum application requirements established under this part.

§ 158.512 Interview expenses.

(a) An individual being considered for employment in the DHS–CS may receive payment or reimbursement for travel to and from preemployment interviews, which may include participating in the assessment program described in § 158.520.

(b) The Department pays or reimburses interview expenses, described in paragraph (a) of this

section, in accordance with 5 U.S.C. 5706b and the Federal Travel Regulations at 41 CFR chapters 301 through 304.

Assessment and Hiring

§ 158.520 Assessment.

(a) The Department determines individuals' CTMS qualifications under the assessment program described in this section. To be considered for employment in the DHS–CS, an individual must participate in the assessment program and meet applicable rating or scoring thresholds in each assessment process in which that individual participates.

(b) The Department establishes and administers an assessment program, with one or more assessment processes, based on CTMS qualifications. The assessment program is designed to efficiently and accurately determine individuals' CTMS qualifications.

(c) Each assessment process compares the qualifications of an individual to CTMS qualifications. The Department develops and administers each assessment process in accordance with applicable legal and professional guidelines governing the assessment and selection of individuals.

(d) An assessment process may use standardized instruments and procedures to measure qualifications. An assessment process may also use demonstrations of qualifications determined appropriate by the Secretary or designee, such as rewards earned from the cybersecurity competition described in Executive Order 13870, published, peer-reviewed cybersecurity research, or a cybersecurity invention or discovery granted a patent under 35 U.S.C. Part II.

(e) The Department makes available information to assist individuals in understanding the purpose of, and preparing for participation in, an assessment process.

(f) To maintain the objectivity and integrity of the assessment program, the Department maintains control over the security and release of materials relating to the assessment program, including assessment plans, validation studies, and other content. Except as otherwise required by law, the Department does not release the following:

(1) Sensitive materials relating to the design and administration of the assessment program;

(2) Names or lists of individuals applying for employment in the DHS–CS; and

(3) Results or relative ratings of individuals who participated in the assessment program.

§ 158.521 Employment eligibility requirements and employment-related criteria.

(a) *Employment eligibility requirements.* To be eligible for employment in the DHS–CS, an individual must:

(1) Meet U.S. citizenship requirements as described in governing Appropriation Acts; and

(2) Comply with Selective Service System requirements described in 5 U.S.C. 3328.

(b) *Employment-related criteria.* The Department determines criteria related to employment in the DHS–CS, reviews individuals applying for employment in the DHS–CS using such criteria, and, as part of an offer of appointment to a qualified position, provides written notice of specific, applicable employment-related criteria necessary to obtain and maintain, employment in the DHS–CS. Employment-related criteria include:

(1) Fitness standards and similar factors described in Executive orders, 5 CFR 302.203, and policies of the Department;

(2) Personnel security requirements related to fitness standards and similar factors described in paragraph (b)(1) of this section;

(3) Geographic mobility requirements; and

(4) Other criteria related to any aspect of appointment or employment, including selection, appointments, qualified positions, or assignments, or some or all of the foregoing.

(c) *Accepting and maintaining employment-related criteria.* To be appointed to a qualified position, an individual must accept and satisfy the specific, applicable employment-related criteria associated with the individual's offer of appointment concurrent with the individual's acceptance of the offer of appointment. An individual's acceptance of an appointment to a qualified position constitutes acceptance of applicable employment-related criteria for that qualified position and the individual's agreement to satisfy and maintain those criteria.

(d) *Changes to employment-related criteria.* Employment-related criteria may change, and DHS–CS employees may be required to accept and satisfy such changes to maintain employment in the DHS–CS.

(e) *Disqualification.* The Department may disqualify an individual from consideration for employment in the DHS–CS or from appointment to a qualified position for: Providing false information to the Department, engaging in dishonest conduct with the Department, unauthorized disclosure of assessment materials for purposes of giving any applicant an advantage in the assessment process, or other actions related to an individual's character or conduct that may negatively impact the integrity or efficiency of the DHS–CS.

§ 158.522 Selection and appointment.

(a) The Department selects an individual for employment in the DHS–CS based on the individual's CTMS qualifications, as determined under the assessment program described in § 158.520.

(b) Prior to finalizing the selection of an individual for employment in the DHS–CS, the Department considers the availability of preference eligibles for appointment under this part, including those recruited based on specific strategies described in § 158.510(d), who have participated in the assessment program and met applicable rating or scoring thresholds, as described in § 158.520(a). When a selection is imminent and there are both preference eligibles and non-preference eligibles undergoing final consideration, the Department regards status as a preference eligible as a positive factor in accordance with CTMS policy.

(c) The Department appoints an individual to a qualified position under the authority in 6 U.S.C. 658 and this part, and all such appointments are in the excepted service and are one of the following types of appointment:

(1) A renewable appointment under § 158.523(a);

(2) A continuing appointment under § 158.523(b); or

(3) An advisory appointment under § 158.523(c).

(d) As part of selecting an individual for employment in the DHS–CS and appointing an individual to a qualified position under this part, the Department:

(1) Determines applicable work and career structures, including the individual's initial work level, using the work valuation system described in § 158.404;

(2) Sets the individual's initial salary using the salary system as described in § 158.620; and

(3) Matches the individual with an initial assignment as described in § 158.703(c).

(e) No qualified position may be established through the non-competitive conversion of a current Federal employee from an appointment made outside the authority of this part to an appointment made under this part.

(f) An individual who accepts an appointment to a qualified position under this part voluntarily accepts an appointment in the excepted service.

(g) A DHS–CS employee serves in the same qualified position throughout a single continuing appointment under this part and throughout multiple, consecutive renewable or continuing appointments under this part, regardless of any changes in the employee's assignments, including primary DHS organization, or changes in the employee's official worksite.

§ 158.523 Appointment types and circumstances.

(a) *Renewable appointment.* Appointment of an individual to a renewable appointment is for up to three years. The Department may renew a renewable appointment for any time period of up to three years, subject to any limitation in CTMS policy regarding the number of renewals. Subject to any additional limitation in CTMS policy, the Department may change an unexpired renewable appointment to a continuing appointment for a DHS–CS employee receiving a salary in the standard range described in § 158.613(b). The following types of renewable appointments include special conditions:

(1) *Reemployed annuitant.* Under this part, the Department may appoint an annuitant to a qualified position and must appoint the annuitant to a renewable appointment. An annuitant appointed to a qualified position serves at the will of the Secretary.

(2) *Uncompensated service.* Under this part, the Department may appoint to a qualified position an individual to provide uncompensated service, any such service is gratuitous service, and the Department must appoint such an individual to a renewable appointment. The gratuitous nature of service must be a condition of employment of such an appointment. The Secretary or designee must approve the appointment of each individual providing uncompensated service by name, and such individual if not providing gratuitous service would otherwise be eligible to receive a salary under this part at or above the amount described in § 158.614(a)(2). An individual providing uncompensated service serves at the will of the Secretary. An individual for appointment to a qualified position to provide uncompensated service need not be assessed under this part, and the documentation associated with that individual's qualified position need not include all the information listed in § 158.706(c).

(b) *Continuing appointment.* Appointment of an individual to a continuing appointment is for an indefinite time period.

(c) *Advisory appointment.* Appointment of an individual, including a former DHS–CS employee, to an advisory appointment is governed by subpart J of this part.

(d) *Former DHS–CS employee.* Appointment under this part of a former DHS–CS employee is governed by § 158.525.

(e) *Restoration to duty from uniformed service or compensable injury.* In accordance with 5 CFR part 353, the Department restores to duty a DHS–CS employee who is a covered person described in 5 CFR 353.103.

(f) *Current and former political appointees.* Appointment under this part of a current political appointee and a former political appointee, both as defined by OPM, may be subject to additional requirements outside of this part, including coordination with OPM.

§ 158.524 Initial service period.

(a) All individuals appointed under this part serve an initial service period that constitutes a probationary period of three years beginning on the date of appointment.

(b) Except as stated in paragraph (c) of this section, service in the DHS–CS counts toward completion of a current initial service period under paragraph (a) of this section. No other service in an appointment made outside the authority of this part may count toward completion of an initial service period under paragraph (a) of this section.

(c) Service as a DHS–CS advisory appointee, as a reemployed annuitant described in § 158.523(a)(1), or providing uncompensated service described in § 158.523(a)(2) does not count towards completion of an initial service period in a subsequent appointment to a qualified position.

(d) CTMS policy implementing this section addresses computation of each DHS–CS employee's initial service period, including accounting for working schedules other than full-time schedules described in § 158.705 and for periods of absence while in pay and nonpay statuses.

§ 158.525 Hiring of former DHS–CS employees.

(a) *Rejoining the DHS–CS.* To facilitate future service in the DHS–CS by former DHS–CS employees, the Department aims to:

(1) Maintain communication with former DHS–CS employees to understand their interest in future service in the DHS–CS;

(2) Provide opportunities for former DHS–CS employees to be considered for appointment again to qualified positions; and

(3) Acknowledge former DHS–CS employees' enhancements to qualifications while outside the DHS–CS.

(b) *Rehiring.* Except as provided in paragraphs (c) through (e) of this section, to be appointed again to a qualified position a former DHS–CS employee must:

(1) Participate again in the assessment program described in § 158.520 for the Department to determine the former DHS–CS employee's current CTMS qualifications; and

(2) Meet employment eligibility and accept and satisfy applicable employment-related criteria as described in § 158.521.

(c) *Reassessment.* A former DHS–CS employee whose most recent appointment to a qualified position was a renewable appointment or a continuing appointment must participate again in the assessment program described in § 158.520 unless the Department determines otherwise based on factors relevant to the former DHS–CS employee, such as:

(1) Time elapsed since the former DHS–CS employee's most recent appointment to a qualified position under this part;

(2) Similarity of cybersecurity work performed by the former DHS–CS employee since that individual's most recent appointment to a qualified position under this part; or

(3) Similarity of the former DHS–CS employee's CTMS qualifications during the former employee's most recent appointment under this part to the CTMS qualifications of a newly identified assignment under the deployment program in § 158.701.

(d) *Former advisory and political appointees.* Appointment under this part of a former DHS–CS employee who previously served in an advisory appointment or other political appointment may be subject to additional requirements, including coordination with the Office of Personnel Management.

(e) *Prospective advisory appointees.* Appointment of any former DHS–CS employee to an advisory appointment is governed by subpart J of this part.

Subpart F—Compensating Talent

Compensation System

§ 158.601 Compensation strategy.

To ensure the DHS–CS fulfills its purpose, as stated in § 158.202, the Secretary or designee aims to establish and administer a compensation system, described in § 158.602, that:

(a) Ensures the compensation for DHS–CS employees is sufficiently

competitive to recruit and retain individuals possessing CTMS qualifications;

(b) Values, encourages, and recognizes, in alignment with the DHS–CS core values described in § 158.305:

(1) Exceptional CTMS qualifications and mission impact,

(2) Excellence and innovation in the performance of DHS–CS cybersecurity work, and

(3) Continual learning to adapt to evolving cybersecurity risks and cybersecurity threats; and

(c) Acknowledges the unpredictable nature of cybersecurity work and the expectation that DHS–CS employees occasionally work unusual hours and extended hours, as needed, to execute the DHS cybersecurity mission, especially in response to exigent circumstances and emergencies, including cybersecurity incidents; and

(d) Reflects an understanding of the cybersecurity talent market, including:

(1) Leading compensation practices and trends,

(2) Current cybersecurity work expectations and arrangements, and

(3) An understanding of the concepts of total compensation and total rewards.

§ 158.602 Compensation system.

(a) The Secretary or designee establishes and administers a compensation system based on:

(1) The compensation strategy in § 158.601;

(2) Information from strategic talent planning described in § 158.401(c);

(3) Generally recognized compensation principles and practices; and

(4) Strategic talent priorities.

(b) The compensation system comprises:

(1) The salary system described in § 158.610; and

(2) Additional compensation described in § 158.603.

§ 158.603 Employee compensation.

(a) *Compensation.* As compensation for service in the DHS–CS, a DHS–CS employee receives a salary as described in paragraph (b) of this section. A DHS–CS employee may also receive additional compensation as described in paragraph (c) of this section.

(b) *Salary.* Except as provided in paragraphs (b)(1) and (2) of this section, a DHS–CS employee receives a salary under the salary system described in § 158.610. The Department sets a DHS–CS employee's salary as described in § 158.620, and salary may include a local cybersecurity talent market supplement described in § 158.612. The Department adjusts a DHS–CS employee's salary as described in § 158.621.

(1) *Uncompensated service.* A DHS–CS employee providing uncompensated service described in § 158.523(a)(2) does not receive a salary under this part.

(2) *Advisory appointees.* A DHS–CS advisory appointee receives a salary as described under subpart J of this part.

(c) *Additional compensation.* In alignment with the compensation strategy in § 158.601 and subject to the requirements of this subpart F, the Department may provide the additional compensation described in paragraph (c)(1) of this section to DHS–CS employees, unless a DHS–CS employee is providing uncompensated service under § 158.523(a)(2).

(1) *Types.* Additional compensation under CTMS is:

(i) Recognition under §§ 158.632 through 158.634;

(ii) Other special payments under §§ 158.640 through 158.643; and

(iii) Other types of compensation, including leave and benefits, authorized under §§ 158.650 through 158.654 and provided in accordance with relevant provisions of other laws.

(2) *Combining types.* A DHS–CS employee, except such an employee providing uncompensated service and a DHS–CS advisory appointee, may receive any type of additional compensation described in paragraph (c)(1) of this section in combination with any other such type subject to the requirements of this subpart F, and subject to the limit described in paragraph (c)(3) of this section.

(3) *Limit.* Additional compensation described in paragraph (c)(1) of this section is subject to, and may be limited by, the aggregate compensation limit described in § 158.604.

(4) *Advisory appointees.* A DHS–CS advisory appointee may receive additional compensation as described in subpart J of this part.

(5) *Department discretion.* Any payment or nonpayment of additional compensation under this part, or the amount of any such compensation, is under the Department's discretion, and may be reviewable only as provided for under subpart I of this part.

§ 158.604 Aggregate compensation limit.

(a) *Limiting aggregate compensation.* A DHS–CS employee may not receive additional compensation listed in in paragraphs (b)(1)(i) through (iv) of this section if such receipt would cause a DHS–CS employee's aggregate compensation for a calendar year to exceed the aggregate compensation limit applicable to that employee. A DHS–CS employee's applicable aggregate compensation limit is the limit amount assigned to the subrange of a salary structure, described in § 158.611, that contains the employee's salary. The Department assigns an aggregate compensation limit to each subrange in a salary structure by assigning the amounts referenced in 5 U.S.C. 5307(d)(1) in ascending order to the subranges, such that each subrange has an aggregate compensation limit that is greater than or equal to the salary maximum of that subrange.

(b) *Aggregate compensation.* For purposes of this part—

(1) A DHS–CS employee's aggregate compensation means the total of the employee's salary, including any local cybersecurity talent market supplement, and the following types of additional compensation the employee receives under this part:

(i) Recognition payments;

(ii) Payments for special working conditions;

(iii) Payments for quarters allowances, overseas differentials and allowances, and remote worksite allowances, foreign currency allowances, and hostile fire pay; and

(iv) Other similar payments described in CTMS policy as being authorized under this part and provided in accordance with other relevant provisions of law.

(2) The following types of compensation a DHS–CS employee receives under this part are excluded from the employee's aggregate compensation:

(i) Payments or reimbursements for professional development and training;

(ii) CTMS student loan repayments;

(iii) CTMS allowances in nonforeign areas;

(iv) Back pay because of an unjustified or unwarranted talent management action;

(v) Severance pay;

(vi) Lump-sum payments for accumulated and accrued annual leave;

(vii) Voluntary separation incentive payments;

(viii) Payments for reservist differentials; and

(ix) Monetary value of any honorary recognition, leave, or other benefits.

(c) *Forfeiture of compensation exceeding limit amount.* Except under corrective action described in paragraph (d) of this section, a DHS–CS employee may not receive any portion of a payment for the additional compensation listed in paragraphs (b)(1)(i) through (iv) of this section that would cause the employee's aggregate compensation in any calendar year to exceed the applicable limit amount for that employee described in paragraph

(a) of this section and the DHS–CS employee forfeits any such portion of a payment.

(d) *Corrective actions.* The Department may make a corrective action if the Department underestimated or overestimated a DHS–CS employee's aggregate compensation in a calendar year, including if an applicable aggregate compensation limit amount changed, resulting in the employee receiving aggregate compensation in excess of the applicable limit amount for a DHS–CS employee or the Department limiting or prohibiting an employee's aggregate compensation incorrectly. Corrective actions may include the Secretary or designee waiving a debt to the Federal Government for a DHS–CS employee under 5 U.S.C. 5584, if warranted, or making appropriate corrective payments to a DHS–CS employee.

§ 158.605 Exemption from other laws regarding compensation.

The provisions of the following laws, among other similar laws, do not apply under CTMS, to the DHS–CS, or to talent management involving the individuals described in § 158.103:

(a) The following provisions of 5 U.S.C.:

(1) Chapter 51 regarding classification,

(2) Chapter 53 regarding pay rates and systems (except section 5379 regarding student loan repayments),

(3) Chapter 55, Subchapter V regarding premium pay (except section 5550a regarding compensatory time off for religious observances),

(4) Chapter 61 regarding work schedules (except sections 6103–6104 regarding holidays),

(5) Section 4502 regarding cash awards and time-off awards,

(6) Section 4503 regarding agency awards (except regarding honorary recognition),

(7) Section 4505a regarding performance-based cash awards,

(8) Sections 4507 and 4507a regarding presidential rank awards,

(9) Section 5307 regarding limitation on certain payments,

(10) Section 5384 regarding performance awards for the Senior Executive Service,

(11) Section 5753 regarding recruitment and relocation bonuses,

(12) Section 5754 regarding retention bonuses,

(13) Section 5755 regarding supervisory differentials, and

(14) Section 5757 regarding extended assignment incentives;

(b) The provisions of 29 U.S.C. 206 and 207 regarding minimum wage payments and overtime pay under the Fair Labor Standards Act of 1938, as amended; and

(c) The following provisions of 5 CFR:

(1) Part 451 regarding awards (except regarding honorary recognition);

(2) Part 511 regarding classification under the General Schedule;

(3) Part 530 regarding pay rates and systems;

(4) Part 531 regarding pay under the General Schedule;

(5) Part 534 regarding pay under other systems;

(6) Part 536 regarding grade and pay retention;

(7) Part 550, subparts A regarding premium pay, I regarding pay for duty involving physical hardship or hazard, M regarding firefighter pay, N regarding compensatory time off for travel, and P regarding overtime pay for border patrol agents;

(8) Part 551 regarding pay administration under the Fair Labor Standards Act;

(9) Part 575 regarding recruitment, relocation, and retention incentives, supervisory differentials; and extended assignment incentives; and

(10) Part 610 regarding hours of duty (except subpart B regarding holidays).

Salaries

§ 158.610 Salary system.

(a) Under the compensation system, described in § 158.602 of this part, the Department establishes and administers a salary system with the goals of maintaining:

(1) Sufficiently competitive salaries for DHS–CS employees as stated in § 158.601(a); and

(2) Equitable salaries among DHS–CS employees.

(b) The salary system comprises:

(1) At least one salary structure, described in § 158.611 of this part, bounded by the salary range described in § 158.613 and incorporating the salary limitations described in § 158.614;

(2) The process for providing a local cybersecurity talent market supplement described in § 158.612; and

(3) The salary administration framework described in §§ 158.620 through 158.622.

§ 158.611 Salary structure.

(a) Under the salary system, described in § 158.610, the Department establishes and administers one or more salary structures based on the strategy, information, principles and practices, and priorities listed in § 158.602(a).

(b) A salary structure:

(1) Is bounded by the salary range described in § 158.613;

(2) Incorporates, as described in paragraph (d) of this section, the salary limitations described in § 158.614; and

(3) May incorporate other salary and cost control strategies, such as control points.

(c) A salary structure includes subranges, within the salary range described in § 158.613 that are associated with work levels established by the work valuation system, described in § 158.404. Each such subrange is associated with at least one such work level.

(d) The Department incorporates the salary limitations described in § 158.614 into a salary structure by assigning each such salary limitation to at least one subrange of the salary structure. The Department assigns such salary limitations in ascending order to the subranges such that each subrange has a salary limitation that is greater than or equal to the salary maximum of that subrange.

(e) The Department may adjust a salary structure annually, or as the Secretary or designee determines necessary, based on the strategy, information, principles and practices, and priorities listed in § 158.602(a).

§ 158.612 Local cybersecurity talent market supplement (LCTMS).

(a) *General.* The Department may provide a DHS–CS employee a LCTMS to ensure the employee receives a sufficiently competitive salary, as described in § 158.610(a). A LCTMS accounts for the difference between a salary as determined under a salary structure, described in § 158.611, and the Department's determination as to what constitutes a sufficiently competitive salary for that local cybersecurity talent market. The Department determines whether a LCTMS is necessary, and establishes and periodically adjusts local cybersecurity talent markets and local cybersecurity talent market supplement percentages, based on the strategy, information, principles and practices, and priorities listed in § 158.602(a).

(b) *Definitions.* As used in this section:

(1) *Local cybersecurity talent market* means the cybersecurity talent market in a geographic area that the Department defines based on the talent market analysis described in § 158.403, and that may incorporate any pay locality established or modified under 5 U.S.C. 5304.

(2) *Local cybersecurity talent market supplement percentage* means a percentage the Department assigns to a local cybersecurity talent market to

increase the amount of a salary provided under a salary structure.

(c) *Salary supplement.* A LCTMS is considered part of salary under this part and for purposes of applying the aggregate compensation limit described in § 158.604. A LCTMS is also basic pay for purposes under 5 U.S.C. and 5 CFR, except for purposes of determining pay under 5 U.S.C. 7511 and 7512 and 5 CFR part 752.

(d) *Eligibility and termination.* (1) The Department determines eligibility for a LCTMS under this section and CTMS policy implementing this section. A DHS–CS employee is eligible for a LCTMS if the employee's official worksite, as determined under § 158.704, is located in a local cybersecurity talent market with an assigned local cybersecurity talent market supplement percentage for the salary structure under which the employee's salary is provided.

(2) The Department terminates a LCTMS a DHS–CS employee receives when the employee's official worksite, as determined under § 158.704, is no longer in a local cybersecurity talent market with an assigned local cybersecurity talent market supplement percentage, or the salary structure under which the employee's salary is provided no longer has an assigned local cybersecurity labor market supplement, or both.

(3) A reduction in salary for a DHS–CS employee because of a change in any LCTMS for that employee is not a reduction in pay for the purposes of 5 U.S.C. 7512 and 5 CFR part 752.

(e) *Limitation.* A DHS–CS employee may not receive, and is not entitled to, any portion of a LCTMS that would cause the employee's salary to exceed the applicable salary limitation assigned to the subrange of a salary structure as described in § 158.611 that contains the employee's salary, but the employee may receive the portion of such a LCTMS that would not cause the employee's salary to exceed the applicable salary limitation. A DHS–CS employee may receive a LCTMS that would cause the employee's salary to be in the extended range, described in § 158.613(c), only if the Secretary or designee invokes the extended range under § 158.613(c)(2) for that employee.

§ 158.613 Salary range.

(a) *Range.* The salary range provides the boundaries of the salary system described in § 158.610. The salary range comprises a standard range and an extended range, and the standard range applies unless the Secretary or designee invokes the extended range under paragraph (c) of this section.

(b) *Standard range.* The upper limit of the standard range is equal to the amount of total annual compensation payable to the Vice President under 3 U.S.C. 104.

(c) *Extended range.* The upper limit of the extended range is 150 percent of the annual rate of basic pay for level I of the Executive Schedule (150% of EX–I). Only DHS–CS employees serving in renewable appointments may receive a salary amount in the extended range, and only if the Secretary or designee invokes the extended range for those employees as described in this paragraph (c).

(1) The Secretary or designee may invoke the extended range for a DHS–CS employee when the Secretary or designee determines, based on the compensation strategy in § 158.601, that the employee's qualifications, the employee's mission impact, and mission-related requirements warrant adjusting the employee's salary beyond the standard range. The Secretary or designee must approve the salary adjustment of each such employee by name, and to receive a salary in the extended range the employee must either already be in a renewable appointment or accept a renewable appointment. While the employee is receiving a salary in an amount in the extended range, the Department may not change that employee's appointment to a continuing appointment.

(2) The Secretary or designee may invoke the extended range for an individual selected for appointment to a qualified position when the Secretary or designee determines, based on the compensation strategy in § 158.601, that the individual's qualifications, the individual's anticipated mission impact, and mission-related requirements warrant setting the individual's salary beyond the standard range. The Secretary or designee must approve the appointment of each such individual to a qualified position by name, and the individual must be appointed to a renewable appointment only. While that individual is receiving a salary under this part in an amount in the extended range, the Department may not change that individual's appointment to a continuing appointment at any time.

(d) *Maximum.* No DHS–CS employee may receive a salary under this part in excess of 150% of EX–I.

§ 158.614 Salary limitations.

(a) The salary system, described in § 158.610, has the following limitations on maximum rates of salary that apply within the CTMS salary range described in § 158.613 of this part:

(1) The annual rate of basic pay for GS–15, step 10 under the General Schedule (excluding locality pay or any other additional pay as defined in 5 CFR chapter 1);

(2) The annual rate of basic pay for level IV of the Executive Schedule;

(3) The annual rate of basic pay for level II of the Executive Schedule;

(4) The annual rate of basic pay for level I of the Executive Schedule; and

(5) The total annual compensation payable to the Vice President under 3 U.S.C. 104.

(b) The Department may establish additional limitations on maximum rates of salary for the salary system.

(c) The salary system incorporates each limitation on maximum rates of salary described in this section into each salary structure established under § 158.611.

Salary Administration

§ 158.620 Setting salaries.

(a) The Department sets the salary for an individual accepting an appointment to a qualified position as part of selection and appointment of the individual, described in § 158.522. The Department sets the individual's salary within a subrange of a salary structure described in § 158.611 based on consideration of:

(1) The individual's CTMS qualifications, determined under the assessment program described in § 158.520;

(2) Applicable work and career structures, including the individual's initial work level, determined as part of selection and appointment under § 158.522;

(3) The individual's anticipated mission impact;

(4) Mission-related requirements; and

(5) Strategic talent priorities.

(b) In setting the salary for an individual appointed to a qualified position under this part, the Department may set the individual's salary without regard to any prior salary of the individual, including any salary or basic pay while serving in a previous appointment under this part or in another previous Federal appointment made outside the authority of this part.

(c) In setting the salary for an individual appointed to a qualified position under this part, the Department may provide a local cybersecurity talent market supplement described in § 158.612.

§ 158.621 Adjusting salaries.

(a) The Department adjusts a DHS–CS employee's salary, or the salaries of a group of DHS–CS employees, by paying a recognition adjustment under

§ 158.631, or paying a local cybersecurity talent market supplement under § 158.612, or both.

(b) The Department does not provide DHS–CS employees with any automatic salary increase or any salary increase based on length of service in the DHS–CS or in any position outside the DHS–CS.

(c) If the Department adjusts a salary structure under § 158.611(e) that results in an increase to the salary minimum for one or more subranges of the salary structure, for any DHS–CS employee receiving a salary in an affected subrange at the affected salary minimum, DHS adjusts the employee's salary to reflect the adjustment to the salary structure and the new salary minimum for the affected subrange. Such a salary adjustment is not considered a recognition adjustment under § 158.631.

§ 158.622 Administering salary in accordance with relevant provisions of other laws.

(a) Except as stated in paragraph (b) of this section, the Department administers salary under this part in accordance with the provisions of 5 CFR part 550 regarding pay administration generally.

(b) The following provisions of 5 CFR part 550 do not apply to administering salary under this part and do not apply under CTMS, to the DHS–CS, or to talent management involving the individuals described in § 158.103 of this part:

(1) Subpart A regarding premium pay;

(2) Subpart I regarding pay for duty involving physical hardship or hazard;

(3) Subpart M regarding firefighter pay;

(4) Subpart N compensatory time-off for travel; and

(5) Subpart P regarding overtime for board patrol agents.

(c) The Department also administers salary under this part in accordance with the provisions of the following:

(1) 5 U.S.C. 5520, 42 U.S.C. 659 and 5 CFR parts 581 and 582, regarding garnishment;

(2) 31 U.S.C. 3702 and 5 CFR part 178 regarding claims settlement;

(3) 31 U.S.C. 3711 and 3716 and 31 CFR chapter IX parts 900 through 904 regarding debt collection;

(4) 5 U.S.C. Chapter 55 Subchapter VII regarding payments to missing employees; and

(5) Other relevant provisions of other laws specifically adopted in CTMS policy.

(d) For purposes of salary administration under this section, the Department administers salary based on consideration of a DHS–CS employee's work schedule under the work scheduling system, described in § 158.705, and may convert the employee's salary into an hourly rate, biweekly rate, or other rate.

Recognition

§ 158.630 Employee recognition.

(a) *DHS–CS employees.* In alignment with the compensation strategy in § 158.601 and the performance management program described in § 158.802 of this part, the Department may provide recognition under §§ 158.631 through 158.634, on a periodic or *ad hoc* basis, to a DHS–CS employee based on the employee's mission impact. In providing such recognition, the Department may also consider mission-related requirements and strategic talent priorities.

(b) *Prospective employees.* In alignment with the compensation strategy in § 158.601, the Department may offer, and provide upon appointment, recognition payments under § 158.632(b) and recognition time-off under § 158.633(b), on a periodic or *ad hoc* basis, to an individual selected for employment in the DHS–CS based on:

(1) The individual's CTMS qualifications determined under the assessment program described in § 158.520;

(2) The individual's anticipated mission impact;

(3) Mission-related requirements; and

(4) Strategic talent priorities.

(c) *Eligibility.* The Department determines eligibility for recognition under this section, §§ 158.631 through 158.634, and CTMS policy implementing this section. The Department may defer providing recognition to a DHS–CS employee under this part if the Department is in the process of determining whether the employee's performance is unacceptable, as defined in 5 U.S.C. 4301(3), or whether the employee has engaged in misconduct. If the Department determines a DHS–CS employee's performance is unacceptable, as defined in 5 U.S.C. 4301(3), or the employee receives an unacceptable rating of record under § 158.804, or the Department determines the employee has engaged in misconduct, the employee is ineligible to receive recognition under this part.

(d) *Policy.* CTMS policy implementing this section addresses:

(1) Eligibility criteria;

(2) Requirements for documenting the reason and basis for recognition provided to a DHS–CS employee;

(3) Appropriate levels of review and approval for providing recognition;

(4) Any limitations on the total number, frequency, or amount of recognition a DHS–CS employee may receive within any specific time period;

(5) Any service agreement requirements; and

(6) Processes for evaluating the effectiveness of recognition in supporting the purpose of CTMS described in § 158.101, the purpose of the DHS–CS described in § 158.202, and the operationalization of the compensation strategy described in § 158.601.

(e) *Advisory appointees.* Recognition under this part for a DHS–CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

§ 158.631 Recognition adjustments.

(a) Under this section and § 158.630, the Department may provide a recognition adjustment to a DHS–CS employee for the reasons and bases stated in § 158.630(a). A recognition adjustment is an adjustment to the DHS–CS employee's salary provided under a salary structure described in § 158.611. A recognition adjustment does not alter any local cybersecurity talent market supplement for that employee.

(b) No DHS–CS employee may receive a recognition adjustment that would cause the employee's salary to exceed the salary range maximum described in § 158.613(d) or the applicable salary limitation assigned to the subrange of a salary structure as described in § 158.611(d) that contains the employee's salary. A DHS–CS employee may not receive a recognition adjustment that would cause the employee's salary amount to be in the extended range, described in § 158.613(c), unless the Secretary or designee invokes the extended range for that employee under § 158.613(c)(1).

(c) A recognition adjustment under this section is not a promotion for any purpose under Title 5 U.S.C. or 5 CFR.

(d) A recognition adjustment under this section for a DHS–CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

§ 158.632 Recognition payments.

(a) Under this section and § 158.630, and for the reasons and bases stated in § 158.630(a), the Department may provide a recognition payment to a DHS–CS employee in an amount of up to 20 percent, or up to 50 percent with approval of the Secretary or designee, of the receiving DHS–CS employee's

salary. The Department may require a service agreement of not less than six months and not more than three years as part of providing a recognition payment to a DHS–CS employee.

(b) Under this section and § 158.630, and for the reasons and bases stated in § 158.630(b) and as part of an offer of employment in the DHS–CS, the Department may offer a recognition payment to an individual selected for employment in the DHS–CS in an amount of up to 20 percent of the receiving individual's initial salary in the DHS–CS. The Department requires a service agreement of not less than six months and not more than three years as part of providing, upon appointment, a recognition payment to an individual selected for employment in the DHS–CS.

(c) The Department may provide a recognition payment as a lump sum payment, an installment payment, or a recurring payment.

(d) The Department may provide a recognition payment under this section to a former DHS–CS employee or to the legal heirs or estate of a former DHS–CS employee in accordance with 5 U.S.C. 4505.

(e) Acceptance of a recognition payment constitutes agreement for Federal Government use of any idea, method, device, or similar that is the basis of the payment.

(f) A recognition payment under this section is subject to and may be limited by the aggregate compensation limit described in § 158.604.

(g) A recognition payment is not salary under this part and is not basic pay for any purpose under 5 U.S.C. or 5 CFR.

(h) A recognition payment under this section is based on the following types of awards and incentives provided under 5 U.S.C.:

(1) Cash awards under 5 U.S.C. 4502;

(2) Agency awards under 5 U.S.C. 4503;

(3) Performance-based cash awards under 5 U.S.C. 4505a and 5384;

(4) Presidential rank awards under 5 U.S.C. 4507 and 4507a; and

(5) Recruitment, relocation, and retention incentives 5 U.S.C. 5753 and 5754.

(i) A recognition payment under this section is in lieu of the types of awards and incentives provided under 5 U.S.C. listed in paragraph (h) of this section, and a DHS–CS employee is ineligible to receive any such awards or incentives.

(j) An individual selected for employment in the DHS–CS is ineligible to receive, as part of the offer of employment, any other offer of a monetary award or incentive, a payment in addition to salary, or other monetary recognition from the Department except as provided in this section and § 158.630. An individual appointed to an advisory appointment is also ineligible to receive, as part of an offer of employment in the DHS–CS, any offer of recognition under this section.

(k) A recognition payment under this section for a DHS–CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

§ 158.633 Recognition time-off.

(a) Under this section and § 158.630, and for the reasons and bases stated in § 158.630(a), the Department may provide recognition time-off to a DHS–CS employee for use within a designated timeframe not to exceed 26 work periods, as defined in § 158.705(c). Recognition time-off is time-off from duty without charge to leave or loss of compensation.

(b) Under this section and § 158.630, and for the reasons and bases stated in § 158.630(b) and as part of an offer of employment in the DHS–CS, the Department may offer up to 40 hours of recognition time-off to an individual selected for employment in the DHS–CS for use within a designated timeframe not to exceed 26 work periods, as defined in § 158.705(b). The Department may require a service agreement as part of providing, upon appointment, recognition time-off to an individual selected for employment in the DHS–CS.

(c) All recognition time-off provided, and the use of such time-off, must be recorded in a timekeeping system for purposes of salary administration and leave administration under this part.

(d) Recognition time-off provided under this section may not, under any circumstances, be converted to a cash payment to the receiving DHS–CS employee or any other type of time-off or leave.

(e) Recognition time-off under this section is based on time-off awards provided under the provisions of 5 U.S.C. 4502(e).

(f) Recognition time-off under this section is in lieu of the time-off awards provided under 5 U.S.C. 4502(e), and a DHS–CS employee is ineligible to receive any such awards.

(g) An individual selected for employment in the DHS–CS is ineligible to receive, as part of the offer of employment, any other offer of time-off or time-off award from the Department except as provided in this section and §§ 158.630 and 158.651. An individual appointed to an advisory appointment is also ineligible to receive, as part of an offer of employment in the DHS–CS, any offer of recognition under this section.

(h) A recognition time-off provided under this section to a DHS–CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

§ 158.634 Honorary recognition.

(a) Under this section and § 158.630, the Department may establish one or more honorary recognition programs to provide honorary recognition to DHS–CS employees for the reasons and bases stated in § 158.630(a). The Department may incur necessary expenses for honorary recognition under an honorary recognition program established under this section.

(b) Honorary recognition under this section is based on honorary recognition provided under the provisions of 5 U.S.C. 4503, and a DHS–CS employee may be eligible to receive honorary recognition under 5 U.S.C. 4503 and 5 CFR part 451 in addition to any honorary recognition under this section.

(c) The Department may provide honorary recognition under this section to a former DHS–CS employee or to the legal heirs or estate of a former DHS–CS employee in accordance with 5 U.S.C. 4505.

(d) Honorary recognition under this section for a DHS–CS advisory appointee is subject to additional requirements in subpart J of this part.

Other Special Payments

§ 158.640 Professional Development and Training.

(a) In alignment with the compensation strategy described in § 158.601 and the career development program described in § 158.803, the Department may provide professional development and training opportunities, payments, and reimbursements for DHS–CS employees.

(b) CTMS policy implementing this section addresses:

(1) Eligibility criteria;

(2) Requirements for documenting the reason and basis for professional development and training opportunities, payments, and reimbursements provided to a DHS–CS employee;

(3) Appropriate levels of review and approval for providing professional development and training opportunities, payments, and reimbursements;

(4) Any limitations on the total number or frequency of professional development and training opportunities, and any limitations on the total number, frequency, or amount of professional development and training payments and reimbursements a DHS–CS employee

may receive, within any specific time period;

(5) Any service agreement requirements;

(6) Requirements for communicating to DHS–CS employees and their supervisors about professional development and training opportunities; and

(7) Processes for evaluating the effectiveness of the professional development and training in supporting the purpose of CTMS described in § 158.101, the purpose of the DHS–CS described in § 158.202, and the operationalization of the compensation strategy described in § 158.601.

(c) Any payment or reimbursement under this section is excluded from the aggregate compensation limit described in § 158.604.

(d) Any payment or reimbursement under this section is not salary under this part and is not basic pay for any purpose under 5 U.S.C. or 5 CFR.

(e) Professional development and training under this section is based on the following training and professional development opportunities, payments, and reimbursements provided under 5 U.S.C.:

(1) Sabbaticals under 5 U.S.C. 3396;

(2) Academic degree training under 5 U.S.C. 4107;

(3) Expenses of training under 5 U.S.C. 4109;

(4) Expenses of attendance at meetings under 5 U.S.C. 4110; and

(5) Payment of expenses to obtain professional credentials under 5 U.S.C. 5757.

(f) In addition to any professional development and training under this section, a DHS–CS employee may be eligible to receive the training and professional development opportunities, payments, and reimbursements provided under 5 U.S.C. listed in paragraph (e) of this section.

(g) Professional development and training under this section for a DHS–CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

§ 158.641 Student loan repayments.

(a) In alignment with the compensation strategy described in § 158.601, the Department may provide a student loan repayment to a DHS–CS employee under this section and in accordance with 5 U.S.C. 5379 and 5 CFR part 537, except that:

(1) The maximum payment amounts under 5 U.S.C. 5379 and 5 CFR part 537 do not apply, and the Department may provide and a DHS–CS employee may receive a student loan repayment under this section so long as such repayment does not exceed $16,500 per employee per calendar year and a total of $90,000 per employee;

(2) The minimum service period length of three years under 5 U.S.C. 5379 and 5 CFR part 537 does not apply, and instead the length of a minimum service period for a DHS–CS employee receiving a student loan repayment under this section is determined under CTMS policy and based on the amount of the repayment received by the employee; and

(3) Eligibility criteria related to time-limited appointments under 5 U.S.C. 5379 and 5 CFR part 537 do not apply, and a DHS–CS employee in a renewable appointment may receive a student loan payment under this section.

(b) In alignment with eligibility criteria under 5 U.S.C. 5379 and 5 CFR part 537:

(1) If the Department determines a DHS–CS employee's performance is unacceptable, as defined in 5 U.S.C. 4301(3), or the employee receives an unacceptable rating of record under § 158.804, or the Department determines the employee has engaged in misconduct, the employee is ineligible to receive a student loan repayment under this section.

(2) A DHS–CS advisory appointee is ineligible to receive a student loan repayment under this section.

(c) CTMS policy implementing this section addresses:

(1) Eligibility criteria;

(2) Requirements for documenting the reason and basis for a student loan repayment provided to a DHS–CS employee;

(3) Appropriate levels of review and approval for providing a student loan repayment;

(4) Service agreement requirements, including minimum service periods;

(5) Any additional limitations on student loan repayments; and

(6) Processes for evaluating the effectiveness of student loan repayments in supporting the purpose of CTMS described in § 158.101, the purpose of the DHS–CS described in § 158.202, and the operationalization of the compensation strategy described in § 158.601.

(d) Any student loan repayment provided under this section is excluded from the aggregate compensation limit described in § 158.604.

(e) Any student loan repayment provided under this section is not salary under this part and is not basic pay for any purpose under 5 U.S.C. or 5 CFR.

§ 158.642 Special working conditions payment program.

(a) In alignment with the compensation strategy described in § 158.601, the Department may establish a program to provide payments to DHS–CS employees to address special working conditions that are otherwise unaccounted for or the Department determines are accounted for insufficiently in DHS–CS employees' other types of additional compensation and salary.

(b) Special working conditions include circumstances in which a supervisor or other appropriate official requires a DHS–CS employee to perform DHS–CS cybersecurity work that involves, as determined by the Department:

(1) Unusual physical or mental hardship;

(2) Performing work at atypical locations, at unexpected times, or for an uncommon duration of time exceeding the expectation described in § 158.601(c) about working unusual hours and extended hours; or

(3) A combination of the conditions described in paragraphs (b)(1) and (2) of this section.

(c) A payment for special working conditions is a payment of up to 25 percent of the receiving DHS–CS employee's salary as computed for a work period, defined in § 158.705(b), or a series of work periods.

(d) The Department determines whether to establish, adjust, or cancel a program under this section based on information from:

(1) The work scheduling system described in § 158.705; and

(2) Strategic talent planning described in § 158.401(c), including information about current compensation practices of other cybersecurity employers analyzed under the talent market analysis described in § 158.403.

(e) The Department determines eligibility for a payment for special working conditions under this section and CTMS policy implementing this section.

(1) A DHS–CS employee who receives a payment for special working conditions under a program established under this section is not automatically eligible or entitled to receive any additional such payments.

(2) A DHS–CS employee receiving a salary equal to or greater than EX–IV is ineligible to receive a payment under this section.

(3) A DHS–CS advisory appointee is ineligible to receive a payment for special working conditions under this section.

(f) CTMS policy implementing this section addresses:

(1) Eligibility criteria;

(2) Requirements for documenting the reason and basis for payments for

special working conditions provided to a DHS–CS employee;

(3) Appropriate levels of review and approval for providing payments for special working conditions;

(4) Any limitations on payments for special working conditions;

(5) Requirements for determining whether a payment for special working conditions is a lump sum payment, paid in installments, or a recurring payment; and

(6) Processes for evaluating the effectiveness of any special working conditions payment program in supporting the purpose of CTMS described in § 158.101, the purpose of the DHS–CS described in § 158.202, and the operationalization of the compensation strategy described in § 158.601.

(g) Any payment under this section is subject to and may be limited by the aggregate compensation limit described in § 158.604.

(h) Any payment under this section is not salary under this part and is not basic pay for any purpose under Title 5 U.S.C. or 5 CFR.

(i) A payment for special working conditions under this section is based on the following types of payments provided under 5 U.S.C.:

(1) Night, standby and hazardous duty differential under 5 U.S.C. 5545;

(2) Pay for Sunday and holiday work under 5 U.S.C. 5546; and

(3) Extended assignment incentives under 5 U.S.C. 5757.

(j) A payment for special working conditions under this section is in lieu of the types of payment provided under 5 U.S.C. listed in paragraph (g) of this section, and a DHS–CS employee is ineligible to receive any such payments under 5 U.S.C.

§ 158.643 Allowance in nonforeign areas.

(a) A DHS–CS employee is eligible for and may receive an allowance under 5 U.S.C. 5941 and implementing regulations in 5 CFR part 591, subpart B, on the same basis and to the same extent as if the employee is an employee covered by those authorities.

(b) The Department provides an allowance described in paragraph (a) of this section to any DHS–CS employee who is eligible, as described in paragraph (a), for such allowance.

(c) Any allowance provided under this section is excluded from the aggregate compensation limit described in § 158.604.

(d) Any allowance provided under this section is not salary under this part and is not basic pay for any purpose under 5 U.S.C. or 5 CFR.

(e) Any allowance under this section for a DHS–CS advisory appointee is subject to additional requirements and restrictions in subpart J of this part.

Other Compensation Provided in Accordance With Relevant Provisions of Other Laws

§ 158.650 Holidays.

In alignment with salary administration under § 158.622 and work scheduling under § 158.705, the Department provides holidays to a DHS–CS employee under this section and in accordance with 5 U.S.C. 6103–6104 and 5 CFR part 610, subpart B.

§ 158.651 Leave.

(a) *Leave.* In alignment with salary administration under § 158.622 and work scheduling under § 158.705, the Department provides leave to a DHS–CS employee under this section and in accordance with 5 U.S.C. Chapter 63 and 5 CFR part 630, including:

(1) Annual leave, as described in 5 U.S.C. Chapter 63, Subchapter I;

(2) Sick leave, as described in 5 U.S.C. Chapter 63, Subchapter I;

(3) Other paid leave, as described in 5 U.S.C. Chapter 63, Subchapter II;

(4) Voluntary transfers of leave, as described in 5 U.S.C. Chapter 63, Subchapter III;

(5) Voluntary leave bank programs, as described in 5 U.S.C. Chapter 63, Subchapter IV;

(6) Family and medical leave, as described in 5 U.S.C. Chapter 63, Subchapter V; and

(7) Leave transfer in disasters and emergencies, as described in 5 U.S.C. Chapter 63, Subchapter VI.

(b) *Annual leave accrual.* A DHS–CS employee's annual leave accrual amount is determined under 5 U.S.C. 6303.

(c) *Annual leave accumulation.* A DHS–CS employee's annual leave accumulation amount is determined under 5 U.S.C. 6304, except that the Department may apply 5 U.S.C. 6304(f)(2)(A) to DHS–CS employees receiving a salary under this part that exceeds 120 percent of the minimum annual rate of basic pay for GS–15 under the General Schedule.

(d) *Leave credits.* The annual leave and sick leave accrued to the credit of a current Federal employee who is appointed to a qualified position under this part without a break in service of more than three calendar days is transferred to the employee's credit in accordance with 5 U.S.C. 6308.

(e) *Annual leave balance upon leaving the DHS–CS.* When a DHS–CS employee moves to a position outside of the DHS–CS, any leave balance for the employee is addressed in accordance with 5 CFR 630.209 and 630.501.

(f) *Leave administration.* The Department administers leave under this section as described in this section and in § 158.655, and in accordance with the relevant provisions of other laws referenced in this section and CTMS policy.

§ 158.652 Compensatory time-off for religious observance.

In alignment with salary administration under § 158.622 of this part and work scheduling under § 158.705, the Department provides compensatory time-off for religious observance to a DHS–CS employee under this section and in accordance with 5 U.S.C. 5550a and 5 CFR 550, subpart J.

§ 158.653 Other benefits.

(a) In alignment with salary administration under § 158.622, leave administration under § 158.651, and work scheduling under § 158.705, the Department provides benefits, including retirement, health benefits, and insurance programs, to a DHS–CS employee under this section and in accordance with 5 U.S.C. Chapters 81–90 and 5 CFR parts 831 and 838–894.

(b) The Department administers the benefits of an annuitant appointed to a qualified position in accordance with 5 U.S.C. 8344, 5 U.S.C. 8468, 5 CFR 553.203, or 5 CFR part 837, as applicable.

(c) The Department provides a transportation subsidy to a DHS–CS employee under this section and in accordance with 5 U.S.C. 7905.

§ 158.654 Other payments.

(a) The Department provides the following other types of payments to a DHS–CS employee under this section and in accordance with the relevant provisions of law referenced in this section:

(1) Severance pay under this section, and the Department provides any severance pay in accordance with 5 U.S.C. 5595 and 5 CFR part 550, subpart G, except that separation from the DHS–CS because of a lapse or nonrenewal of a DHS–CS employee's appointment under this part or because of a DHS–CS employee's refusal to accepted a directed subsequent assignment, described in § 158.708, is not an involuntary separation, and the former DHS–CS employee is not entitled to severance pay.

(2) Lump-sum leave payouts under this section, and the Department provides any lump-sum leave payouts in accordance with 5 U.S.C. 5551 and 5552 and 5 CFR part 550, subpart L.

(3) Voluntary separation incentive payments under this section, and the

Department provides any such payments in accordance with 5 U.S.C. 3521–3525 and 5 CFR part 576.

(4) Reservist differential under this section, and the Department provides any such differential in accordance with 5 U.S.C. 5538.

(5) Quarters allowances under this section, and the Department provides any such allowances in accordance with 5 U.S.C. Chapter 59, Subchapter II, the Department of State Standardized Regulations and any implementing supplements issued by the Department of State, and 5 CFR part 591, subpart C.

(6) Overseas differentials and allowances under this section, and the Department provides any such differentials and allowances in accordance with 5 U.S.C. Chapter 59, Subchapter III, the Department of State Standardized Regulations and any implementing supplements issued by the Department of State, and 5 CFR part 591, subpart C.

(7) Remote worksite allowances, foreign currency allowances, and hostile fire pay under this section, and the Department provides any such allowances and pay in accordance with 5 U.S.C. Chapter 59, Subchapter IV.

(8) Other similar payments described in CTMS policy as being authorized under this part and provided in accordance with relevant provisions of other laws.

(b) A payment for any quarter allowances, overseas differentials and allowances, and remote worksite allowances, foreign currency allowances, and hostile fire pay under paragraphs (a)(5) through (7) of this section is subject to and may be limited by the aggregate compensation limit described in § 158.604. A payment for any severance pay, lump-sum leave payout, voluntary separation inventive payment, and reservist differential under paragraphs (a)(1) through (4) of this section is not subject to the aggregate compensation limit described in § 158.604. A payment under paragraph (a)(8) of this section may be subject to and limited by the aggregate compensation limit described in § 158.604, as described in CTMS policy.

(c) Any payment under this section is not salary under this part and is not basic pay for any purpose under Title 5 U.S.C. or 5 CFR.

§ 158.655 Administering compensation in accordance with relevant provisions of other laws.

(a) For purposes of administering compensation authorized under §§ 158.650 through 158.654 in accordance with relevant provisions of other laws:

(1) The Department may convert a DHS–CS employee's salary into an hourly rate, biweekly rate, or other rate, and administer compensation based on consideration of the DHS–CS employee's work schedule under the work scheduling system described in § 158.705;

(2) A DHS–CS employee's hours of work and related computations are determined under the relevant provisions of law referenced in §§ 158.650 through 158.654 and CTMS policy implementing this section;

(3) A DHS–CS employee on a part-time schedule described in § 158.705 is treated as if the employee is serving ''part-time career employment'' defined in 5 CFR 340.101; and

(4) A DHS–CS employee on a contingent schedule described in § 158.705 is treated as if the employee is serving ''intermittent employment'' defined in 5 CFR 340.401.

(b) If, in administering compensation under §§ 158.650 through 158.654, the Department determines it is necessary to clarify the relationship between those sections and the relevant provisions of law referenced in those sections and any other relevant provisions of other laws, the Department will address the issue in new or revised CTMS policy.

Subpart G—Deploying Talent

§ 158.701 Deployment program.

(a) *Deployment program.* The Secretary or designee establishes and administers a deployment program to:

(1) Guide when the Department uses CTMS to recruit and retain individuals possessing CTMS qualifications; and

(2) Operationalize aspects of the work valuation system, the talent acquisition system and the compensation system, described in §§ 158.404, 158.501, and 158.602 respectively.

(b) Under the deployment program, the Department:

(1) Designates qualified positions as described in § 158.702;

(2) Designates and staffs assignments as described in § 158.703;

(3) Determines and documents a DHS–CS employee's official worksite as described in § 158.704;

(4) Administers a work scheduling system as described in § 158.705; and

(5) Performs necessary recordkeeping as described in § 158.706.

§ 158.702 Designating qualified positions.

(a) When a DHS organization requires individuals possessing CTMS qualifications to ensure the most effective execution of the DHS cybersecurity mission and the recruitment and retention of such individuals would likely be enhanced by using CTMS, the Secretary or designee designates qualified positions.

(b) CTMS policy implementing this section addresses:

(1) Procedures for DHS organizations to request using CTMS;

(2) Requirements for DHS organization using CTMS; and

(3) Information necessary to designate qualified positions.

(c) Designating qualified positions may result in:

(1) Establishing one or more qualified positions under the talent acquisition system, described in § 158.501; or

(2) Designating and staffing one or more assignments as described in § 158.703; or

(3) Both results described in paragraphs (c)(1) and (2) of this section.

(d) Designating qualified positions involves budget and fiscal considerations related to establishing one or more qualified positions under the talent acquisition system, described in § 158.501.

§ 158.703 Designating and staffing assignments.

(a) *Designating assignments.* The Department designates assignments by defining combinations of CTMS qualifications and DHS–CS cybersecurity work associable with qualified positions. CTMS policy implementing this section addresses procedures for DHS organizations to designate assignments, including as a result of designating qualified positions as described in § 158.702.

(b) *Staffing assignments.* The Department staffs assignments by:

(1) Matching assignments with DHS–CS employees as described in paragraph (d) of this section;

(2) Matching assignments with newly appointed individuals as described in paragraph (c) of this section; or

(3) Seeking to recruit individuals and establish new qualified positions under the talent acquisition system described in § 158.501 and then matching assignments with newly appointed individuals as described in paragraph (c) of this section.

(c) *Initial assignment.* Upon appointment of an individual to a qualified position, the Department matches the individual with an assignment based on the alignment of the individual's CTMS qualifications, determined under the assessment program described in § 158.520, to the CTMS qualifications of an assignment. In matching an individual with an initial assignment, the Department may also consider:

(1) Input from the individual;

(2) Input from DHS organizations;
(3) Mission-related requirements; and
(4) Strategic talent priorities.

(d) *Subsequent assignments.* The Department matches DHS–CS employees with assignments subsequent to employees' initial assignments, as necessary.

(1) The Department matches a DHS–CS employee with a subsequent assignment based on the alignment of the employee's CTMS qualifications with the CTMS qualifications of an assignment. In matching a DHS–CS employee with a subsequent assignment, the Department may also consider:

(i) Input from the employee;

(ii) Input from DHS organizations, especially the primary DHS organization of the employee's current assignment;

(iii) Information about the employee from the performance management program described in § 158.802 and the career development program described in § 158.803;

(iv) Mission-related requirements; and

(v) Strategic talent priorities.

(2) A DHS–CS employee may have multiple assignments throughout the employee's service in a qualified position, but may only have one assignment at a time. A DHS–CS employee's subsequent assignments may have assignment information, described in § 158.706(e), that is different than the assignment information of the employee's initial assignment, including primary DHS organization.

(3) In alignment with the career development program described in § 158.803 and based on information from development reviews described in § 158.806 the Department communicates with DHS–CS employees on an ongoing basis about subsequent assignment opportunities;

§ 158.704 Official worksite.

(a) *Definition.* A DHS–CS employee's official worksite is the geographic location where the employee regularly performs DHS–CS cybersecurity work or where the employee's DHS–CS cybersecurity work is based, as determined and documented by the Department under this section.

(b) *Determination.* The Department determines a DHS–CS employee's official work site for purposes of administering compensation under this part, especially eligibility for any compensation described in §§ 158.612 and 158.643. The Department's determination of a DHS–CS employee's official worksite includes consideration of any of the following for the employee: Telework, variation in location where the employee performs DHS–CS cybersecurity work, and temporary situations affecting the location where the employee performs DHS–CS cybersecurity work.

(c) *Documentation.* Upon appointment of an individual to a qualified position, the Department documents the individual's official worksite as part of documenting the employee's appointment to a qualified position and the employee's assignment, as described in § 158.706. The Department updates documentation of a DHS–CS employee's official worksite, if the geographic location where the DHS–CS employee regularly performs DHS–CS cybersecurity work changes and such change impacts the determination of the DHS–CS employee's official worksite under paragraph (a) of this section and such change is expected to last, or does last, for six months or more.

§ 158.705 Work scheduling.

(a) *Work scheduling system.* The Secretary or designee establishes and administers a work scheduling system for DHS–CS employees to ensure:

(1) Agility for the Department in scheduling DHS–CS cybersecurity work to execute the DHS cybersecurity mission;

(2) Availability of DHS–CS employees to perform the DHS–CS cybersecurity work of their assignments;

(3) Clear expectations for DHS–CS employees about when they are expected to perform DHS–CS cybersecurity work associated with their assignments;

(4) Flexibility for DHS–CS employees in scheduling and performing DHS–CS cybersecurity work associated with their assignments; and

(5) Recording of, accounting for, and monitoring of hours worked by DHS–CS employees.

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

(1) *Work period* means a two-week period of 14 consecutive days that begins on a Sunday and ends on a Saturday, and is the equivalent of a *biweekly pay period* defined in 5 U.S.C. 5504 and 5 CFR part 550, subpart F.

(2) *Minimum hours of work* means the minimum number of hours that a DHS–CS employee is required to work, or account for with time-off, during a work period, and is the equivalent to the term *basic work requirement* defined in 5 U.S.C. 6121.

(3) *Time-off* means leave under § 158.651, time-off under § 158.652, and recognition time-off under § 158.633, or other time-off of duty available for DHS–CS employees.

(4) *Full-time schedule* means 80 hours per work period.

(5) *Part-time schedule* means a specified number of hours less than 80 hours per work period. When DHS–CS cybersecurity work associated with a DHS–CS employee's assignment regularly requires the DHS–CS employee to exceed that employee's specified number of hours per work period, the Department considers, with input from the employee and the employee's supervisor, whether to change the employee's work schedule from part-time to full-time to ensure appropriate compensation under this part, including accrual of leave under § 158.651 and the DHS–CS employee's share of health benefits premiums provided under § 158.653.

(6) *Contingent schedule* means an irregular number of hours up to 80 hours per work period. A contingent schedule is appropriate only when the DHS–CS cybersecurity work associated with a DHS–CS employee's assignment is sporadic and cannot be regularly scheduled in advance. When DHS–CS cybersecurity work associated with a DHS–CS employee's assignment is able to be scheduled in advance on a regular basis, the Department changes the employee's work schedule from contingent to part-time or full-time, as appropriate, to ensure appropriate compensation under this part, including accrual of leave under § 158.651 and the DHS–CS employee's share of health benefits premiums provided under § 158.653.

(c) *Employee work schedules.* (1) A DHS–CS employee's work schedule, and any minimum hours of work associated with the employee's schedule, is determined at the time of appointment and recorded as part of documenting the employee's appointment to a qualified position under § 158.706. A DHS–CS employee on a contingent schedule does not have a minimum number of hours of work but has a maximum number of total hours for the employee's appointment that is determined at the time of appointment and recorded as part of documenting the employee's appointment to a qualified position under § 158.706.

(2) A DHS–CS employee's work schedule, and any minimum hours of work, may change during the employee's service in a qualified position and the Department records any such changes in the documentation associated with the employee's qualified position under § 158.706.

(d) *Work schedule requirements.* (1) DHS–CS employees are expected to perform DHS–CS cybersecurity work associated with their assignments to

execute the DHS cybersecurity mission, especially in response to exigent circumstances and emergencies, including cybersecurity incidents defined in 6 U.S.C. 659, without entitlement to more compensation than the employee's salary described in § 158.603. Hours worked by a DHS–CS employee that exceed the employee's minimum hours of work do not affect the employee's salary or result in any automatic compensation, including a type of additional compensation.

(2) A DHS–CS employee on a full-time schedule is expected to work at least 80 hours per work period.

(3) A DHS–CS employee on a part-time schedule is expected to work at least the employee's specified number of hours of work per work period.

(4) A DHS–CS employee on a contingent schedule is expected to work as necessary to perform the DHS–CS cybersecurity work associated with the employee's assignment, not to exceed the maximum number of total hours for the employee's appointment.

(5) DHS–CS employees must report hours worked by the employee. The Department monitors such hours for purposes of managing the DHS–CS, including considering any changes to DHS–CS employees' schedules, and administering compensation, including assisting in consideration of any additional compensation for DHS–CS employees under § 158.642.

(6) A DHS–CS employee on a full-time schedule or a part-time schedule must account for minimum hours of work by the conclusion of the last day of the work period. If the hours worked by the employee are less than the employee's minimum hours of work, the employee must use time-off approved by the employee's supervisor, or must be placed in an appropriate non-pay status for the purposes described in paragraphs (a)(1) and (2) of this section, to account for the difference between hours actually worked by the employee and the employee's minimum hours of work.

(7) A DHS–CS employee on a full-time schedule or a part-time schedule, in coordination with the employee's supervisor, may adjust when work hours are completed in a given work period, to ensure time-off for religious observance, while also completing minimum hours of work. A DHS–CS employee on a contingent schedule, in coordination with the employee's supervisor, may adjust when work hours are completed to ensure time-off for religious observance.

(e) *Hours worked and compensation.* The Department uses the work scheduling system described in this section in administering compensation under this part, especially salary administration described in § 158.622 and the compensation described in §§ 158.642, 158.650, 158.651, and 158.652. In alignment with the compensation strategy, described in § 158.601, the work scheduling system:

(1) Acknowledges the unpredictable nature of cybersecurity work and the expectation described in § 158.601(c) about working unusual hours and extended hours as needed; and

(2) Reflects an understanding of the cybersecurity talent market, especially current work expectations and arrangements.

(f) *Policy.* CTMS policy implementing this section addresses:

(1) Procedures for determining, recording, and updating as necessary, DHS–CS employees' work schedules;

(2) Procedures for selecting and communicating anticipated work hours in advance and communicating variances from those work hours;

(3) Requirements regarding reporting and monitoring hours worked;

(4) Procedures for accounting for minimum hours of work; and

(5) Other work scheduling requirements for DHS–CS employees, including DHS–CS employees supporting specific DHS organizations. Such requirements may include designated days, hours, core hours, or limits on the number of work hours per day;

§ 158.706 Recordkeeping.

(a) *Generally.* The Department documents an individual's appointment to a qualified position and creates records of a DHS–CS employee's employment in the DHS–CS in compliance with 5 U.S.C. 2951 and 5 CFR subchapter A, part 9, and subchapter B, parts 293 and 297.

(b) *Documenting a qualified position.* The Department documents a qualified position established under this part by documenting an individual's appointment to a qualified position. Such documentation includes a description of the individual's:

(1) CTMS qualifications and the DHS–CS cybersecurity work that can be performed through application of those qualifications;

(2) Applicable work and career structures established under the work valuation system described in § 158.404;

(3) Salary under the compensation system described in § 158.602;

(3) Assignment information described in paragraph (e) of this section;

(4) Official worksite described in § 158.704; and

(5) Work schedule described in § 158.705.

(c) *Updating qualified position documentation.* The Department updates the documentation associated with a DHS–CS employee's qualified position, described in paragraph (a) of this section, to reflect changes affecting the employee's qualified position, including any changes to the description of information listed in paragraph (a), such as enhancements to the employee's CTMS qualifications. Except as necessary for purposes of recordkeeping under this section, any update to the documentation associated with a DHS–CS employee's qualified position is not a promotion, transfer, or reassignment for any other purpose under 5 U.S.C. or 5 CFR.

(d) *Documenting an assignment.* The Department documents a DHS–CS employee's initial assignment as part of documenting the employee's qualified position under this section. The Department updates the documentation associated with a DHS–CS employee's qualified position for each of the employee's subsequent assignments described in § 158.703.

(e) *Assignment information.* Documentation of each assignment under this section includes the following operational information:

(1) Statement of cybersecurity work activities;

(2) Timeframe, such as anticipated duration;

(3) Primary DHS organization;

(4) Personnel security requirements;

(5) Location, such as official worksite determined under § 158.704;

(6) Information related to work scheduling under § 158.705; and

(7) Information related to the performance management program, including information relevant to appraisal reviews, mission impact reviews, and development reviews, described in subpart H of this part.

(f) *Integrating with existing processes.* For purposes of recordkeeping for DHS–CS employees, including documenting positions and assignments under this section, the Department uses existing Federal personnel recordkeeping processes, standards, requirements, and systems of record. CTMS policy implementing this section addresses integration of the approach to talent management under this part, including definitions used in this part, with existing Federal personnel recordkeeping processes, standards, requirements, and systems of record, as necessary.

§ 158.707 Details and opportunities outside DHS.

(a) DHS–CS employees serving in renewable appointments or continuing appointments may be detailed to:

(1) A position in the excepted service in another agency under 31 U.S.C. 1535;

(2) A position in the SES in another agency under 5 CFR 317.903;

(3) A position in the competitive service in another agency under 31 U.S.C. 1535 and 5 CFR 300.301, if approved by the Director of the Office of Personnel Management;

(4) Certain offices of the White House under 3 U.S.C.112;

(5) The Congress under 2 U.S.C. 4301(f);

(6) An international organization under 5 U.S.C. 3343; or

(7) Another detail opportunity under other provisions of applicable law.

(b) Individuals from outside the DHS–CS may not be detailed to a qualified position.

(c) DHS–CS employees serving in continuing appointments may be assigned to eligible non-Federal organizations under the Intergovernmental Personnel Act in accordance with 5 U.S.C. 3371–3375 and 5 CFR part 334.

§ 158.708 Directed assignments.

(a) Occasionally, the Department may direct a subsequent assignment of a DHS–CS employee, and such a directed subsequent assignment may require a change in the employee's official worksite, determined under § 158.704. For such directed subsequent assignments of a DHS–CS employee, the Department pays or reimburses expenses or allowances under and in accordance with the Federal Travel Regulations at 41 CFR chapters 301 and 302, and for such directed assignments that are not temporary, DHS provides notice to and consultation with the employee as described in this paragraph.

(b) Directed subsequent assignments expected to last less than six months are considered temporary, and for purposes under the Federal Travel Regulations at 41 CFR chapters 301 and 302, are temporary duty.

(c) For such directed subsequent assignments expected to last six months or more and with an official worksite in a DHS–CS employee's current commuting area, defined in 5 CFR 550.703, the Department provides the employee written notice at least 30 calendar days before the effective date of the subsequent assignment. This notice requirement may be waived only when the employee consents in writing.

(d) For such directed subsequent assignments expected to last six months or more and with an official worksite outside of a DHS–CS employee's current commuting area, defined in 5 CFR 550.703, DHS consults with the employee on the reasons for, and the employee's preferences regarding, the proposed change in assignment. Following such consultation, the Department provides the employee written notice at least 90 calendar days before the effective date of the assignment. This notice requirement may be waived only when the employee consents in writing.

§ 158.709 Exemption from other laws regarding deployment.

The provisions of laws, among other similar laws, listed in §§ 158.405, 158.502, and 158.605 do not apply under CTMS, to the DHS–CS, or to talent management involving the individuals described in § 158.103.

Subpart H—Developing Talent

Authority: 5 U.S.C. Chapters 41 and 43; 5 CFR parts 410 and 430.

§ 158.801 Definitions.

As used in this subpart:

Appraisal has the same meaning as that term in 5 CFR 430.203.

Appraisal period has the same meaning as that term in 5 CFR 430.203.

Appraisal program has the same meaning as that term in 5 CFR 430.203.

Appraisal system and *performance appraisal system* have the same meanings as those terms in 5 CFR 430.203.

Mission impact has the same meaning as defined in § 158.104.

Performance has the same meaning as that term in 5 CFR 430.203.

Performance rating has the same meaning as that term in 5 CFR 430.203.

Progress review has the same meaning as that term in 5 CFR 430.203.

Rating of record has the same meaning as that term in 5 CFR 430.203.

§ 158.802 Performance management program.

(a) In alignment with the DHS–CS's core values described in § 158.305 and the compensation strategy described in § 158.601, the Secretary or designee establishes and administers a systematic performance management program to:

(1) Establish and maintain individual accountability among DHS–CS employees;

(2) Manage, recognize, and develop the performance of each DHS–CS employee; and

(3) Improve effectiveness of DHS–CS employees in executing the DHS cybersecurity mission.

(b) The performance management program comprises the following ongoing reviews:

(1) Appraisal reviews described in § 158.804;

(2) Mission impact reviews described in § 158.805; and

(3) Development reviews described in § 158.806.

(c) To complete appraisal reviews, mission impact reviews, and development reviews for a DHS–CS employee, the Department may collect, on a periodic or ongoing basis, information and input from:

(1) The DHS–CS employee;

(2) Other DHS–CS employees;

(3) The employee's supervisor; and

(4) Other appropriate officials.

§ 158.803 Career development program.

(a) *Career development program.* In alignment with the DHS–CS's core values described in § 158.305 and the compensation strategy described in § 158.601, the Secretary or designee establishes and administers a career development program to:

(1) Guide the career progression of each DHS–CS employee;

(2) Ensure development of the collective expertise of DHS–CS employees through continual learning; and

(3) Ensure continued alignment between the qualifications of DHS–CS employees and CTMS qualifications.

(b) *Career progression.* Career progression in the DHS–CS is based on enhancement of CTMS qualifications and salary progression resulting from recognition adjustments under § 158.631. Career progression in the DHS–CS is not based on length of service in the DHS–CS or the Federal Government. The Department guides the career progression of DHS–CS employees using development strategies based on:

(1) Information from development reviews, described in § 158.806;

(2) Mission-related requirements; and

(3) Strategic talent priorities.

(c) *Commitment to continual learning.* The Department establishes, maintains, and communicates criteria for continual learning. Such criteria include recommended and required learning activities, including completion of specific courses of study, completion of mission-related training defined in 5 CFR 410.101, performance of certain DHS–CS cybersecurity work as part of assignments, and participation in opportunities for professional development and training described in § 158.640. The Department aims to utilize all available opportunities for DHS–CS employee development,

including opportunities under this part and under or based on authorities in 5 U.S.C. and 5 CFR relating to continual learning, professional development, and training, as appropriate.

(d) *Verification of qualifications enhancements.* The Department verifies DHS–CS employees' enhancement of CTMS qualifications, which may include review by the CTMB or assessment using standardized instruments and procedures designed to measure the extent to which a DHS–CS employee has enhanced the employee's qualifications. Verification of enhancement to CTMS qualifications may require updating the documentation associated with the employee's qualified position, as described in § 158.706.

§ 158.804 Appraisal reviews.

(a) Under 5 U.S.C. Chapter 43 and 5 CFR part 430, the Department establishes an appraisal program to review and evaluate the performance of DHS–CS employees to ensure DHS–CS employees' individual accountability.

(b) The appraisal program for DHS–CS employees includes one or more progress reviews, as defined in 5 CFR 430.203, and an appraisal of an employee's performance that results in a rating of record, as defined in 5 CFR 430.203.

(c) The Department addresses unacceptable performance, as defined in 5 U.S.C. 4301(3), under the provisions of 5 CFR part 432 or part 752. The CTMB may assist with any decision, or action, or both, made under the authority in this section and 5 CFR part 430 and 5 CFR part 432 or 752.

(d) If the Department determines a DHS–CS employee's performance is unacceptable or the employee receives an unacceptable rating of record, the employee is ineligible to receive recognition under §§ 158.630 through 158.634 and the employee may be excluded from mission impact reviews under § 158.805.

§ 158.805 Mission impact reviews.

(a) The Department reviews a DHS–CS employee's mission impact throughout the employee's service in the DHS–CS and generates a mission impact summary at least annually. The Department may conduct mission impact reviews concurrently with development reviews.

(b) In reviewing a DHS–CS employee's mission impact, individually or as part of a group of DHS–CS employees, or both, the Department considers factors such as:

(1) Superior application of CTMS qualifications to perform DHS–CS cybersecurity work;

(2) Significant enhancements to CTMS qualifications;

(3) Special contributions to cybersecurity technologies, techniques, tactics, or procedures; and

(4) Notable improvements to execution of the DHS cybersecurity mission.

(c) The Department uses mission impact summary information to make distinctions among DHS–CS employees, such as comparing, categorizing, and ranking DHS–CS employees on the basis of mission impact to support decisions related to recognition for DHS–CS employees under §§ 158.630 through 158.634.

§ 158.806 Development reviews.

(a) The Department reviews a DHS–CS employee's career progression, as described in § 158.803(b) throughout the employee's service in the DHS–CS. The Department generates a development summary, at least annually, which may include plans for a DHS–CS employee's continual learning in alignment with the criteria for continual learning under the career development program described in § 158.803.

(b) As part of development reviews, the Department may compare, categorize, and rank DHS–CS employees to support decisions related to professional development and training under § 158.640. The Department may also use information from development reviews in matching subsequent assignments under § 158.703. The Department may conduct development reviews concurrently with mission impact reviews.

Subpart I—Employee Rights, Requirements, and Input

§ 158.901 Federal employee rights and processes.

(a) *Adverse actions:* Nothing in this part affects the rights of CS employees under 5 U.S.C. Chapter 75, 5 U.S.C. 4303, and 5 CFR parts 432 and 752.

(b) *Reductions in force.* The provisions of 5 U.S.C. Chapter 35, Subchapter I and 5 CFR part 351 regarding reductions in force apply to talent management actions taken under this part.

(c) *Redress with third parties.* Nothing in this part affects the rights, as provided by law, of a DHS–CS employee to seek review before a third party of a talent management action taken under this part involving that employee, including seeking review before the:

(1) Equal Employment Opportunity Commission, regarding discrimination under Federal anti-discrimination laws;

(2) Merit Systems Protection Board, regarding matters such as adverse actions under 5 U.S.C. Chapter 75 or Chapter 43 and individual rights of action under 5 U.S.C. Chapter 12;

(3) Office of Special Counsel, regarding matters such as whistleblower retaliation and other prohibited personnel practices under 5 U.S.C. 2302 and the Hatch Act (5 U.S.C. 7321 *et seq.*); and

(4) Department of Labor, regarding matters covered by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 *et seq.*).

(d) *Back pay.* Back pay remains available under 5 U.S.C. 5596 and 5 CFR part 550, subpart H, for unjustified or unwarranted talent management actions.

§ 158.902 Ethics requirements.

(a) DHS–CS employees, including such employees providing uncompensated service and DHS–CS advisory appointees, are employees covered by the Ethics in Government Act section 101(f)(3), and are subject to the criminal conflict of interest rules as well as government ethics requirements applicable to Federal employees, including:

(1) Criminal conflict of interest provisions in 18 U.S.C. 201–209;

(2) Ethics in Government Act, as amended, and implementing regulations in 5 CFR, Chapter XVI, Subchapter B, including financial disclosure reporting in 5 CFR part 2634 and the Standards of Ethical Conduct for Employees of the Executive Branch in 5 CFR part 2635;

(3) Supplemental Standards of Ethical Conduct for Employees of the Department of Homeland Security in 5 CFR part 4601; and

(4) Department policy.

(b) Under the ethics requirements described in paragraph (a) of this section, DHS–CS employees must seek approval for certain outside activities, comply with ethics program requirements, and other applicable laws, including post-government employment restrictions.

§ 158.903 Employee input program.

(a) *Program.* The Department establishes and administers a program for DHS–CS employees to express employment-related concerns and recommendations for enhancing CTMS administration and DHS–CS management. Under such a program, a DHS–CS employee may request review of certain talent management actions

related to the employee's employment in the DHS–CS or related to the processes, systems, and programs established under this part, or both. The Cybersecurity Talent Management Board may use information from this program for the periodic evaluation of CTMS described in § 158.302.

(b) *Policy.* CTMS policy implementing this section addresses:

(1) Talent management actions covered by the employee input program;

(2) The process for DHS–CS employees to express input; and

(3) The interaction of the employee input program with relevant processes for redress with third parties of employment-related actions, including those described in § 158.901.

Subpart J—Advisory Appointments

§ 158.1001 Advisory appointments and advisory appointees.

(a) An advisory appointment is an appointment to a qualified position that:

(1) The Secretary determines is of a policy-determining, policy-making, or policy-advocating character or involves a close and confidential working relationship with the Secretary or other key appointed officials;

(2) Does not have a salary set by statute; and

(3) Is not required to be filled by an appointment by the President.

(b) An advisory appointment to a qualified position is treated as a Schedule C position under 5 CFR 213.3301 except regarding appointment and compensation. Talent management for a DHS–CS advisory appointee is in accordance with the provisions of 5 CFR applicable to Schedule C appointees, except that appointment and compensation for a DHS–CS advisory appointee is governed by this part.

(c) Employment restrictions such as those concerning the criminal conflict of interest statutes, standards of ethical conduct, partisan political activity, and contained in laws such as Executive Orders, government-wide ethics regulations and the Hatch Act (5 U.S.C. 7321 *et seq.*), apply to a DHS–CS advisory appointee as if the employee were a Schedule C appointee.

(d) The Department tracks and coordinates advisory appointments with the Executive Office of the President and the Office of Personnel Management (OPM), as appropriate.

§ 158.1002 Appointment of advisory appointees.

(a) Appointment of an individual, including a former DHS–CS employee, to an advisory appointment is governed by this subpart J and subpart E of this part.

(b) An individual for appointment to an advisory appointment must participate in the assessment program described in § 158.520. The Secretary or designee must approve the appointment of an individual to an advisory appointment by name, and an individual appointed to an advisory appointment serves at the will of the Secretary.

(c) A DHS–CS advisory appointee may be removed at any time. In accordance with 5 U.S.C. 7511(b), the provisions of 5 U.S.C. Chapter 75, subchapter II do not apply to talent management actions taken under this part for a DHS advisory appointee.

(d) An advisory appointment terminates no later than the end of the term of the U.S. President under which the advisory appointee was appointed.

(e) The Secretary or designee establishes a limit on the number of advisory appointments under this subpart J, and the total number of advisory appointments under this subpart may not exceed that limit at any time.

(f) The Department may not change an advisory appointment to a renewable appointment or continuing appointment.

(g) The Department may not use an advisory appointment solely or primarily for the purpose of detailing any individual to the White House.

§ 158.1003 Compensation for advisory appointees.

(a) *General.* Compensation for a DHS–CS advisory appointee is governed by this subpart J and subpart F of this part. A DHS–CS advisory appointee may provide uncompensated service and any such service is gratuitous service.

(b) *Compensation.* As compensation for service in the DHS–CS, a DHS–CS advisory appointee receives a salary as described in paragraph (c) this section, unless the appointee is providing uncompensated service. A DHS–CS advisory appointee, except such an employee providing uncompensated service, may also receive additional compensation as described in paragraph (d) of this paragraph.

(c) *Salary.* A DHS–CS advisory appointee receives a salary under the salary system described in § 158.610.

(1) *Setting salary.* The Department determines the salary for an individual accepting an advisory appointment to a qualified position under § 158.620.

(2) *Adjusting salary.* The Department determines any adjustments to salary of a DHS–CS advisory appointee under § 158.621.

(3) *Extended range.* A DHS–CS advisory appointee is ineligible for a salary in the extended range.

(4) *Local cybersecurity talent market supplement.* The Department may provide a DHS–CS advisory appointee a local cybersecurity talent market supplement under § 158.612.

(d) *Additional compensation.* In alignment with the compensation strategy in § 158.601, the Department may provide the following types of additional compensation to a DHS–CS advisory appointee for the purposes of each such type as described under this part and subject to the requirements of this section. An individual appointed to an advisory appointment is ineligible to receive any type of additional compensation under this part as part of an offer of employment in the DHS–CS.

(1) *Types.* Additional compensation under CTMS for a DHS–CS advisory appointee is:

(i) Recognition adjustments under § 158.631, except the Secretary or designee must approve any such recognition for a DHS–CS advisory appointee;

(ii) Recognition payments under § 158.632, except the Secretary or designee must approve any such recognition for a DHS–CS advisory appointee;

(iii) Recognition time-off under § 158.633, except the Secretary or designee must approve any such recognition for a DHS–CS advisory appointee;

(iv) Honorary recognition under § 158.634;

(v) Professional development and training under § 158.640, so long as a professional development and training program described in § 158.640 explicitly covers DHS–CS advisory appointee and prohibits such employees from receiving any payment or reimbursement for costs of academic degree training or expenses to obtain professional credentials, including examinations to obtain such credentials;

(vi) Allowances in nonforeign areas under § 158.643; and

(vii) Other types of compensation, including leave and benefits, authorized under §§ 158.650 through 158.655 and provided in accordance with relevant provisions of other laws.

(2) *Combining types.* A DHS–CS advisory appointee may receive any type of additional compensation described in paragraph (c)(1) of this section in combination with any other such type subject to the requirements of subpart F of this part and the requirements and restrictions of this section.

(3) *Restrictions.* Additional compensation described in paragraph (d)(1) of this section is subject to, and may be limited by:

(i) The aggregate compensation limit described in § 158.604;

(ii) Prohibitions in 5 U.S.C. 4508, guidance from the Office of Management and Budget and Office of Personnel Management, and any other provisions of law governing compensation for political appointees; and

(iii) Other requirements and restrictions in CTMS policy.

(e) *Compensation administration.* For purposes of administering compensation under this part for a DHS–CS advisory appointee, the Department administers salary and other compensation, including leave, based on consideration of the employee's work schedule under the work scheduling system described in § 158.705, and may convert the appointee's salary into an hourly rate, biweekly rate, or other rate.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species Status With Critical Habitat for Guadalupe Fatmucket, Texas Fatmucket, Guadalupe Orb, Texas Pimpleback, and False Spike, and Threatened Species Status With Section 4(D) Rule and Critical Habitat for Texas Fawnsfoot; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2019–0061; FF09E21000 FXES11110900000 212]

RIN 1018–BD16

Endangered and Threatened Wildlife and Plants; Endangered Species Status With Critical Habitat for Guadalupe Fatmucket, Texas Fatmucket, Guadalupe Orb, Texas Pimpleback, and False Spike, and Threatened Species Status With Section 4(d) Rule and Critical Habitat for Texas Fawnsfoot

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), propose to list six Central Texas mussel species: The Guadalupe fatmucket (*Lampsilis bergmanni*), Texas fatmucket (*Lampsilis bracteata*), Texas fawnsfoot (*Truncilla macrodon*), Guadalupe orb (*Cyclonaias necki*), Texas pimpleback (*Cyclonaias* (=*Quadrula*) *petrina*), and false spike (*Fusconaia* (=*Quincuncina*) *mitchelli*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing Guadalupe fatmucket, Texas fatmucket, Guadalupe orb, Texas pimpleback, and false spike as endangered species is warranted, and listing Texas fawnsfoot as a threatened species is warranted. We propose a rule issued under section 4(d) of the Act (''4(d) rule'') for the Texas fawnsfoot. If we finalize this rule as proposed, it would add these species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. We also propose to designate critical habitat for all six species under the Act. In total, approximately 1,944 river miles (3,129 river kilometers) in Texas fall within the boundaries of the proposed critical habitat designations. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat. We also are notifying the public that we have scheduled two informational meetings followed by public hearings on the proposed rule.

DATES:

Comment submission: We will accept comments received or postmarked on or before October 25, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public informational meeting and public hearing: We will hold public informational sessions from 5:00 p.m. to 6:00 p.m., Central Time, followed by public hearings from 6:30 p.m. to 8:30 p.m., Central Time, on September 14, 2021, and September 16, 2021.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2019–0061, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rules box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2019–0061, U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Public informational meetings and public hearings: The public informational meetings and the public hearings will be held virtually using the Zoom platform. See Public Hearing, below, for more information.

Availability of supporting materials: For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at *https://www.fws.gov/southwest/es/AustinTexas/ESA_Sp_Mussels.html* and at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2019–0061. Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at the Service website set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd., Suite 200, Austin, TX 78758; telephone (512) 490–0057. 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 may be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. This document proposes the Guadalupe fatmucket (*Lampsilis bergmanni*), Texas fatmucket (*Lampsilis bracteata*), Guadalupe orb (*Cyclonaias necki*), Texas pimpleback (*Cyclonaias* (=*Quadrula*) *petrina*), and false spike (*Fusconaia* (=*Quincuncina*) *mitchelli*) as endangered species and Texas fawnsfoot (*Truncilla macrodon*) as a threatened species. This document also proposes the designation of critical habitat for all six species, as well as a 4(d) rule providing protective regulations for the Texas fawnsfoot.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on 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 habitat loss through changes in water quality and quantity, as well as increased fine sediments (Factor A), are the primary threats to these species.

Under the Act, for any species that is determined to be threatened, we must provide protective regulations to provide for the conservation of that species. For the Texas fawnsfoot, we are proposing to prohibit take and possession.

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 4(b)(2) of the Act states that the Secretary must make the designation on

the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Supporting analyses. We prepared an analysis of the economic impacts of the proposed critical habitat designations and hereby announce the availability of the draft economic analysis for public review and comment.

Our species status assessment report (SSA report) documents the results of the comprehensive biological status review for the central Texas mussels and provides an account of the species' overall viability through forecasting of the species' condition in the future (Service 2019a, entire). Additionally, the SSA report contains our analysis of required habitat and the existing conditions of that habitat.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of eight appropriate specialists regarding the species status assessment report. We received responses from six specialists, which informed this proposed rule. The purpose of peer review is to ensure that our listing determinations, critical habitat designations, and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species.

We sought comments from independent specialists on the SSA report to ensure that our proposal is based on scientifically sound data and analyses. We received feedback from six scientists with expertise in freshwater mussel biology, ecology, genetics, climate science, and hydrology as peer review of the SSA report. The reviewers were generally supportive of our approach and made suggestions and comments that strengthened our analysis. The SSA report and other materials relating to this proposal can be found at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2019–0061.

Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that any of these species are threatened instead of endangered, or endangered instead of threatened, or we may conclude that any of these species do not warrant listing as either an endangered species or a threatened species. Such final decisions would be a logical outgrowth of this proposal, as long as we: (a) Base the decisions on the best scientific and commercial data available after considering all of the relevant factors; (2) do not rely on factors Congress has not intended us to consider; and (3) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of these species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics, genomics, systematics, and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, abundance, and current and projected trends; and

(e) Past and ongoing conservation measures for these species, their habitats, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of the Central Texas mussels.

(5) Information on regulations that are necessary and advisable to provide for the conservation of the Texas fawnsfoot and that the Service can consider in developing a 4(d) rule for the species. In particular, information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether any other forms of take should be excepted from the prohibitions in the 4(d) rule.

(6) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including information to inform the following factors such that a designation of critical habitat may be determined to be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(d) No areas meet the definition of critical habitat.

(7) Specific information on:

(a) The amount and distribution of habitat for all six Central Texas mussels;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Any additional areas occurring within the range of the species, *i.e.,* Anderson, Austin, Bastrop, Bell, Blanco, Brazoria, Brazos, Brown, Burleson, Caldwell, Coleman, Colorado, Comal, Concho, Dallas, DeWitt, Edwards, Ellis, Falls, Fayette, Fort Bend, Freestone, Gillespie, Gonzales, Grimes, Guadalupe, Hays, Henderson, Houston, Kaufman, Kerr, Kendall, Kimble, Lampasas, Leon, Llano, Madison, Mason, Matagorda, McCulloch, McLennan, Menard, Milam, Mills, Navarro, Palo Pinto, Parker,

Robertson, Runnels, San Saba, Shackelford, Stephens, Sutton, Tom Green, Travis, Throckmorton, Waller, Washington, Victoria, Wharton, and Williamson Counties, Texas, that should be included in the designation because they (1) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (2) are unoccupied at the time of listing and are essential for the conservation of the species;

(d) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(e) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments:

(i) Regarding whether occupied areas are inadequate for the conservation of the species;

(ii) Providing specific information that supports the determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species; and

(iii) Explaining whether or not unoccupied areas fall within the definition of ''habitat'' at 50 CFR 424.02 and why.

(8) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(10) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion.

(12) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Public Hearing

We have scheduled two public informational meetings and public hearings on this proposed rule to list the Central Texas mussels as endangered or threatened species with critical habitat. We will hold the public informational meetings and public hearings on the date and at the times listed above under *Public informational meeting and public hearing* in **DATES**. We are holding the public informational meetings and public hearings via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit *https://www.fws.gov/southwest/.* Registrants will receive the Zoom link and the telephone number for the public informational meetings and public hearings. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials *(https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials*) prior to the public informational meetings and public hearings.

The public hearings will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding this proposed rule. While the public informational meetings will be opportunities for dialogue with the Service, the public hearings are not: They are a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearings must register before the hearing (*https://www.fws.gov/southwest/*). The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

Table 1, below, summarizes the petition history and proposed status of the Central Texas mussels under the Endangered Species Act. On June 25, 2007, we received a formal petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians), for 475 species in the southwestern United States. The petitioned group of species included the Texas fatmucket.

On October 15, 2008, we received a petition dated October 9, 2008, from WildEarth Guardians, requesting that the Service list as threatened or endangered and designate critical habitat for six species of freshwater mussels, including the Texas pimpleback, Texas fawnsfoot, and false spike.

On December 15, 2009, we published our 90-day finding that the above petitions presented substantial scientific information indicating that listing the Texas fatmucket, Texas pimpleback, Texas fawnsfoot, and false spike may be warranted (74 FR 66260). As a result of

the finding, we initiated status reviews for these four species. On October 6, 2011, we published a 12-month finding for five Texas mussels, including the Texas fatmucket, Texas fawnsfoot, and Texas pimpleback, that listing was warranted but precluded by higher priority actions, and these species were added to the candidate list (76 FR 62166). Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing rule is precluded by other higher priority listing activities. The Texas fatmucket, Texas fawnsfoot, and Texas pimpleback were included in all of our subsequent annual Candidate Notices of Review (77 FR 69993, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016; and 84 FR 54732, October 10, 2019).

The distribution of the newly described Guadalupe orb was previously fully contained within the distribution of the Texas pimpleback. Genetic information received in 2018 (Burlakova *et al.* 2018, entire) confirmed that the Guadalupe orb is a separate species distinct from the Texas pimpleback, and the Guadalupe orb is now a newly described species. Similarly, the Guadalupe fatmucket was split from the Texas fatmucket in 2018 (Inoue *et al.* 2018, entire) and described in 2019 (Inoue *et al.* 2019, in press). As both species were part of the original petitioned entities, we evaluated both of these new species as well as the four original species in our SSA, and all six species are included in this proposed rule.

This document constitutes our concurrent 12-month warranted petition finding for the false spike and proposed listing rule and proposed critical habitat rule for all six Central Texas mussel species.

TABLE 1—LIST OF THE PETITION FINDINGS FOR THE SIX CENTRAL TEXAS MUSSELS

Scientific name	Common name	River basins	Petition received date	90-day finding date	12-month finding date
Lampsilis bergmanni	Guadalupe fatmucket	Guadalupe	Previously included in Texas fatmucket.		
Lampsilis bracteata	Texas fatmucket	Colorado	June 25, 2007	December 15, 2009	October 6, 2011.
Truncilla macrodon	Texas fawnsfoot	Trinity, Brazos, Colorado.	October 15, 2008	December 15, 2009	October 6, 2011.
Cyclonaias necki	Guadalupe orb	Guadalupe	Previously included in Texas pimpleback.		
Cyclonaias petrina	Texas pimpleback	Colorado	October 15, 2008	December 15, 2009	October 6, 2011.
Fusconaia mitchelli	False spike	Brazos, Colorado, Guadalupe.	October 15, 2008	December 15, 2009	This finding.

I. Proposed Listing Determination

Background

General Mussel Biology

Freshwater mussels, including the six Central Texas mussels, have a complex life history involving parasitic larvae, called glochidia, which are wholly dependent on host fish. As freshwater mussels are generally sessile (immobile), dispersal is accomplished primarily through the behavior of host fish and their tendencies to travel upstream and against the current in rivers and streams. Mussels are broadcast spawners; males release sperm into the water column, which is taken in by the female through the incurrent siphon (the tubular structure used to draw water into the body of the mussel). The developing larvae remain with the female until they mature and are ready for release as glochidia, to attach on the gills, head, or fins of fishes (Vaughn and Taylor 1999, p. 913; Barnhart *et al.* 2008, pp. 371–373).

Glochidia die if they fail to find a host fish, attach to the wrong species of host fish, attach to a fish that has developed immunity from prior infestations, or attach to the wrong location on a host fish (Neves 1991, p. 254; Bogan 1993, p. 599). Successful glochidia encyst (enclose in a cyst-like structure) on the host's tissue, draw nutrients from the fish, and develop into juvenile mussels (Arey 1932, pp. 214–215). The glochidia will remain encysted for about a month through a transformation to the juvenile stage. Once transformed, the juveniles will excyst from the fish and drop to the substrate.

Freshwater mussel species vary in both onset and duration of spawning, how long developing larvae are held in the marsupial gill chambers (gills used for holding eggs and glochidia), and which fish species serve as hosts. The mechanisms employed by mussel species to increase the likelihood of interaction between host fish and glochidia vary by species.

Mussels are generally immobile; their primary opportunity for dispersal and movement within the stream comes when glochidia attach to a mobile host fish (Smith 1985, p. 105). Upon release from the host, newly transformed juveniles drop to the substrate on the bottom of the stream. Those juveniles that drop in unsuitable substrates die because their immobility prevents them from relocating to more favorable habitat. Juvenile freshwater mussels burrow into interstitial substrates and grow to a larger size that is less susceptible to predation and displacement from high flow events (Yeager *et al.* 1994, p. 220). Adult mussels typically remain within the same general location where they dropped off (excysted) from their host fish as juveniles.

Host specificity can vary across mussel species, which may have specialized or generalized relationships with one or more taxa of fish. Mussels have evolved a wide variety of adaptations to facilitate transmission of glochidia to host fish including: Display/mantle lures mimicking fish or invertebrates; packages of glochidia (conglutinates) that mimic worms, insect larvae, larval fish, or fish eggs; and release of glochidia in mucous webs that entangle fish (Strayer *et al.* 2004, p. 431). Polymorphism (existence of multiple forms) of mantle lures and conglutinates frequently exists within mussel populations (Barnhart *et al.* 2008, p. 383), representing important adaptive capacity in terms of genetic diversity and ecological representation.

Guadalupe Fatmucket

The Guadalupe fatmucket (*Lampsilis bergmanni*) was recently discovered to be a separate and distinct species from Texas fatmucket (*L. bracteata;* Inoue *et al.* 2018, pp. 5–6; Inoue *et al.* 2019, in press), and the Service now recognizes the Guadalupe fatmucket as a new

species that occurs only in the Guadalupe River basin. Because the Guadalupe fatmucket has recently been split from Texas fatmucket, the species are very similar, and better information is not yet available, we believe the Guadalupe fatmucket has similar habitat needs (headwater habitats in gravel or bedrock fissures) and host fish (sunfishes) as the Texas fatmucket.

The Guadalupe fatmucket is a small to medium-sized freshwater mussel (to 4 inches (in) (100 millimeters (mm))) that exhibits sexual dimorphism and has a yellow-green-tan shell, and is similar in appearance to the Texas fatmucket (a more detailed description of the Texas fatmucket is found in Howells *et al.* 2011, pp. 14–16). Related species in the genus *Lampsilis* from the southeast United States reach a maximum age of 13–25 years (Haag and Rypel 2010, pp. 4–6).

Guadalupe fatmucket is currently found in one population, which occurs in 54 miles (87 km) of the Guadalupe River basin in Kerr and Kendall Counties, Texas (Randklev *et al.* 2017, p. 4) (table 2; figure 1). For more information on this population, see the SSA report.

TABLE 2—CURRENT GUADALUPE FATMUCKET POPULATION

Population	Streams included	Counties	Occupied reach length (mi (km))	Recent collection years (numbers)
Guadalupe River	Guadalupe River; North Fork, Guadalupe River; Johnson Creek.	Kerr and Kendall Co., TX	54 (87)	2018 (22), 2019 (shells).

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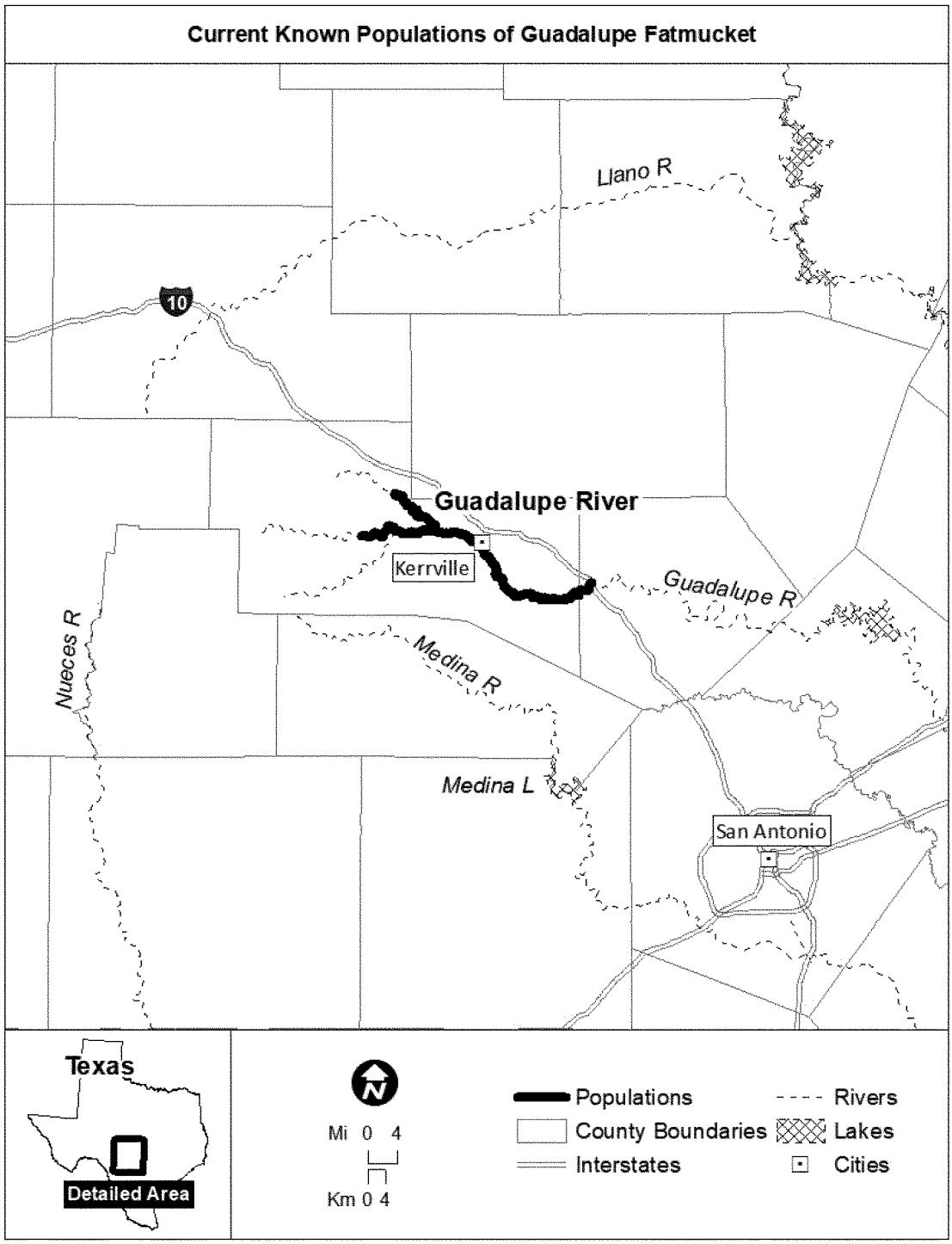

Figure 1. Map showing location of known Guadalupe fatmucket population.

Texas Fatmucket

A thorough review of the taxonomy, life history, and ecology of the Texas fatmucket is presented in the SSA report. Texas fatmucket has been characterized as a rare Texas endemic (Burlakova *et al.* 2011a, p. 158) and was originally described as the species *Unio bracteatus* by A.A. Gould in 1855 (p. 228) from the ''Llanos River'' in ''Upper'' Texas. The species is currently recognized as *Lampsilis bracteata* (Williams *et al.* 2017, pp. 35, 39). Recently, individuals that had been known as Texas fatmucket in the Guadalupe River basin were found to be a new species (Inoue *et al.* 2019, in press); therefore, the Texas fatmucket occurs only in the Colorado River basin.

The Texas fatmucket is a small to medium-sized freshwater mussel (to 4 in (100 mm)) that exhibits sexual dimorphism (males and females have different shapes) and has a yellow-

green-tan shell (Howells *et al.* 2011, pp. 14–16). For a detailed morphological description see Howells *et al.* 1996 (p. 61) and Howells 2014 (p. 41).

Host fishes for Texas fatmucket are members of the Family Centrarchidae (sunfishes) including bluegill (*Lepomis macrochirus*), green sunfish (*L. cyanellus*), Guadalupe bass (*Micropterus treculii*), and largemouth bass (*M. salmoides*) (Howells 1997, p. 257; Johnson *et al.* 2012, p. 148; Howells 2014, p. 41; Ford and Oliver 2015, p. 4; Bonner *et al.* 2018, p. 9).

Related species can expel conglutinates (packets of glochidia) and are known to use mantle lures (Barnhart *et al.* 2008, pp. 377, 380) to attract sight-feeding fishes that attack and rupture the marsupium where the glochidia are held, thereby becoming infested by glochidia. These species are long-term brooders (bradytictic), spawning and becoming gravid in the fall and releasing glochidia in the spring (Barnhart *et al.* 2008, p. 384).

Related species in the genus *Lampsilis* from the southeast United States reach a maximum age of 13–25 years (Haag and Rypel 2010; pp. 4–6). Texas fatmucket occur in firm mud, stable sand, and gravel bottoms, in shallow waters, sometimes in bedrock fissures or among roots of bald cypress (*Taxodium distichum*) and other aquatic vegetation (Howells 2014, p. 41). The species typically occurs in free-flowing rivers but can survive in backwater areas, such as in areas upstream of lowhead dams (*e.g.* Llano Park Lake (BioWest, Inc., 2018, pp. 2–3)).

Texas fatmucket currently occur only in the upper reaches of major tributaries within the Colorado River basin (Randklev *et al.* 2017, p. 4) in five populations: Lower Elm Creek, upper/middle San Saba River, Llano River, Pedernales River, and lower Onion Creek (table 3; figure 2). Isolated individuals not considered part of larger functioning populations have been found in Cherokee Creek, Bluff Creek, and the North Llano River. For more information on these populations, see the SSA report.

TABLE 3—CURRENT TEXAS FATMUCKET POPULATIONS

Population	Streams included	Counties	Occupied reach length (mi (km))	Recent collection years (number collected)
Lower Elm Creek	Elm Creek	Runnels Co., TX	12.5 (20)	*2005 2008 (1) 2019 (1)
Upper/Middle San Saba River	San Saba River	Menard, Mason, San Saba, and McCulloch Co., TX.	62 (100)	2016 (29) 2017 (87) 2017 (71)
Llano River	Llano River, South Llano River.	Kimble, Mason, Llano Co., TX	127 (204)	2016 (72) 2017 (47) 2017 (5)
Pedernales River	Pedernales River, Live Oak Creek.	Gillespie, Hays, and Blanco Co., TX.	79 (127)	2017 (17)
Lower Onion Creek	Onion Creek	Travis Co., TX	5 (8)	2010 (3) 2018 (1)

*No live animals.

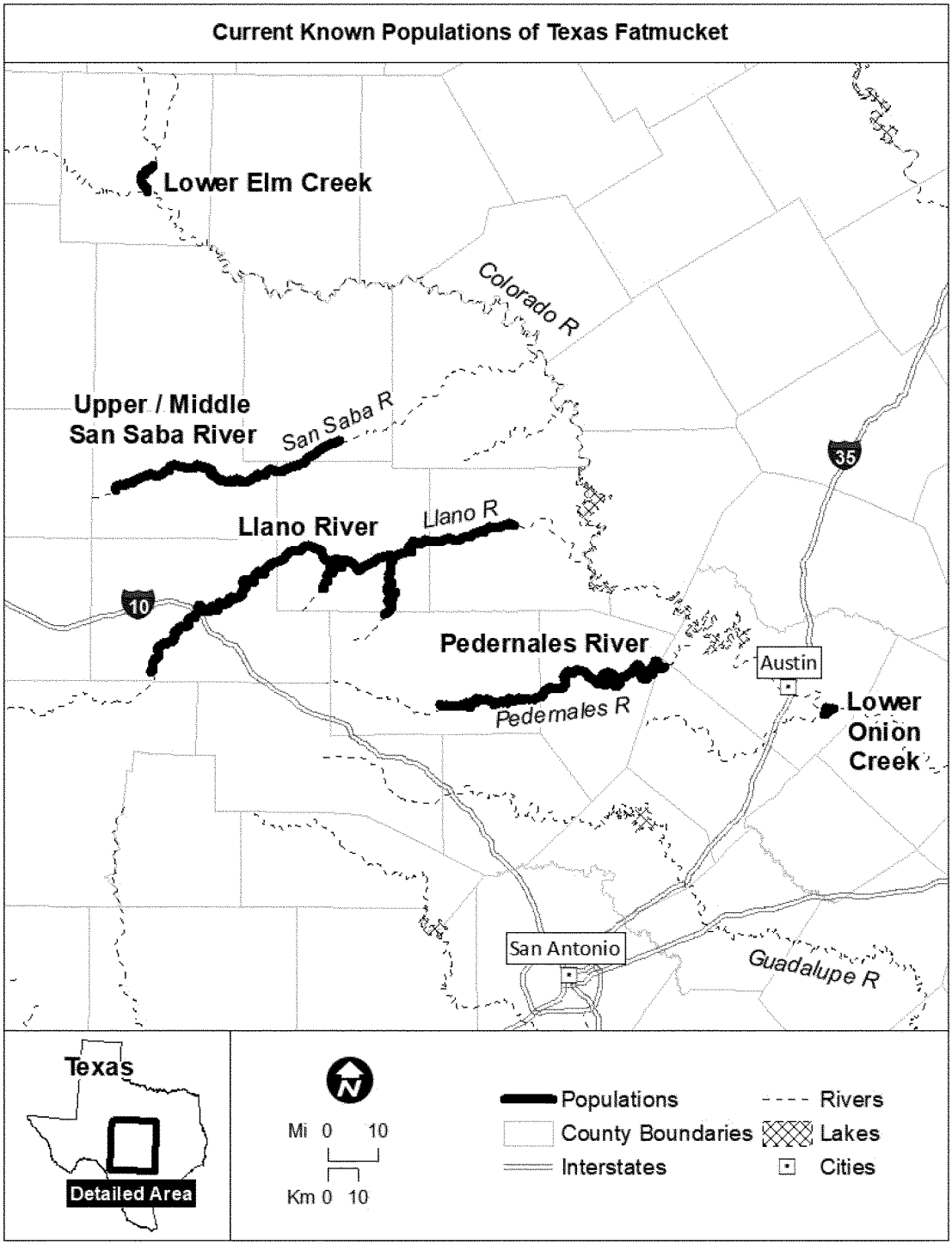

Figure 2. Map showing locations of known Texas fatmucket populations.

Texas Fawnsfoot

The Texas fawnsfoot was originally described as *Unio macrodon* 1859 from a location near Rutersville, Fayette County, Texas (Lea 1859, pp. 154–155). Texas fawnsfoot is recognized by the scientific community as *Truncilla macrodon* (Williams *et al.* 2017, pp. 35, 44).

Texas fawnsfoot is a small- to medium-sized (2.4 in (60 mm)) mussel with an elongate oval shell (Howells 2014, p. 111). For a detailed description, see Howells *et al.* 1996 (p. 143) and Howells 2014 (p. 111).

Host fish species are not confirmed for the Texas fawnsfoot, but we conclude they use freshwater drum (*Aplodinotus grunniens;* Howells 2014, p. 111), like other *Truncilla* species occurring in Texas and elsewhere (Ford and Oliver 2015, p. 8). Freshwater drum are molluscivorous (mollusk-eating) and

become infested with glochidia when they consume gravid female mussels (Barnhart *et al.* 2008, p. 373). This strategy of host infestation may limit population size, as reproductively successful females are sacrificed (*i.e.,* eaten by freshwater drum). Related species are bradytictic, brooding larvae over the winter instead of releasing them immediately (Barnhart *et al.* 2008, p. 384). Other species in the genus *Truncilla* from the Southeast and Midwest reach a maximum age ranging from 8–18 years (Haag and Rypel 2010, pp. 4–6).

Texas fawnsfoot are found in medium- to large-sized streams and rivers with flowing waters and mud, sand, and gravel substrates (Howells 2014, p. 111). Adults are most often found in bank habitats and occasionally in backwater, riffle, and point bar habitats, with low to moderate velocities that appear to function as flow refuges during high flow events (Randklev *et al.* 2017c, p. 137).

Texas fawnsfoot occurs in the lower reaches of the Colorado and Brazos Rivers, and in the Trinity River (Randklev *et al.* 2017b, p. 4) in seven populations: East Fork Trinity River, Middle Trinity River, Clear Fork Brazos River, Upper Brazos River, Middle/Lower Brazos River, San Saba/Colorado Rivers, and Lower Colorado River (table 4; figure 3). Texas fawnsfoot was historically distributed throughout the Colorado and Brazos River basins (Howells 2014, pp. 111–112; and reviewed in Randklev *et al.* 2017c, pp. 136–137) and in the Trinity River basin (Randklev *et al.* 2017b, p. 11). Texas fawnsfoot historically occurred in, but is now absent from, the Leon River (Popejoy *et al.* 2016, p. 477). Randklev *et al.* (2017c, p. 135) surveyed the Llano, San Saba, and Pedernales Rivers and found neither live individuals nor dead shells of Texas fawnsfoot. Isolated individuals not considered part of functioning populations have been found in the Little River. For more information on Texas fawnsfoot populations, see the SSA report.

TABLE 4—CURRENT TEXAS FAWNSFOOT POPULATIONS

Population	Streams included	Counties	Occupied reach length (mi (km))	Recent collection years (numbers)
East Fork Trinity River	East Fork Trinity River	Kaufman Co., TX	12 (19)	2017 (40) 2018 (12)
Middle Trinity River	Trinity River	Navarro, Anderson, Leon, Houston, and Madison Co., TX.	140 (225)	2016—2017 (59)
Clear Fork Brazos River	Clear Fork Brazos River	Shackelford and Throckmorton Co., TX.	13 (21)	2010 (1) 2018 (0)
Upper Brazos River	Brazos River	Palo Pinto and Parker Co., TX	62 (100)	2017 (23)
Middle/Lower Brazos River	Brazos River	McLennan, Falls, Robertson, Milam, Brazos, Burleson, Grimes, Washington, Waller, Austin, and Fort Bend Co., TX.	346 (557)	2014 (188) 2017 (28)
San Saba/Colorado Rivers	San Saba River, Colorado River	San Saba and Mills Co., TX	43 (69)	2017 (0) 2018 (2)
Lower Colorado River	Colorado River	Colorado, Wharton, and Matagorda Co., TX.	109 (175)	2010 (52) 2015 (10) 2017 (9)

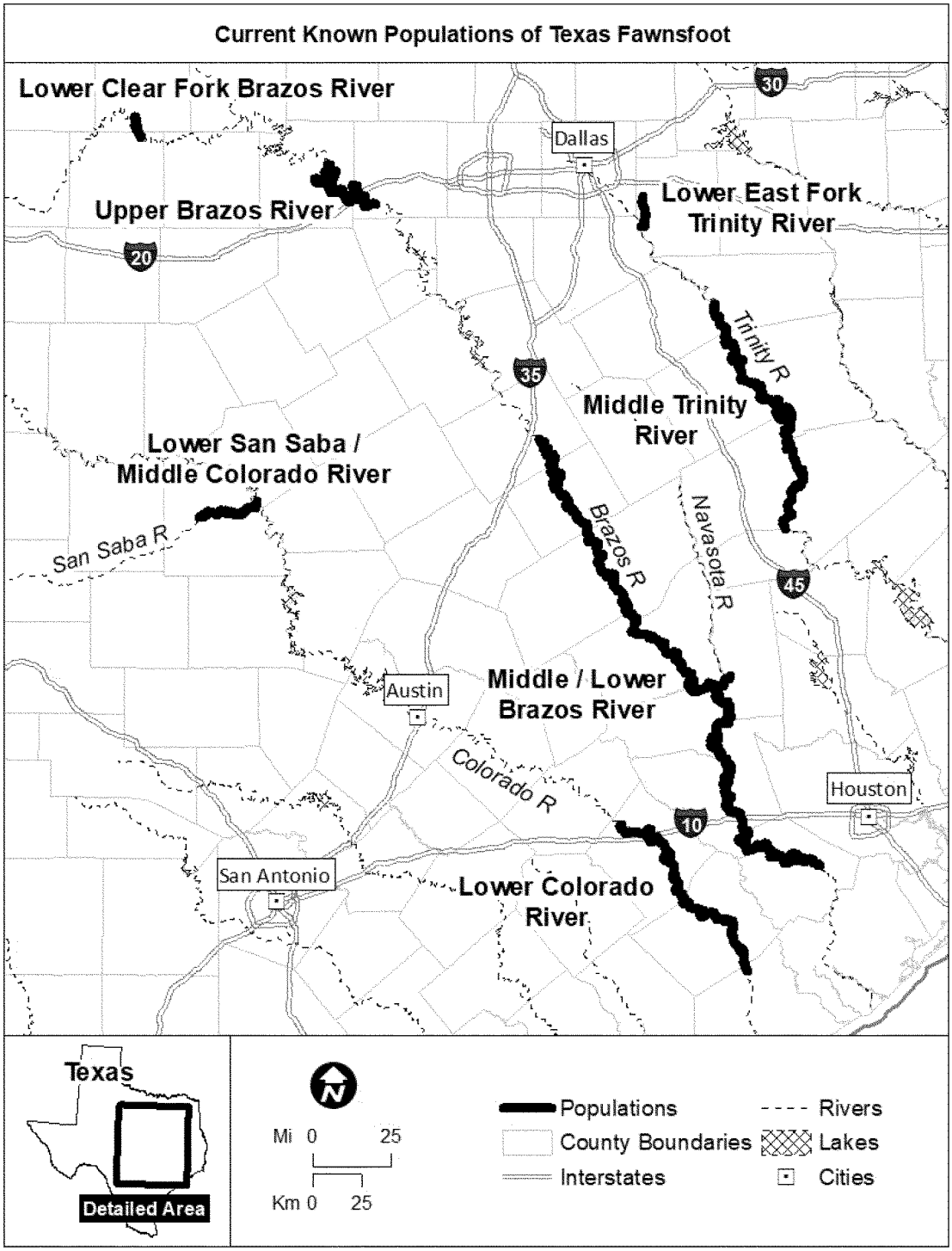

Figure 3. Map showing locations of known Texas fawnsfoot populations.

Guadalupe Orb

Burlakova *et al.* (2018, entire) recently described the Guadalupe orb (*Cyclonaias necki*) from the Guadalupe River basin as a separate species distinct from Texas pimpleback. The Guadalupe orb occurs only in the Guadalupe basin and is a small-sized mussel with a shell length that reaches up to 2.5 in (63 mm) (Burlakova *et al.* 2018, p. 48). Guadalupe orb shells are thinner and more compressed but otherwise morphologically similar to the closely related Texas pimpleback. The posterior ridge is more distinct and prominent, and the umbo is more compressed than in Texas pimpleback (Burlakova *et al.* 2018, p. 48). Individuals collected from the upper Guadalupe River (near Comfort, Texas) averaged 1.9 in (48 mm) (Bonner *et al.* 2018, p. 221). Channel catfish, flathead catfish, and tadpole madtom are host fish for the Guadalupe

orb (Dudding *et al.* 2019, p. 15). Dudding *et al.* (2019, p. 16) cautioned that the apparent clumped distribution of Guadalupe orb (and closely related species) in ''strongholds'' could be related to observed ongoing declines in native catfishes, including the small and rare tadpole madtom, a riffle specialist. The best available information leads us to believe that reproduction, ecological interactions and habitat requirements of Guadalupe orb are similar to those of the closely related Texas pimpleback.

The Guadalupe orb occurs only in the Guadalupe River basin in two separate and isolated populations: The upper Guadalupe River and the lower Guadalupe River (table 5; figure 4). An isolated individual not considered part of a functioning population has been found in the Blanco River, a tributary to the San Marcos River (Johnson *et al.* 2018, p. 7). For more information on these populations, see the SSA report.

TABLE 5—CURRENT GUADALUPE ORB POPULATIONS

Population	Streams included	Counties	Occupied reach length (mi (km))	Recent collection years (numbers)
Upper Guadalupe River	Guadalupe River	Kerr, Kendall, and Comal Co., TX	95 (153)	2013 (1) 2017 (10) 2018 (2)
Lower Guadalupe River	Guadalupe River, San Marcos River.	Caldwell, Guadalupe, Gonzales, DeWitt, and Victoria Co., TX.	181 (291)	2014–2015 (893) 2017 (41)

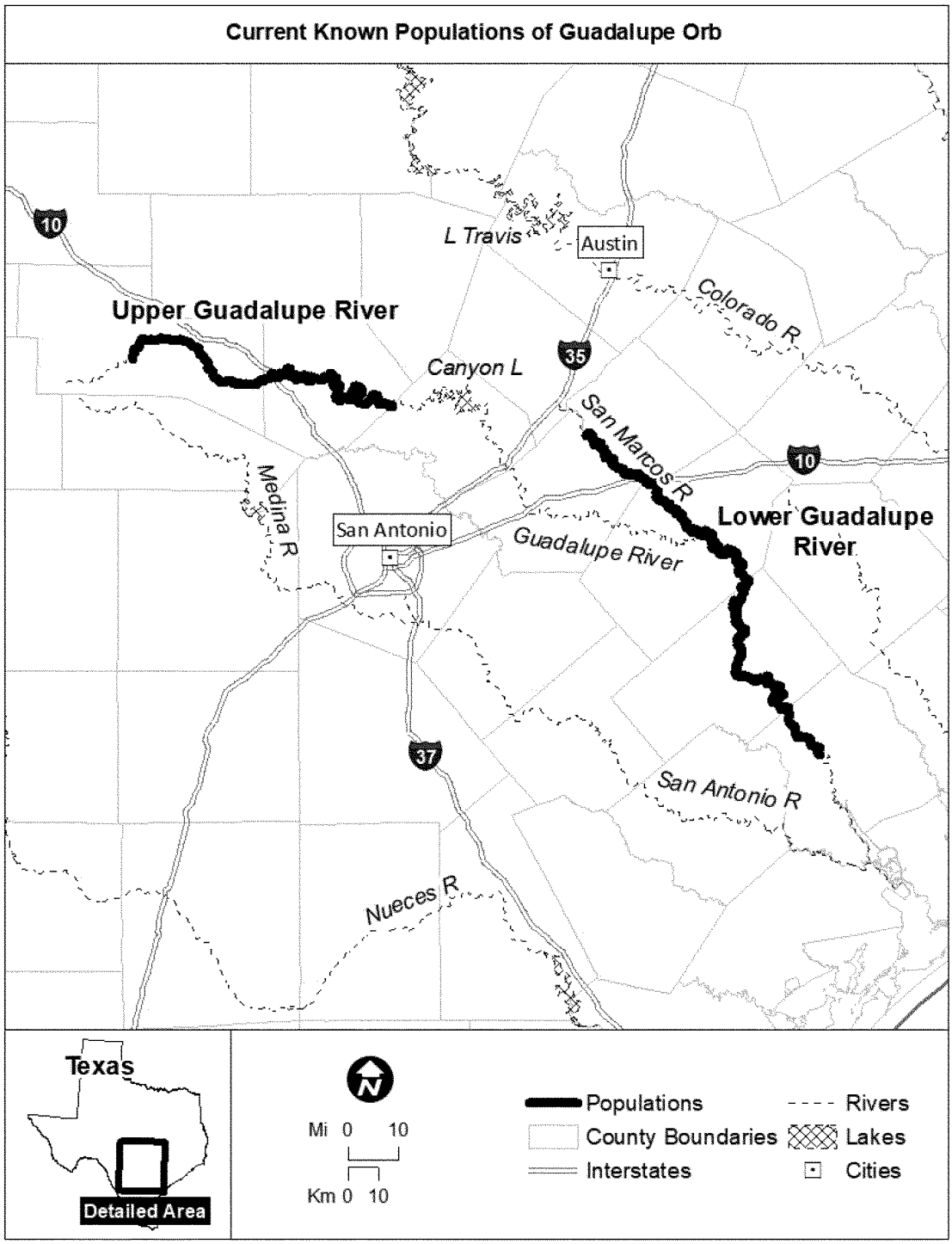

Figure 4. Map showing locations of known Guadalupe orb populations.

Texas Pimpleback

The Texas pimpleback was originally described as *Unio petrinus* from the ''Llanos River'' in ''Upper'' Texas (Gould 1855, p. 228). The species is now recognized as *Cyclonaias petrina* by the scientific community (Williams *et al.* 2017, pp. 35, 37). Burlakova *et al.* (2018, entire) recently described the Guadalupe orb (*C. necki*) from the Guadalupe River basin as a separate species distinct from Texas pimpleback. Texas pimpleback is now considered to occur only in the Colorado River basin of Texas. Texas pimpleback is a small- to medium-sized (up to 4 in (103 mm)) mussel with a moderately inflated, yellow, brown, or black shell, occasionally with vague green rays or concentric blotches (Howells 2014, p. 93).

Recent laboratory studies of the closely related Guadalupe orb suggest that channel catfish (*Ictalurus*

punctatus), flathead catfish (*Pylodictus olivarus*) and tadpole madtom (*Noturus gyrinus*) are host fish for Texas pimpleback (Dudding *et al.* 2019, p. 2). Related species have miniature glochidia and use catfish as hosts (Barnhart *et al.* 2008, pp. 373, 379). Additionally, related species can also produce conglutinates (Barnhart *et al.* 2008, p. 376) and tend to exhibit short-term brooding (tachytictia; releasing glochidia soon after the larvae mature) (Barnhart *et al.* 2008, p. 384). Texas pimpleback are reproductively active between April and August (Randklev *et al.* 2017c, p. 110). Related species live as long as 15–72 years (Haag and Rypel 2010, p. 10).

Texas pimpleback occurs in the Colorado River basin in five isolated populations: Concho River, Upper San Saba River, Lower San Saba River/Colorado River, Llano River, and the Lower Colorado River (table 6; figure 5). Only the Lower San Saba and Llano River populations are known to be successfully reproducing. Texas pimpleback was historically distributed throughout the Colorado River basin (Howells 2014, pp. 93–94; reviewed in Randklev *et al.* 2017, pp. 109–110). For more information on Texas pimpleback populations, see the SSA report.

TABLE 6— CURRENT TEXAS PIMPLEBACK POPULATIONS

Population	Streams included	Counties	Occupied reach length (mi (km))	Recent collection years (numbers)
Concho River	Concho River	Concho Co., TX	14 (23)	2008 (47) 2012 (1)
Upper San Saba River	San Saba River	Menard Co., TX	30 (48)	2017 (1)
Lower San Saba/Colorado Rivers	San Saba River, Colorado River	San Saba, McCulloch, Mills, Brown, and Coleman Co., TX.	178 (286)	2012 (247) 2014 (481) 2017 (97) 2018 (42)
Llano River	Llano River	Mason Co., TX	5 (8)	2012 (10) 2016 (1) 2017 (23)
Lower Colorado River	Colorado River	Colorado and Wharton Co., TX	98 (158)	2014 (49) 2017 (8) 2018 (30)

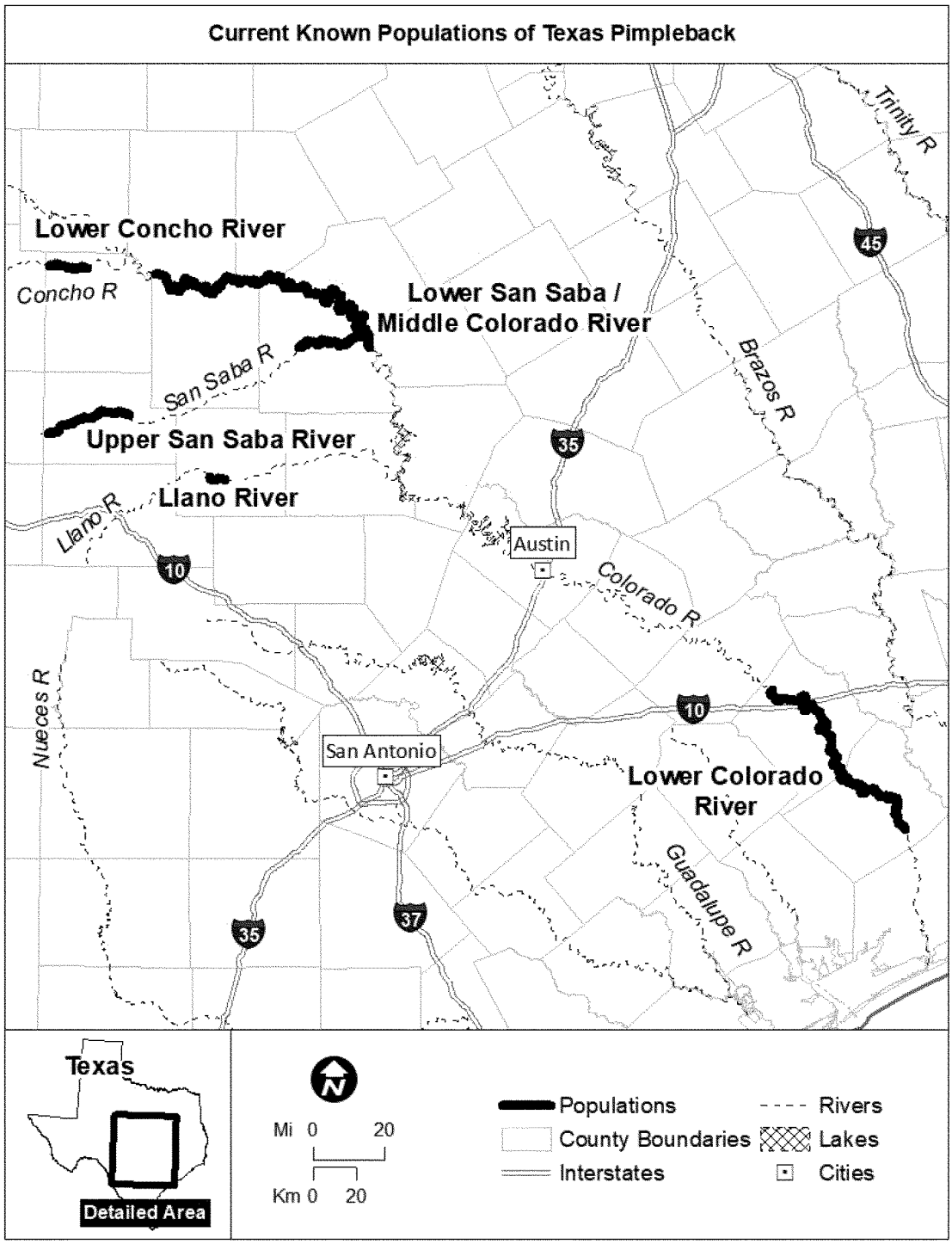

Figure 5. Map showing locations of known Texas pimpleback populations.

False Spike

The false spike is native to the Brazos, Colorado, and Guadalupe basins in central Texas (Howells 2010, p. 4; Randklev *et al.* 2017c, p. 12). It was thought to have historically occurred in the Rio Grande based on the presence of fossil and subfossil shells there (Howells 2010, p. 4), but those specimens have now been attributed to *Sphenonaias taumilapana* Conrad 1855 (no common name; Randklev *et al.* 2017c, p. 12; Graf and Cummings 2007, p. 309).

The false spike was originally described as *Unio mitchelli* by Charles T. Simpson in 1895 from the Guadalupe River in Victoria County, Texas (Dall 1896, pp. 5–6). The species has been assigned as *Quincuncina mitchelli* by Turgeon *et al.* (1988, p. 33) and was recognized as such by Howells *et al.* (1996, p. 127), and it was referenced as *Quadrula mitchelli* by Haag (2012, p.

71). Finally, it was recognized as *Fusconaia mitchelli,* its current nomenclature, by Pfeiffer *et al.* (2016, p. 289). False spike is considered a valid taxon by the scientific community (Williams *et al.* 2017, pp. 35, 39).

The false spike is a medium-sized freshwater mussel (to 5.2 in (132 mm)) with a yellow-green to brown or black elongate shell, sometimes with greenish rays. For a detailed description see Howells *et al.* 1996 (pp. 127–128) and Howells 2014 (p. 85).

Based on closely related species, false spike likely brood eggs and larvae from early spring to late summer and host fish are expected to be minnows (family Cyprinidae) (Pfeiffer *et al.* 2016, p. 287). Confirmed host fish for false spike include blacktail shiner (*Cyprinella venusta*) and red shiner (*C. lutrensis;* Dudding *et al.* 2019, p. 16).

Related species in the genus *Fusconaia* from the southeast United States are reach a maximum age of 15–51 years (Haag and Rypel 2010, pp. 4–6). No information on age at maturity currently exists for false spike (Howells 2010d, p. 3). In part because of their long lifespan and episodic recruitment strategy, populations may be slow to recover from disturbance.

False spike occur in larger creeks and rivers with sand, gravel, or cobble substrates, and in areas with slow to moderate flows. The species is not known from impoundments, nor from deep waters (Howells 2014, p. 85).

False spike was once considered common wherever it was found; however, beginning in the early 1970s, the species began to be regarded as rare throughout its range, based on collection information (Strecker 1931, pp. 18–19; Randklev *et al.* 2017c, p. 13). It was considered to be extinct until 2011, when the discovery of seven live false spike in the Guadalupe River, near Gonzales, Texas, was the first report of living individuals in nearly four decades (Howells 2010d, p. 4; Randklev *et al.* 2011, p. 17). Dudding *et al.* (2019, pp. 16–17) cautioned that the patchy distribution of false spike could be related to host fish relationships; that is, because their host fish have a small home range, limited dispersal ability, and are sensitive to human impacts, distribution of false spike could be limited by access to, and movement of, host fish.

Currently, the false spike occurs in four populations: In the Little River and some tributaries (Brazos River basin), the lower San Saba and Llano Rivers (Colorado River basin), and in the lower Guadalupe River (Guadalupe River Basin) (table 7; figure 6). For more information on these populations, see the SSA report. False spike is presumed to have been extirpated from the remainder of its historical range throughout the Brazos, Colorado, and Guadalupe Basins of central Texas (reviewed in Randklev *et al.* 2017c, pp. 12–13).

TABLE 7—CURRENT FALSE SPIKE POPULATIONS

Population	Streams included	Counties	Occupied reach length (mi (km))	Recent collection years (number collected)
Little River and tributaries	Little River Brushy Creek, San Gabriel River	Milam and Williamson Co., TX	41 (66)	2015 (29)
Lower San Saba River	San Saba River	San Saba Co., TX	42 (67)	2012 (3)
Llano River	Llano River	Mason Co., TX	<1 (~1)	2017 (1)
Lower Guadalupe River	Guadalupe River	Gonzales, DeWitt, and Victoria Co., TX.	102 (164)	2014–2015 (652)

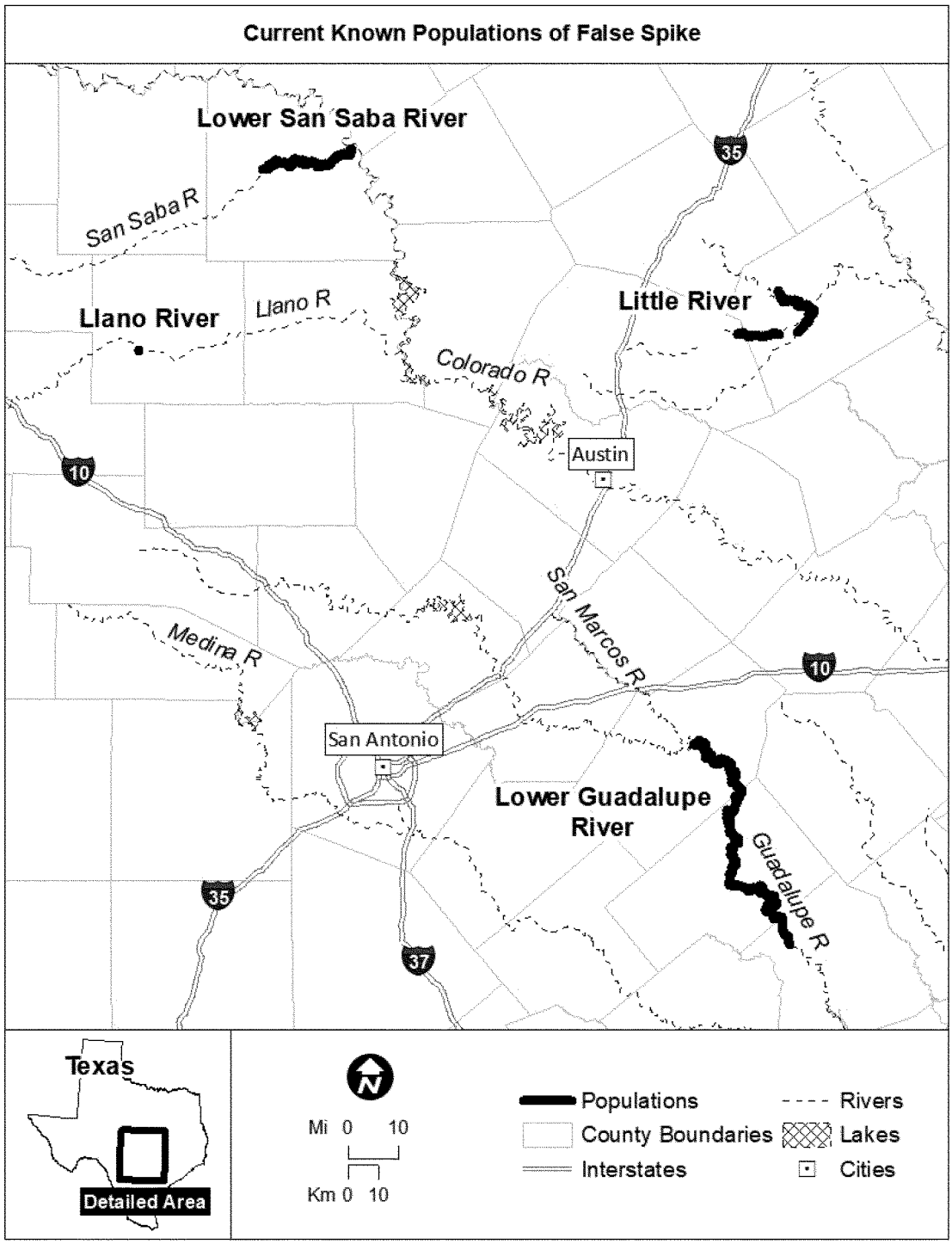

Figure 6. Map showing locations of known false spike populations.

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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 (*e.g.* conservation measures).

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological status review for the Guadalupe fatmucket, Texas fatmucket, Texas fawnsfoot, Guadalupe orb, Texas pimpleback, and false spike, including an assessment of the potential stressors to each species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as endangered or threatened species under the Act. The SSA report provides the scientific basis that informs our regulatory decision, which involves the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R2–ES–2019–0061 on *http://www.regulations.gov.*

To assess the viability of the six Central Texas mussels, 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 individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. This process used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and their resources, and the threats that influence the species' current and future conditions, in order to assess the species' overall viability and the risks to that viability.

Using various timeframes and the current and projected future resiliency, redundancy, and representation, we describe the species' levels of viability over time. For the Central Texas mussels to maintain viability, their populations or some portion thereof must be resilient. A number of factors influence the resiliency of Central Texas mussel populations, including occupied stream length, abundance, and recruitment. While some of the six species have life-history adaptations that help them tolerate dewatering and other stressors to some extent, each of these stressors diminishes the resiliency of populations to some degree and especially in combination. Elements of the species' habitat that determine whether Central Texas mussel populations can grow to maximize habitat occupancy influence those factors, thereby increasing the resiliency of populations. These

resiliency factors and habitat elements are discussed in detail in the SSA report and summarized here.

Species Needs

Occupied Stream Length: Most freshwater mussels, including the Central Texas mussel species, are found in aggregations, called mussel beds, that vary in size from about 50 to >5,000 square meters (m^2), separated by stream reaches in which mussels are absent or rare (Vaughn 2012, p. 2). We define a mussel population at a larger scale than a single mussel bed; it is the collection of mussel beds within a stream reach between which infested host fish may travel, allowing for ebbs and flows in mussel bed density and abundance over time throughout the entirety of the population's occupied reach. Therefore, resilient mussel populations must occupy stream reaches long enough such that stochastic events that affect individual mussel beds do not eliminate the entire population. Repopulation by infested fish from other mussel beds within the reach can allow the population to recover from these events. We consider populations extending more than 50 miles (80 kilometers (km)) to be highly resilient to stochastic events because a single event is unlikely to affect the entire population. Populations occupying reaches between 20 and 49 river miles (32–79 km) have some resiliency to stochastic events, and populations occupying reaches less than 20 miles (32 km) have little resiliency. Note that, by definition, an extirpated or functionally extirpated population occupies a stream length of approximately (or approaching) zero miles (0 km).

Abundance: Mussel abundance in a given stream reach is a product of the number of mussel beds and the density of mussels within those beds. For populations of Central Texas mussel species to be healthy (*i.e.,* resilient), there must be many mussel beds of sufficient density such that local stochastic events do not necessarily eliminate the bed(s), allowing the mussel bed and the overall local population within a stream reach to recover from any single event. Mussel abundance is indicated by the number of individuals found during a sampling event; mussel surveys rarely represent a complete census of the population. Instead, density is estimated by the number found during a survey event using various statistical techniques. Because we do not have population estimates for most populations of Central Texas mussels, nor are the techniques directly comparable (*i.e.,* same area size searched, similar search time, etc.), we used the number of individuals captured as an index over time, presuming relatively similar levels of effort. While we cannot precisely determine population abundance at the sites using these numbers, we are able to determine if the species is dominant at the site or rare and examine this over time if those data are available.

Reproduction: Resilient Central Texas mussel populations must also be reproducing and recruiting young individuals into the population. Population size and abundance reflects previous influences on the population and habitat, while reproduction and recruitment reflect population trends that may be stable, increasing, or decreasing over time. For example, a large, dense mussel population that contains mostly old individuals is not likely to remain large and dense into the future, as there are few young individuals to sustain the population over time (*i.e.,* death rates exceed birth rates and subsequent recruitment of reproductive adults resulting in negative population growth). Conversely, a population that is less dense but has many young and/or gravid individuals may likely grow to a higher density in the future (*i.e.,* birth rates and subsequent recruitment of reproductive adults exceeds death rates resulting in positive population growth). Detection rates of very young juvenile mussels during routine abundance and distribution surveys are extremely low due to sampling bias because sampling for these species involves tactile searches and mussels <35 mm are very difficult to detect (Strayer and Smith 2003, pp. 47–48).

Evidence of reproduction is demonstrated by repeated captures of small-sized individuals (juveniles and subadults near the low end of the detectable range size ~35 mm; Randklev *et al.* 2013, p. 9) over time and by observing gravid (with eggs in the marsupium, gills, or gill pouches) females during the reproductively active time of year. While small-sized mussels and gravid females can be difficult to detect, it is important that surveyors attempt to detect them as reproduction and subsequent recruitment are important demographic parameters that affect growth rates in mussel populations (Berg *et al.* 2008, pp. 396, 398–399; Matter *et al.* 2013, pp. 122–123, 134–135).

Risk Factors for the Central Texas Mussels

We reviewed the potential risk factors (*i.e.,* threats, stressors) that could be affecting the six Central Texas mussels now and in the future. In this proposed rule, we will discuss only those factors in detail that could meaningfully impact the status of the species. Those risks that are not known to have effects on Central Texas mussel populations, such as disease, are not discussed here but are evaluated in the SSA report. Many of the threats and risk factors are the same or similar for each of the six species. Where the effects are expected to be similar, we present one discussion that applies to all six species. Where the effects may be unique or different to one species, we will address that specifically. The primary risk factors (*i.e.,* threats) affecting the status of the Central Texas mussels are: (1) Increased fine sediment (Factor A from the Act), (2) changes in water quality (Factor A), (3) altered hydrology in the form of inundation (Factor A), (4) altered hydrology in the form of loss of flow and scour of substrate (Factor A), (5) predation and collection (Factor C), and (6) barriers to fish movement (Factor E). These factors are all exacerbated by the ongoing and expected effects of climate change. Finally, we also reviewed the conservation efforts being undertaken for the species.

Increased Fine Sediment

Juvenile and adult Central Texas mussels inhabit microsites that have abundant interstitial spaces, or small openings in an otherwise closed matrix of substrate, created by gravel, cobble, boulders, bedrock crevices, tree roots, and other vegetation. Inhabited interstitial spaces have some amount of fine sediment (*i.e.,* clay and silt) necessary to provide appropriate shelter. However, excessive amounts of fine sediments can reduce the number of appropriate microsites in an otherwise suitable mussel bed by filling in these interstitial spaces and can smother mussels in place. All six species of Central Texas mussels generally require stable substrates, and loose silt deposits do not generally provide for substrate stability that can support mussels. Interstitial spaces provide essential habitat for juvenile mussels. Juvenile freshwater mussels burrow into interstitial substrates, making them particularly susceptible to degradation of this habitat feature. When clogged with sand or silt, interstitial flow may become reduced (Brim Box and Mossa 1999, p. 100), thus reducing juvenile habitat availability and quality. While adult mussels can be physically buried by excessive sediment, ''the main impacts of excess sedimentation on unionids (freshwater mussels) are often sublethal'' and include interference with feeding mediated by valve closure (Brim Box

and Mossa 1999, p. 101). Many land use activities can result in excessive erosion, sediment production, and channel instability, including, but not limited to: logging, crop farming, ranching, mining, and urbanization (Brim Box and Mossa 1999, p. 102).

Under a natural flow regime, a stream's sediment load is in equilibrium such that as sediments are naturally moved downstream from one microsite to another, the amount of sediment in the substrate is relatively stable, given that different reaches within a river or stream may be aggrading (gaining) or degrading (losing) sediment (Poff *et al.* 1997, pp. 770–772). Current and past human activities result in enhanced sedimentation in river systems, and legacy sediment, resulting from past land disturbance and reservoir construction, continues to persist and influence river processes and sediment dynamics (Wohl 2015, p. 31) and these legacy effects can degrade mussel habitats. Fine sediments collect on the streambed and in crevices during low flow events, and much of the sediment is washed downstream during high flow events (also known as cleansing flows) and deposited elsewhere. However, increased frequency of low flow events (from groundwater extraction, instream surface flow diversions, and drought) combined with a decrease in cleansing flows (from reservoir management and drought) causes sediment to accumulate. Sediments deposited by large-scale flooding or other disturbance may persist for several years until adequate cleansing flows can redistribute that sediment downstream. When water velocity decreases, which can occur from reduced streamflow or inundation, water loses its ability to carry sediment in suspension, and sediment falls to the substrate, eventually smothering mussels not adapted to soft substrates (Watters 2000, p. 263). Sediment accumulation can be exacerbated when there is a simultaneous increase in the sources of fine sediments in a watershed.

In the range of the Central Texas mussels, these sources include streambank erosion from development, agricultural activities, livestock and wildlife grazing and browsing, in-channel disturbances, roads, and crossings, among others (Poff *et al.* 1997, p. 773). In areas with ongoing development, runoff can transport substantial amounts of sediment from ground disturbance related to construction activities with inadequate or absent sedimentation controls. While these construction impacts can be transient (lasting only during the construction phase), the long-term effects of development are long lasting and can result in hydrological alterations as increased impervious cover increases runoff and resulting shear stress causes streambank instability and additional sedimentation.

All populations of Central Texas mussels face the risk of fine sediment accumulation to varying degrees. Multiple populations of the six Central Texas mussel species are experiencing increased sedimentation, including in particular the Clear Fork Brazos River (Texas fawnsfoot), middle and lower Brazos River (false spike and Texas fawnsfoot), and lower Colorado River (Texas pimpleback, Texas fawnsfoot). In the future, we expect sediment deposition to continue to increase across the range of all six species due to low water levels and decreasing frequency of cleansing flows at all populations and for longer periods due to climate change and additional human development in the watershed.

Changes in Water Quality

Freshwater mussels and their host fish require water in sufficient quantity and quality on a consistent basis to complete their life cycles. Urban growth and other anthropogenic activities across Texas are placing increased demands on limited freshwater resources that, in turn, can have deleterious effects on water quality. Water quality can be degraded through contamination or alteration of water chemistry. Chemical contaminants are ubiquitous throughout the environment and are a major reason for the current declining status of freshwater mussel species nationwide (Augspurger *et al.* 2007, p. 2025). Immature mussels (*i.e.,* juveniles and glochidia) are especially sensitive to water quality degradation and contaminants (Cope *et al.* 2008, p. 456, Wang *et al.* 2017, pp. 791–792; Wang *et al.* 2018, p. 3041).

Chemicals enter the environment through both point and nonpoint source discharges, including hazardous spills, industrial wastewater, municipal effluents, and agricultural runoff. These sources contribute organic compounds, trace metals, pesticides, and a wide variety of newly emerging contaminants (*e.g.,* pharmaceuticals) that comprise some 85,000 chemicals in commerce today that are released to the aquatic environment (Environmental Protection Agency (EPA) 2018, p. 1). The extent to which environmental contaminants adversely affect aquatic biota can vary depending on many variables such as concentration, volume, and timing of the release. Species diversity and abundance consistently ranks lower in waters that are polluted or otherwise impaired by contaminants. Freshwater mussels are not generally found for many miles downstream of municipal wastewater treatment plants (Gillis *et al.* 2017, p. 460; Goudreau *et al.* 1993, p. 211; Horne and McIntosh 1979, p. 119). For example, transplanted common freshwater mussels (including threeridge (*Amblema plicata*) and the nonnative Asian clam (*Corbicula fluminea*) showed reduced growth and survival below a wastewater treatment plant (WWTP) outfall relative to sites located upstream of the WWTP in Wilbarger Creek (a tributary to the Colorado River in Travis County, Texas); water chemistry was altered by the wastewater flows at downstream sites, with elevated constituents in the water column that included copper, potassium, magnesium, and zinc (Duncan and Nobles 2012, p. 8; Nobles and Zhang 2015, p. 11). Contaminants released during hazardous spills are also of concern. Although spills are relatively short-term localized events, depending on the types of substances and volume released, water resources nearby can be severely impacted and degraded for years following an incident.

Ammonia is of particular concern below wastewater treatment plants because freshwater mussels are particularly sensitive to increased ammonia levels (Augspurger *et al.* 2003, p. 2569). Elevated concentrations of un-ionized ammonia (NH_3) in the interstitial spaces of benthic habitats (>0.2 parts per billion) have been implicated in the reproductive failure of other freshwater mussel populations (Strayer and Malcom 2012, pp. 1787–1788), and sublethal effects (valve closures) have recently been described as total ammonia nitrogen approaches 2.0 milligrams per liter (mg/L = ppm; Bonner *et al.* 2018, p. 186). Immature mussels (*i.e.,* juveniles and glochidia) are especially sensitive to water quality degradation and contaminants, including ammonia (Wang *et al.* 2007, p. 2055). For smooth pimpleback (*Cyclonaias houstonensis,* a species native to central Texas but not included in this listing), the revised EPA ammonia benchmarks are sufficient to protect from short term effects of ammonia on the species' physiological processes (Bonner *et al.* 2018, p. 151). However, the long-term effects of chronic exposure (*i.e.,* years or decades) to freshwater mussels has yet to be experimentally investigated.

Municipal wastewater contains both ionized and un-ionized ammonia, and wastewater discharge permits issued by Texas Commission on Environmental

Quality (TCEQ) do not always impose limits on ammonia, particularly for smaller volume dischargers. Therefore, at a minimum, concentrations of ammonia are likely to be elevated in the immediate mixing zone of some WWTP outfalls. To give some insight into the potential scope of WWTP related impacts, approximately 480 discharge permits are issued for the Brazos River watershed alone from its headwaters above Possum Kingdom Lake down to the Gulf of Mexico (TCEQ 2018c, entire). In addition, some industrial permits, such as animal processing facilities, have ammonia limits in the range of 3 to 4 mg/L or higher, which exceeds levels that inhibited growth in juvenile fatmucket (*Lampsilis siliquoidea*) and rainbow mussel (*Villosa iris*) (Wang *et al.* 2007, entire). Similar to the Brazos River, WWTP outfalls are numerous throughout the ranges of the Central Texas mussels.

An additional type of water quality degradation that affects the Central Texas mussels is alteration of water quality parameters such as dissolved oxygen, temperature, and salinity levels. Dissolved oxygen levels may be reduced from increased nutrient inputs or other sources of organic matter that increase the biochemical oxygen demand in the water column as microorganisms decompose waste. Organic waste can originate from storm water or irrigation runoff or wastewater effluent, and juvenile mussels seem to be particularly sensitive to low dissolved oxygen (with sublethal effects evident at 2 ppm and lethal effects evident at 1.3 ppm; Sparks and Strayer 1998, pp. 132–133). Increased water temperature (over 30 °C and approaching 40 °C) from climate change and from low flows during drought can exacerbate low dissolved oxygen levels in addition to other drought-related effects on both juvenile and adult mussels (Sparks and Strayer 1998, pp. 132–133). Finally, high salinity concentrations are an additional concern in certain watersheds, where dissolved salts can be particularly limiting to Central Texas mussels. Upper portions of the Brazos and Colorado Rivers, originating from the Texas High Plains, contain saline water, sourced from both natural geological formations, and from oil and gas development. Salinity in river water is diluted by surface flow and as surface flow decreases salt concentrations increase, resulting in adverse effects to freshwater mussels. Even low levels of salinity (2–4 parts per thousand (ppt)) have been demonstrated to have substantial negative effects on reproductive success, metabolic rates, and survival of freshwater mussels (Blakeslee *et al.* 2013, p. 2853). Bonner *et al.* (2018, pp. 155–156) suggest that the behavioral response of valve closure to high salinity concentrations (>2 ppt) is the likely mechanism for reduced metabolic rates, reduced feeding, and reduced reproductive success based on reported sublethal effects of salinity >2 ppt for Texas pimpleback.

Water quality and quantity are interdependent, so reductions in surface flow from drought, instream diversion, and groundwater extraction serve to concentrate contaminants by reducing flows that would otherwise dilute point and non-point source pollution. For example, salinity inherently poses a greater risk to aquatic biota under low flow conditions as salinity concentrations and water temperatures increase. Drought conditions can place additional stressors on stream systems beyond reduced flow by exacerbating contaminant-related effects to aquatic biota, including Central Texas mussels. Not only can temperature be a biological, physical, and chemical stressor, the toxicity of many pollutants to aquatic organisms increases at higher temperatures (*e.g.,* ammonia, mercury). We foresee threats to water quality increasing into the future as demand and competition for limited water resources grows.

Altered Hydrology—Inundation

Central Texas mussels are adapted to flowing water (lotic habitats) rather than standing water (lentic habitats) and require free-flowing water to survive. Low flow events (including stream drying) and inundation can eliminate habitat appropriate for Central Texas mussels, and while these species can survive these events for a short duration, populations that experience prolonged drying events or repeated drying events will not persist over time.

Inundation has primarily occurred upstream of dams, both large (such as the Highland Lakes on the Colorado River and other major flood control and water supply reservoirs) and small (low water crossings and diversion dams typical of the tributaries and occurring usually on privately owned lands throughout Central Texas). Inundation causes an increase in sediment deposition, eliminating the crevices that many Central Texas mussel species inhabit. Inundation also includes the effects of reservoir releases where frequent variation in surface water elevation acts to make habitats unsuitable for Central Texas mussels. In large reservoirs, deep water is very cold and often devoid of oxygen and necessary nutrients. Cold water (less than 11 °Celsius (C) or 52 °F (F)) stunts mussel growth and delays or hinders spawning. The Central Texas mussels do not tolerate inundation under large reservoirs. Further, deep-water reservoirs with bottom release (like Canyon Reservoir) can affect water temperatures several miles downriver. The water temperature remains below 21.1 °C for the first 3.9 miles (6.3 km) of the 13.8-mile (22.2-km) Canyon Reservoir tailrace (Texas Parks and Wildlife Department (TPWD) 2007c, p. ii), cold enough to support a recreational non-native rainbow and brown trout fishery.

The construction of dams, inundation of reservoirs, and management of water releases have significant effects on the natural hydrology of a river or stream. For example, dams trap sediment in reservoirs, and managed releases typically do not conform to the natural flow regime (*i.e.,* higher baseflows, and peak flows of reduced intensity but longer duration). Rivers transport not only water but also sediment, which is transported mostly as suspended load (held by the water column), and most sediment transport occurs during floods as sediment transport increases as a power function (greater than linear) of flow (Kondolf 1997, p. 533). It follows that increased severity of flooding would result in greater sediment transport, with important effects on substrate stability and benthic habitats for freshwater mussels and other organisms dependent on stable benthic habitats. Further, water released by dams is usually clear and does not carry a sediment load and is considered ''hungry water because the excess energy is typically expended on erosion of the channel bed and banks . . . resulting in incision (downcutting of the bed) and coarsening of the bed material until a new equilibrium is reached'' (Kondolf 1997, p. 535). Conversely, depending on how dam releases are conducted, reduced flood peaks can lead to accumulations of fine sediment in the river bed (*i.e.,* loss of flushing flows, Kondolf 1997, pp. 535, 548).

Operation of flood-control, water-supply, and recreation reservoirs results in altered hydrologic regimes, including an attenuation of both high- and low-flow events. Flood-control dams store floodwaters and then release them in a controlled manner; this extended release of flood waters can result in significant scour and loss of substrates that provide mussel habitat. Along with this change in the flow of water, sediment dynamics are affected as sediment is trapped above and scoured below major impoundments. These changes in water and sediment transport

have negatively affected freshwater mussels and their habitats.

There are numerous dams throughout the range of Central Texas mussels. There are now 27 major reservoirs in the Brazos River basin (16 have >50,000 acre-feet of storage) (Brazos River and Associated Bay Estuary System Basin and Bay Expert Science Team (BBEST) 2012, p. 33); 31 major reservoirs in the Colorado River basin, including the Highland Lakes (Texas Water Development Board (TWDB) 2018d, p. 1); 9 major reservoirs on the Guadalupe River (BBEST 2011b, p. 2.2); and 31 major reservoirs in the Trinity River basin (BBEST 2009, p. 10). These reservoirs, subsequent inundation, and resulting fragmentation of mussel populations has been the primary driver of the current distribution of the Central Texas mussels. Additional reservoirs are planned for the future, including the Cedar Ridge Reservoir, proposed by the City of Abilene on the Clear Fork of the Brazos River near the town of Lueders, Texas (83 FR 16061), and more than one reservoir is proposed to be built off the main channel of the Lower Colorado River in Wharton and Colorado Counties, Texas (Lower Colorado River Authority (LCRA) 2018c, p. 1). The Allens Creek Reservoir is proposed for construction on Allens Creek near the City of Wallis, to provide water supply and storage for the City of Houston (Brazos River Authority (BRA) 2018b, p. 1). Water that is planned to be pumped from the Brazos River during high flows will be stored and released back into the river to meet downstream needs during periods of low flow.

Altered Hydrology—Flow Loss and Scour

Extreme water levels—both low flows and high flows—threaten population persistence of the Central Texas mussels. The effects of population losses associated with excessively low flows are compounded by population losses associated with excessively high flows. Whereas persistent low flow during times of drought results in drying of mussel habitats and desiccation of exposed mussels, rapid increases in flows associated with large-scale rain events and subsequent flooding results in scour of the streambed and physical displacement of mussels and appropriate substrates. Appropriately-sized substrates are moved during scouring high flow events and mussels are transported downstream to inappropriate sites or are buried by inappropriately sized materials. The Central Texas mussels are experiencing a repeating cycle of alternating droughts and flooding that, in combination with hydrological alterations, threatens population persistence.

Droughts that have occurred in the recent past have led to extremely low flows in several Central Texas rivers. Many of these rivers have some resiliency to drought because they are spring-fed (Colorado River tributaries, Guadalupe River), are very large (lower Brazos and Colorado Rivers), or have significant return flows (Trinity River), but drought in combination with increased groundwater pumping may lead to lower river flows of longer duration than have been recorded in the past. Reservoir releases can be managed to some extent during drought conditions to prevent complete dewatering below many major reservoirs. During the months of July and August 2018, the Clear Fork Brazos, Concho, San Saba, Llano, Pedernales, and upper Colorado and upper Guadalupe Rivers all had very low flows (U.S. Geological Survey (USGS) 2019).

Streamflow in the Colorado River above the Highland Lakes and downstream of the confluence with Concho River has been declining since the 1960s as evidenced by annual daily mean streamflow (USGS 2008b, pp. 812, 814, 848, 870, 878, 880), and overall river discharge for each of the rivers can be expected to continue to decline due to increased drought as a result of climate change, absent significant return flows. There are a few exceptions including the Llano River at Llano (USGS 2008b, p. 892), Pedernales River at Fredericksburg (USGS 2008b, p. 896), Onion Creek near Driftwood, and Onion Creek at Highway 183 (flows appear to become more erratic, characteristic of a developing watershed; USGS 2008b, pp. 930, 946). In the San Saba River, continuing or increasing surface and alluvial aquifer groundwater withdrawals in combination with drought is likely to result in reduced streamflow, affecting mussels in the future (Randklev *et al.* 2017c, pp. 10–11).

Flows have declined due to drought in the Brazos River in recent years upstream of Lake Whitney (USGS 2008b, pp. 578, 600, 626, 638; BRA 2018e, p. 6), although baseflows are maintained somewhat due to releases from Lake Granbury and other reservoirs in the upper basin (USGS 2008b, p. 644; BRA 2018e, p. 6). In the middle Brazos, U.S. Army Corps of Engineers (USACE) dams have reduced the magnitude of floods on the mainstem of the Brazos River downstream of Lake Whitney (USGS 2008b, pp. 652, 676 766, 776; BRA 2018e, p. 6), while flows in the lower Brazos and Navasota Rivers appear to have higher baseflows due to water supply operations in the upper basin that deliver to downstream users (USGS 2008b, pp. 754, 766, 776; BRA 2018e, p. 6). Lake Limestone releases also appear to be contributing to higher base flows in the Lower Brazos (BRA 2018e, p. 6). Flows have declined in the upper Guadalupe River (USGS 2008b, pp. 992, 994, 1000, 1018) but appear relatively unchanged at Comfort and Spring Branch and in the San Marcos River (USGS 2008b, pp. 1004, 1006, 1022), and in the lower Guadalupe River (USGS 2008b, pp. 1036, 1040). In the lower sections of the Colorado River, lower flows and reduced high flow events are more common now decades after major reservoirs were constructed (USGS 2008b, pp. 964, 966). In the Trinity River, low flows are higher (elevated baseflows) than they were in the past (USGS 2008b, pp. 370, 398, 400, 430) because of substantial return flows from Dallas area wastewater treatment plants.

Many of the tributary streams (*i.e.,* Concho, San Saba, Llano, and Pedernales Rivers) historically received significant groundwater inputs from multiple springs associated with the Edwards and other aquifers. As spring flows decline due to drought or groundwater lowering from pumping, habitat for Central Texas mussels in the tributary streams is reduced and could eventually cease to exist (Randklev *et al.* 2018, pp. 13–14). While Central Texas mussels may survive short periods of low flow, as low flows persist, mussels face oxygen deprivation, increased water temperature, increased predation risk, and ultimately stranding, all reducing survivorship, reproduction, and recruitment in the population.

Low-flow events lead to increased risk of desiccation (physical stranding and drying) and exposure to elevated water temperature and other water quality degradations, such as contaminants, as well as to predation. For example, sections of the San Saba River, downstream of Menard, Texas, experienced very low flows during the summer of 2015, which led to dewatering of occupied habitats as evidenced by observations of recent dead shell material of Texas pimpleback and Texas fatmucket (TPWD 2015, pp. 2–3; described in detail by Randklev *et al.* 2018, entire). Several USGS stream gauges reported very low flows during the 2017–2018 water year, including: the Clear Fork of the Brazos River, Elm Creek, Concho River at Paint Rock, San Saba River, Colorado River at San Saba, Llano River, Pedernales River, and upper Guadalupe River (USGS 2018a, entire). Service, TPWD, and Texas

Department of Transportation (TxDOT) biologists noted in 2017 that at one site on the Brazos River near Highbank, Texas, the presence of 42 dead to fresh dead (with tissue intact) Texas fawnsfoot that likely died as a result of recent drought or scouring events (Tidwell 2017, entire).

High flow events lead to increased risk of physical removal, transport, and burial (entrainment) of mussels as unstable substrates are transported downstream by floodwaters and later redeposited in locations that may not be suitable. A site in the lower Colorado River near Altair, Texas, suffered significant changes in both mussel community structure and bathymetry (measurement of water depths) during extensive flooding (and resulting high flows) in August 2017, as a result of Hurricane Harvey (Bonner *et al.* 2018, p. 266). This site previously held the highest mussel abundance (Bonner *et al.* 2018, pp. 242–243) and represented high-quality habitat within the Colorado River basin, prior to the flooding events. Mussel abundance significantly decreased by nearly two orders of magnitude (Bonner *et al.* 2018, p. 266). This location had two of the Central Texas mussel species (Texas fawnsfoot and Texas pimpleback) present during initial surveys in 2017 (Bonner *et al.* 2018, p. 242). Widespread flooding was reported in the Colorado and Guadalupe River basins of Central Texas in October 2018.

The distribution of mussel beds and their habitats is affected by large floods returning at least once during the typical life span of an individual mussel (generally from 3 to 30 years). The presence of flow refuges mediates the effects of these floods, as shear stress is relatively low in flow refuges and where sediments are relatively stable, and individual mussels ''must either tolerate high-frequency disturbances or be eliminated, and can colonize areas that are infrequently disturbed between events'' (Strayer 1999, pp. 468–469). Shear stress and relative substrate stability are limiting to mussel abundance and species richness (Randklev *et al.* 2017a, p. 7), and riffle habitats may be more resilient to high flow events than littoral (bank) habitats.

The Central Texas mussels have historically been, and currently remain, exposed to extreme hydrological conditions, including severe drought leading to dewatering, and heavy rains leading to damaging scour events with movement of mussels and substrate (*i.e.,* ''flash flooding''). For example, in 2018, over the span of 69 days, the Llano River near Llano, Texas, experienced extreme low flows (0.08 cfs on August 8, 2018), and extreme high flows leading to severe flooding, which resulted in substantial scour of streambed and riparian area habitats (278,000 cfs on October 16, 2018) (Llano River Watershed Alliance (LRWA) 2019, entire). Prolonged drought followed by severe flooding can result in failure and collapse of river banks and subsequent sedimentation, as demonstrated by slumping and undercutting on the lower Guadalupe River near Cuero, Texas, in 2015 (Giardino and Rowley 2016, pp. 70–72), which is occupied by the false spike and Guadalupe orb. The usual drought/flood cycle in Central Texas can be characterized by long periods of time absent of rain interrupted by short periods of heavy rain, resulting in often severe flooding. These same patterns led to the development of flood control and storage reservoirs throughout Texas in the twentieth century. It follows that, given the extreme and variable climate of Central Texas, mussels must have life-history strategies and other adaptations that allow them to persist by withstanding severe conditions and repopulating during more favorable conditions. However, it is also likely that there is a limit to how the mussels might respond to increasing variability, frequency, and severity of extreme weather events, combined with habitat fragmentation and population isolation.

Sediment deposition may arise from human activities, as well. Sand and gravel can be mined from rivers or from adjacent alluvial deposits, and instream gravels often require less processing and are thus more attractive from a business perspective (Kondolf 1997, p. 541). Instream mining directly affects river habitats, and can indirectly affect river habitats through channel incision, bed coarsening, and lateral channel instability (Kondolf 1997, p. 541). Excavation of pits in or near to the channel can create a nickpoint, which can contribute to erosion (and mobilization of substrate) associated with head cutting (Kondolf 1997, p. 541). Off-channel mining of floodplain pits can become involved during floods, such that the pits become hydrologically connected and thus can affect sediment dynamics in the stream (Kondolf 1997, p. 545).

Predation and Collection

Predation on freshwater mussels is a natural phenomenon. Raccoons, muskrats, snapping turtles, wading birds, and fish are known to prey upon Central Texas mussels. Under natural conditions, the level of predation occurring within Central Texas mussel populations is not likely to pose a significant risk to any given population. However, during periods of low flow, terrestrial predators and wading birds have increased access to portions of the river that are otherwise too deep under normal flow conditions. High levels of predation during drought have been observed on the Llano and San Saba Rivers. As drought and low flow are predicted to occur more often and for longer periods due to the effects of future climate change, the Hill Country tributaries (of the Colorado River) in particular are expected to experience additional predation pressure into the future, and this may become especially problematic in the Llano and San Saba Rivers. Predation is expected to be less of a problem for the lower portions of the mainstem river populations because the rivers are significantly larger than the tributary streams and Central Texas mussels are less likely to be found by predators in exposed or very shallow habitats.

Certain mussel beds within some populations, due to ease of access, are vulnerable to overcollection and vandalism. These areas, primarily on the Llano and San Saba Rivers, have well-known and well-documented mussel beds that have been sampled repeatedly over the past few years by multiple researchers and others for a variety of projects. Given the additional stressors aforementioned in this section, these populations are being put at additional risk due to over-collection and over-harvest for scientific needs.

Barriers to Fish Movement

Central Texas mussels historically colonized new areas through movement of infested host fish, as newly metamorphosed juveniles would excyst from host fish in new locations. Today, the remaining Central Texas mussel populations are significantly isolated due to habitat fragmentation by major reservoirs such that recolonization of areas previously extirpated is extremely unlikely, if not impossible, due to existing dams creating permanent barriers to host fish movement. There is currently no opportunity for interaction among any of the extant Central Texas mussel populations, as they are isolated from one another by major reservoirs.

The overall distribution of mussels is, in part, a function of host fish dispersal (Smith 1985, p. 105). There is limited potential for immigration and emigration between populations other than through the movement of infected host fish between mussel populations. Small populations are more affected by this limited immigration potential because they are susceptible to genetic drift, resulting from random loss of genetic diversity, and inbreeding

depression. At the species level, isolated populations that are eliminated due to stochastic events cannot be recolonized naturally due to barriers to host fish movement, leading to reduced overall redundancy and representation.

Many of the Central Texas mussels' known or assumed primary host fish species are known to be common, widespread species in the Central Texas river basins. We know that populations of mussels and their host fish have become fragmented and isolated over time following the construction of major dams and reservoirs throughout Central Texas. We do not currently have information demonstrating that the distribution of host fish is a factor currently limiting Central Texas mussels distribution. However, a recent study suggested that the currently restricted distribution of false spike, Guadalupe orb, and other related species could be related to declining abundance of their host fish, particularly those fish having small home ranges and specialized habitat affinities (Dudding *et al.* 2019, entire). Further research into the relationships between each of the Central Texas mussel species and their host fish is needed to more fully examine the possible role of declining host fish abundance in declining mussel populations.

Effects of Climate Change

Climate change has been documented to have already taken place, and continued greenhouse gas emissions at or above current rates will cause further warming (Intergovernmental Panel on Climate Change (IPCC) 2013, pp. 11–12). Warming in Texas is expected to be greatest in the summer (Maloney *et al.* 2014, p. 2236). The number of extremely hot days (high temperatures exceeding 95 °F) is expected to double by around 2050 (Kinniburgh *et al.* 2015, p. 83). Western Texas, including portions of the ranges of the Central Texas mussels, is an area expected to show greater responsiveness to the effects of climate change (Diffenbaugh *et al.* 2008, p. 3). Changes in stream temperatures are expected to reflect changes in air temperature, at a rate of approximately 0.6–0.8 °C increase in stream water temperature for every 1 °C increase in air temperature (Morrill *et al.* 2005, pp. 1–2, 15) and with implications for temperature-dependent water quality parameters such as dissolved oxygen and ammonia toxicity. The Central Texas mussels exist at or near a climate and habitat gradient in North America, with the eastern United States having more rainfall and higher freshwater mussel diversity, and the western United States receiving less rainfall and having fewer species of freshwater mussels. As such, it is likely that the Central Texas mussels may be particularly vulnerable to future climate changes in combination with current and future stressors (Burlakova *et al.* 2011a, pp. 156, 161, 163; Burlakova *et al.* 2011b, pp. 395, 403).

While projected changes to rainfall in Texas are small (U.S. Global Change Research Program (USGCRP) 2017, p. 217), higher temperatures caused by anthropogenic factors lead to increased soil water deficits because of higher rates of evapotranspiration. This is likely to result in increasing drought severity in future climate scenarios just as ''extreme precipitation, one of the controlling factors in flood statistics, is observed to have generally increased and is projected to continue to do so across the United States in a warming atmosphere'' (USGCRP 2017, p. 231). Even if precipitation and groundwater recharge remain at current levels, increased groundwater pumping and resultant aquifer shortages due to increased temperatures are nearly certain (Loaiciga *et al.* 2000, p. 193; Mace and Wade 2008, pp. 662, 664–665; Taylor *et al.* 2013, p. 325). Higher temperatures are also expected to lead to increased evaporative losses from reservoirs, which could negatively affect downstream releases and flows (Friedrich *et al.* 2018, p. 167). Effects of climate change, such as air temperature increases and an increase in drought frequency and intensity, have been shown to be occurring throughout the range of Central Texas mussels (USGCRP 2017, p. 188; Andreadis and Lettenmaier 2006, p. 3), and these effects are expected to exacerbate several of the stressors discussed above, such as water temperature and flow loss (Wuebbles *et al.* 2013, p. 16).

A recent review of future climate projections for Texas concludes that both droughts and floods could become more common in Central Texas and projects that years like 2011 (the warmest on record) could be commonplace by the year 2100 (Mullens and McPherson 2017, pp. 3, 6). This trend toward more frequent drought is attributed to increases in hot temperatures, and the number of days at or above 100 °F are projected to ''increase in both consecutive events and the total number of days'' (Mullens and McPherson 2017, pp. 14–15). Similarly, floods are projected to become more common and severe because of increases in the magnitude of extreme precipitation (Mullens and McPherson 2017, p. 20). Recent ''historic'' flooding of the Llano River resulted in the transport of high levels of silt and debris to Lake Travis, so much so that the City of Austin's ability to treat raw water was affected and the City issued a boil water notice and call for water conservation (City of Austin 2018c, p. 3)

In the analysis of the future condition of the Central Texas mussels, we considered climate change to be an exacerbating factor, contributing to the increase of fine sediments, changes in water quality, loss of flowing water, and predation. Due to the effects of ongoing climate change (represented by representative concentration pathway (RCP) 4.5), we expect the frequency and duration of cleansing flows to decrease, leading to the increase in fine sediments at all populations. Many populations will experience increased frequency of low flows. More extreme climate change projections (RCP 8.5 and beyond) lead to further increases in fine sediment within the populations. Similarly, as lower water levels concentrate contaminants and cause unsuitable temperature and dissolved oxygen levels, we expect water quality to decline to some degree in the future. The SSA report includes a detailed analysis of the species' responses to both RCP 4.5 and 8.5.

Conservation Actions and Regulatory Mechanisms

Since 2011, when three of the Central Texas mussel species became candidates for listing under the Endangered Species Act, many agencies, non-governmental organizations, and other interested parties have been working to develop voluntary agreements with private landowners to restore or enhance habitats for fish and wildlife in the region, including in the watersheds where Central Texas mussels occur. These agreements provide voluntary conservation including upland habitat enhancements that will, if executed properly, reduce threats to the species while improving in-stream physical habitat and water quality, as well as adjacent riparian and upland habitats. Additionally, as many as three river authorities are developing (or have already developed) conservation plans that may lead to candidate conservation agreements with assurances to benefit one or more species of candidate mussels (including the Central Texas mussels) in their basins. Because these plans and agreements are not yet fully drafted and implemented, we are not considering the conservation actions in our evaluation of the status of the Central Texas mussels; however, we will evaluate any new information on these

actions prior to making our final listing determination for these species.

Some publicly and privately owned lands in the watersheds occupied by Central Texas mussels are protected with conservation easements or are otherwise managed to support populations of native fish, wildlife, and plant populations. The Natural Resources Conservation Service (NRCS), along with the Service and State and local partners, are working with private landowners to develop and implement comprehensive conservation plans to address soil, water, and wildlife resource concerns in the lower Colorado River basin through a Working Lands for Wildlife project (NRCS 2019a, entire).

The Service has been hosting annual mussel research and coordination meetings to help manage and monitor scientific collection of mussel populations and encourage collaboration among researchers and other conservation partners since 2018 (USFWS 2018, p. 1, USFWS 2019a, p. 1). Additionally, work is under way to evaluate methods of captive propagation for the Central Texas mussel species at the Service's hatchery and research facilities (San Marcos Aquatic Research Center, Inks Dam National Fish Hatchery, and Uvalde National Fish Hatchery), including efforts to collect gravid females from the wild to infest host fish (Bonner *et al.* 2018, pp. 8, 9, 11).

Species Condition

Here we discuss the current condition of each known population, taking into account the risks to those populations that are currently occurring, as well as management actions that are currently occurring to address those risks. We consider climate change to be currently occurring, resulting in changes to the timing and amount of rainfall affecting streamflow, increased stream temperatures, and increased accumulation of fine sediments. In the SSA report, for each species and population, we developed and assigned condition categories for three population and three habitat factors that are important for viability of each species. The condition scores for each factor were then used to determine an overall condition of each population: healthy, moderately healthy, unhealthy, or functionally extirpated. These overall conditions translate to our presumed probability of persistence of each population, with healthy populations having the highest probability of persistence over 20 years (greater than 90 percent), moderately healthy populations having a probability of persistence that falls between 60 and 90 percent, and unhealthy populations having the lowest probability of persistence (between 10 and 60 percent). Functionally extirpated populations are not expected to persist over 20 years or are already extirpated.

Guadalupe Fatmucket

Overall, there is one known remaining population of Guadalupe fatmucket, in the Guadalupe River. Historically, Guadalupe fatmucket likely occurred through the Guadalupe River basin, but it currently only occurs in the upper Guadalupe River in an unhealthy population due to low abundance and little evidence of reproduction and recruitment. Very few individuals have been found in recent years, and the upper Guadalupe River in this reach already experiences very low water levels. These low water events are expected to continue into the future, and the population will be unlikely to rebound from any degraded habitat conditions.

Texas Fatmucket

Overall, there are five known remaining populations of Texas fatmucket, all limited to the headwater reaches of the Colorado River and its tributaries (see figure 2, above). Historically, most Texas fatmucket populations were likely connected by fish migration throughout the Colorado River basin, but due to impoundments and low water conditions in the Colorado River and tributaries they are currently isolated from one another, and repopulation of extirpated locations is unlikely to occur without human assistance. Two of the current populations are moderately healthy, two are unhealthy, and one is functionally extirpated.

Lower Elm Creek: The Elm Creek population of Texas fatmucket is extremely small and isolated. This population will continue to be threatened by excessive sedimentation and deterioration of substrate, altered hydrology associated with anthropogenic activities and the effects of climate change, and water quality degradation. The poor habitat conditions and only a single individual found at this site more than a decade ago indicate a population that is unlikely to persist and may already be extirpated.

Upper/Middle San Saba River: The population of Texas fatmucket in the upper/middle San Saba River is currently moderately healthy. Most of the flows in the Upper San Saba River (in Menard County, Texas) are from Edwards Formation springs, where it gains streamflow from groundwater except for, and due to a change in the underlying geology, a reach that loses flow to the aquifer (called a losing reach) near the Menard/Mason County line (LBG-Guyton 2002, p. 3). It is in this losing reach where drought effects are especially noticeable, as some flows may percolate downward to the aquifer. Much of the middle San Saba River below Menard is reported to have gone dry for 10 of the last 16 years by landowners downstream of Menard (Carollo Engineers 2015, p. 2). Regardless of the cause, low flows in the San Saba River have resulted in significant stream drying, and stranded Central Texas mussels have been identified following dewatering as recently as 2015 near and below the losing reach (TPWD 2015, p. 3). During the 2011–2013 drought, stream flows in the San Saba River were critically low, such that several water rights in Schleicher, Menard, and McCulloch Counties were suspended by the Texas Commission on Environmental Quality (TCEQ). These very low flow events are expected to continue into the future and put the upper/middle San Saba River population of Texas fatmucket at risk of extirpation. Even if the locations of Texas fatmucket do not become dry, water quality degradation and increased sedimentation associated with low flows is expected.

Llano River: The Llano River population of Texas fatmucket is currently moderately healthy, although there has been limited evidence that the population is successfully reproducing, and collection of the species is frequent at this location. We expect flows to continue to decline and the frequency of extreme flow events to increase, leading to increased sedimentation and decreased water quality, and scour, and the population is expected to decline as a result.

Pedernales River: The population of Texas fatmucket in the Pedernales River is very small and isolated. The Pedernales River is a flashy system, which experiences extreme high flow events, especially in the lower reaches in the vicinity of Pedernales Falls State Park and below. Occasional, intense thunderstorms can dramatically increase streamflow and mobilize large amounts of silt and organic debris (LCRA 2017, p. 82). The continued increasing frequency of high flow events combined with the very low abundances in the river result in a population that is likely to be extirpated and currently is unhealthy.

Onion Creek: Only a single live individual of Texas fatmucket has been found in Onion Creek since 2010, and we consider this population to be

functionally extirpated with little chance of persistence. The upper reaches of Onion Creek frequently go dry, and several privately owned low-head in-channel dams currently exist along upper and lower Onion Creek, which further provide barriers to fish passage and mussel dispersal, preventing recolonization after low water events. Onion Creek is in close proximity to the City of Austin, and continued development in the watershed is expected to continue to degrade habitat conditions.

Texas Fawnsfoot

There are seven remaining populations of Texas fawnsfoot, in the Trinity, Brazos, and Colorado River basins. Historically, Texas fawnsfoot occurred throughout each basin with populations connected by fish migration within each basin, but due to impoundments and low water conditions, they are currently isolated from one another, and repopulation of extirpated locations is unlikely to occur without human assistance. Four Texas fawnsfoot populations are moderately healthy, and three are unhealthy.

East Fork Trinity River: The Texas fawnsfoot population in the East Fork Trinity River occupies a small stream reach (12 mi (19 km)), making it especially vulnerable to a single stochastic event such as a spill or flood and changes to water quality. Further, no evidence of reproduction exists for this population. The population is expected to decline as a result of the lack of reproduction. This population is small and isolated from the middle and lower Trinity River population by unsuitable habitat affected primarily by altered hydrology as flows from the Dallas-Fort Worth metro area are too flashy to provide suitable habitat for Texas fawnsfoot. Therefore, this population is unhealthy.

Middle Trinity River: Texas fawnsfoot in the Trinity River have experienced improved water quality over the past 30 years due to advancements in wastewater treatment technology and facilities, and streamflows have been subsidized by return flows originating in part from other basins, although water quality degradation and sedimentation are still of concern. Additionally, the middle Trinity River is a relatively long and unobstructed reach of river. While habitat may decline, we expect the population of Texas fawnsfoot to persist in the middle Trinity River, as we expect that flows will remain within a normal range of environmental variation in this reach.

Clear Fork Brazos River: Texas fawnsfoot in the Clear Fork of the Brazos River is very small and isolated. This population likely experienced extensive mortality associated with prolonged dewatering during the 2011–2013 drought, combined with ambient water quality degradation associated with naturally occurring elevated salinity levels from the upper reaches of the river. This population is likely functionally extirpated, although more survey effort is needed to reach a definitive conclusion. Further, the proposed Cedar Ridge Reservoir, if constructed, will likely result in significant hydrologic alterations, all of which would not be expected to improve the overall condition of this population of Texas fawnsfoot.

Upper Brazos River: The population of Texas fawnsfoot in the Upper Brazos River is characterized by low abundances and lack of reproduction, and reduced flows associated with continued drought and upstream dam operations. Further, water quality degradation associated with naturally occurring salinity is expected to continue. This population is at risk of extirpation due to its small population size and continued poor habitat conditions.

Middle/Lower Brazos River: The population of Texas fawnsfoot in the middle and lower Brazos River occupies a fairly long reach of river (346 mi (557 km)) and exhibits evidence of reproduction. The lack of major impoundments and diversions in the Brazos River below Waco, Texas, benefits this population through maintenance of a relatively natural hydrological regime. Even so, Texas fawnsfoot surveys have yet to yield the species in numbers that would indicate a healthy population, and future habitat degradation from reduced flows, increased temperatures, and decreased water quality will likely reduce the resiliency of this population.

Lower San Saba: Texas fawnsfoot in the lower San Saba River are found in low abundance with little evidence of reproductive success and subsequent recruitment of new individuals to the population. Habitat factors are currently unhealthy overall, due primarily to degraded substrate conditions caused, in part, by reductions in flowing water over time due to a combination of increased water withdrawals and drought. We expect this population to become functionally extirpated due to lack of water and degradation of substrate.

Lower Colorado River: The Texas fawnsfoot population in the lower Colorado River is expected to remain extant under current conditions, as this reach is expected to remain wetted but flowing at reduced amounts that reduce available habitat. Despite increasing demands for municipal water, we expect that the lower Colorado River will continue to provide water associated with priority downstream agricultural and industrial water rights. Similar to the lower Brazos River population, the Lower Colorado River is vulnerable to reduced flows and associated habitat degradation, because the Texas fawnsfoot occurs in bank habitats that are likely to become exposed to desiccation, predation, and increased water temperatures as river elevations decline while the river still flows in its main channel. Over time, we expect flows in the lower Colorado River to be reduced, negatively affecting substrate quality and water quality (through increased sediment load and water temperature) such that reproduction and abundance are negatively affected, resulting in overall unhealthy population conditions.

Guadalupe Orb

There are two remaining populations of the Guadalupe orb, all in the Guadalupe River basin. Historically, Guadalupe orb likely occurred throughout the basin with populations connected by fish migration, but due to impoundments and low water conditions, they are currently isolated from one another, and repopulation of extirpated locations is unlikely to occur without human assistance. Both of the Guadalupe orb populations are moderately healthy.

Upper Guadalupe River: The Guadalupe orb population in the upper Guadalupe River occurs over approximately 95 river miles (153 river km), and water quantity and quality are in moderate condition. However, the population occurs in low numbers, and there appears to be a lack of reproduction; this population is unhealthy and is expected to become functionally extirpated in the near future. This stream reach is expected to be sensitive to potential changes in groundwater inputs to stream flow and thus is vulnerable to ongoing and future hydrological alterations that reduce flows during critical conditions, resulting in substrate quality degradations as well as water quality degradation.

San Marcos/Lower Guadalupe Rivers: In the San Marcos and Lower Guadalupe River, the Guadalupe orb population currently occupies a relatively long stream length, is observed in relatively high abundances, and exhibits evidence of reproduction. Significant spring complexes contribute substantially to baseflow during dry

periods in this system and are expected to continue to contribute to baseflows for the next 50 years due to conservation measures implemented by the Edwards Aquifer Habitat Conservation Plan partners, bolstering the resiliency of this population. However, this population is subject to extreme high flow events that scour and mobilize the substrate, and water quality degradation and sedimentation are threats, putting it at risk of decline.

Texas Pimpleback

There are five remaining Texas pimpleback populations, all in the Colorado River basin. Historically, Texas pimpleback likely occurred throughout the basin with populations connected by fish migration, but due to impoundments and low water conditions, they are currently fragmented and isolated from one another and repopulation of extirpated locations is unlikely to occur without human assistance. Three of the remaining Texas pimpleback populations are unhealthy and are not reproducing, and two of the populations are moderately healthy.

CONCHO RIVER: The Texas pimpleback population in the Concho River is limited by very low levels of flowing water (including periods of almost complete dewatering), poor water quality, and poor substrate quality associated with excessive sedimentation. The drought of 2011–2013 resulted in extremely low flows in this river, and only one live adult has been found since that time. This population may currently be functionally extirpated.

Middle Colorado/Lower San Saba Rivers: The population of Texas pimpleback in the middle Colorado and lower San Saba River is the largest known. This population has relatively high abundance but little evidence of reproduction, so we expect this population to decline as old individuals die and very few young individuals are recruited into the reproducing population. The combination of reduced flows, degraded water quality, and substrate degradation will reduce the resiliency of this population and may cause it to become extirpated.

Upper San Saba River: Similar to other populations of Texas pimpleback, the population in the Upper San Saba River is currently unhealthy and does not appear to be reproducing. Regardless of the high risk of low water levels, the very small population size and lack of reproduction will likely result in the extirpation of this population. Because of the losing reach near Hext, Texas, that serves to separate the upper and lower San Saba River populations, along with differences in substrate, this population is isolated and no longer connected to the lower San Saba River population.

Llano River: The population of Texas pimpleback in the Llano River occupies a very short stream length, which is negatively affected by substrate degradation during periods of low flows. This population, due to ease of access to the location, is especially vulnerable to the threat of overcollection and vandalism. The small population size and frequency of low water levels, and flooding with scour, cause this population to be unhealthy.

Lower Colorado River: Currently, the population of Texas pimpleback in the lower Colorado River is relatively abundant over a long stream length. However, because the species is a riffle specialist, the Texas pimpleback is especially sensitive to hydrological alterations leading to both extreme drying (dewatering) during low flow events, and to extreme high flow events leading to scouring of substrate and movement of mature individuals to sites that may or may not be appropriate (as evidenced by the August 2017 scouring flood event that substantially degraded the quality of the Altair Riffle in the lower Colorado River, a formerly robust mussel bed). We expect this population to be at risk of extirpation due to these extreme flow events.

False Spike

Overall, there are four known remaining populations of false spike (see figure 6, above), comprising less than 10 percent of the species' known historical range. Historically, most false spike populations were likely connected by fish migration throughout each of the Brazos, Colorado, and Guadalupe river basins, but due to impoundments they are currently fragmented and isolated from one another and repopulation of extirpated locations is unlikely to occur without human assistance. Based on our analysis as described in the SSA Report, one population is moderately healthy, and three are unhealthy.

Little River and tributaries: The Little River population is considered to have low resiliency currently due to the small size of the population. Development in the watershed has reduced water quality and substrate conditions currently, and habitat factors are expected to continue to decline because of alterations to flows and water quality associated primarily with increasing development in the watershed as the Austin-Round Rock (Texas) metropolitan area continues to expand. Low water levels remain a concern that is mediated somewhat by the likelihood that enhanced return flows associated with the development and use of alternative water supplies will bolster base flows somewhat. The small size of the population combined with continued habitat degradation put this population at high risk of extirpation.

Lower San Saba River: The lower San Saba River population is currently small and isolated and therefore has low resiliency. The population has low abundance, and a lack of reproduction and subsequent recruitment, and we expect it to become functionally extirpated in the next 10 years. Future degradation of habitat factors is expected as flows continue to be diminished, most notably by altered precipitation patterns (that result in dewatering droughts and scouring floods) combined with enhanced evaporative demands and anthropogenic withdrawals to support existing and future demands for municipal and agricultural water.

Llano River: The Llano River population is currently very small and isolated and therefore has low resiliency. The population occupies an extremely small area, and degradation of habitat is expected to continue as flows continue to decline due to altered precipitation patterns (dewatering droughts and scouring floods) combined with enhanced evaporative demands and anthropogenic withdrawals to support existing and future demands for municipal and agricultural water. Further, this population is well known and easy to access and therefore has experienced high collection pressure in recent years, and the population has not shown recent evidence of reproduction. Therefore, we expect the population to become extirpated.

Lower Guadalupe River: The lower Guadalupe River population of false spike is the largest population of the species and the most resilient. This population has fairly high abundance over a long reach, and flow protections afforded by the Edwards Aquifer Habitat Conservation Plan have contributed substantially to the resiliency of this population by sustaining base flows above critical levels. However, despite these base flow protections, this population remains vulnerable to changes in water quality, sedimentation, and extreme high flow events, such as from hurricanes or other strong storms, which scour and deplete mussel beds (Strayer 1999, pp. 468–469). Overall, this population is moderately healthy.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in

the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and incorporates the threats individually and cumulatively. Our current and future condition assessment is iterative because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of 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.

Status Throughout All of Its Range

After evaluating threats to the six Central Texas mussel species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that all six species of Central Texas mussels have declined significantly in overall distribution and abundance. At present, most of the known populations exist in very low abundances and show limited evidence of recruitment. Furthermore, existing available habitats are reduced in quality and quantity, relative to historical conditions. Our analysis revealed five primary threats that caused these declines and pose a meaningful risk to the viability of the species. These threats are primarily related to habitat changes (Factor A from the Act): The accumulation of fine sediments, altered hydrology, and impairment of water quality, all of which are exacerbated by the effects of climate change. Predation and collection (Factor C) are also affecting those populations already experiencing low stream flow, and barriers to fish movement (Factor E) limit dispersal and prevent recolonization after stochastic events.

Because of historic and ongoing habitat destruction and fragmentation, remaining Central Texas mussel populations are now fragmented and isolated from one another, interrupting the once functional metapopulation dynamic that historically made mussel populations robust and very resilient to change. The existing fragmented and isolated mussel populations are largely in a state of chronic degradation due to a number of historical and ongoing stressors affecting flows, water quality, sedimentation, and substrate quality. Given the high risk of catastrophic events including droughts and floods, both of which are exacerbated by climate change, many Central Texas mussel populations are at a high risk of extirpation.

Beginning around the turn of the twentieth century until 1970, over 100 major dams had been constructed, creating reservoirs across Texas, including several reservoirs in the Brazos and Trinity basins, the chain of Highland Lakes on the Lower Colorado River, the Guadalupe Valley Hydroelectric Project, and the Canyon Reservoir on the Guadalupe River (Dowell 1964, pp. 3–8). The inundation and subsequent altered hydrology and sediment dynamics associated with operation of these flood-control, hydropower, and municipal water supply reservoirs have resulted in irreversible changes to the natural flow regime of these rivers. These changes have re-shaped and fragmented these aquatic ecosystems and fish and invertebrate communities, including populations of the six species of Central Texas mussels, which all depend on natural river flows.

Water quality has benefited from dramatically improved wastewater treatment technology in recent years, such that fish populations have rebounded but not completely recovered (Perkin and Bonner 2016, p. 97). However, water quality degradation continues to affect mussels and their habitats, especially as low flow conditions and excessive sedimentation interact to diminish instream habitats, and substrate-mobilizing and mussel-scouring flood events have become more extreme and perhaps more frequent.

Additionally, while host fish may still be adequately represented in contemporary fish assemblages, access to fish hosts can be reduced during critical reproductive times by barriers such as the many low-water crossings and low-head dams that now exist and fragment the landscape. Diminished access to host fish leads to reduced reproductive success just as barriers to fish passage impede the movement of fish, and thus compromise the ability of mussels to disperse and colonize new habitats following a disturbance (Schwalb *et al.* 2013, p. 447).

Populations of each of the six Central Texas mussels face risks from declining water quantity in both large and small river segments. Low flows lead to dewatering of habitats and desiccation of individuals, elevated water temperatures, and other quality degradations, as well as increased exposure to predation. Future higher air temperatures, higher rates of evaporation and transpiration, and changing precipitation patterns are expected in central Texas (Jiang and Yang 2012, pp. 234–239, 242). Future climate changes are expected to lead to human responses, such as increased groundwater pumping and surface water diversions, associated with increasing demands for and decreasing availability of freshwater resources in the State (reviewed in Banner *et al.* 2010, entire). Finally, direct mortality due to predation and collection further limits population sizes of those populations already experiencing the stressors discussed above.

These threats, alone or in combination, are expected to cause the extirpation of additional mussel populations, further reducing the overall redundancy and representation of each of the six species of Central Texas mussels. Historically, each species, with a large range of interconnected populations (*i.e.,* having metapopulation dynamics), would have been resilient to stochastic events such as drought, excessive sedimentation, and scouring floods because even if some locations were extirpated by such events, they could be recolonized over time by dispersal from nearby survivors and facilitated by movements by ''affiliate species'' of host fish (Douda *et al.* 2012, p. 536). This connectivity across potential habitats would have made for highly resilient species overall, as evidenced by the long and successful evolutionary history of freshwater mussels as a taxonomic group, and in

North America in particular. However, under present circumstances, restoration of that connectivity on a regional scale is not feasible. As a consequence of these current conditions, the viability of the six species of Central Texas mussels now primarily depends on maintaining and improving the remaining isolated populations and potentially restoring new populations where feasible.

Guadalupe Fatmucket

The Guadalupe fatmucket has only one remaining population, and very few individuals have been detected and reported in recent years. The upper Guadalupe River in this reach already experiences very low water levels, putting this population at high risk of extirpation. The species has very low viability, with a single population at high risk of extirpation, and no additional representation or redundancy. Our analysis of the species' current and future conditions, as well as the conservation efforts discussed above, show that the Guadalupe fatmucket is in danger of extinction throughout all of its range due to the severity and immediacy of threats currently impacting the species.

Texas Fatmucket

Of the five remaining fragmented and isolated populations of Texas fatmucket, two are small in abundance and occupied stream length and have low to no resiliency (unhealthy), and one population is functionally extirpated. The other two current populations are moderately healthy. The upper/middle San Saba and Llano River populations are larger, with increased abundance and occupied stream length, but these populations are vulnerable to stream drying and overcollection. These very low flow events are expected to continue into the future, and both of these populations of Texas fatmucket are at risk of extirpation. Even if the locations of Texas fatmucket do not become dry, water quality degradation and increased sedimentation associated with low flows is expected. Additionally, the Llano River population does not appear to be successfully reproducing, further increasing the species' risk of extirpation at this location. The Texas fatmucket has no populations that are currently considered healthy. Loss of populations at high risk of extirpation leads to low levels of redundancy and representation. Overall, these low levels of resiliency, redundancy, and representation result in the Texas fatmucket having low viability, and the species currently faces a high risk of extinction. Our analysis of the species' current and future conditions shows that the Texas fatmucket is in danger of extinction throughout all of its range due to the severity and immediacy of threats currently impacting the species.

Texas Fawnsfoot

Seven populations of Texas fawnsfoot remain. Four populations are moderately healthy, and three are unhealthy or are functionally extirpated. Currently, two of the moderately healthy populations are not subject to flow declines similar to the remaining populations of this species, due to increased flow returns in the Trinity River from wastewater treatment facilities and a lack of impoundments on the mainstem of the lower Brazos River. In the future, however, as extreme flow events become more frequent as rainfall patterns change, and increased urbanization results in reduced groundwater levels, we expect even these populations to be at an increased risk of extirpation. Within 25 to 50 years, even under the best conditions and with additional conservation efforts undertaken, given the ongoing effects of climate change and human activities on altered hydrology and habitat degradation, we expect only one population to be in healthy condition, one population to remain in moderately healthy condition, four populations to be in unhealthy condition, and one population to become functionally extirpated. Given the likelihood of increased climate and anthropogenic effects in the foreseeable future, as many as five populations are expected to become functionally extirpated, leaving no more than three unhealthy populations remaining after 50 years. In the future, we anticipate that the Texas fawnsfoot will have reduced viability, with no highly resilient populations and limited representation and redundancy. Thus, after assessing the best available information, we determine that the Texas fawnsfoot 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.

Guadalupe Orb

Only two fragmented and isolated populations of Guadalupe orb remain, and one of these populations is functionally extirpated. The San Marcos/Lower Guadalupe River population is more resilient but is at risk of catastrophic events, such as hurricane flooding, that can scour and reduce the abundance and distribution of this population. The Guadalupe orb has no populations that are considered healthy. Loss of populations at high risk of extirpation leads to low levels of redundancy and representation, and results in overall low viability. The Guadalupe orb currently faces a high risk of extinction. Our analysis of the species' current and future conditions, as well as the conservation efforts discussed above, show that the Guadalupe orb is in danger of extinction throughout all of its range due to the severity and immediacy of threats currently impacting the species.

Texas Pimpleback

Of the five remaining Texas pimpleback populations, three are unhealthy and are not reproducing, and two are moderately healthy. The populations that are not reproducing are considered functionally extirpated, and the two moderately healthy populations are expected to continue to decline. The population in the middle Colorado and lower San Saba Rivers has very little evidence of reproduction and is therefore likely to decline due to a lack of young individuals joining the population as the population ages. The lower Colorado River population has very recently experienced an extreme high flow event (*i.e.,* associated with Hurricane Harvey flooding in August and September of 2017) that vastly changed the substrate and mussel composition of much of its length, putting this population at high risk of extirpation. The Texas pimpleback has no healthy populations, and all populations are expected to continue to decline. Loss of populations at high risk of extirpation leads to low levels of redundancy and representation. Overall, these low levels of resiliency, redundancy, and representation result in the Texas pimpleback having low viability, and the species currently faces a high risk of extinction. Our analysis of the species' current and future conditions, as well as the conservation efforts discussed above, show that the Texas pimpleback is in danger of extinction throughout all of its range due to the severity and immediacy of threats currently impacting the species.

False Spike

Of the four remaining fragmented and isolated populations of false spike, three are small in abundance and occupied stream length, having low to no resiliency. The remaining lower Guadalupe River population is larger, with increased abundance and occupied stream length; however, the risk of extreme high flow events in this reach is high. Therefore, the false spike has no populations that are currently considered healthy (*i.e.,* highly

resilient). Loss of populations at high risk of extirpation leads to low levels of redundancy (few populations will persist to withstand catastrophic events) and representation (little to no ecological or genetic diversity will persist to respond to changing environmental conditions). The threats identified above are occurring now and are expected to continue into the future. Overall, these low levels of resiliency, redundancy, and representation result in the false spike having low viability, and the species currently faces a high risk of extinction. Our analysis of the species' current and future conditions demonstrate that the false spike is in danger of extinction throughout all of its range due to the severity and immediacy of threats currently impacting the species.

Summary of Status Throughout All of Its Range: Guadalupe Fatmucket, Texas Fatmucket, Guadalupe Orb, Texas Pimpleback, and False Spike

Our analysis of the species' current and future conditions, as well as the conservation efforts discussed above, show that the Guadalupe fatmucket, Texas fatmucket, Guadalupe orb, Texas pimpleback, and false spike are in danger of extinction throughout all their ranges due to the severity and immediacy of threats currently impacting their populations. The risk of extinction is high because the remaining fragmented populations have a high risk of extirpation, are isolated, and have limited potential for recolonization. We find that a threatened species status is not appropriate for Guadalupe fatmucket, Texas fatmucket, Guadalupe orb, Texas pimpleback, and false spike because of their currently contracted ranges, because all populations are fragmented and isolated from one another, because the threats are occurring across the entire range of these species, and because the threats are ongoing currently and are expected to continue or worsen into the future. Because these species are already in danger of extinction throughout their ranges, a threatened status is not appropriate.

Summary of Status Throughout All of Its Range: Texas Fawnsfoot

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that that Texas fawnsfoot populations will continue to decline over the next 25 years so that this species is likely to become in danger of extinction throughout all or a significant portion of its range within the foreseeable future due to increased frequency of drought and extremely high flow events, decreased water quality, and decreased substrate suitability. We considered whether the Texas fawnsfoot is presently in danger of extinction and determined that endangered status is not appropriate. The current conditions as assessed in the SSA report show two of the populations in two of the representative units are not currently subject to declining flows or extreme flow events. While 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. According to our assessment of plausible future scenarios in the SSA report, the species is likely to become an endangered species in the foreseeable future of 25 years throughout all of its range. Twenty-five years encompasses about 5 generations of the Texas fawnsfoot; additionally, models of human demand for water (Texas Water Development Board 2017, p. 30) and climate change (*e.g.,* Kinniburgh *et al.* 2015, p. 83) project decreased water availability over 25 and 50 years, respectively. As a result, we expect increased incidences of low flows followed by scour events as well as persistent decreased water quality to be occurring in 25 years. Thus, after assessing the best available information, we determine that the Texas fawnsfoot is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range: Guadalupe Fatmucket, Texas Fatmucket, Guadalupe Orb, Texas Pimpleback, and False Spike

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 Guadalupe fatmucket, Texas fatmucket, Guadalupe orb, Texas pimpleback, and false spike are in danger of extinction throughout all of their ranges, and accordingly did not undertake an analysis of whether there are any significant portions of these species' ranges. Because the Guadalupe fatmucket, Texas fatmucket, Guadalupe orb, Texas pimpleback, and false spike warrant listing as endangered throughout all of their ranges, 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 2014 Significant Portion of its Range Policy that provided the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range.

Status Throughout a Significant Portion of Its Range: Texas Fawnsfoot

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and, (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the Texas fawnsfoot, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

We considered whether any of the threats acting on the species are geographically concentrated in any portion of the range at a biologically meaningful scale. We examined the following threats throughout the range of the species: The accumulation of fine sediments, altered hydrology, and impairment of water quality (Factor A); predation and collection (Factor C); and barriers to fish movement (Factor E).

We identified a portion of the range of Texas fawnsfoot, the upper Brazos

River (including the populations in the Upper Brazos River and Clear Fork Brazos River), that is experiencing a concentration of the following threats: Altered hydrology and impaired water quality. Although these threats are not unique to this area, they are acting at a greater intensity here (*e.g.,* populations higher in the watershed and that receive less rainfall are more vulnerable to stream drying because there is a smaller volume of water in the river), either individually or in combination, than elsewhere in the range. In addition, the small sizes of each population, coupled with the current condition information in the SSA report suggesting the two populations in this area are unhealthy, leads us to find that this portion provides substantial information indicating the populations occurring here *may* be in danger of extinction now.

We then proceeded to the significance question, asking whether there is substantial information indicating that this portion of the range (*i.e.,* the Upper Brazos River and Clear Fork Brazos River) *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)). In undertaking this analysis for the Texas fawnsfoot, we considered whether the Upper Brazos River portion of the species' range may be significant based on its biological importance to the overall viability of the Texas fawnsfoot. Therefore, for the purposes of this analysis, when considering whether this portion may be biologically significant, we considered whether the portion may (1) occur in a unique habitat or ecoregion for the species, (2) contain high quality or high value habitat relative to the remaining portions of the range, for the species' continued viability in light of the existing threats, or (3) contain habitat that is essential to a specific life-history function for the species and that is not found in the other portions (for example, the principal breeding ground for the species).

We evaluated the available information about the portion of the range of Texas fawnsfoot that occupies the upper Brazos River in this context, assessing its biological significance in terms of these three habitat criteria, and determined the information did not substantially indicate it may be significant. Texas fawnsfoot in these populations exhibit similar habitat and host fish use to Texas fawnsfoot in the remainder of its range; thus, there is no unique observable environmental usage or behavioral characteristics attributable to just this area's populations. The Upper Brazos River is not essential to any specific life-history function of the Texas fawnsfoot that is not found elsewhere in the range. Further, the habitat in the Upper Brazos River does not contain higher quality or higher value than the remainder of the species' range. The Upper Brazos River populations have a small number of individuals compared to most of the other populations throughout the range of Texas fawnsfoot (see Table 4, above). The Clear Fork Brazos River population may already be extirpated, and the Upper Brazos River population had 23 individuals found in 2017. These populations do not interact with other populations of the species.

Overall, we found no substantial information that would indicate the Upper Brazos River may be significant. While this area provides some contribution to the species' overall ability to withstand catastrophic or stochastic events (redundancy and resiliency, respectively), the species has a larger population that occupies a larger area downstream in the Brazos River. The best scientific and commercial information available indicates that the Upper Brazos River population's contribution is very limited in scope due to the small population sizes and isolation from other populations. Therefore, because we could not answer both the status and significance questions in the affirmative, we conclude that the Upper Brazos River portion of the range does not warrant further consideration as a significant portion of the range.

We did not identify any portions of the Texas fawnsfoot's range where: (1) The portion is significant; and, (2) the species is in danger of extinction in that portion. Therefore, we conclude that the Texas fawnsfoot is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16-cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status: Guadalupe Fatmucket, Texas Fatmucket, Guadalupe Orb, Texas Pimpleback, and False Spike

Our review of the best available scientific and commercial information indicates that the Guadalupe fatmucket, Texas fatmucket, Guadalupe orb, Texas pimpleback, and false spike meet the definition of endangered species. Therefore, we propose to list the Guadalupe fatmucket, Texas fatmucket, Guadalupe orb, Texas pimpleback, and false spike as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Determination of Status: Texas Fawnsfoot

Our review of the best available scientific and commercial information indicates that the Texas fawnsfoot meets the definition of a threatened species. Therefore, we propose to list the Texas fawnsfoot 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 species' decline by addressing the threats to survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to

address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*).

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.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Central Texas mussels. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Central Texas mussels are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the National Park Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The discussion below regarding protective regulations under section 4(d) of the Act for the Texas fawnsfoot complies with our policy.

Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal agricultural and silvicultural practices, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and,

(2) Normal residential landscape activities.

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) Modification of the channel or water flow of any stream in which the Central Texas mussels are known to occur;

(3) Livestock grazing that results in direct or indirect destruction of stream habitat; and

(4) Discharge of chemicals or fill material into any waters in which the Central Texas mussels are known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'' Additionally, the second sentence of section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants.'' Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (*see State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising its authority under section 4(d), the Service has developed a proposed rule that is designed to address the Texas fawnsfoot'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 Texas fawnsfoot. As discussed in the Summary of Biological Status and Threats section, the Service has concluded that the Texas fawnsfoot is likely to become in danger of extinction within the foreseeable future primarily due to habitat changes such as the accumulation of fine sediments, altered hydrology, and impairment of water quality, predation and collection, and barriers to fish movement. The provisions of this proposed 4(d) rule would promote conservation of the Texas fawnsfoot by encouraging riparian landscape conservation while also meeting the conservation needs of Texas fawnsfoot. By streamlining those projects that follow best management practices and improve instream habitat (such as streambank stabilization, instream channel restoration, and upland restoration that improves instream habitat), conservation is more likely to occur for Texas fawnsfoot, improving the condition of populations in those reaches. The provisions of this proposed rule are one of many tools that the Service would use to promote the conservation of the Texas fawnsfoot. This proposed 4(d) rule would apply only if and when the Service makes final the listing of the Texas fawnsfoot as a threatened species.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the Texas fawnsfoot by prohibiting the following activities, except as otherwise authorized or permitted: Take, possession, and import/export of unlawfully taken specimens.

As discussed in the Summary of Biological Status and Threats (above), habitat loss, predation and collection, and barriers to fish movement are affecting the status of the Texas fawnsfoot. A range of activities have the potential to impact the Texas fawnsfoot, including: Instream construction, water withdrawals, flow releases from upstream dams, riparian vegetation removal, improper handling, and wastewater treatment facility outflows. Regulating these activities will help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other stressors.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental and intentional take will help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other stressors.

We have identified some exceptions to the prohibition on incidental and intentional take. Those exceptions include the following activities:

(1) Channel restoration projects that create natural, physically stable (streambanks and substrate remaining relatively unchanging over time), ecologically functioning streams or stream and wetland systems (containing an assemblage of fish, mussels, other invertebrates, and plants) 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 and woodland buffers. This exception to the proposed 4(d) rule for incidental take would promote conservation of Texas fawnsfoot by creating stable stream channels that are less likely to scour during high flow events, thereby increasing population resiliency.

(2) Bioengineering methods such as streambank stabilization using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These methods would not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion

structures. In addition, to reduce streambank erosion and sedimentation into the stream, work using these bioengineering methods would be performed at base flow or low water conditions and when significant rainfall is not predicted. Further, streambank stabilization projects must keep all equipment out of the stream channels and water. Similar to channel restoration projects, this exception to the proposed 4(d) rule for incidental take would promote conservation of Texas fawnsfoot by creating stable stream channels that are less likely to scour during high flow events, thereby increasing population resiliency.

(3) Soil and water conservation practices and riparian and adjacent upland habitat management activities that restore instream habitats for the species, restore adjacent riparian habitats that enhance stream habitats for the species, stabilize degraded and eroding stream banks to limit sedimentation and scour of the species' habitats, and restore or enhance nearby upland habitats to limit sedimentation of the species' habitats and comply with conservation practice standards and specifications and technical guidelines developed by the Natural Resources Conservation Service (NRCS) and available in the Field Office Technical Guide (FOTG). Soil and water conservation practices and aquatic species habitat restoration projects associated with NRCS conservation plans are designed to improve water quality and enhance fish and aquatic species habitats. This exception to the proposed 4(d) rule for incidental take would promote conservation of Texas fawnsfoot by creating stable stream channels and reducing sediment inputs to the stream, thereby increasing population resiliency.

(4) Presence or abundance surveys for Texas fawnfoot conducted by individuals who successfully complete and show proficiency by passing the end-of-course test with a score equal to or greater than 90 percent, with 100 percent accuracy in identification of mussel species listed under the Endangered Species Act, in an approved freshwater mussel identification and sampling course (specific to the species and basins in which the Texas fawnsfoot is known to occur), such as that administered by the Service, State wildlife agency, or qualified university experts. Those individuals exercising this exemption should provide reports to the Service annually on number, specific location (*e.g.* GPS coordinates), and date of encounter. This exemption does not apply if lethal take or collection is anticipated. This exemption only applies for 5 years from the date of successful completion of the course. This provision of the 4(d) rule for intentional take would promote conservation of Texas fawnsfoot by ensuring surveyors are proficient at identification of freshwater mussels and would add to the knowledge and understanding of the distribution of Texas fawnsfoot populations.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service recognizes the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve Texas fawnsfoot that may result in otherwise prohibited take without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Texas fawnsfoot. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. Proposed Critical Habitat Designation

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). Additionally, our regulations at 50 CFR 424.02 define the word ''habitat'' as follows: ''for the purposes of designating critical habitat only, habitat is the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species.''

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and

transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more-complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The implementing regulations at 50 CFR 424.12(b)(2) further delineate unoccupied critical habitat by setting out three specific parameters: (1) When designating critical habitat, the Secretary will first evaluate areas occupied by the species; (2) the Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species; and (3) for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

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

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

As the regulatory definition of ''habitat'' reflects (50 CFR 424.02), habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of these 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.

Prudency Determinations

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), 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 Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be

expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed in the proposed listing rule, above, while collection at certain locations has been identified as a threat to certain populations of Texas pimpleback, Texas fatmucket, and false spike in the Llano River, the location of these populations is well known and the identification and mapping of critical habitat is not expected to increase the degree of this threat. In our SSA report and proposed listing rule for the Central Texas mussels, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the Central Texas mussels and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the Central Texas mussels.

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 Central Texas mussels 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 these 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 Central Texas mussels.

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 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These 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.

We derive the specific physical or biological features (PBFs) essential for Central Texas mussels from studies of these species' habitat, ecology, and life history. The life histories of the six Central Texas mussel species are very similar—mussels need flowing water, suitable substrate, suitable water quality, flow refuges, and appropriate host fish—and so we will discuss their common habitat needs and then describe species-specific needs thereafter.

Space for Individual and Population Growth and for Normal Behavior

Most freshwater mussels, including the Central Texas mussels, are found in aggregations, called mussel beds, that vary in size from about 50 to greater than 5,000 square meters (m^2), separated by stream reaches in which mussels are absent or rare (Vaughn 2012, p. 983). Freshwater mussel larvae (called glochidia) are parasites that must attach to a host fish. A population incorporates more than one mussel bed; it is the collection of mussel beds within a stream reach between which infested host fish may travel, allowing for ebbs and flows in mussel bed density and abundance over time throughout the population's occupied reach. Therefore, resilient mussel populations must occupy stream reaches long enough so that stochastic events that affect individual mussel beds do not eliminate the entire population. Repopulation by infested host fish from other mussel beds within the reach can allow the population to recover from these events. Longer stream reaches are more likely to support populations of Central Texas mussels into the future than shorter stream reaches. Therefore, we determine that long stream reaches, over 50 miles (80.5 km), are an important component of a riverine system with habitat to

support all life stages of Central Texas mussels.

All six species of Central Texas mussels need flowing water for survival. They are not found in lakes, reservoirs, or in pools without flow, or in areas that are regularly dewatered. River reaches with continuous flow support all life stages of Central Texas mussels, while those with little or no flow do not. Flow rates needed by each species will vary depending on the species and the river size, location, and substrate type.

Additionally, each species of Central Texas mussel has specific substrate needs, including gravel/cobble (Guadalupe orb, Texas pimpleback, and false spike), gravel/sand/silt (Texas fawnsfoot), and bedrock crevices/vegetated runs (Guadalupe fatmucket and Texas fatmucket). Except for habitats for Texas fawnsfoot, these locations must be relatively free of fine sediments such that the mussels are not smothered.

Physiological Requirements: Water Quality Requirements

Freshwater mussels, as a group, are sensitive to changes in water quality parameters such as dissolved oxygen, salinity, ammonia, and pollutants. Habitats with appropriate levels of these parameters are considered suitable, while those habitats with levels outside of the appropriate ranges are considered less suitable. We have used information for these six Central Texas mussel species, where available, and data from other species when species-specific information is not available. Juvenile freshwater mussels are particularly susceptible to low dissolved oxygen levels. Juveniles will reduce feeding behavior when dissolved oxygen is between 2–4 milligrams per liter (mg/L), and mortality has been shown to occur at dissolved oxygen levels below 1.3 mg/L. Increased salinity levels may also be stressful to freshwater mussels, and additionally, Central Texas mussels show signs of stress at salinity levels of 2 ppt or higher (Bonner *et al.* 2018; pp. 155–156).

The release of pollutants into streams from point and nonpoint sources have immediate impacts on water quality conditions and may make environments unsuitable for habitation by mussels. Early life stages of freshwater mussels are some of the most sensitive organisms of all species to ammonia and copper (Naimo 1995, pp. 351–352; Augsperger *et al.* 2007, p. 2025). Additionally, sublethal effects of contaminants over time can result in reduced feeding efficiency, reduced growth, decreased reproduction, changes in enzyme activity, and behavioral changes to all mussel life stages. Even wastewater discharges with low ammonia levels have been shown to negatively affect mussel populations.

Finally, water temperature plays a critical role in the life history of freshwater mussels. High water temperatures can cause valve closure, reduced reproductive output, and death. The Central Texas mussels differ in their optimal temperature ranges, with some species much more tolerant of high temperatures than others. Laboratory studies investigating the effects of thermal stress on glochidia and adults has indicated thermal stress may occur at 29 °C (84.2) °F) (Bonner *et al.* 2018; Khan *et al.* 2019, entire)).

Based on the above information, we determine that stream reaches with the following water quality parameters are suitable for the Guadalupe fatmucket, Texas fatmucket, Texas fawnsfoot, Guadalupe orb, Texas pimpleback, and false spike:

- Low salinity (less than 2 ppt);
- Low total ammonia (less than 0.77 mg/L total ammonia nitrogen);
- Low levels of contaminants;
- Dissolved oxygen levels greater than 2 mg/L;
- Water temperatures below 29 °C (84.2 °F).

Sites for Development of Offspring

As discussed above, freshwater mussel larvae are parasites that must attach to a host fish to develop into juvenile mussels. The Central Texas mussels use a variety of host fish, many of which are widely distributed throughout their ranges. The presence of these fish species, either singly or in combination, supports the life-history needs of the Central Texas mussels:

- *False spike:* Blacktail shiner (*Cyprinella venusta*) and red shiner (*C. lutrensis*);
- *Texas fawnsfoot:* Freshwater drum (*Aplodinotus grunniens*);
- *Texas pimpleback and Guadalupe orb:* Channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictus olivaris*), and tadpole madtom (*Noturus gyrinus*);
- *Texas fatmucket and Guadalupe fatmucket:* Green sunfish (*Lepomis cyanellus*), bluegill (*L. macrochirus*), largemouth bass (*Micropterus salmoides*), and Guadalupe bass (*M. treculii*).

Summary of Essential Physical or Biological Features

In summary, we derive the specific PBFs essential to the conservation of Central Texas mussels from studies of these species' habitat, ecology, and life history as described above. Additional information can be found in the SSA report available on *http://www.regulations.gov* under Docket No. FWS–R2–ES–2019–0061. We have determined that the following PBFs are essential to the conservation of the Central Texas mussels:

(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 mussel and native fish (such as stable riffle-run-pool habitats that provide flow refuges consisting of silt-free gravel and coarse sand substrates).

(2) Adequate flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time), necessary to maintain benthic habitats where the species are found and to maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the mussels' and fish hosts' habitat, food availability, spawning habitat for native fishes, and the ability for newly transformed juveniles to settle and become established in their habitats.

(3) Water and sediment quality (including, but not limited to, dissolved oxygen, 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) The presence and abundance of fish hosts necessary for recruitment of the Central Texas mussels.

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 Central Texas mussels may require special management considerations or protections to reduce the following threats: Increased fine sediment, changes in water quality impairment, altered hydrology from both inundation and flow loss/scour, predation and collection, and barriers to fish movement.

Management activities that could ameliorate these threats include, but are

not limited to: Use of best management practices (BMPs) designed to reduce sedimentation, erosion, and bank side destruction; protection of riparian corridors and leaving sufficient canopy cover along banks; exclusion of livestock and nuisance wildlife (feral hogs, exotic ungulates); 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; use of highest water quality standards for wastewater and other return flows, and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the occupied areas we are proposing to designate as critical habitat contain the PBFs that are essential to the conservation of the species and that may require special management considerations or protection. Special management considerations or protection may be required of the Federal action agency to eliminate, or to reduce to negligible levels, the threats affecting the PBFs of each unit.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

We are proposing to designate critical habitat in areas within the geographical area that was occupied by the species at the time of listing. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing because we have determined that a designation limited to occupied areas would be inadequate to ensure the conservation of the species. The current distributions of all six of the Central Texas mussels are much reduced from their historical distributions. We anticipate that recovery will require continued protection of existing populations and habitat, as well as ensuring that there are adequate numbers of mussels in stable populations that occur over a wide geographic area. This strategy will help to ensure that catastrophic events, such as the effects of hurricanes (which can lead to flooding that causes excessive sedimentation, nutrients, and debris to disrupt stream ecology, etc.) and drought, 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 ranges, were considered in formulating this proposed critical habitat. The unoccupied areas included in this designation all contain at least one PBF, fall within the regulatory definition of ''habitat'' (50 CFR 424.02), and are reasonably certain to contribute to the conservation of the species, as discussed in the below unit descriptions.

Sources of data for this proposed critical habitat include multiple databases maintained by universities and State agencies, scientific and agency reports, and numerous survey reports on streams throughout the species' ranges (see SSA report).

Areas Occupied at the Time of Listing

The proposed critical habitat designations do not include all streams known to have been occupied by the species historically; instead, they focus on streams occupied at the time of listing that have retained the necessary PBFs that will allow for the maintenance and expansion of existing populations. A stream reach may not have all of the PBFs to be included as proposed critical habitat; in such reaches, our goal is to recover the species by restoring the missing PBFs. We defined ''occupied'' units as stream channels with observations of one or more live individuals. Specific habitat areas were delineated based on reports of live individuals and recently dead shells. We include ''recent dead shell material'' to delineate the boundaries of a unit because recently dead shell material at a site indicates the species is present in that area. Recently dead shells have tissue remaining on the shells or have retained a shiny nacre, indicating the animal died within days or weeks of finding the shell. It is highly unlikely that a dead individual represents the last remaining individual of the population, and recently dead shells are an accepted indicator of species' presence (*e.g.,* Howells 1996; Randklev *et al.* 2012). We are relying on evidence of occupancy from data collected in 2000 to the present. This is because freshwater mussels may be difficult to detect and some sites are not visited multiple times. Additionally, these species live at least 15—20 years. Because adults are less sensitive to habitat changes than juveniles, changes in population sizes usually occur over decades rather than years. As a result, areas where individuals were collected within the last 20 years are expected to remain occupied now. Additionally, any areas that were surveyed around 20 years ago and do not have subsequent surveys were reviewed for any large-scale habitat changes (*i.e.,* major flood or scour event, drought) to confirm that general habitat characteristics remained constant over this time. None of the relatively few areas without more recent survey information had experienced changes to general habitat characteristics. Therefore, data from around 2000 would be considered a strong indicator a species remains extant at a site if general habitat characteristics have remained constant over that time.

For occupied areas proposed as critical habitat, we delineated critical habitat unit boundaries using the following criterion: Evaluate habitat suitability of stream segments within the geographic area occupied at the time of listing, and retain those segments that contain some or all of the PBFs to support life-history functions essential for conservation of the species.

As a final step, we evaluated those occupied stream segments retained through the above analysis and refined the starting and ending points by evaluating the presence or absence of appropriate PBFs. We selected upstream and downstream cutoff points to reference existing easily recognizable geopolitical features including confluences, highway crossings, and county lines. Using these features as end points allows the public to clearly understand the boundaries of critical habitat. Unless otherwise specified, any stream beds located directly beneath bridge crossings or other landmark features used to describe critical habitat spatially, such as stream confluences, are considered to be wholly included within the critical habitat unit. Critical habitat stream segments were then mapped using ArcMap version 10 (ESRI, Inc.), a Geographic Information Systems program.

We consider the following streams to be occupied by the Guadalupe fatmucket at the time of proposed listing: Guadalupe River, North Fork Guadalupe River, and Johnson Creek (see *Unit Descriptions,* below).

We consider the following streams to be occupied by the Texas fatmucket at the time of proposed listing: Bluff Creek, Elm Creek, San Saba River, Cherokee Creek, North Llano River, South Llano River, Llano River, James River, Threadgill Creek, Beaver Creek,

Pedernales River, Live Oak Creek, and Onion Creek (see *Unit Descriptions,* below).

We consider the following streams to be occupied by the Texas fawnsfoot at the time of proposed listing: Clear Fork of the Brazos River, Upper Brazos River, Lower Brazos River, Navasota River, Little River, Lower San Saba River, Upper Colorado River, Lower Colorado River, East Fork of the Trinity River, and Middle Trinity River (see *Unit Descriptions,* below).

We consider the following streams to be occupied by the Guadalupe orb at the time of proposed listing: Upper Guadalupe River, South Fork Guadalupe River, Lower Guadalupe River, and San Marcos River (see *Unit Descriptions,* below).

We consider the following streams to be occupied by the Texas pimpleback at the time of proposed listing: Concho River, Upper Colorado River, Lower San Saba River, Upper San Saba River, Llano River, and Lower Colorado River (see *Unit Descriptions,* below).

We consider the following streams to be occupied by false spike at the time of proposed listing: Little River, San Gabriel River, Brushy Creek, San Saba River, Llano River, San Marcos River, and Guadalupe River (see *Unit Descriptions,* below).

Areas Outside the Geographic Area Occupied at the Time of Listing

We are not proposing to designate any areas outside the geographical area currently occupied by the false spike, Guadalupe orb, and Guadalupe fatmucket because we did not find any unoccupied areas that contained the necessary PBFs and were essential for the conservation of the species. However, each species needs the establishment and protection of additional resilient populations across their historical ranges to reduce their risk of extinction. While the species need these areas, we do not currently have adequate information to identify where these populations could be located at this time.

We have determined that a designation limited to the occupied units would be inadequate to ensure the conservation of the Texas fatmucket, Texas fawnsfoot, and Texas pimpleback. Of the five remaining fragmented and isolated populations of Texas fatmucket, two are small in abundance and occupied stream length and have low to no resiliency (*i.e.,* are unhealthy), and one population is functionally extirpated. The other two current populations have moderate resiliency and remain at risk of extirpation. For Texas fawnsfoot, seven populations remain. Four populations have moderate resiliency, and three are unhealthy or are functionally extirpated. The populations with moderate resiliency are all in the mainstem of large rivers, subject to decreased water quality as urbanization increases. Increasing the size of populations in the upper portions of the watersheds will increase the redundancy and representation of the Texas fawnsfoot in areas that are not subject to similar water quality declines. Finally, of the five remaining Texas pimpleback populations, three are unhealthy and are not reproducing, and two have moderate resiliency. This species needs expanded populations across its range to increase the populations' resiliency and the species' redundancy and representation.

In the SSA report, we defined 50 miles (80 km) as a stream length long enough to sustain a highly resilient population of the Central Texas mussels because a single event is unlikely to affect the entire population, and the affected section may be repopulated by mussel beds up- or downstream. Where available, we identified areas outside the geographical area currently occupied by Texas fatmucket, Texas pimpleback, and Texas fawnsfoot as critical habitat in order to increase the occupied stream length of existing small populations. Not all small (less than 50 miles) occupied stream reaches may have adjacent unoccupied reaches that are reasonably certain to contribute to the conservation of the species, and while these smaller reaches will inherently have a higher risk of extirpation, these smaller areas contribute to the conservation of the species through maintaining redundancy and representation. Special management within smaller occupied units can reduce the risk of extirpation.

We are proposing to designate some areas outside the geographical area currently occupied by Texas fatmucket, Texas pimpleback, and Texas fawnsfoot we found to be essential for the conservation of each species. The proposed unoccupied subunits are essential to the conservation of the species because each provides for the growth and expansion of the species within portions of their historical ranges. The longer the reach occupied by a species, the more likely it is that the population can withstand stochastic events such as extreme flooding, dewatering, or water contamination. Therefore, the unoccupied subunits are each essential for the conservation of the species. These proposed areas are located immediately adjacent to currently occupied stream reaches, include one or more of the necessary PBFs, and would allow for expansion of existing populations necessary to improve population resiliency, extend physiographic representation, and reduce the risk of extinction for the species. The establishment of additional moderately healthy to healthy populations across the range of these species would sufficiently reduce their risk of extinction. Improving the resiliency of populations in the currently occupied streams, and into identified unoccupied areas, will increase species viability to the point that the protections of the Act are no longer necessary. The unoccupied reaches we are proposing for critical habitat designation are Elm Creek and Onion Creek for the Texas fatmucket; the Clear Fork Brazos River for the Texas fawnsfoot; and the Llano River and Concho River for the Texas pimpleback.

General Information on the Maps of the Proposed Critical Habitat Designations

When determining proposed 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 Central Texas mussels. 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 proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, 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 propose to designate 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. We have determined that occupied areas are inadequate to ensure the conservation of the species. Therefore, we have also identified, and propose for designation as critical habitat, unoccupied areas that are essential for the conservation of the species.

The proposed critical habitat designations are defined by the map or

maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the proposed critical habitat designations in the discussion of individual units below. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* under Docket No. FWS–R2–ES–2019–0061.

Proposed Critical Habitat Designation

In total, we are proposing to designate approximately 1,944 river mi (3,129 river km), accounting for overlapping units, in 27 units (total of 50 subunits; Table 8) as critical habitat for one or more Central Texas mussel species: The false spike, Texas fatmucket, Guadalupe fatmucket, Texas pimpleback, Guadalupe orb, and Texas fawnsfoot. All but five of the subunits are currently occupied by one or more of the species, and each of the 50 subunits contains the physical and biological features essential to the conservation of each species. These proposed critical habitat areas, described below, constitute our current best assessment of areas that meet the definition of critical habitat for the six Central Texas mussel species. Each species historically occurred in a different subset of watersheds in Central Texas; therefore, there are large differences in the amount of critical habitat proposed for each species. For example, the Guadalupe fatmucket only occurred in the upper reaches of the Guadalupe River basin. As such, we have not proposed to designate areas outside of the very small historical range. In contrast, Texas fawnsfoot was historically widespread in three basins; therefore, to maintain the adaptive capacity of this species, we are proposing to designate a larger area for Texas fawnsfoot. Texas surface water is owned by the State, as are the beds of navigable streams; thus the actual critical habitat units (occupied waters and streambeds up to the ordinary high-water mark) are owned by the State of Texas (Texas Water Code Section 11.021, 11.0235). Adjacent riparian areas are in most cases, privately owned, and are what is reported in the discussion that follows. In many cases, activities on adjacent private land would not trigger section 7 consultation under the Act if those activities do not affect instream habitat.

TABLE 8—OVERALL PROPOSED CRITICAL HABITAT FOR THE CENTRAL TEXAS MUSSELS

[Note: Stream lengths will not sum due to overlapping units.]

Species	Basin/unit name	Occupied	Proposed critical habitat river mi (km)
Guadalupe fatmucket	*Guadalupe River:*	Yes.	
	GUFM–1a: North Fork Guadalupe River		7.5 (12.1)
	GUFM–1b: Johnson Creek		10.4 (16.7)
	GUFM–1c: Guadalupe River		36.2 (58.3)
			Total: 54.1 (87.1)
Texas fatmucket	*Colorado River:*	Yes.	
	TXFM–1a: Bluff Creek		11.8 (19.0)
	TXFM–1b: Lower Elm Creek		12.5 (20.2)
	TXFM–2: San Saba River		93.4 (150.3)
	TXFM–3: Cherokee Creek		18.1 (29.2)
	TXFM–4a: North Llano River		31.2 (50.1)
	TXFM–4b: South Llano River		22.9 (36.8)
	TXFM–4c: Llano River		90.4 (145.6)
	TXFM–4d: James River		18.6 (30.1)
	TXFM–4e: Threadgill Creek		8.3 (13.4)
	TXFM–4f: Beaver Creek		12.9 (20.8)
	TXFM–5a: Pedernales River		80.1 (128.9)
	TXFM–5b: Live Oak Creek		2.6 (4.2)
	TXFM–6a: Lower Onion Creek		5.2 (8.3)
			Total: 408.2 (656.8)
	Colorado River:	No.	
	TXFM–1c: Upper Elm Creek		9.1 (14.7)
	TXFM–6b: Upper Onion Creek		18.9 (30.4)
			Total: 28 (45.1)
Texas fawnsfoot	*Brazos River:*	Yes.	
	TXFF–1a: Upper Clear Fork Brazos River		27.9 (44.9)
	TXFF–2: Upper Brazos River		79.9 (128.6)
	TXFF–3a: Lower Brazos River		348.0 (560.0)
	TXFF–3b: Navasota River		39.3 (63.2)
	Colorado River:		
	TXFF–4: Little River		35.6 (57.3)
	TXFF–5a: San Saba River		50.4 (81.1)
	TXFF–5b: Upper Colorado River		10.5 (16.9)
	TXFF–6: Lower Colorado River		124.4 (200.2)
	Trinity River:		
	TXFF–7: East Fork Trinity River		15.6 (25.1)
	TXFF–8: Trinity River		157.0 (252.7)
			Total: 888.6 (1,430.1)

TABLE 8—OVERALL PROPOSED CRITICAL HABITAT FOR THE CENTRAL TEXAS MUSSELS—Continued

[Note: Stream lengths will not sum due to overlapping units.]

Species	Basin/unit name	Occupied	Proposed critical habitat river mi (km)
	Brazos River:	No.	
	TXFF–1b: Lower Clear Fork Brazos River		28.6 (46.0)
Guadalupe orb	*Guadalupe River:*	Yes.	
	GORB–1a: South Fork Guadalupe River		5.1 (8.3)
	GORB–1b: Upper Guadalupe River		99.4 (159.9)
	GORB–2a: San Marcos River		65.3 (105.1)
	GORB–2b: Lower Guadalupe River		124.7 (200.7)
			294.5 (474.0)
Texas pimpleback	*Colorado River:*	Yes.	
	TXPB–1a: Bluff Creek		11.8 (19.0)
	TXPB–1b: Lower Elm Creek		12.5 (20.2)
	TXPB–2a: Lower Concho River		35.6 (57.2)
	TXPB–3a: Upper Colorado River		153.8 (247.6)
	TXPB–3b: Lower San Saba River		50.4 (81.1)
	TXPB–4: Upper San Saba River		52.8 (85.0)
	TXPB–5a: Upper Llano River		38.3 (61.6)
	TXPB–6: Lower Colorado River		111.3 (179.1)
			Total: 466.5 (750.8)
	Colorado River:	No.	
	TXPB–2b: Upper Concho River		16.0 (25.7)
	TXPB–5b: Lower Llano River		12.2 (19.7)
			Total: 28.2 (45.4)
False spike	*Brazos River:*	Yes.	
	FASP–1a: Little River		35.6 (57.3)
	FASP–1b: San Gabriel River		31.4 (50.5)
	FASP–1c: Brushy Creek		14.0 (22.5)
	Colorado River:		
	FASP–2: San Saba River		50.4 (81.1)
	FASP–3: Llano River		50.5 (81.3)
	Guadalupe River:		
	FASP–4a: San Marcos River		21.6 (34.8)
	FASP–4b: Guadalupe River		124.7 (200.7)
			Total: 328.2 (528.2)

Guadalupe Fatmucket

We are proposing to designate approximately 54.1 river mi (87.1 river km) in a single unit (three subunits) as critical habitat for Guadalupe fatmucket. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Guadalupe fatmucket. The unit we propose as critical habitat is GUFM–1: Guadalupe River Unit. Table 9 shows the occupancy of the unit, the riparian ownership, and approximate length of the proposed designated areas for the Texas fatmucket. We present a brief description of the proposed unit, and reasons why it meets the definition of critical habitat for Guadalupe fatmucket, below.

TABLE 9—PROPOSED CRITICAL HABITAT UNITS FOR THE GUADALUPE FATMUCKET

[Note: Lengths may not sum due to rounding.]

Unit	Subunit	Riparian ownership	Occupancy	River miles (kilometers)
GUFM–1: Guadalupe River	GUFM–1a: North Fork Guadalupe River	Private	Occupied	7.5 (12.1)
	GUFM–1b: Johnson Creek	Private	Occupied	10.4 (16.7)
	GUFM–1c: Guadalupe River	Private	Occupied	36.2 (58.3)
Total				54.1 (87.1)

Guadalupe River Basin

Unit GUFM–1: Guadalupe River

Subunit GUFM–1a: North Fork Guadalupe River. The North Fork Guadalupe River subunit consists of 7.5 river mi (12.1 river km) in Kerr County, Texas. The adjacent riparian areas of the subunit are privately owned. The entire subunit is currently occupied by the species. The North Fork Guadalupe River subunit extends from the FM 1340 bridge crossing (just upstream of the Bear Creek Boy Scout camp) downstream to the confluence with the Guadalupe River. This subunit contains all of the PBFs essential to the conservation of the Guadalupe fatmucket. The North Fork Guadalupe River subunit is in a mostly rural setting; is influenced by drought, low flows, and flooding (leading to scour); and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and ground water withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. Special management may be necessary to ensure adequate instream flow and water quality.

Subunit GUFM–1b: Johnson Creek. The Johnson Creek subunit consists of 10.4 river mi (16.7 river km) within Kerr County, Texas. The Johnson Creek subunit begins at the Byas Springs Road crossing downstream to the confluence with the Guadalupe River. The adjacent riparian area is privately owned. The subunit is occupied by the Guadalupe fatmucket. This site contains the majority of the PBFs essential to the conservation of the species. Certain PBFs, such as sufficient water flow, dissolved oxygen levels, and water temperature, may be missing or degraded during times of drought. The Johnson Creek subunit is in a mostly rural but urbanizing setting, is influenced by drought, low flows, and flooding (leading to scour), and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and groundwater withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity.

Subunit GUFM–1c: Guadalupe River. This unit consists of approximately 36.2 river mi (58.3 river km) in Kerr and Kendall Counties, Texas. The Guadalupe River Subunit extends from the confluence of the North and South Fork Guadalupe Rivers downstream to the Interstate Highway 10 bridge crossing near Comfort, Texas. The adjacent riparian areas of this subunit are privately owned. The subunit is occupied by the Guadalupe fatmucket. This portion of the Guadalupe River basin is largely agricultural with several municipalities and multiple low-head dams originally built for a variety of purposes and now largely used for recreation (kayaking, fishing, camping, swimming, etc.). This subunit provides all of the PBFs essential to the conservation of the species. The Guadalupe River subunit is experiencing some urbanization and is influenced by drought, low flows, and flooding (leading to scour), and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by Guadalupe orb.

Texas Fatmucket

We are proposing to designate approximately 436.0 river mi (701.7 km) in 6 units (15 subunits) as critical habitat for Texas fatmucket. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Texas fatmucket. The six areas we propose as critical habitat are: TXFM–1: Elm Creek Unit; TXFM–2: San Saba River Unit; TXFM–3: Cherokee Creek Unit; TXFM–4: Llano River Unit; TXFM–5: Pedernales River Unit; and TXFM–6: Onion Creek Unit. Table 10 shows the occupancy of the units, the riparian ownership, and approximate length of the proposed designated areas for the Texas fatmucket. We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for Texas fatmucket, below.

TABLE 10—PROPOSED CRITICAL HABITAT UNITS FOR TEXAS FATMUCKET

[Note: Lengths may not sum due to rounding.]

Unit	Subunit	Riparian ownership	Occupancy	River miles (kilometers)
TXFM–1: Elm Creek	TXFM–1a: Bluff Creek	Private	Occupied	11.8 (19.0)
	TXFM–1b: Lower Elm Creek	Private	Occupied	12.5 (20.2)
	TXFM–1c: Upper Elm Creek	Private	Unoccupied	9.1 (14.7)
TXFM–2: San Saba River		Private	Occupied	93.4 (150.3)
TXFM–3: Cherokee Creek		Private	Occupied	18.1 (29.2)
TXFM–4: Llano River	TXFM–4a: North Llano River	Private	Occupied	31.2 (50.1)
	TXFM–4b: South Llano River	Private	Occupied	22.9 (36.8)
	TXFM–4c: Llano River	Private	Occupied	90.4 (145.6)
	TXFM–4d: James River	Private	Occupied	18.6 (30.1)
	TXFM–4e: Threadgill Creek	Private	Occupied	8.3 (13.4)
	TXFM–4f: Beaver Creek	Private	Occupied	12.9 (20.8)
TXFM–5: Pedernales River	TXFM–5a: Pedernales River	Private, Federal.	Occupied	80.1 (128.9)
	TXFM–5b: Live Oak Creek	Private	Occupied	2.6 (4.2)
TXFM–6: Onion Creek	TXFM–6a: Lower Onion Creek	Private	Occupied	5.2 (8.3)
	TXFM–6b: Upper Onion Creek	Private	Unoccupied	18.9 (30.4)
Total				436.0 (701.7)

Colorado River Basin

Unit TXFM–1: Elm Creek

Subunit TXFM–1a: Bluff Creek. This occupied critical habitat subunit consists of 11.8 river mi (19.0 km) of Bluff Creek, a tributary to Elm Creek, in Runnels County, Texas. The subunit extends from the County Road 153 bridge crossing, near the town of Winters, Texas, downstream to the confluence of Bluff and Elm creeks. The riparian area of this subunit is privately owned. This subunit is currently occupied by Texas fatmucket. The Bluff Creek subunit is in a rural setting, is influenced by drought, low flows, and elevated chlorides, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and ground water withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by Texas pimpleback.

Subunit TXFM–1b: Lower Elm Creek. This subunit consists of 12.5 river mi (20.2 km) of Elm Creek beginning at the confluence of Bluff Creek and continuing downstream to Elm Creek's confluence with the Colorado River in Runnels County, Texas. The riparian lands adjacent to this subunit are privately owned. The Elm Creek watershed is relatively small and remains largely rural and dominated by agricultural practices. This stream regularly has extremely low or no flow during times of drought. Moreover, this stream has elevated chloride concentrations and sedimentation resulting in reduced habitat quality and availability, and decreased water quality. Lower Elm Creek is occupied by Texas fatmucket and contains some of the PBFs essential to the conservation of the species such as presence of host fish; others are in degraded condition and would benefit from management actions such as improving water quality and substrate. The Lower Elm Creek subunit is influenced by drought, low flows, and elevated chlorides, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and ground water withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This unit is also occupied by Texas pimpleback.

Subunit TXFM–1c: Upper Elm Creek. Because we have determined occupied areas are not adequate for the conservation of the species, we evaluated whether any unoccupied areas are essential for the conservation of Texas fatmucket and identified this area as essential for the conservation of the species. This subunit consists of 9.1 river mi (14.7 km) from the County Road 153 crossing, near the town of Winters, Texas, downstream to the confluence of Bluff and Elm creeks. The riparian area surrounding this subunit is privately owned. The entire Elm Creek watershed is dominated by agriculture and remains rural. Upper Elm Creek is not currently occupied by Texas fatmucket, but it is essential for the conservation of the species because it provides for the growth and expansion of the Texas fatmucket within a portion of its historical range on Elm Creek; the occupied segment of Elm Creek is too small to ensure conservation of the Texas fatmucket over the long term. This unit is important to the conservation of Texas fatmucket because it is the furthest upstream population; its loss would shrink the overall range of Texas fatmucket to the lower, larger tributaries of the Colorado River. Additionally, this population of Texas fatmucket is substantially far from the other population of the species, such that if a catastrophic event such as drought or extreme flooding were to occur it is likely that this population would be affected differently, increasing the chance of the species surviving such an event.

The Upper Elm Creek subunit is in a rural setting, is influenced by drought, low flows, and elevated chlorides, and is being affected by ongoing agricultural activities. Although it is considered unoccupied, portions of this subunit contain some or all of the physical or biological features essential for the conservation of the species. As previously mentioned, flow rates in this subunit are typically not within the range required by the Texas fatmucket (PBF 1). This subunit is often characterized by small, isolated pools separated by short riffles over bedrock during low flow and when dam releases are minimal. During the last decade, lower Elm Creek has experienced both the lowest and highest flow rates on record (see SSA report for more information). This subunit will require management actions that address flow rate and associated stream habitat quality.

Suitable stream habitat and hydrological connectivity (PBF 2) are unsupported throughout the entirety of this subunit. Specifically, low flows during times of drought punctuated by high flows are either scouring the stream habitat, or depositing stream sediments downstream. Because mussels are sedentary organisms, transportation of individuals during flooding events is often lethal.

The Texas fatmucket uses predatory fish (*e.g.,* bass and sunfishes) for its host infestation period of its lifecycle. These host fishes (PBF 3) are presumed to be common throughout the state of Texas and within the Upper Elm Creek subunit. While ongoing research may be necessary to confirm current abundance of host fishes are at suitable levels, we currently believe they are adequate.

This subunit is not included in Texas Commission on Environmental Quality classified stream segments; therefore, we have no specific water quality information. During times of normal flow this subunit likely supports healthy water quality parameters (PBF 4) for Texas fatmucket, but water quality is likely compromised during low flows, when water temperatures rise and dissolved oxygen drops. The Upper Elm Creek subunit will require additional management practices to ensure sufficient water quality standards are being met and maintained for Texas fatmucket.

Because this reach of Elm Creek periodically contains the flowing water conditions and host fish species used by Texas fatmucket, it qualifies as habitat according to our regulatory definition (50 CFR 424.02).

If the Texas fatmucket can be reestablished in this reach, it will expand the occupied reach length in Elm Creek to a length that will be more resilient to the stressors that the species is facing. The longer the reach occupied by a species, the more likely it is that the population can withstand stochastic events such as extreme flooding, dewatering, or water contamination. In the SSA report, we identified 50 miles (80.5 km) as a reach long enough for a population to be able to withstand stochastic events, and the addition of this 10.9-mile reach, as well as the adjacent tributary of Bluff Creek, would expand the existing Texas fatmucket population downstream in Lower Elm Creek and in Bluff Creek closer to 50 miles. The addition of multiple tributaries increases the value of the overall critical habitat unit, providing protection for the population should a stochastic event occur in one tributary. If Texas fatmucket were to become reestablished throughout this unit, it would likely be a moderately to highly resilient population due to longer stream length and would increase the species' future redundancy. This unit is

essential for the conservation of the species because it will provide habitat for range expansion in portions of known historical habitat that is necessary to increase viability of the species by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the species, because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring and reintroducing the species into unoccupied habitat are being developed. The Texas fatmucket is listed as threatened by the State of Texas, and the Texas Comptroller of Public Accounts has funded research, surveys, propagation, and reintroduction studies for this species. State and Federal partners have shown interest in propagation and reintroduction efforts for the Texas fatmucket. As previously mentioned, efforts are underway regarding a captive propagation program for Texas fatmucket at the San Marcos Aquatic Resource Center and Inks Dam National Fish Hatchery. The State of Texas, San Marcos Aquatic Resource Center, Inks Dam National Fish Hatchery, and the Service's Austin and Texas Coastal Field Offices collaborate regularly on conservation actions. Therefore, this unoccupied critical habitat subunit is essential for the conservation of the Texas fatmucket and is reasonably certain to contribute to such conservation.

Unit TXFM–2: San Saba River

This unit consists of 93.4 river mi (150.3 km) of the San Saba River in Menard, Mason, McCulloch, and San Saba Counties, Texas. This unit of the San Saba River extends from the Schleicher and Menard County line, near Fort McKavett, Texas, downstream to the San Saba River confluence with the Colorado River. The adjacent riparian areas are privately owned. This basin is largely rural and is dominated by mostly agricultural activities including cattle grazing and hay and pecan farming. This unit is affected by very low flows and drought during the summer, which is exacerbated by pumping. This unit contains all of the PBFs essential to the conservation of the Texas fatmucket and is currently occupied by the species. The San Saba River unit is influenced by drought, low flows, underlying geology resulting in a losing reach and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, groundwater withdrawals and surface water diversions, and collection. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, improve habitat connectivity, and manage collection. Special management will be necessary to ensure adequate flow and prevent water quality degradation. This subunit is also occupied by Texas fawnsfoot, Texas pimpleback, and false spike.

Unit TXFM–3: Cherokee Creek

This unit consists of 18.1 river mi (29.2 km) of Cherokee Creek in San Saba County, Texas. The adjacent riparian lands are privately owned. The Cherokee Creek unit extends from the County Road 409 bridge crossing downstream to the confluence with the Colorado River. This unit is occupied by the Texas fatmucket and contains all of the PBFs essential to the conservation of the species. Even though this unit is smaller than 50 miles, which we had determined was the reach length long enough to withstand stochastic events, this population increases the species' redundancy, making it more likely to withstand catastrophic events that may eliminate one or more of the other populations. The Cherokee Creek unit is in a rural setting, is influenced by drought and low flows, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and groundwater withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. Special management may be necessary to limit the effect of low flow and drought conditions. With this special management, the threats to the population may be reduced, increasing the resiliency of the population, and providing additional redundancy and representation for the species.

Unit TXFM–4: Llano River

Subunit TXFM–4a: North Llano River. This subunit consists of 31.2 river mi (50.1 km) in Sutton and Kimble Counties, Texas. The North Llano River subunit extends from the most upstream County Road 307 bridge crossing in Sutton County downstream for 31.2 river mi (50.1 river km) into Kimble County at the confluence with the South Llano River near the city of Junction, Texas. The North Llano River is occupied by the Texas fatmucket and contains all of the PBFs essential to the conservation of the species. Riparian areas adjacent to this subunit are privately owned and largely dominated by rural agricultural operations. This subunit is not heavily influenced by spring inputs like some other tributaries to the Llano River, such as the South Llano River. During summertime low flows and extended periods of drought, this subunit often becomes a series of isolated pools separated by shallow flowing riffles over bedrock. These reduced flows can leave mussels stranded and dessicated in dry beds or isolated in shallow pools. Decreased flows can also result in decreased water quality, specifically in the form of reduced dissolved oxygen and increased temperature. Special management may be required to address ongoing concerns of low flows and subsequent water quality degradation.

Subunit TXFM–4b: South Llano River. The South Llano River subunit extends from the Edwards and Kimble County line downstream 22.9 river mi (36.8 river km) to the confluence with the North Llano River in Kimble County, Texas. Riparian areas adjacent to this subunit are privately owned. Major activities in this basin are farming, ranching, and other agricultural uses, as the watershed remains largely rural. The South Llano River subunit is occupied by the Texas fatmucket and contains all of the PBFs essential to the conservation of the species. The South Llano River subunit is influenced by flooding (leading to scour), drought, and low flows and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and groundwater withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. Special management will be required to address episodic low flows during summer drought and associated with reduced spring flow.

Subunit TXFM–4c: Llano River. This subunit consists of 90.4 river mi (145.6 km) in Kimble, Mason, and Llano Counties, Texas. The Llano River subunit begins at the confluence of the North and South Fork Llano River and continues downstream to the State Highway 16 bridge crossing in Llano County. The riparian land adjacent to the subunit is privately owned, and the watershed remains largely rural. The Llano River subunit is occupied by the Texas fatmucket and contains all of the PBFs essential to the conservation of the species. The Llano River subunit is in a rural setting; is influenced by flooding (leading to scour), drought, and low flows; and is being affected by ongoing

agricultural activities and development resulting in excessive sedimentation, water quality degradation, and groundwater withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. Special management may be necessary to prevent low-flow conditions due to drought and agricultural water use. This subunit is also occupied by Texas pimpleback and false spike.

Subunit TXFM–4d: James River. The James River subunit consists of 18.6 river mi (30.1 km) of the James River and begins at the Kimble and Mason county line and continues downstream to the Llano River confluence. Adjacent riparian areas are privately owned. The James River subunit is occupied by the Texas fatmucket and contains all of the PBFs essential to the conservation of the species. The James River subunit is in a rural setting; is influenced by flooding (leading to scour), drought, and low flows; and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and groundwater withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity.

Subunit TXFM–4e: Threadgill Creek. The Threadgill Creek subunit consists of 8.3 river mi (13.4 river km) extending from the Ranch Road 783 bridge crossing downstream to the confluence with Beaver Creek. Riparian lands adjacent to this subunit are privately owned. Threadgill Creek is occupied by the Texas fatmucket and contains all of the PBFs essential to the conservation of the species. The Threadgill Creek subunit is in a rural setting; is influenced by flooding (leading to scour), drought, and low flows; and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and ground water withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity.

Subunit TXFM–4f: Beaver Creek. The Beaver Creek Subunit consists of 12.9 river mi (20.8 river km) and begins at the confluence with Threadgill Creek and continues downstream to the confluence with the Llano River. Adjacent riparian habitats are privately owned. This subunit contains all of the PBFs essential to the conservation of Texas fatmucket. The Beaver Creek subunit is in a rural setting; is influenced by flooding (leading to scour), drought, and low flows; and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and ground water withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity.

This subunit is connected to known populations of Texas fatmucket in Subunits TXFM–4c and TXFM–4e, but there are no recent surveys of Beaver Creek itself. There are no instream structures in subunits TXFM–4c and TXFM–4e that would impede water flow; the flow regime is the same as in those subunits; and the host fish may move between the subunits freely. Based on this information, it is reasonable to conclude that the populations in subunits TXFM–4c and TXFM–4e are unlikely to stop at the most up- or downstream survey location; therefore, we conclude that this subunit is occupied.

However, due to the lack of recent surveys, we are analyzing this subunit against the second prong of the definition of critical habitat for unoccupied habitat out of an abundance of caution. If subunit TXFM–4f is not, in fact, occupied, it is essential to the conservation of the species because it provides for needed growth and expansion of the species in this portion of its historical range and connectivity between documented occupied reaches. Connecting occupied reaches increases the resiliency of the occupied reaches by allowing for gene flow and repopulation after stochastic events. The longer the occupied reach, the more likely it is that the Texas fatmucket population can rebound after stochastic events such as extreme flooding, dewatering, or water contamination. Therefore, subunit TXFM–4e is essential for the conservation of the species.

Unit TXFM–5: Pedernales River

Subunit TXFM–5a: Pedernales River. The Pedernales River subunit consists of 80.1 river mi (128.9 river km) in Gillespie, Blanco, Hays, and Travis Counties, Texas. The Pedernales River subunit extends from the origination of the Pedernales River at the confluence of Bear and Wolf creeks in Gillespie County downstream to the FM 3238 (Hamilton Pool Road) bridge crossing in Travis County. The riparian area of this subunit is primarily privately owned, although 1.5 river mi (2.4 river km) within Lyndon B. Johnson National Historical Park owned and managed by the National Park Service (NPS) in Gillespie County, Texas. The subunit is currently occupied by the Texas fatmucket and supports all of the PBFs essential to the conservation of the species. The watershed of the Pedernales River is characterized by agricultural uses including irrigated orchards and vineyards. Excess nutrients, sediment, and pollutants enter the Pedernales River from wastewater, agricultural runoff, and urban stormwater runoff, all of which reduces instream water quality. The Pedernales River geology, like many central Texas rivers, is predominately limestone outcroppings; therefore, this system is subject to flashy, episodic flooding during rain events that mobilize large amounts of sediment and wood materials. Special management may be required in this subunit to address low water levels as a result of water withdrawals and drought. Additionally, implementation of the highest levels of treatment of wastewater practicable would improve water quality in this subunit, and maintenance of riparian habitat and upland buffers would maintain or improve substrate quality.

Subunit TXFM–5b: Live Oak Creek. The Live Oak Creek subunit consists of 2.6 river mi (4.2 river km) in Gillespie County, Texas. Riparian ownership of lands adjacent to this subunit is private. The Live Oak Creek subunit originates at the FM 2093 bridge crossing downstream to its confluence with the Pedernales River. This subunit is currently occupied by Texas fatmucket and contains all of the PBFs essential to the conservation of the species. The Live Oak Creek subunit is in a mostly rural setting with some urbanization; is influenced by drought, low flows, and flooding (leading to scour); and is being affected by ongoing development and agricultural activities resulting in excessive sedimentation, water quality degradation, and groundwater withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. Special management considerations may be required to address periods of low flow, increased sedimentation, and water quality degradation.

Unit TXFM–6: Onion Creek

Subunit TXFM–6a: Lower Onion Creek. The Lower Onion Creek subunit consists of 5.2 river mi (8.3 river km) in

Travis County, Texas. This subunit extends from the State Highway 130 bridge crossing downstream to the confluence with the Colorado River. This subunit is in close proximity to the rapidly urbanizing city of Austin, Texas, and contains substantial municipal developments. The effects of such rapid and widespread urbanization have contributed to significantly altered flows in Onion Creek that have led to bank destabilization, increased sedimentation and streambed mobilization, and loss of stable substrate. Further, urban runoff pollutants are responsible for degraded water quality conditions. Even though this unit is smaller than 50 miles, which we had determined was the reach length long enough to withstand stochastic events, the population increases the species' redundancy, making it more likely to withstand catastrophic events that may eliminate one or more of the other populations. Further, it is the easternmost population of Texas fatmucket and its loss would lessen the species' distribution considerably. The Lower Onion Creek subunit is occupied by Texas fatmucket. The subunit occurs within private land and contains some of the PBFs essential to the conservation of Texas fatmucket, including host fishes. Several PBFs, such as water quality, sufficient flow rates, and sedimentation, are either missing in this subunit or minimally acceptable for the species. Special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity.

Subunit TXFM–6b: Upper Onion Creek. Because we have determined occupied areas are not adequate for the conservation of the species, we have evaluated whether any unoccupied areas are essential for the conservation of Texas fatmucket and identified this area as essential for the conservation of the species. The Upper Onion Creek subunit consists of 18.9 river mi (30.4 river km) of stream habitat with private riparian ownership. The subunit begins at the Interstate Highway 35 bridge crossing and extends downstream to the State Highway 130 bridge, where it is adjacent to subunit TXFM–6a. The Upper Onion Creek subunit is in a rural but urbanizing setting and is influenced by drought, low flows, and flooding (leading to scour). Riparian lands adjacent to this subunit are privately owned.

This unit is essential to the conservation of Texas fatmucket because it would expand the easternmost population; its loss would diminish the distribution of Texas fatmucket. Additionally, this population of Texas fatmucket is substantially far from the other population of the species, such that if a catastrophic event such as drought or extreme flooding were to occur it is likely that this population would be affected differently, increasing the chance of the species surviving such an event. The subunit is being affected by ongoing agricultural and development activities resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs.

Although it is considered unoccupied, portions of this subunit contain some or all of the physical or biological features essential for the conservation of the species. Water quantity (PBF 1) is likely present only during portions of the year. This subunit is subjected to extreme high and extreme low flows during periods of flash flooding and prolonged drought. This subunit requires management actions that address these hydrological alterations leading to extreme high and low flow events.

Suitable substrate and connected instream habitats (PBF 2) are not present through the majority of this reach. The Upper Onion Creek subunit's watershed is highly urbanized and even minor precipitation events frequently result in elevated flows, which scour, mobilize, and redeposit stream bed materials. Management actions addressing overland flows and the frequency of elevated flows in this subunit are required.

Access to host fishes (PBF 3) is the only physical or biological factor currently supported by this subunit because Texas fatmucket utilize common basses and sunfishes (see the SSA report for more details). Future management actions could focus on determining if the abundance and distribution of host fish are sufficient to support a robust Texas fatmucket population.

Urban runoff and resulting inflows from tributary streams contributes to elevated levels of salts and decreased dissolved oxygen levels in Onion Creek. While these parameters may be present during periods of normal flows, we believe they are degraded overall. Management actions that contribute to increased quality of key water parameters (PBF 4) would benefit this stream subunit and allow for the reestablishment of Texas fatmucket. This subunit occurs within the Barton Springs segment of the Edwards Aquifer recharge zone, and the continued management of this aquifer may indirectly benefit Texas fatmucket through water quality improvements.

Because this reach of Onion Creek periodically contains the flowing water conditions and host fish species used by Texas fatmucket, it qualifies as habitat according to our regulatory definition (50 CFR 424.02).

If the Texas fatmucket becomes reestablished in this reach, it will expand the occupied reach length in Onion Creek to a length that will be more resilient to the stressors that the species is facing. The longer the reach occupied by a species, the more likely it is that the population can withstand stochastic events such as extreme flooding, dewatering, or water contamination. The addition of this 18.9-mile reach to the 5.2-mile occupied section of Onion Creek would expand the existing Texas fatmucket population in Onion Creek to 25.1 miles. While this reach length is still less than 50 miles, (the stream length identified in the SSA report as a reach long enough for a population to be able to withstand stochastic events) the additional stream miles would substantially increase the resiliency of this population and dramatically reduce the likelihood of its extirpation. If this unit were established, it would likely be a moderately resilient population due to longer stream length and would increase the species' future redundancy This unit is essential for the conservation of the species because it will provide habitat for range expansion in portions of known historical habitat that is necessary to increase viability of the species by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the species because it is an extension of a currently occupied unit and it supports the host fish of the species (PBF 2), as well as the appropriate flowing water conditions (PBF 1) periodically. Additionally, the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring and reintroducing the species into unoccupied habitat are being worked on. The Texas fatmucket is listed as threatened by the State of Texas, and the Texas Comptroller of Public Accounts has funded research, surveys, propagation, and reintroduction studies for this species. State and Federal partners have shown interest in propagation and reintroduction efforts for the Texas fatmucket. As previously mentioned, efforts are underway regarding a captive propagation program for Texas fatmucket at the San Marcos Aquatic Resource Center and Inks Dam National Fish Hatchery. The State of Texas, San Marcos Aquatic Resource Center, Inks Dam National Fish

Hatchery, and the Service's Austin and Texas Coastal Field Offices collaborate regularly on conservation actions. Therefore, this unoccupied critical habitat subunit is essential for the conservation of the Texas fatmucket and is reasonably certain to contribute to such conservation.

Texas Fawnsfoot

We are proposing to designate approximately 917.2 river mi (1,476.1 km) in eight units (11 subunits) as critical habitat for Texas fawnsfoot. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Texas fawnsfoot. The eight areas we propose as critical habitat are: TXFF–1: Clear Fork Brazos River Unit; TXFF–2: Upper Brazos River Unit; TXFF–3: Lower Brazos River Unit; TXFF–4: Little River; TXFF–5: Lower San Saba and Upper Colorado River Unit; TXFF–6: Lower Colorado River Unit; TXFF–7: East Fork Trinity River Unit; and TXFF–8: Trinity River Unit. Table 11 shows the occupancy of the units, the riparian ownership, and approximate length of the proposed designated areas for the Texas fawnsfoot. We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for Texas fawnsfoot, below.

TABLE 11—PROPOSED CRITICAL HABITAT UNITS FOR THE TEXAS FAWNSFOOT (*Truncilla macrodon*)

[Note: Lengths may not sum due to rounding.]

Unit	Subunit	Riparian ownership	Occupancy	River miles (kilometers)
TXFF–1: Clear Fork Brazos River	TXFF–1a: Upper Clear Fork Brazos River	Private	Occupied	27.9 (44.9)
	TXFF–1b: Lower Clear Fork Brazos River	Private	Unoccupied	28.6 (46.0)
TXFF–2: Upper Brazos River		Private	Occupied	79.9 (128.6)
TXFF–3: Lower Brazos River	TXFF–3a: Lower Brazos River	Private	Occupied	348.0 (560.0)
	TXFF–3b: Navasota River	Private	Occupied	39.3 (63.2)
TXFF–4: Little River		Private	Occupied	35.6 (57.3)
TXFF–5: Lower San Saba and Upper Colorado River.	TXFF–5a. Lower San Saba River	Private	Occupied	50.4 (81.1)
	TXFF–5b. Upper Colorado River	Private	Occupied	10.5 (16.9)
TXFF–6: Lower Colorado River		Private	Occupied	124.4 (200.2)
TXFF–7: East Fork Trinity River		Private	Occupied	15.6 (25.1)
TXFF–8: Trinity River		Private	Occupied	157.0 (252.7)
Total				917.2 (1,476.1)

Brazos River Basin

Unit TXFF–1: Clear Fork of the Brazos River

Subunit TXFF–1a: Upper Clear Fork of the Brazos River. The Upper Clear Fork of the Brazos River Subunit consists of approximately 27.9 river mi (44.9 river km) in Throckmorton and Shackelford Counties, Texas. The subunit begins at the confluence of Paint Creek and extends downstream to the US Highway 283 bridge, near Fort Griffin, Texas. Adjacent riparian lands are privately owned. This subunit is occupied by Texas fawnsfoot and contains some of the PBFs essential to the conservation of the species, such as appropriate fish hosts and appropriate flows during portions of the year. The Upper Clear Fork of the Brazos River does not currently have sufficient flow, and water quality is often inadequate for the Texas fawnsfoot in this subunit, largely due to ongoing low-flow conditions from summertime drought and continued pressure on already strained water resources for municipal and agricultural uses.

The Upper Clear Fork Brazos River subunit is in a rural setting and is influenced by drought, low flows, and chlorides. The subunit is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity.

Subunit TXFF–1b: Lower Clear Fork of the Brazos River. Because we have determined occupied areas are not adequate for the conservation of the species, we have evaluated whether any unoccupied areas are essential for the conservation of Texas fawnsfoot and identified this area as essential for the conservation of the species. The Lower Clear Fork of the Brazos River Subunit consists of 28.6 river mi (46.0 river km) in Shackelford and Stephens Counties, Texas. This subunit begins at the US Highway 283 bridge and continues downstream to the US Highway 183 bridge in Stephens County, Texas. Adjacent riparian lands are privately owned.

This unit is essential to the conservation of Texas fawnsfoot because it would expand the most northern population; its loss would reduce the distribution of Texas fawnsfoot to only mainstem, higher order streams. Additionally, this population of Texas fawnsfoot is geographically distant from the other populations of the species, such that if a catastrophic event were to occur within the range of Texas fawnsfoot, such as extreme flooding or drought, it is likely that this population would not be affected in the same way, increasing the chance of the species surviving such an event. The Lower Clear Fork Brazos River Subunit is in a rural setting; is influenced by drought, low flows, and chlorides; and is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs.

Although it is considered unoccupied, portions of this subunit contain some or all of the physical or biological features essential for the conservation of the species. Flowing water at rates needed by Texas fawnsfoot (PBF 1) is not adequate in this subunit throughout most of the year due to low precipitation, surface diversions, and groundwater withdrawals. In the SSA report, we noted that the Lower Clear Fork of the Brazos River experienced both the lowest flow rate (0 cfs) during the 2011 drought and the highest flow rate (approaching 4,000 cfs) during the 2015 floods. This altered hydrological regime also degrades stream habitat (PBF 2) by either scouring out available substrate or depositing large amounts of sediment on top of otherwise suitable areas. Appropriate substrates are found only in isolated reaches. Management

actions that allow for improvement of degraded habitat areas within this subunit would allow Texas fawnsfoot populations to expand and increase the subunit's resiliency.

Freshwater drum, the Texas fawnsfoot's host fish (PBF 3), is expected to be present in the Lower Clear Fork of the Brazos River. However, it remains unclear if the abundance of host fish for the Texas fawnsfoot is currently sufficient. Thus, management actions may be necessary to ensure appropriate populations of host fish are co-occurring with Texas fawnsfoot.

Water quality (PBF 4) may not be sufficient in the Lower Clear Fork of the Brazos River. Elevated chloride levels from naturally occurring underground salt formations are exacerbated by reduced water flow. In order for Texas fawnsfoot populations to expand and occupy the Lower Clear Fork of the Brazos River subunit, management actions would be necessary to reduce chloride levels.

Because this reach of the Clear Fork Brazos River periodically contains the flowing water conditions and host fish species used by Texas fawnsfoot, it qualifies as habitat according to our regulatory definition (50 CFR 424.02).

If the Texas fawnsfoot can be reestablished in this reach, it will expand the occupied reach length in the Clear Fork Brazos River to a length that will be more resilient to the stressors that the species is experiencing. The longer the reach occupied by a species, the more likely it is that the population can withstand stochastic events such as extreme flooding, dewatering, or water contamination. In the SSA report, we identified 50 miles (80.5 km) as a reach long enough for a population to be able to withstand stochastic events, and the addition of this 28.6-mile reach to the 27.9-mile occupied section of the Clear Fork Brazos River would expand the existing Texas fawnsfoot population in the Clear Fork Brazos River to 56.5 miles, achieving a length that would allow for a highly resilient population to be reestablished, increasing the species' future redundancy. This unit is essential for the conservation of the species because it will provide habitat for range expansion in portions of known historical habitat that is necessary to increase viability of the species by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the species, because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring and reintroducing the species into unoccupied habitat are being developed. The Texas fawnsfoot is listed as threatened by the State of Texas, and the Texas Comptroller of Public Accounts has funded research, surveys, propagation, and reintroduction studies for this species. State and Federal partners have shown interest in propagation and reintroduction efforts for the Texas fawnsfoot. As previously mentioned, efforts are underway regarding a captive propagation program for Texas fawnsfoot at the San Marcos Aquatic Resource Center and Inks Dam National Fish Hatchery. The State of Texas, San Marcos Aquatic Resource Center, Inks Dam National Fish Hatchery, and the Service's Austin, Arlington and Texas Coastal Field Offices collaborate regularly on conservation actions for Texas fawnsfoot. Therefore, this unoccupied critical habitat subunit is essential for the conservation of the Texas fawnsfoot and is reasonably certain to contribute to such conservation.

Unit TXFF–2: Upper Brazos River

The Upper Brazos River Unit consists of approximately 79.9 river mi (128.6 km) of the Brazos River in Palo Pinto and Parker Counties, Texas. The Upper Brazos River Unit extends from the FM 4 bridge crossing in Palo Pinto County, Texas, downstream to the FM 1189 bridge in Parker County, Texas. The unit is currently occupied by the species, and adjacent riparian lands are privately owned. This unit currently supports some of the PBFs essential to the conservation of Texas fawnsfoot, such as presence of appropriate fish hosts and suitable flow conditions during portions of the year, but becomes unsuitable during times of drought. The PBFs for water quality and sufficient flow are degraded in this unit, as excessive chloride concentrations and persistent low flows diminish habitat quality in this unit. Elevated chloride concentrations in this portion of Central Texas are often a result of natural causes, such as saline water inputs from spring releases flowing through subterranean salt deposits. However, while the Texas fawnsfoot may be able to tolerate some minor increases in salinity, low-flow rates in this unit exacerbate the concentrations of chlorides.

The Upper Brazos River Unit is in a rural setting with some urbanization; is influenced by drought, low flows, chlorides, and reservoir operations; and is being affected by rock, sand and gravel mining, ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. Special management may be required to improve the water quantity, water quality, and habitat connectivity in this unit.

Unit TXFF–3: Lower Brazos River

Subunit TXFF–3a: Lower Brazos River. The Lower Brazos River Subunit consists of approximately 348.0 river mi (560.0 km) in McLennan, Falls, Robertson, Milam, Burleson, Brazos, Washington, Grimes, Waller, Austin, and Fort Bend Counties, Texas. This subunit begins at the Texas State Highway 6 bridge crossing, downstream of Waco, Texas, to the Fort Bend and Brazoria county line. This subunit is occupied by Texas fawnsfoot and supports all of the PBFs essential to the conservation of the Texas fawnsfoot. Adjacent riparian lands are privately owned and include rural agricultural operations such as cattle grazing and row-crop agriculture. Because much of the historically forested floodplain has been deforested, bank sloughing and sedimentation is ongoing in this segment.

The Lower Brazos River Subunit is in a rural setting with some urbanization; is influenced by drought, low flows, and reservoir operations; and is being affected by rock, sand and gravel mining, channel incision, ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, groundwater withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, restore riparian vegetation, and improve habitat connectivity. The Brazos River Authority (BRA) owns and manages surface water rights throughout the Brazos River basin, and, through operations of the BRA system of reservoirs, the BRA is able to manage flows in this subunit to some degree.

Subunit TXFF–3b: Navasota River. The Navasota River Subunit consists of 39.3 river mi (63.2 river km) of the Navasota River in Brazos and Grimes Counties, Texas. This subunit extends from the State Highway 30 bridge downstream to the Brazos River confluence. Adjacent riparian lands to this subunit are primarily privately owned. The subunit is largely rural with agricultural practices dominating the surrounding landscape. This subunit is

occupied by the Texas fawnsfoot and supports the PBFs essential to the conservation of the species. The Navasota River has experienced water quality degradation (low dissolved oxygen and elevated bacteria) from adjacent land use practices, flow alterations associated with drought, and operation of the Lake Limestone reservoir. Additionally, this subunit has elevated levels of nitrate and phosphorus presumably from agricultural runoff. The Navasota River Subunit is in a rural setting with some urbanization; is influenced by drought, low flows, and reservoir operations; and is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, restore riparian vegetation, and improve habitat connectivity.

Colorado River Basin

Unit TXFF–4: Little River

The Little River Unit consists of 35.6 river miles (57.3 km) of the Little River in Milam County, Texas. This subunit begins at the Bell and Milam county line and continues downstream to the confluence of the Little and San Gabriel rivers. The lands adjacent to the critical habitat unit are privately owned. The unit is currently occupied by the species and supports all of the PBFs essential to the conservation of the species. The Little River subunit is in a mostly rural setting, is influenced by ongoing development in the upper reaches associated with the Austin-Round Rock metropolitan area, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and groundwater withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. The Little River Unit is also occupied by false spike.

Unit TXFF–5: Lower San Saba River and Upper Colorado River

Subunit TXFF–5a: Lower San Saba River. The Lower San Saba River Subunit consists of approximately 50.4 river mi (81.1 river km) in San Saba County, Texas. This subunit begins at the Brady Creek confluence and extends to the Colorado River confluence. Adjacent riparian lands are owned and are primarily in agricultural use. The river experiences periods of low flow due to drought and water withdrawals, and water withdrawals are expected to increase in the future. The subunit is occupied by Texas fawnsfoot and contains all of the PBFs essential to the conservation of the species. The Lower San Saba River Subunit is experiencing some urbanization and is influenced by drought, low flows, and wastewater discharges. The watershed is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by Texas pimpleback and false spike.

Subunit TXFF–5b: Upper Colorado River. The Upper Colorado River Subunit consists of 10.5 river mi (16.9 river km) of the Colorado River near its confluence with the San Saba River in San Saba, Mills, and Lampasas Counties, Texas. This subunit extends from the County Road 124 bridge and continues downstream to the US highway 190 bridge. Activities in the watershed are mostly agricultural. The river experiences periodic low flows from drought and upstream water withdrawals. The average daily flow rate of the upper Colorado River in this segment has been declining since the early 1920s. This subunit is currently occupied, and adjacent riparian lands are privately owned. All PBFs essential to the conservation of Texas fawnsfoot are present in this subunit, with the exception of appropriate flows throughout the year.

The Upper Colorado River Subunit is influenced by reservoir operations and chlorides and is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by the Texas pimpleback.

Unit TXFF–6: Lower Colorado River

The Lower Colorado River Unit consists of approximately 124.4 river mi (200.2 river km) of the Colorado River in Colorado, Wharton, and Matagorda Counties, Texas. This unit begins at the Fayette and Colorado county line and continues downstream to the Texas State Highway 35 bridge near Bay City, Texas. Adjacent riparian habitats are privately owned. This unit is currently occupied by Texas fawnsfoot, and all PBFs essential to the conservation of the species are present in the unit. Upstream reservoir operation and urbanization in the Austin, Texas, metropolitan area contribute to altered flows and degraded water quality downstream.

The Lower Colorado River Unit is in a mostly rural setting with some urbanization downstream from an urban area; is influenced by reservoir operations, drought, low flows, flooding (leading to scour), and wastewater discharges; and is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, wastewater inputs, and rock, sand and gravel mining. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by the Texas pimpleback.

Trinity River Basin

Unit TXFF–7: East Fork of the Trinity River

This unit consists of approximately 15.6 river mi (25.1 km) of the East Fork of the Trinity River in Kaufman County, Texas. The East Fork of the Trinity River Unit extends from the Dallas and Kaufman county line downstream to the Trinity River confluence. This unit is currently occupied, and adjacent riparian lands are privately owned. Even though this unit is smaller than 50 miles, which we had determined was the reach length long enough to withstand stochastic events, the population increases the species' redundancy, making it more likely to withstand catastrophic events that may eliminate one or more of the other populations.

Some of the PBFs essential to the conservation of Texas fawnsfoot are present, such as host fishes and appropriate substrate. The East Fork Trinity River Unit is in an urban setting; is influenced by drought, low flows, wastewater discharges, and flooding (leading to scour); and is being affected by ongoing development activities, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation,

improve water quality, maintain adequate flows, and improve habitat connectivity, which would reduce the threats to the population, increasing the resiliency of the population.

Unit TXFF–8: Middle Trinity River

The Middle Trinity River Unit consists of approximately 157.0 river mi (252.7 km) of the Trinity River in Navarro, Henderson, Freestone, Anderson, Leon, Houston, and Madison Counties, Texas. This unit extends from the State Highway 31 bridge, west of Trinidad, Texas, to the State Highway 21 bridge in Madison County. This unit is occupied, and adjacent riparian lands are privately owned. This unit provides all of the PBFs essential to the conservation of Texas fawnsfoot, although flows in this portion of the Trinity River are elevated above natural levels due to altered hydrology within the basin and daily high mean discharge approaching 80,000 cubic feet per second. Runoff and wastewater effluent release in the Dallas-Fort Worth metropolitan area result in daily pulses of high and low flow moving through the Trinity basin.

The Middle Trinity River Unit is in a rural setting with some urbanization; is influenced by drought, low flows, wastewater discharges, reservoir operations, and flooding (leading to scour); and is being affected by channel incision, ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, restore riparian vegetation, and improve habitat connectivity.

Guadalupe Orb

We are proposing to designate approximately 294.5 river mi (474.0 river km) in two units (four subunits) as critical habitat for Guadalupe orb. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Guadalupe orb. The two areas we propose as critical habitat are: GORB–1: Upper Guadalupe River Unit and GORB–2: Lower Guadalupe River Unit. Table 12 shows the occupancy of the units, the riparian ownership, and approximate length of the proposed designated areas for the Guadalupe orb. We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for Guadalupe orb, below.

TABLE 12—PROPOSED CRITICAL HABITAT UNITS FOR THE GUADALUPE ORB

[Note: Lengths may not sum due to rounding.]

Unit	Subunit	Riparian ownership	Occupancy	River miles (kilometers)
GORB–1: Upper Guadalupe River	GORB–1a: South Fork Guadalupe River	Private	Occupied	5.1 (8.3)
	GORB–1b: Upper Guadalupe River	Private	Occupied	99.4 (159.9)
GORB–2: Lower Guadalupe River	GORB–2a: San Marcos River	Private	Occupied	65.3 (105.1)
	GORB–2b: Lower Guadalupe River	Private	Occupied	124.7 (200.7)
Total				294.5 (474.0)

Guadalupe River Basin

Unit GORB–1: Upper Guadalupe River

Subunit GORB–1a: South Fork Guadalupe River. The South Fork Guadalupe River Subunit consists of 5.1 river mi (8.3 river km) of the South Fork Guadalupe River in Kerr County, Texas. This subunit extends from Griffin Road crossing just downstream of the Texas Highway 39 crossing in Kerr County, to its confluence with the North Fork Guadalupe River. This subunit is occupied by the Guadalupe orb, and the riparian area is privately owned. This subunit is mostly rural and agricultural, with organized recreational camps. These camps often operate very low dams that form small impoundments along the subunit. The South Fork Guadalupe River Subunit contains all of the PBFs essential to the conservation of the species. This subunit, combined with the Upper Guadalupe River subunit, results in a highly resilient population with presence in several tributaries, protecting the population from a single stochastic event eliminating the entire population.

The South Fork Guadalupe River Subunit is in a mostly rural setting; is influenced by drought, low flows, and flooding (leading to scour); and is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, and ground water withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity.

Subunit GORB–1b: Upper Guadalupe River. The Upper Guadalupe River Subunit consists of 99.4 river mi (159.9 river km) of the Guadalupe River in Kerr, Kendall, and Comal Counties, Texas. This subunit extends from the confluence of the North and South Forks of the Guadalupe River downstream to the US Highway 311 bridge in Comal County, Texas. The Upper Guadalupe River is occupied by the Guadalupe orb, and adjacent riparian areas are privately owned. The subunit contains the PBFs essential to the conservation of the Guadalupe orb. In recent years, the Guadalupe orb in this reach have experienced some of the highest and lowest flows on record, as well as water quality degradation (high temperature and low dissolved oxygen). Extreme high flows removed needed gravel and cobble, while low flows caused suspended sediment to settle out, reducing substrate quality for the Guadalupe orb.

The Upper Guadalupe River subunit is in a mostly rural setting with some urbanization; is influenced by drought, low flows, and flooding (leading to scour); and is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by Guadalupe fatmucket.

Unit GORB–2: Lower Guadalupe River

Subunit GORB–2a: San Marcos River. The San Marcos River Subunit consists of approximately 65.3 river miles (105.1 river km) in Caldwell, Guadalupe, and Gonzales Counties, Texas. The subunit extends from the FM 1977 bridge crossing in Caldwell County to the

Guadalupe River confluence. The subunit is currently occupied by the Guadalupe orb, and adjacent riparian areas are privately owned. The San Marcos River drains the City of San Marcos, including the campus of Texas State University, leading to impacts of urban runoff, waste water inputs, and altered hydrology. The large San Marcos springs complex, the second largest in Texas, contributes significantly to the flows in this river and the lower Guadalupe River. This segment contains all of the PBFs essential to the conservation of the species.

The San Marcos River Subunit is in a mostly rural setting with some urbanization and downstream from an urban area; is influenced by drought, low flows, flooding (leading to scour), and wastewater discharges; and is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by the false spike.

Subunit GORB–2b: Lower Guadalupe River. The Lower Guadalupe River Subunit consists of approximately 124.7 river mi (200.7 river km) in Gonzales, DeWitt, and Victoria Counties, Texas. This subunit extends from the San Marcos River confluence downstream to the US Highway 59 bridge crossing near Victoria, Texas. The Lower Guadalupe River Subunit is currently occupied by the Guadalupe orb, and adjacent riparian areas are privately owned. This subunit contains all of the PBFs necessary for the Guadalupe orb and is the most resilient population known. Existing protections for the San Marcos and Comal Springs from the Edwards Aquifer Authority Habitat Conservation Plan provide some protection to spring flows and help ensure flow rates and water quality are generally believed to be suitable for downstream mussel beds during times of drought and low flows.

The Lower Guadalupe River subunit is in a mostly rural setting with some urbanization downstream from some urban areas; is influenced by reservoir operations, drought, low flows, flooding (leading to scour), and wastewater discharges; and is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by the false spike.

Texas Pimpleback

We are proposing to designate approximately 494.7 river mi (796.1 km) in six units (10 subunits) as critical habitat for Texas pimpleback. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Texas pimpleback. The five areas we propose as critical habitat are: TXPB–1: Elm Creek Unit; TXPB–2: Concho River Unit; TXPB–3: Upper Colorado River/Lower San Saba River Unit; TXPB–4: Upper San Saba River Unit; TXPB–5: Llano River Unit; and TXPB–6: Lower Colorado River Unit. Table 13 shows the occupancy of the units, the riparian ownership, and approximate length of the proposed designated areas for the Texas pimpleback. We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for Texas pimpleback, below.

TABLE 13—PROPOSED CRITICAL HABITAT UNITS FOR THE TEXAS PIMPLEBACK

[Note: Lengths may not sum due to rounding.]

Unit	Subunit	Riparian ownership	Occupancy	River miles (kilometers)
TXPB–1: Elm Creek	TXPB–1a: Bluff Creek	Private	Occupied	11.8 (19.0)
	TXPB–1b: Lower Elm Creek	Private	Occupied	12.5 (20.2)
TXPB–2: Concho River	TXPB–2a: Lower Concho River	Private	Occupied	35.6 (57.2)
	TXPB–2b. Upper Concho River	Private	Unoccupied	16.0 (25.7)
TXPB–3. Upper Colorado River/Lower San Saba River.	TXPB–3a. Upper Colorado River	Private	Occupied	153.8 (247.6)
	TXPB–3b. Lower San Saba River	Private	Occupied	50.4 (81.1)
TXPB–4: Upper San Saba River		Private	Occupied	52.8 (85.0)
TXPB–5: Llano River	TXPB–5a: Upper Llano River	Private	Occupied	38.3 (61.6)
	TXPB–5b: Lower Llano River	Private	Unoccupied	12.2 (19.7)
TXPB–6. Lower Colorado River		Private	Occupied	111.3 (179.1)
Total				494.7 (796.1)

Colorado River Basin

Unit TXPB–1: Elm Creek

Subunit TXPB–1a: Bluff Creek. This occupied critical habitat subunit consists of 11.8 river mi (19.0 km) of Bluff Creek, a tributary to Elm Creek, in Runnels County, Texas. The subunit extends from the County Road 153 bridge crossing, near the town of Winters, Texas, downstream to the confluences of Bluff and Elm creeks. The riparian area of this subunit is privately owned. This subunit is currently occupied by Texas pimpleback. The Bluff Creek subunit is in a rural setting, is influenced by drought, low flows, and elevated chlorides, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and ground water withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by Texas fatmucket.

Subunit TXPB–1b: Lower Elm Creek. This subunit consists of 12.5 river mi (20.2 km) of Elm Creek beginning at the County Road 344 crossing downstream to Elm Creek's confluence with the Colorado River in Runnels County, Texas. The riparian lands adjacent to this subunit are privately owned. The Elm Creek watershed is relatively small and remains largely rural and dominated by agricultural practices. This stream regularly has extremely low or no flow during times of drought. Moreover, this stream has elevated chloride concentrations and

sedimentation resulting in reduced habitat quality and availability, and decreased water quality. Lower Elm Creek is occupied by Texas pimpleback and contains some of the PBFs essential to the conservation of the species such as presence of host fish; others are in degraded condition and would benefit from management actions. The Lower Elm Creek subunit is influenced by drought, low flows, and elevated chlorides, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and groundwater withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This unit is also occupied by Texas fatmucket.

Unit TXPB–2: Concho River

Subunit TXPB–2a: Lower Concho River. The Lower Concho River Subunit consists of approximately 35.6 river mi (57.2 river km) in Tom Green and Concho Counties, Texas. The Concho River subunit extends from the FM 1692 bridge crossing downstream to the FM 1929 crossing. This subunit is occupied, and its riparian area is privately owned. The Lower Concho River Subunit does not currently contain all of the PBFs essential to the conservation of the Texas pimpleback, as it does not currently have sufficient water quality (*e.g.,* water temperature is high and dissolved oxygen is low) and instream flow is too low at certain times of the year. Upstream reservoirs, built for flood control and municipal water storage, have contributed to a downward trend in normal river base-flows in recent years. The Lower Concho River subunit is in a mostly rural setting downstream from an urban area, is influenced by reservoir operations and chlorides, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity.

Subunit TXPB–2b: Upper Concho River. Because we have determined occupied areas are not adequate for the conservation of the species, we have evaluated whether any unoccupied areas are essential for the conservation of Texas pimpleback and identified this area as essential for the conservation of the species. The Upper Concho River subunit consists of 16.0 river mi (25.7 river km) of the Concho River in Tom Green County, Texas, from the FM 380 bridge crossing, downstream of San Angelo, Texas, to the FM 1692 bridge where it adjoins subunit TXPB–2a. The riparian lands adjacent to this subunit are privately owned.

This subunit is essential to the conservation of Texas pimpleback because it would expand one of the smaller populations to a length that would be highly resilient to stochastic events; its loss would shrink the distribution of Texas pimpleback and reduce redundancy of the species, limiting its viability. The Upper Concho River subunit is in a mostly rural setting with some urbanization downstream from an urban area; is influenced by reservoir operations, wastewater discharges, and chlorides; and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, groundwater withdrawals and surface water diversions, and wastewater inputs.

Although it is considered unoccupied, portions of this subunit contain some or all of the physical or biological features essential for the conservation of the species. Flowing water (PBF 1) is not at levels appropriate for Texas pimpleback in this subunit. Several upstream reservoirs divert the already limited flows, and reduced precipitation has resulted in an overall decrease in river flow rates. Management actions to increase stream flows in this subunit would be required for the Texas pimpleback population to be reestablished.

Currently, appropriate substrates (PBF 2) exist in isolated areas throughout this subunit. These isolated pockets of suitable habitat could allow for expansion and recolonization of Texas pimpleback. However, future management actions that focus on habitat restoration in this reach to improve connectivity between habitat patches would improve the resiliency of this population, once restored.

Recent research on the closely related Guadalupe orb indicated that several species of catfishes are likely suitable host fishes for Texas pimpleback, as well. Currently, we believe appropriate host fishes (PBF 3) are occurring throughout the subunit and would allow for reproduction of Texas pimpleback when the species is reestablished. Management actions could address any deficit in the abundance and distribution of fish hosts in this area allowing for expansion and future reestablishment of this subunit from the adjacent occupied subunit TXPB–2a.

Water quality (PBF 4) is degraded in this subunit. The Upper Concho River subunit, due in part to low flows and high water temperature, experiences decreased levels of dissolved oxygen at such a level that could preclude mussel occupancy. We believe these periods of low dissolved oxygen primarily occur during hot summer months when droughts are common. Therefore, management actions that increase flow rates would also improve water quality in this reach.

Because this reach of the Concho River periodically contains the appropriate substrate conditions and host fish species used by Texas pimpleback, it qualifies as habitat according to our regulatory definition (50 CFR 424.02).

If the Texas pimpleback can be reestablished in this reach, it will expand the occupied reach length in the Concho River to a length that will be more resilient to the stressors that the species is facing. The longer the reach occupied by a species, the more likely it is that the population can withstand stochastic events such as extreme flooding, dewatering, or water contamination. In the SSA report, we identified 50 miles (80.5 km) as a reach long enough for a population to be able to withstand stochastic events, and the addition of this 16.0-mile reach to the 35.6-mile occupied section of the Concho River would expand the existing Texas fawnsfoot population in the Concho River to 51.6 miles, achieving a length that would allow for a highly resilient population to be reestablished, increasing the species' future redundancy. This unit is essential for the conservation of the species because it will provide habitat for range expansion in portions of known historical habitat that is necessary to increase viability of the species by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the species, because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring and reintroducing the species into unoccupied habitat are being worked on. The Texas pimpleback is listed as threatened by the State of Texas, and the Texas Comptroller of Public Accounts has funded research, surveys, propagation, and reintroduction studies for this species. State and Federal partners have shown interest in propagation and reintroduction efforts for the Texas pimpleback. As previously mentioned, efforts are underway regarding a captive propagation program

for Texas pimpleback at the San Marcos Aquatic Resource Center and Inks Dam National Fish Hatchery. The State of Texas, San Marcos Aquatic Resource Center, Inks Dam National Fish Hatchery, and the Service's Austin and Texas Coastal Field Offices collaborate regularly on conservation actions. Therefore, this unoccupied critical habitat subunit is essential for the conservation of the Texas pimpleback and is reasonably certain to contribute to such conservation.

Unit TXPB–3: Upper Colorado River and Lower San Saba River

Subunit TXPB–3a: Upper Colorado River. The Upper Colorado River Subunit consists of approximately 153.8 river mi (247.6 river km) in Coleman, McCulloch, Brown, San Saba, Mills, and Lampasas Counties, Texas. The subunit extends from the Coleman and McCulloch county line downstream to the confluence of the Colorado River and Cherokee Creek. The riparian area of this subunit is privately owned. The Upper Colorado River is occupied by Texas pimpleback and contains some of the PBFs essential to the conservation of the species, including host fishes in appropriate abundance and small areas of suitable substrate habitat, but not several PBFs, such as sufficient flow rate and sufficient water quality (dissolved oxygen is often low, and temperature reaches unsuitably high levels during summer drought). The Upper Colorado River subunit is in a mostly rural setting, is influenced by reservoir operations and chlorides, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, groundwater withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by Texas fawnsfoot.

Subunit TXPB–3b: Lower San Saba River. The Lower San Saba River Subunit consists of 50.4 river mi (81.1 river km) of the San Saba River. This subunit is currently occupied by the species, and adjacent riparian areas are privately owned. The Lower San Saba Subunit extends from the Brady Creek confluence in San Saba County, Texas, downstream to the Colorado River confluence where it adjoins the Upper Colorado River subunit (TXPB–3a). This subunit contains all the PBFs essential to the conservation of the Texas pimpleback most of the year. This population contains evidence of recent Texas pimpleback reproduction, which is largely absent from the rest of the species' range.

This subunit is primarily rural, with cattle grazing and irrigated orchards. Summer drought and water withdrawals cause occasional periods of low flow, which results in water quality degradation as water temperatures are high and dissolved oxygen is low. Additionally, high-flow events during flooding can result in habitat scour and sedimentation. The Lower San Saba River Subunit is experiencing some urbanization; is influenced by drought, low flows, and wastewater discharges; and is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by Texas fawnsfoot and false spike.

Unit TXPB–4: Upper San Saba River

The Upper San Saba River Unit consists of approximately 52.8 river mi (85.0 river km) of the San Saba River in Menard County, Texas. Adjacent riparian habitats are privately owned. The Upper San Saba River Unit extends from the Schleicher County line near Fort McKavett, Texas, downstream to the FM 1311 bridge crossing in Menard, County, Texas. Texas pimpleback occupies the Upper San Saba River Unit in low densities. The Upper San Saba River Unit contains the PBFs essential to the conservation of Texas pimpleback most of the year, although flows decline to low levels during summer drought. The PBFs of sufficient water flow and water quality are lacking during these times, as low-flow conditions lead to high water temperature and low dissolved oxygen. The Upper San Saba River unit is in a rural setting; is influenced by drought, low flows, and underlying geology resulting in a losing reach; and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, groundwater withdrawals and surface water diversions, and collection. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by Texas fatmucket.

Unit TXPB–5: Llano River

Subunit TXPB–5a: Upper Llano River. The Upper Llano River Subunit consists of approximately 38.3 river mi (61.6 river km) in Kimble and Mason Counties, Texas. Adjacent riparian areas are privately owned. This subunit extends from the Ranch Road RR 385 bridge crossing downstream to the US Highway 87 bridge. This reach of the Llano River is largely rural, with much of the land in agricultural use. The Upper Llano River Subunit is occupied by the Texas pimpleback and contains all the necessary PBFs essential to the conservation of the species most of the year. However, drought conditions and flooding in the Llano River can be extreme, causing the species to experience either extreme low-flow conditions with related reduced water quality or extreme high flows that mobilize substrate, eroding habitat or depositing sediment on Texas pimpleback populations. The Upper Llano River Subunit is in a rural setting; is influenced by drought, low flows, and flooding (leading to scour); and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and collection. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, improve habitat connectivity, and manage collection. This subunit is also occupied by Texas fatmucket.

Subunit TXPB–5b: Lower Llano River. Because we have determined occupied areas are not adequate for the conservation of the species, we have evaluated whether any unoccupied areas are essential for the conservation of Texas pimpleback and identified this area as essential for the conservation of the species. The Lower Llano River Subunit consists of 12.2 river mi (19.7 river km) of the Llano River. This subunit extends from the US Highway 87 bridge in Mason County downstream to the Mason and Llano county line. Adjacent riparian lands are privately owned.

This subunit is essential to the conservation of Texas pimpleback because it would expand one of the smaller populations to a length that would be highly resilient to stochastic events in a separate tributary; its loss would reduce the distribution of Texas pimpleback and reduce redundancy of the species, limiting its viability. The Lower Llano River Subunit is in a rural setting; is influenced by drought, low flows, and flooding (leading to scour);

and is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, and ground water withdrawals and surface water diversions.

Although it is considered unoccupied, portions of this subunit contain some or all of the physical or biological features essential for the conservation of the species. Flowing water (PBF 1) is generally sufficient in this subunit during portions of the year. However, in the past decade the Llano River has seen both the highest and lowest flow rates ever recorded, with extremely low water levels and stranding of mussels during low flow, and scour and entrainment of mussels with subsequent deposition over suitable habitat during floods. Spring inputs from the South Llano River help mitigate the effects of drought in the lower portions of the Llano River, although water withdrawals for agricultural operations contribute to decreased flows during drought. Ongoing management actions by resource management agencies and non-profit organizations are contributing to restoring a natural flow regime.

In the Llano River, suitable substrates (PBF 2) exist as isolated riffles between larger pools. Given the hydrology of the Llano River basin, suitable substrates have been degraded in this reach and would need restoration.

The Texas pimpleback uses similar host fishes as the closely related Guadalupe orb, including channel catfish, flathead catfish, and tadpole madtom. Sufficient abundance of host fishes (PBF 3) are present in the lower Llano River subunit to support a population of Texas pimpleback.

Water quality in the lower Llano River subunit (PBF 4) are generally sufficient for the species during portions of the year. However, dissolved oxygen declines and water temperature increases during periods of low flow. Management to ensure sufficient flow rates in this reach will improve water quality as well.

Because this reach of the Llano River periodically contains the flowing water conditions, suitable substrates, and host fish species used by Texas pimpleback, it qualifies as habitat according to our regulatory definition (50 CFR 424.02).

If the Texas pimpleback can be reestablished in this reach, it will expand the occupied reach length in the Llano River to a length that will be more resilient to the stressors that the species is facing. The longer the reach occupied by a species, the more likely it is that the population can withstand stochastic events such as extreme flooding, dewatering, or water contamination. In the SSA report, we identified 50 miles (80.5 km) as a reach long enough for a population to be able to withstand stochastic events, and the addition of this 12.2-mile reach to the 38.3-mile occupied section of the Llano River would expand the existing Texas pimpleback population in the Llano River to 50.5 miles, achieving a length that would allow for a highly resilient population to be reestablished, increasing the species' future redundancy. This unit is essential for the conservation of the species because it will provide habitat for range expansion in portions of known historical habitat that is necessary to increase viability of the species by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the species, because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring and reintroducing the species into unoccupied habitat are being worked on. The Texas pimpleback is listed as threatened by the State of Texas, and the Texas Comptroller of Public Accounts has funded research, surveys, propagation, and reintroduction studies for this species. State and Federal partners have shown interest in propagation and reintroduction efforts for the Texas pimpleback. As previously mentioned, efforts are underway regarding a captive propagation program for Texas pimpleback at the San Marcos Aquatic Resource Center and Inks Dam National Fish Hatchery. The State of Texas, San Marcos Aquatic Resource Center, Inks Dam National Fish Hatchery, and the Service's Austin and Texas Coastal Field Offices collaborate regularly on conservation actions.

Therefore, this unoccupied critical habitat subunit is essential for the conservation of the Texas pimpleback and is reasonably certain to contribute to such conservation. This subunit is also occupied by Texas fatmucket and false spike.

Unit TXPB–6: Lower Colorado River

The Lower Colorado River Unit consists of approximately 111.3 river mi (179.1 river km) of the Colorado River in Colorado and Wharton Counties, Texas. The Lower Colorado River unit extends from the Fayette and Colorado County line downstream to the Wharton and Matagorda County line. The unit is currently occupied, and adjacent riparian lands are privately owned. This unit contains all of the PBFs essential to the conservation of Texas pimpleback. Periodic low flows due to drought and water management activities contribute to diminished and variable flows, dewatering, scour, and water quality decline from urban run-off, agricultural operations, and wastewater treatment effluent. The Lower Colorado River Unit is in a mostly rural setting with some urbanization downstream from an urban area and is influenced by reservoir operations, drought, low flows, flooding (leading to scour), and wastewater discharges. The unit is being affected by ongoing agricultural activities and development, resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, wastewater inputs, and rock, sand and gravel mining. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by Texas fatmucket.

False Spike

We are proposing to designate approximately 328.2 river mi (528.2 km) in four units (seven subunits) as critical habitat for false spike. Each of the seven subunits is currently occupied by the species and contains all of the PBFs essential to the conservation of the species. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for false spike. The four areas we propose as critical habitat are: FASP–1: Little River Unit; FASP–2: San Saba River Unit; FASP–3: Llano River Unit; and FASP–4: Guadalupe River Unit. Table 14 shows the occupancy of the units, the riparian ownership, and approximate length of the proposed designated areas for the false spike. We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for false spike, below.

TABLE 14—PROPOSED CRITICAL HABITAT UNITS FOR FALSE SPIKE

[Note: Lengths may not sum due to rounding]

Unit	Subunit	Riparian ownership	Occupancy	River miles (kilometers)
FASP–1: Little River	FASP–1a: Little River	Private	Occupied	35.6 (57.3)
	FASP–1b: San Gabriel River	Private	Occupied	31.4 (50.5)
	FASP–1c: Brushy Creek	Private	Occupied	14.0 (22.5)
FASP–2: San Saba River		Private	Occupied	50.4 (81.1)
FASP–3: Llano River		Private	Occupied	50.5 (81.3)
FASP–4: Guadalupe River	FASP–4a: San Marcos River	Private	Occupied	21.6 (34.8)
	FASP–4b: Guadalupe River	Private	Occupied	124.7 (200.7)
Total				328.2 (528.2)

Brazos River Basin

Unit FASP–1: Little River

Subunit FASP–1a: Little River. This subunit consists of 35.6 river miles (57.3 km) of the Little River in Milam County, Texas. This subunit begins at the Bell and Milam county line and continues downstream to the confluence of the Little and San Gabriel Rivers. The lands adjacent to the critical habitat unit are privately owned. The unit is currently occupied by the species and supports all of the PBFs essential to the conservation of the species. The Little River subunit is in a mostly rural setting, is influenced by ongoing development in the upper reaches associated with the Austin-Round Rock metropolitan area, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and ground water withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit is also occupied by the Texas fawnsfoot.

Subunit FASP–1b: San Gabriel River. This subunit consists of 31.4 river mi (50.5 km) of the San Gabriel River in Williamson and Milam Counties, Texas. The subunit starts downstream of the Granger Lake dam (at the downstream edge of the Pecan Grove State Wildlife Management Area) and continues through Williamson County to the confluence of the San Gabriel and Little Rivers in Milam County. The land adjacent to this subunit is all privately owned. The San Gabriel River subunit is currently occupied by the species and currently supports all of the PBFs essential to the conservation of the species. The San Gabriel River subunit is in a rural setting, is influenced by releases from Granger Reservoir, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, and ground water withdrawals and surface water diversions. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity.

Subunit FASP–1c: Brushy Creek. The subunit consists of 14.0 river mi (22.5 km) of Brushy Creek in Milam County, Texas. The subunit begins at the US Highway 79 bridge crossing and extends downstream to the confluence with Brushy Creek and the San Gabriel River. The unit is currently occupied by the species, and the adjacent riparian areas are privately owned. This stream drains a large portion of the City of Cedar Park, resulting in altered hydrology, altered flow regimes, and increased sedimentation. Brushy Creek contains some of the PBFs essential to the conservation of the false spike, such as adequate fish hosts, but other factors like water flow rates and water quality parameters may not be adequate during summer low-flow periods. The Brushy Creek subunit is in a rural but urbanizing setting, and it is influenced by wastewater discharges and ongoing development in the upper reaches associated with the Austin-Round Rock metropolitan area. It is also being affected by ongoing development and agricultural activities resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. Additionally, hydrological alterations in this watershed result in scour and mobilization of sediment during times of high-flow rates, resulting in loss of appropriate mussel habitat. Special management considerations for this area could include the highest level of wastewater treatment, decreased pollutant inputs from surface flows, bank stabilization, and increased flows during low-flow periods.

Colorado River Basin

Unit FASP–2: San Saba River

This unit consists of 50.4 river mi (81.1 km) of the San Saba River in San Saba County, Texas. The unit extends from the San Saba River and Brady Creek confluence and continues downstream to the confluence of the San Saba and Colorado Rivers. The riparian land adjacent to the critical habitat unit is privately owned. The unit is currently occupied by the species and contains all of the PBFs essential to the conservation of false spike. The San Saba River subunit is in a rural setting, is influenced by drought, low flows, and wastewater discharges, and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, groundwater withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. Much of the land use in the watershed is agricultural, and special management considerations or protection may be required to address excess nutrients, sediment, and pollutants that enter the San Saba River and reduce instream water quality. Sources of these types of pollution are wastewater, agricultural runoff, and urban stormwater runoff. Additional special management considerations or protection may be required in this unit to address low water levels that result from water withdrawals and drought, as well as excessive erosion. This subunit is also occupied by Texas pimpleback.

Unit FASP–3: Llano River

This unit consists of 50.5 river mi (81.3 km) of the Llano River in Kimble and Mason Counties, Texas. The Llano River unit begins at the Ranch Road 385 bridge crossing in Kimble County and

continues downstream to the Mason and Llano County line. The unit is occupied by the species, and surrounding riparian areas are privately owned. The majority of the Llano River basin is rural and composed of agricultural operations that were historically used for sheep and goat ranching. During 2018, the Llano River experienced some of the largest floods and most severe drought within the same year. Extreme floods and drought conditions result in both stream bed mobilization, sedimentation, and dewatering. The Llano River unit contains all the PBFs essential to the conservation of false spike. The Llano River unit is in a rural setting; is influenced by drought, low flows, and flooding (leading to scour); and is being affected by ongoing agricultural activities and development resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and collection. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, improve habitat connectivity, and manage collection. Additionally, special management may be required to address excess nutrients, sediment, and pollutants, as well as exceptionally low and high flows. This subunit is also occupied by Texas fatmucket, Texas fawnsfoot, and Texas pimpleback.

Guadalupe River Basin

Unit FASP–4: Guadalupe River

Subunit FASP–4a: San Marcos River. This subunit consists of 21.6 river mi (34.8 km) of the San Marcos River in Gonzales County, Texas. The San Marcos River subunit begins at the Farm-to-Market (FM) 2091 bridge crossing within Palmetto State Park (Park Road 11) and continues for 21.7 river miles downstream to the San Marcos River confluence with the Guadalupe River. The riparian lands adjacent to this subunit are primarily privately owned; Texas Parks and Wildlife Department's Palmetto State Park occurs in the upstream reaches. The San Marcos River drains the City of San Marcos, including the campus of Texas State University, which causes the river to be impacted by urban runoff, wastewater inputs, and altered hydrology. The San Marcos springs complex, the second largest in Texas, contributes significantly to the flows in this river and the lower Guadalupe River. The lower San Marcos River watershed is characterized by agricultural land in the lower portion of the San Marcos River. The subunit is occupied by the false spike and contains all of the PBFs essential to the conservation of the species. Because the San Marcos River subunit is downstream from an urban area in a rural but urbanizing setting, it is influenced by wastewater discharges and ongoing development in the upper reaches associated with the Austin-Round Rock metropolitan area. It is also being affected by ongoing development and agricultural activities resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. Special management considerations may be required to address riparian bank sloughing, increased sedimentation, and pollutants from upstream urbanization and agricultural practices. This subunit is also occupied by Guadalupe orb.

Subunit FASP–4b: Guadalupe River. This subunit consists of 124.7 river mi (200.7 km) of the Guadalupe River in Gonzales, DeWitt, and Victoria Counties, Texas. The Guadalupe River subunit begins at the confluence of the Guadalupe and San Marcos Rivers and continues downstream for 124.7 river miles to the US highway 59 bridge near Victoria, Texas. Adjacent riparian areas within this subunit are privately owned. This subunit is occupied by the false spike and contains all of the PBFs essential to the conservation of the species. The Guadalupe River subunit is in a mostly rural but urbanizing setting, is influenced by reservoir releases (from Canyon and Guadalupe Valley) and flooding (leading to scour), and is being affected by ongoing development and agricultural activities resulting in excessive sedimentation, water quality degradation, ground water withdrawals and surface water diversions, and wastewater inputs. Therefore, special management is necessary to reduce sedimentation, improve water quality, maintain adequate flows, and improve habitat connectivity. This subunit contains the most resilient known population of false spike. During times of drought, spring water influence from the Comal and San Marcos Rivers can contribute as much as 50 percent of the flows to the lower Guadalupe River. Continued protections for these spring systems are imperative for protecting mussel beds in the lower Guadalupe River. Special management considerations may be required to ensure low flows, sedimentation, and degraded water quality parameters do not worsen and contribute to future population decline. This subunit is also occupied by Guadalupe orb.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species 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 or that involve some other Federal action. Federal agency actions within the species' habitat that may require conference or consultation or both include management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, Army National Guard, 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. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency, do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2), is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, 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 reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, if subsequent to the previous consultation: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the 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 Central Texas mussels and its fish host by decreasing or altering flows to levels that would adversely affect their ability 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 the mussel or its host fish 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, timber harvest, off-road vehicle use, agricultural, industrial, and urban development, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the mussel and its fish host by increasing the sediment deposition to levels that would adversely affect their ability to complete their life cycles.

(4) 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 mussel or its fish host 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 mussel or its fish host.

(5) 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 Central Texas mussels. Possible actions could include, but are not limited to, stocking of nonnative fishes, stocking of sport fish, or other related actions. These activities can introduce parasites or disease for host fish, and can result in direct predation, or affect the growth, reproduction, and survival, of Central Texas mussels.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a

benefit to the species for which critical habitat is proposed for designation. There are no Department of Defense (DoD) lands with a completed INRMP within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless 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 that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise the discretion to exclude the area only if such exclusion would not result in the extinction of the species. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

The Service is aware of efforts currently under way by the Brazos River Authority, Trinity River Authority of Texas, and Lower Colorado River Authority (collectively the River Authorities) to develop comprehensive management plans for one or more species of Central Texas mussels. The Service is currently working with the River Authorities individually to develop Candidate Conservation Agreements with Assurances (CCAAs) that address activities conducted by the River Authorities and conservation measures specifically designed to provide a net conservation benefit to the covered species, including the Central Texas mussels, in the covered area for the term of the CCAA. The Brazos River Authority CCAA would cover the false spike and Texas fawnsfoot. The Trinity River Authority of Texas is developing a CCAA that would cover the Texas fawnsfoot. The Colorado River Authority is developing a CCAA that would cover the Texas fawnsfoot and Texas pimpleback. Finally, the Guadalupe-Blanco River Authority, in partnership with the Upper Guadalupe River Authority, has plans to develop a comprehensive Habitat Conservation Plan (HCP) for the entire Guadalupe River Basin that would cover the false spike, Guadalupe orb, and Guadalupe fatmucket, among other species. None of these plans have been approved or operationalized as of the time this proposal is published. While these agreements are not yet completed, if and when they are, we may consider excluding areas covered by the completed agreements from our critical habitat designations.

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 assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate whether a specific critical habitat designation may restrict or modify specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socioeconomic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For these proposed designations, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from these proposed designations of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designations of critical habitat for the Central Texas mussels (Industrial Economics, Inc. (IEc) 2019, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable incremental economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and thus may require additional management or conservation efforts as a result of the critical habitat designation for the species; these additional efforts may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, constitute our draft economic analysis (DEA) of the proposed critical habitat

designations for the Central Texas mussels, and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the proposed critical habitat designations. In our December 4, 2019, IEM describing probable incremental economic impacts that may result from the proposed designations, we first identified probable incremental economic impacts associated with each of the following categories of activities: (1) Federal lands management (National Park Service, U.S. Forest Service, Department of Defense); (2) agriculture; (3) forest management/silviculture/timber; (4) development; (5) recreation; (6) restoration activities; and (7) transportation. We considered each industry or category individually. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list any of the species, as proposed in this document, in areas where the Central Texas mussels are present, under section 7 of the Act, Federal agencies would be required to consult with the Service on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designations (*i.e.,* difference between the jeopardy and adverse modification standards) for the Central Texas mussels. Because the designation of critical habitat is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Central Texas mussels would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designations of critical habitat for these species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of these proposed designations of critical habitat.

The proposed critical habitat designations for the Central Texas mussels totals approximately 1,944 river mi (3,129 river km) in 27 units with a combination of occupied and unoccupied areas. In occupied areas, any actions that may affect the species or their habitat would likely also affect proposed 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 proposed critical habitat designations 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. However, it is believed that, in most circumstances, these costs would not reach the threshold of ''significant'' under E.O. 12866. We anticipate incremental costs of section 7 consultations in occupied critical habitat to total less than $75,000 per year.

In unoccupied critical habitat, any costs of section 7 consultations would not be incurred due to the listing of the species. We are proposing to designate six subunits that are currently unoccupied by the Central Texas mussels. We anticipate approximately five new formal section 7 consultations to occur in the next 10 years in these subunits. Considering the costs of formal consultation as well as project modifications that arise from consultation, we project consultations in unoccupied critical habitat to cost approximately $15,000 per consultation.

In total, in both occupied and unoccupied critical habitat, we expect the total cost of critical habitat designations not to exceed $82,500 per year.

We are soliciting data and comments from the public on the DEA discussed above, as well as on all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts received during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90. If we receive credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion, we will conduct an exclusion analysis for the relevant area or areas. We may also exercise the discretion to evaluate any other particular areas for possible exclusion. Furthermore, when we conduct an exclusion analysis based on impacts identified by experts in, or sources with firsthand knowledge about, impacts that are outside the scope of the Service's expertise, we will give weight to those impacts consistent with the expert or firsthand information unless we have rebutting information. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions

Exclusions Based on Economic Impacts

The first sentence of section 4(b)(2) of the Act requires the Service to consider the economic impacts (as well as the impacts on national security and any other relevant impacts) of designating critical habitat. In addition, economic impacts may, for some particular areas, play an important role in the discretionary section 4(b)(2) exclusion analysis under the second sentence of section 4(b)(2). In both contexts, the Service will consider the probable incremental economic impacts of the designation. When the Service undertakes a discretionary section 4(b)(2) exclusion analysis with respect to a particular area, we will weigh the economic benefits of exclusion (and any

other benefits of exclusion) against any benefits of inclusion (primarily the conservation value of designating the area). The conservation value may be influenced by the level of effort needed to manage degraded habitat to the point where it could support the listed species.

The Service will use its discretion in determining how to weigh probable incremental economic impacts against conservation value. The nature of the probable incremental economic impacts and not necessarily a particular threshold level triggers considerations of exclusions based on probable incremental economic impacts. For example, if an economic analysis indicates high probable incremental impacts of designating a particular critical habitat unit of low conservation value (relative to the remainder of the designation), the Service may consider exclusion of that particular unit.

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. In preparing this proposal, we have determined that there are no lands within the proposed designations of critical habitat for the Central Texas mussels owned or managed by the Department of Defense or Department of Homeland Security. We anticipate no impact on national security because there are no lands owned or managed by the Department of Defense within this proposal, and we have not identified any national security or homeland security activities that would be affected by the proposed designations. However, if through the public comment period we receive credible information regarding impacts on national security or homeland security from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90.

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 HCPs, safe harbor agreements, or candidate conservation agreements with assurances (CCAAs), 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 whether there are Tribal conservation plans or parnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities that may be affected by the designation. We also consider any State, local, public health, community interest, environmental, or social impacts that might occur because of the designations.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the Central Texas mussels, and the proposed designations do not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from these proposed critical habitat designations. We are aware of efforts currently under way by the River Authorities to develop CCAAs for the Central Texas mussels, as discussed above, and will take those efforts into account in a final designation. During the development of a final designation, we will consider any additional information received through the public comment period regarding other relevant impacts to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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 will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. 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 if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designations. 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 would be directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designations would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial 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. In our economic analysis, we did not find that the designations of this proposed critical habitat will 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 proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designations of critical habitat do not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this proposed rule would significantly or uniquely affect small governments because the lands being proposed for critical habitat designation are owned by the State of Texas. This government entity does not fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Central Texas mussels in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify

critical habitat. A takings implications assessment has been completed and concludes that, if adopted, these designations of critical habitat for the Central Texas mussels does not pose significant takings implications for lands within or affected by the designations.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed 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 these proposed critical habitat designations with, appropriate State resource agencies in Texas. 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 proposed rule does not have substantial direct effects either on the States, or on the relationship between the National Government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designations 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) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that no tribal lands fall within the boundaries of the proposed critical habitat designations for the Central Texas mussels, so no tribal lands would be affected by the proposed designations.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for ''Fatmucket, Guadalupe''; ''Fatmucket, Texas''; ''Fawnsfoot, Texas''; ''Orb, Guadalupe''; ''Pimpleback, Texas''; and ''Spike, false'' to the List of Endangered and Threatened Wildlife in alphabetical order under Clams to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
CLAMS				
*	*	*	*	*
Fatmucket, Guadalupe	*Lampsilis bergmanni*	Wherever found	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.95(f)[CH].
Fatmucket, Texas	*Lampsilis bracteata*	Wherever found	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.95(f)[CH].
Fawnsfoot, Texas	*Truncilla macrodon*	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.45(c)[4d]; 50 CFR 17.95(f)[CH].
*	*	*	*	*
Orb, Guadalupe	*Cyclonaias necki*	Wherever found	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.95(f)[CH].
*	*	*	*	*
Pimpleback, Texas	*Cyclonaias petrina*	Wherever found	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.95(f)[CH].
*	*	*	*	*
Spike, false	*Fusconaia mitchelli*	Wherever found	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.95(f)[CH].
*	*	*	*	*

■ 3. As proposed to be added at 83 FR 51570 (Oct. 11, 2018), and amended at 85 FR 44821 (July 24, 2020) and 85 FR 61384 (Sept. 29, 2020), § 17.45 is further amended by adding paragraph (c) to read as follows:

§ 17.45 Special rules—snails and clams.

* * * * *

(c) Texas fawnsfoot (*Truncilla macrodon*)—(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Texas fawnsfoot. Except as provided at paragraph (c)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to the Texas fawnsfoot:

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

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

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e).

(v) Sale or offer for sale, as set forth at § 17.21(f).

(2) *Exceptions from the prohibitions.* With regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken Texas fawnsfoot, as set forth at § 17.21(d)(2).

(v) Take incidental to an otherwise lawful activity caused by:

(A) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers.

(B) Bioengineering methods such as streambank stabilization using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These methods would not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures. In addition, to reduce streambank erosion and sedimentation into the stream, work using these bioengineering methods would be performed at base-flow or low-water conditions and when significant rainfall is not predicted. Further, streambank stabilization projects must keep all equipment out of the stream channels and water.

(C) Soil and water conservation practices and riparian and adjacent upland habitat management activities that restore in-stream habitats for the species, restore adjacent riparian habitats that enhance stream habitats for the species, stabilize degraded and eroding stream banks to limit sedimentation and scour of the species' habitats, and restore or enhance nearby upland habitats to limit sedimentation of the species' habitats and comply with conservation practice standards and specifications, and technical guidelines developed by the Natural Resources Conservation Service.

(D) Presence or abundance surveys for Texas fawnfoot conducted by individuals who successfully complete and show proficiency by passing the end-of-course test with a score equal to or greater than 90 percent, with 100 percent accuracy in identification of mussel species listed under the Endangered Species Act, in an approved freshwater mussel identification and sampling course (specific to the species and basins in which the Texas fawnsfoot is known to occur), such as that administered by the Service, a State wildlife agency, or qualified university experts. Those individuals exercising the exemption in this paragraph (c)(2)(v)(D) should provide reports to the Service annually on number, location, and date of collection. The exemption in this paragraph (c)(2)(v)(D) does not apply if lethal take or collection is anticipated. The exemption in this paragraph (c)(2)(v)(D) only applies for 5 years from the date of successful course completion.

* * * * *

■ 4. Amend § 17.95(f) by:

■ a. Adding critical habitat entries for ''Guadalupe Fatmucket (*Lampsilis*

bergmanni)'', ''Texas Fatmucket (*Lampsilis bracteata*)'', and ''Texas Fawnsfoot (*Truncilla macrodon*)'' immediately following the entry for ''Appalachian Elktoe *(Alasmidonta raveneliana)*'';

■ b. Adding an entry for ''Guadalupe Orb (*Cyclonaias necki*)'' immediately following the entry for ''Carolina Heelsplitter *(Lasmigona decorata)*''; and

■ c. Adding entries for ''Texas Pimpleback (*Cyclonaias petrina*)'' and ''False Spike (*Fusconaia mitchelli*)'' immediately following the entry for ''Georgia Pigtoe *(Pleurobema hanleyianum)*''.

The additions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) * * *

Guadalupe Fatmucket (*Lampsilis bergmanni*)

(1) A critical habitat unit is depicted for Kendall and Kerr Counties, Texas, on the map in this critical habitat entry.

(2) Within this area, the physical or biological features essential to the conservation of Guadalupe fatmucket consist of the following components within waters and streambeds up to the ordinary high-water mark:

(i) Flowing water at moderate to high rates with sufficient depth to remain sufficiently cool and oxygenated during low-flow periods;

(ii) Substrate including bedrock and boulder crevices, point bars, and vegetated run habitat comprising sand, gravel, and larger cobbles;

(iii) Green sunfish (*Lepomis cyanellus*), bluegill (*L. macrochirus*), largemouth bass (*Micropterus salmoides*), and Guadalupe bass (*M. treculii*) present; and

(iv) Water quality parameters within the following ranges:

(A) Dissolved oxygen >2 mg/L;

(B) Salinity <2 ppt;

(C) Total ammonia <0.77 mg/L total ammonia nitrogen;

(D) Water temperature <29 °C (84.2 °F); and

(E) Low levels of contaminants.

(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 [EFFECTIVE DATE OF THE FINAL RULE].

(4) 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–R2–ES–2019–0061.

(5) Index map of critical habitat for the Central Texas mussels, which includes the Guadalupe fatmucket, follows:

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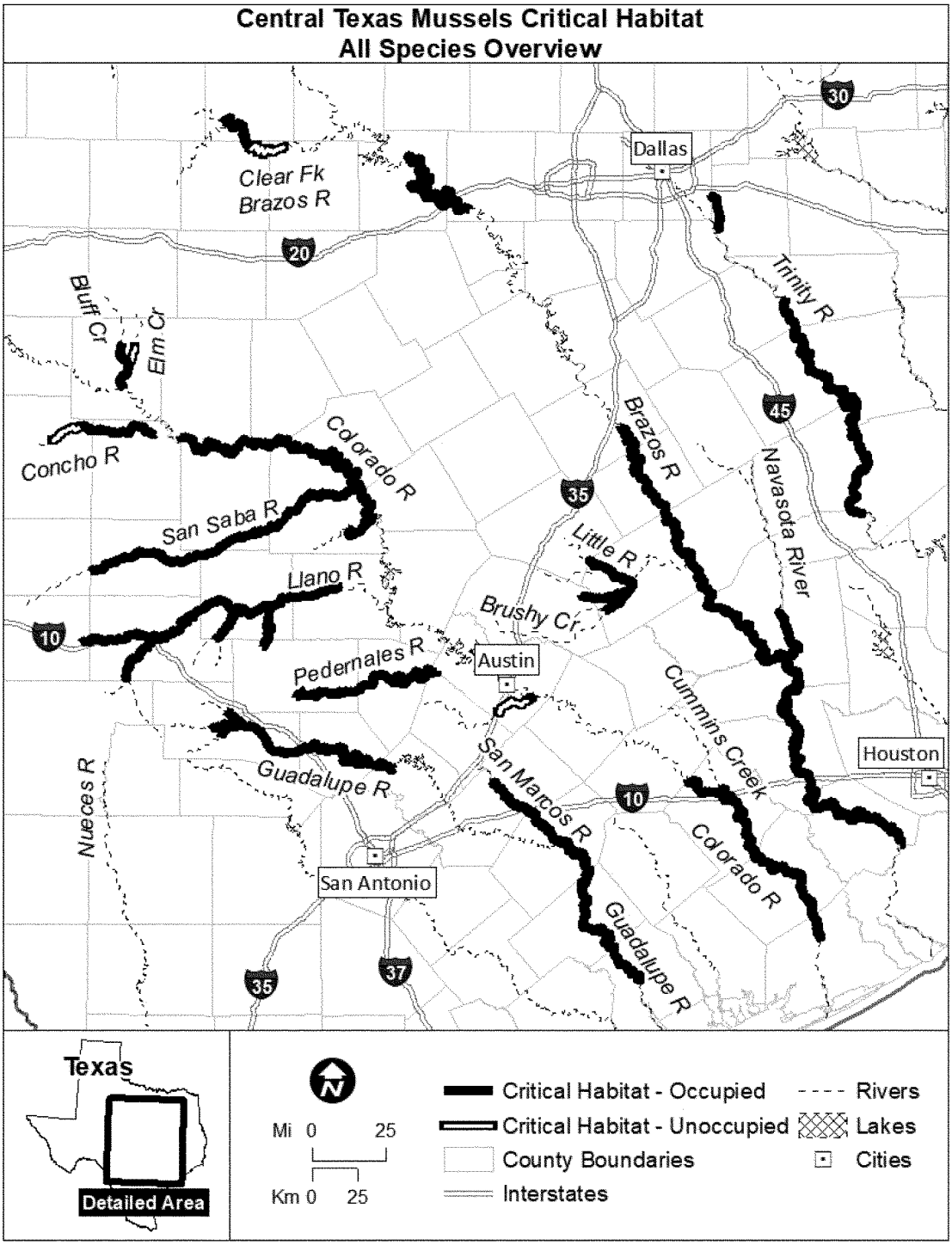
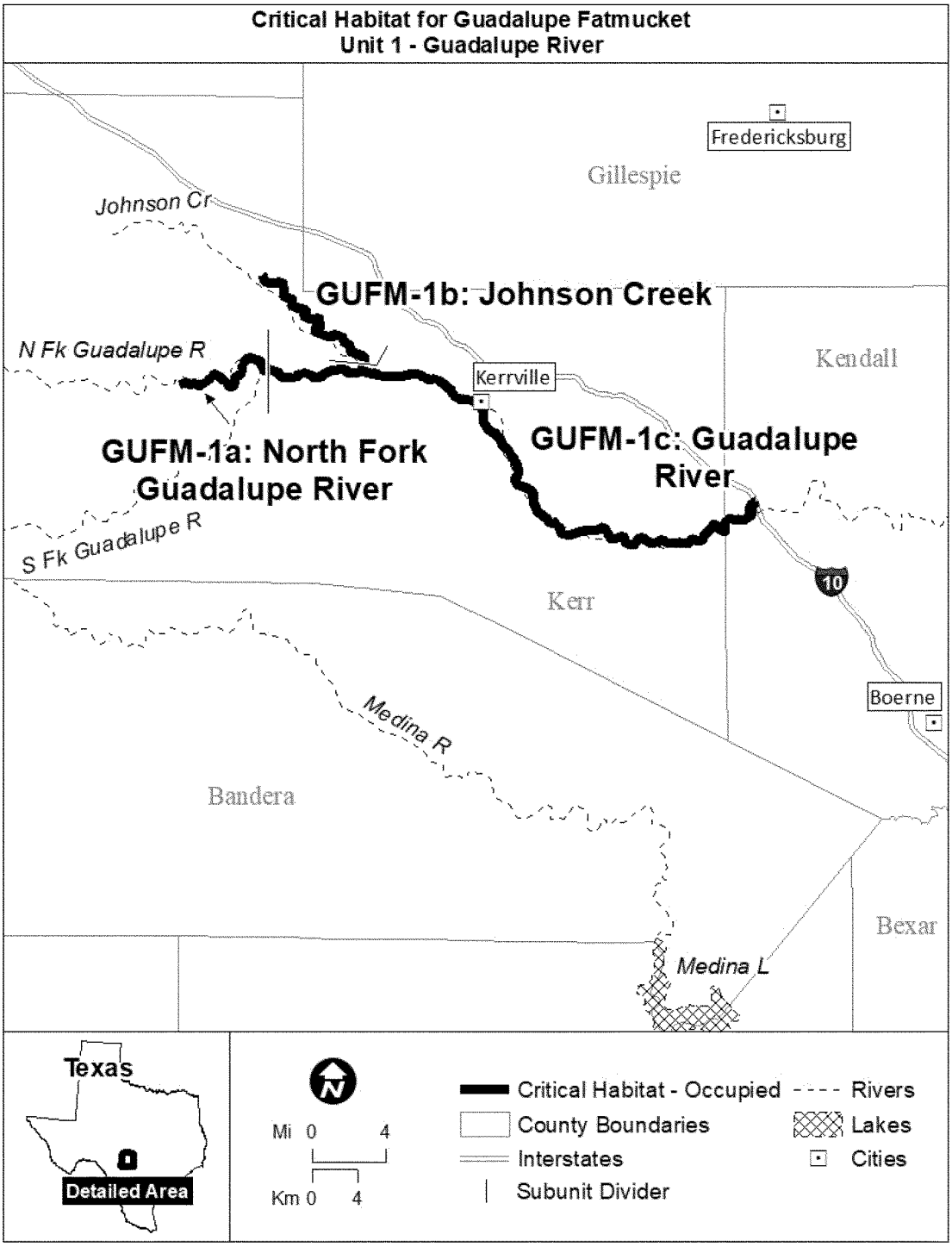


(6) Map of Unit GUFM–1: Guadalupe River follows:



TEXAS FATMUCKET (*LAMPSILIS BRACTEATA*)

Texas Fatmucket (*Lampsilis bracteata*)

(1) Critical habitat units are depicted for Blanco, Gillespie, Hays, Kimble, Llano, Mason, McCulloch, Menard, Runnels, San Saba, and Travis Counties, Texas, on the maps in this critical habitat entry.

(2) Within these areas, the physical or biological features essential to the conservation of Texas fatmucket consist of the following components within waters and streambeds up to the ordinary high-water mark:

(i) Flowing water at moderate to high rates with sufficient depth to remain sufficiently cool and oxygenated during low-flow periods;

(ii) Substrate including bedrock and boulder crevices, point bars, and vegetated run habitat comprising sand, gravel, and larger cobbles;

(iii) Green sunfish (*Lepomis cyanellus*), bluegill (*L. macrochirus*),

largemouth bass (*Micropterus salmoides*), and Guadalupe bass (*M. treculii*) present; and

(iv) Water quality parameters within the following ranges:

(A) Dissolved oxygen >2 mg/L;

(B) Salinity <2 ppt;

(C) Total ammonia <0.77 mg/L total ammonia nitrogen;

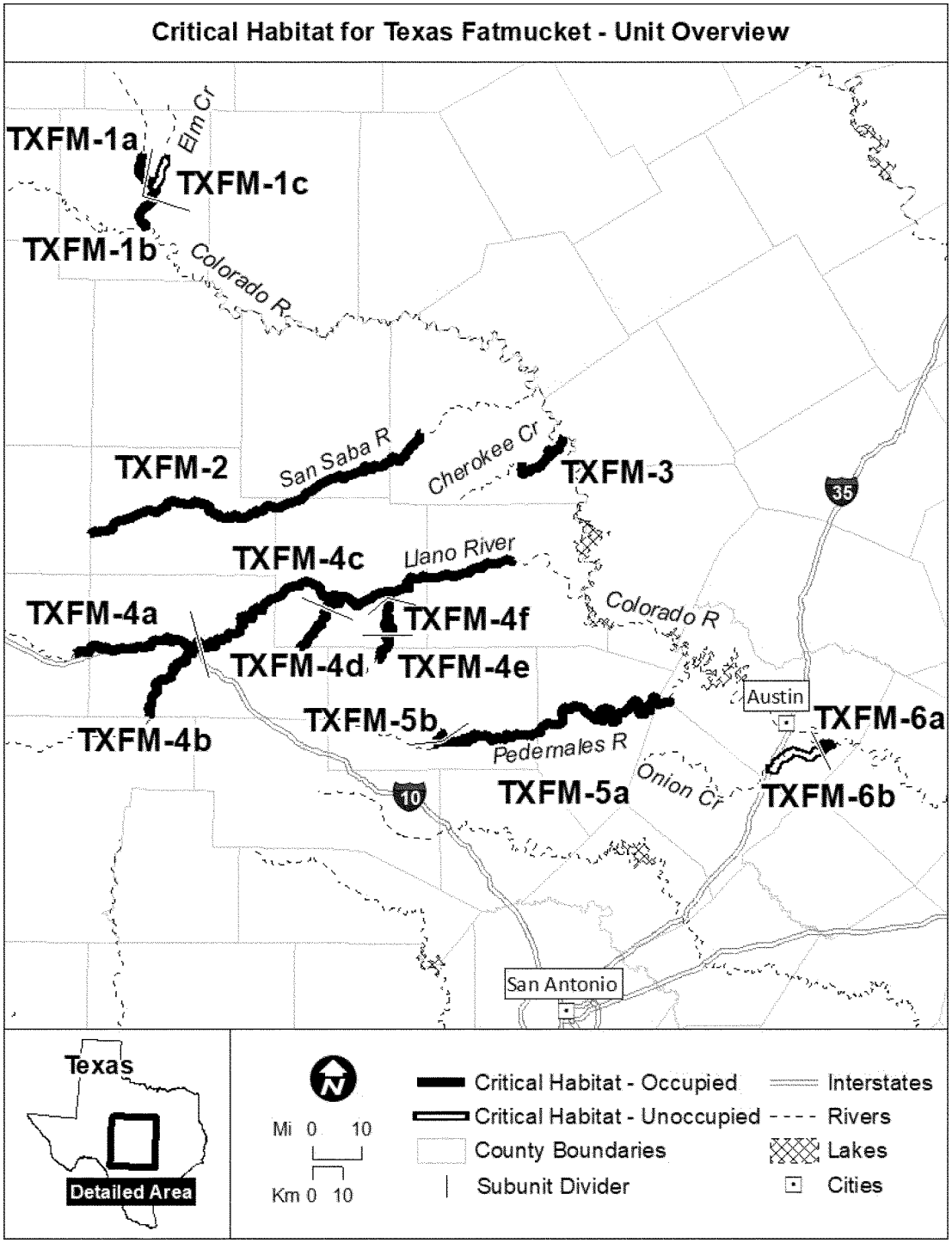
(D) Water temperature <29 °C (84.2 °F); and

(E) Low levels of contaminants.

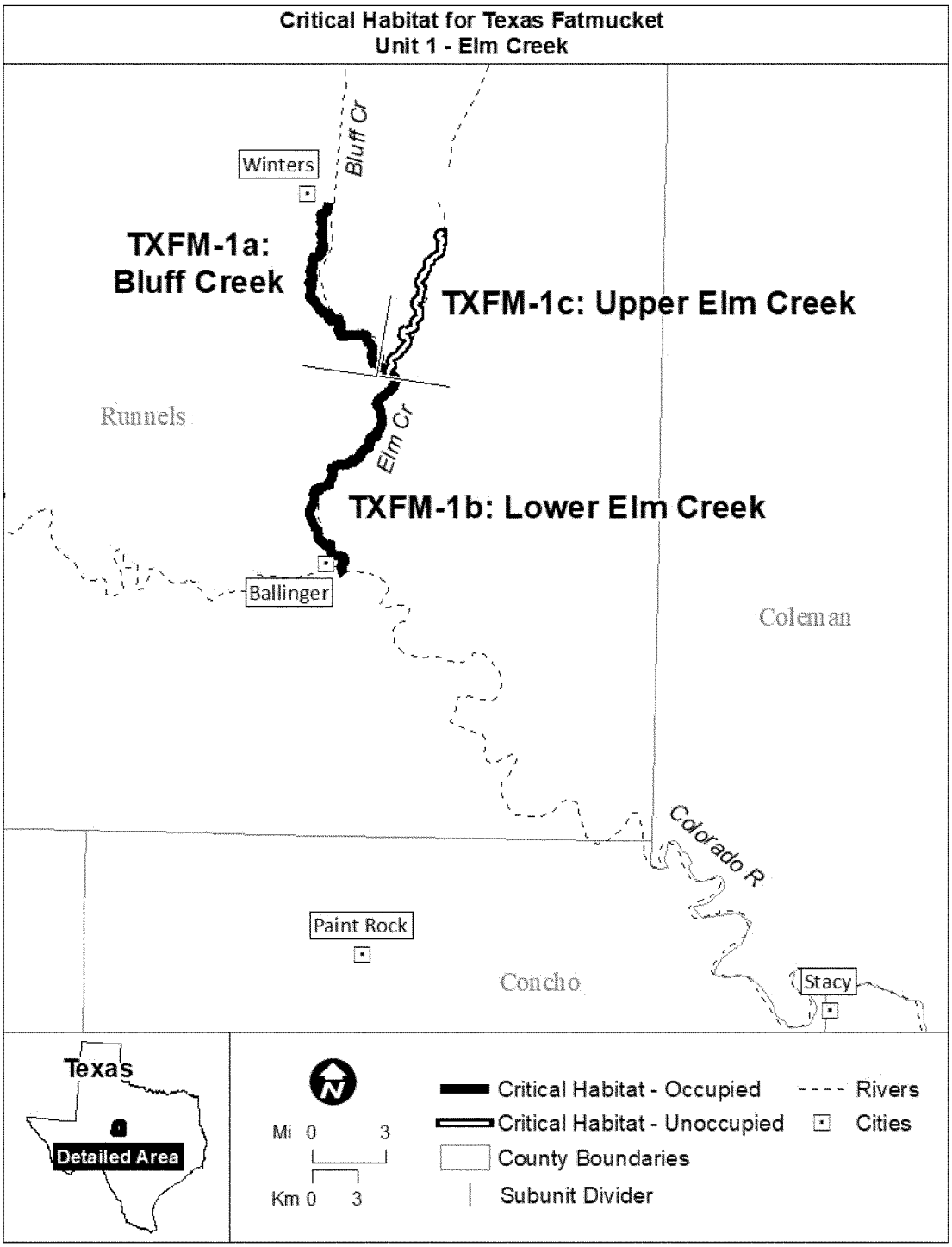
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) 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–R2–ES–2019–0061.

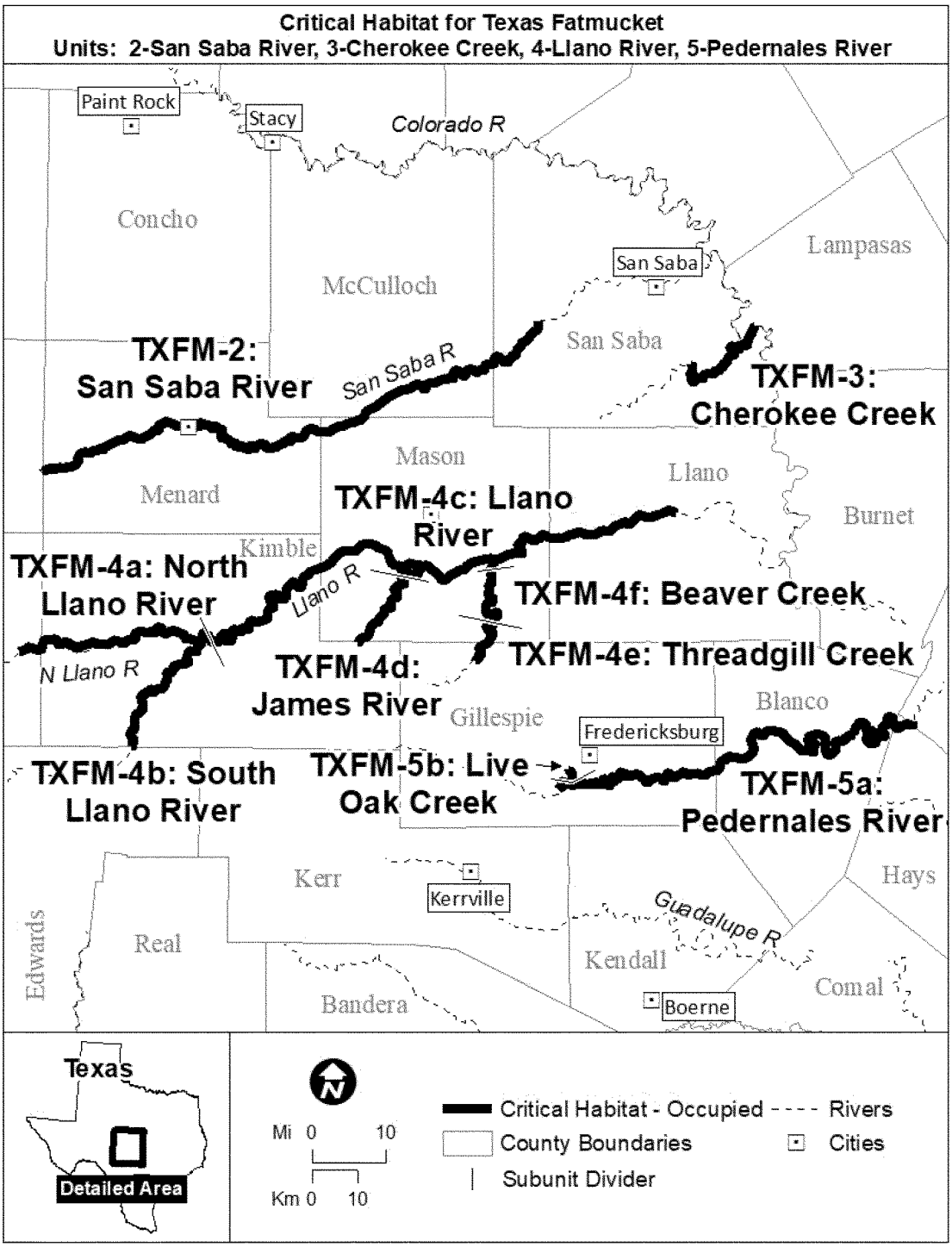
(5) *Note:* An index map of the critical habitat designations for the Central Texas mussels, which includes the Texas fatmucket, can be found in this paragraph (f) at the entry for the Guadalupe fatmucket. An index map of critical habitat units for the Texas fatmucket follows:



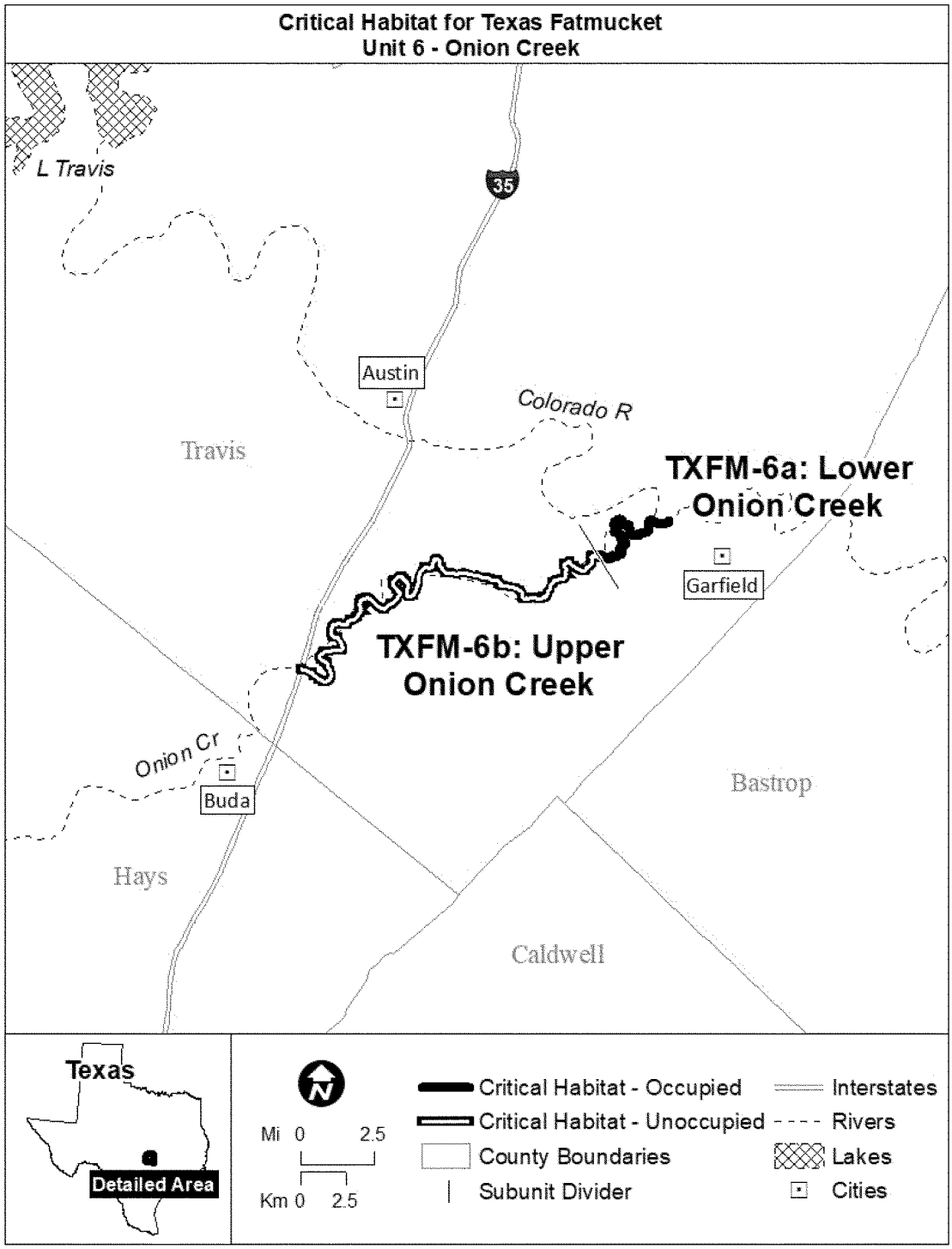
(6) Map of TXFM–1: Elm Creek follows:



(7) Map of Unit TXFM–2: San Saba River, Unit TXFM–3: Cherokee Creek, Unit TXFM–4: Llano River, and Unit TXFM–5: Pedernales River, follows:



(8) Map of Unit TXFM–6: Onion Creek follows:



Texas Fawnsfoot (*Truncilla macrodon*)

(1) Critical habitat units are depicted for Anderson, Austin, Brazos, Burleson, Colorado, Falls, Fort Bend, Freestone, Grimes, Henderson, Houston, Kaufman, Lampasas, Leon, Madison, Matagorda, McLennan, Milam, Mills, Navarro, Palo Pinto, Parker, Robertson, San Saba, Shackelford, Stephens, Throckmorton, Waller, Washington, and Wharton Counties, Texas, on the maps in this critical habitat entry.

(2) Within these areas, the physical or biological features essential to the conservation of Texas fawnsfoot consist of the following components within waters and streambeds up to the ordinary high-water mark:

(i) Flowing water at rates suitable to prevent excess sedimentation but not so high as to dislodge individuals or sediment;

(ii) Stable bank and riffle habitats with gravel, sand, silt, and mud substrates that are clean swept by flushing flows;

(iii) Freshwater drum (*Aplodinotus grunniens*) present; and

(iv) Water quality parameters within the following ranges:

(A) Dissolved oxygen >2 mg/L;

(B) Salinity <2 ppt;

(C) Total ammonia <0.77 mg/L total ammonia nitrogen;

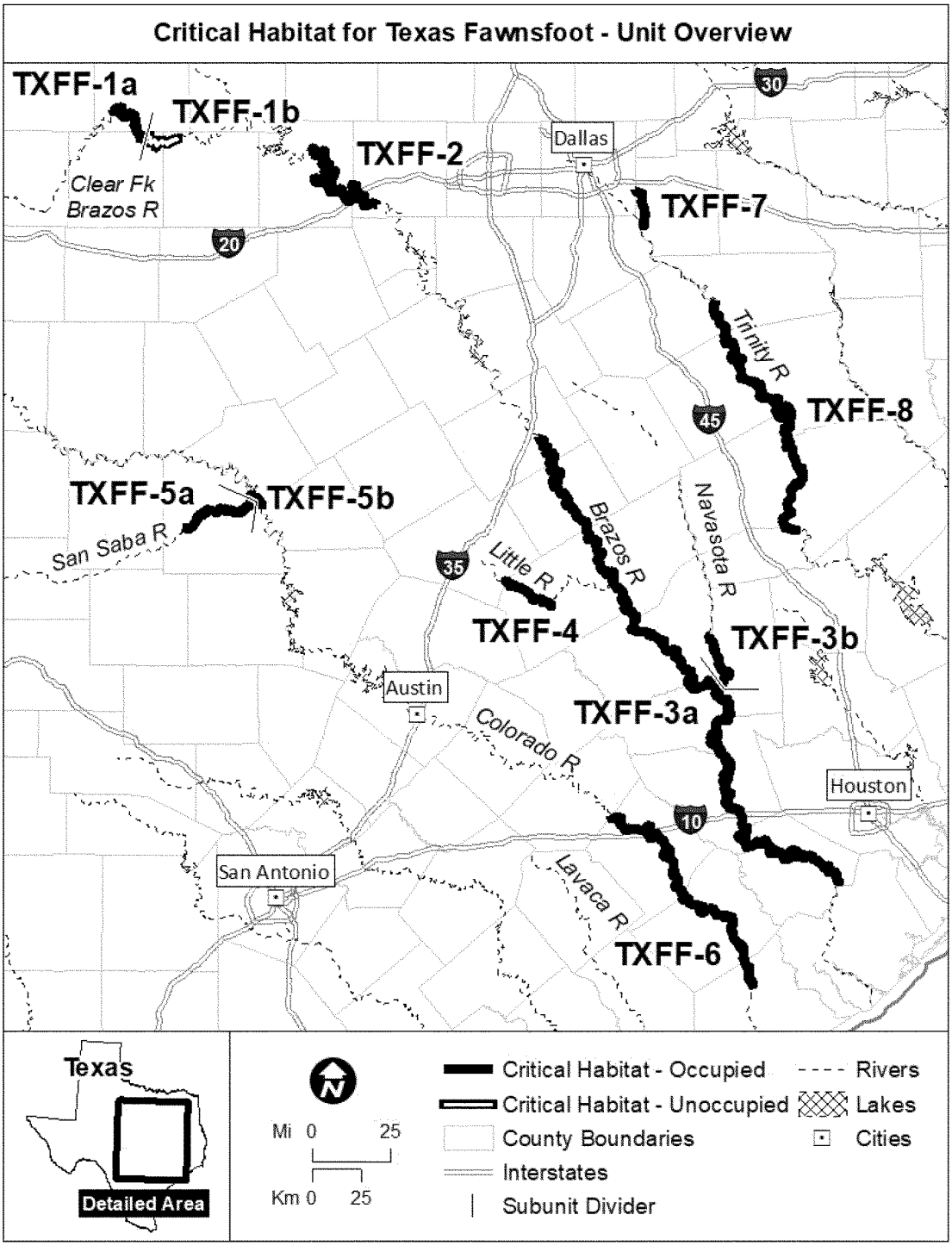
(D) Water temperature <29 °C (84.2 °F); and

(E) Low levels of contaminants.

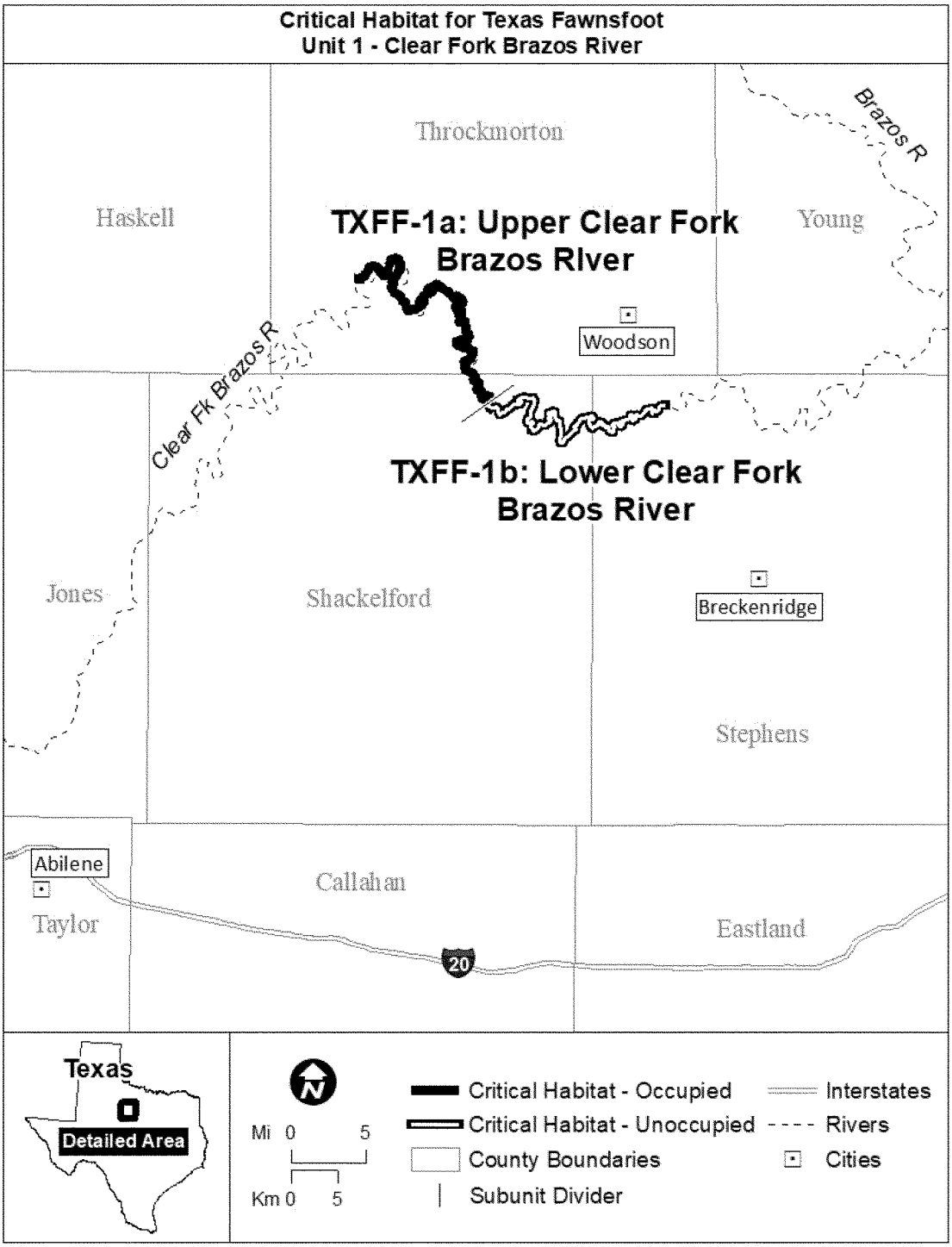
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) 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–R2–ES–2019–0061.

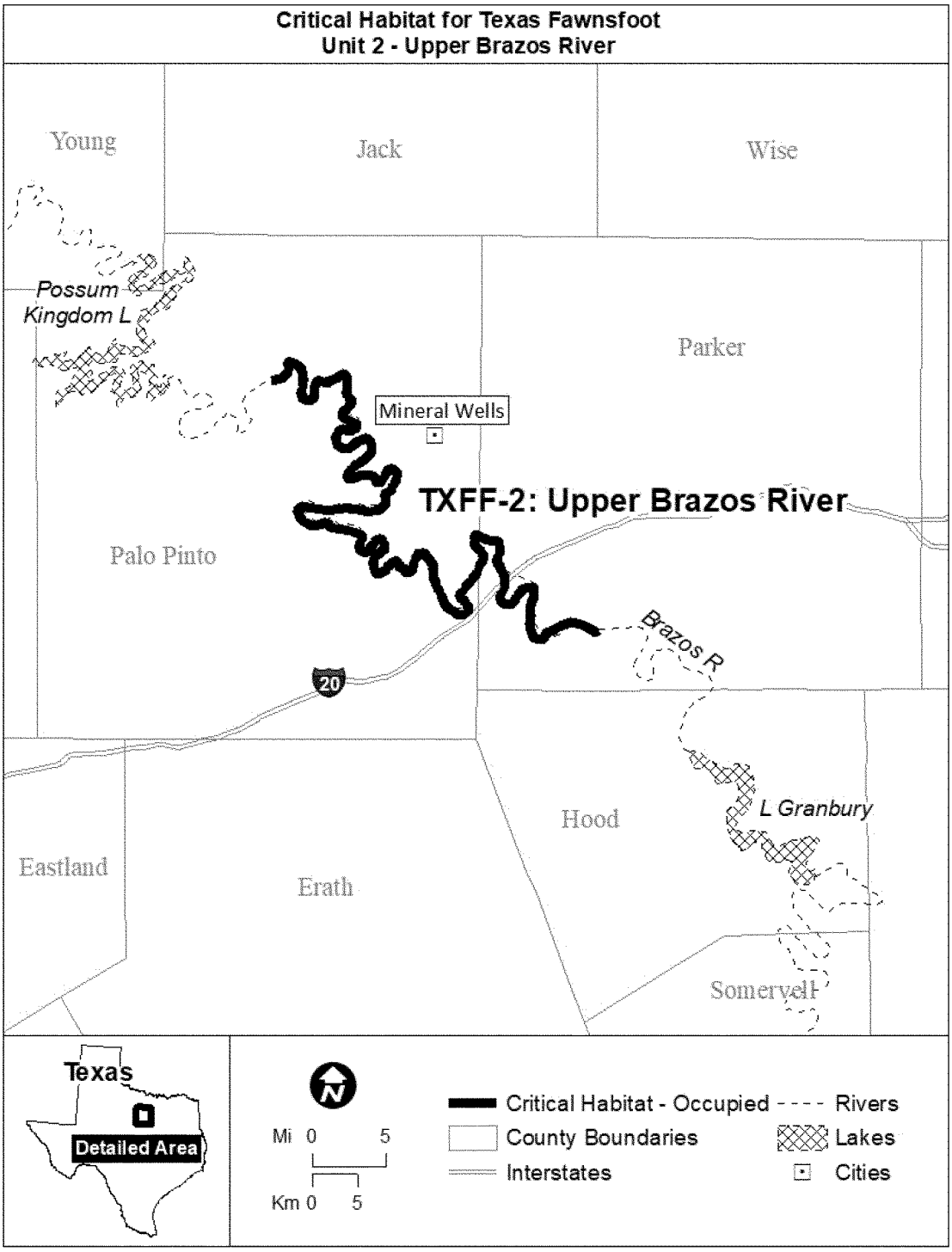
(5) *Note:* An index map of the critical habitat designations for the Central Texas mussels, which includes the Texas fawnsfoot, can be found in this paragraph (f) at the entry for the Guadalupe fatmucket. An index map of critical habitat units for the Texas fawnsfoot follows:


Critical Habitat for Texas Fawnsfoot - Unit Overview
TXFF-1a
TXFF-1b
Clear Fk Brazos R
TXFF-2
Dallas
TXFF-7
Trinity R
TXFF-8
TXFF-5a
TXFF-5b
San Saba R
Little R
Brazos R
Navasota R
TXFF-4
TXFF-3b
Austin
TXFF-3a
Colorado R
Houston
San Antonio
Lavaca R
TXFF-6
30
20
45
35
10
Texas
Detailed Area
Mi 0 25
Km 0 25
Critical Habitat - Occupied
Critical Habitat - Unoccupied
County Boundaries
Interstates
Subunit Divider
Rivers
Lakes
Cities

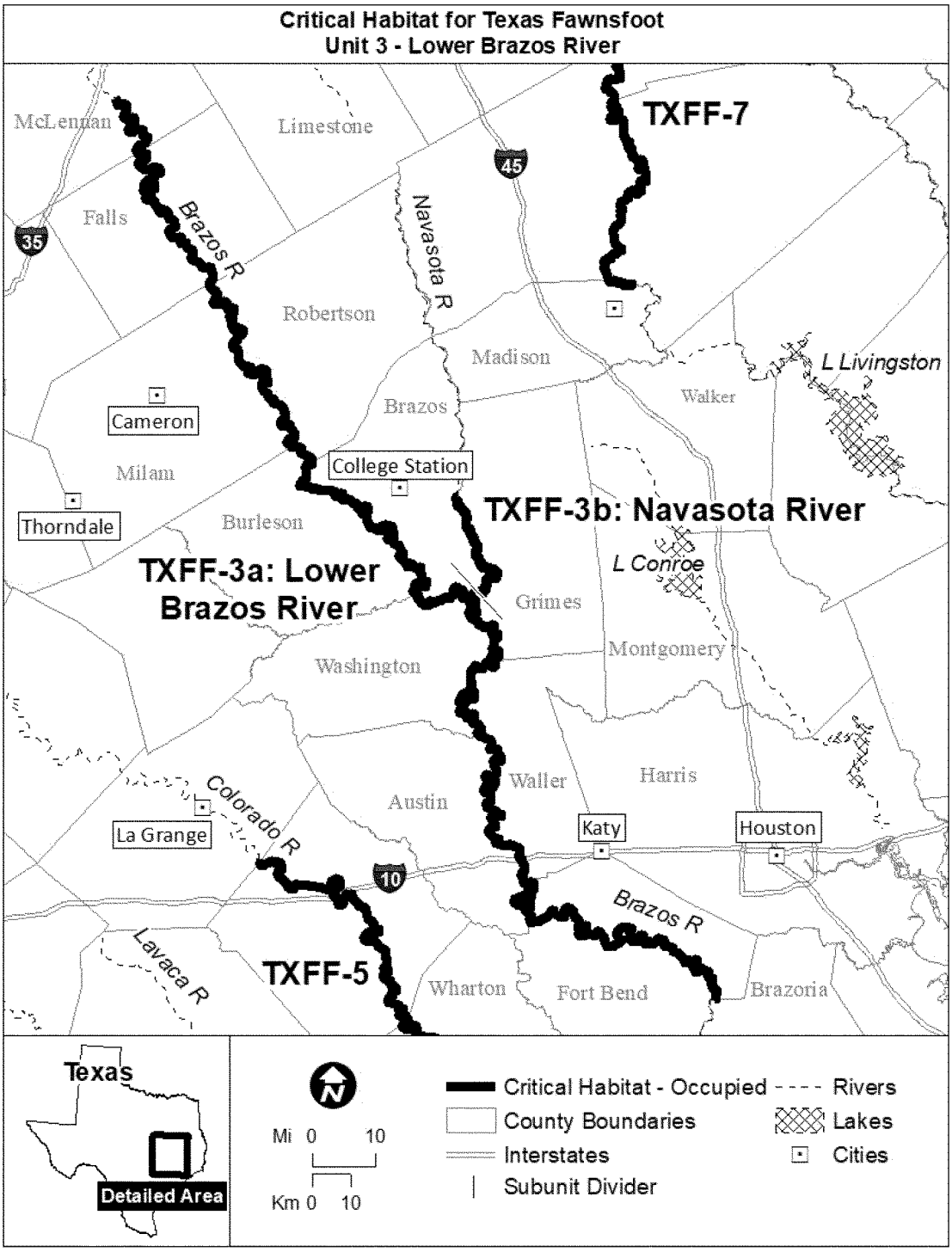
(6) Map of Unit TXFF–1: Clear Fork Brazos River follows:



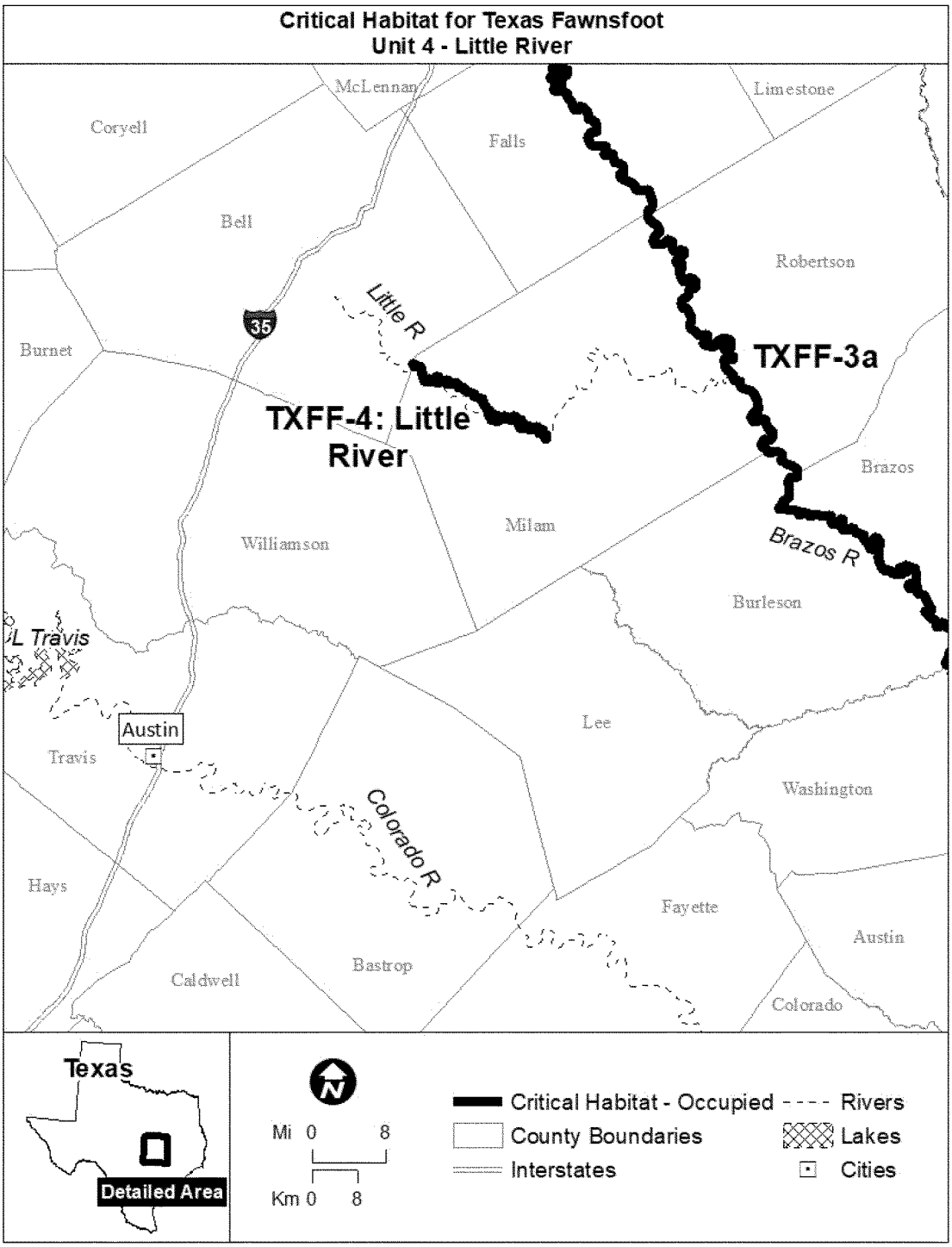
(7) Map of Unit TXFF–2: Upper Brazos River follows:



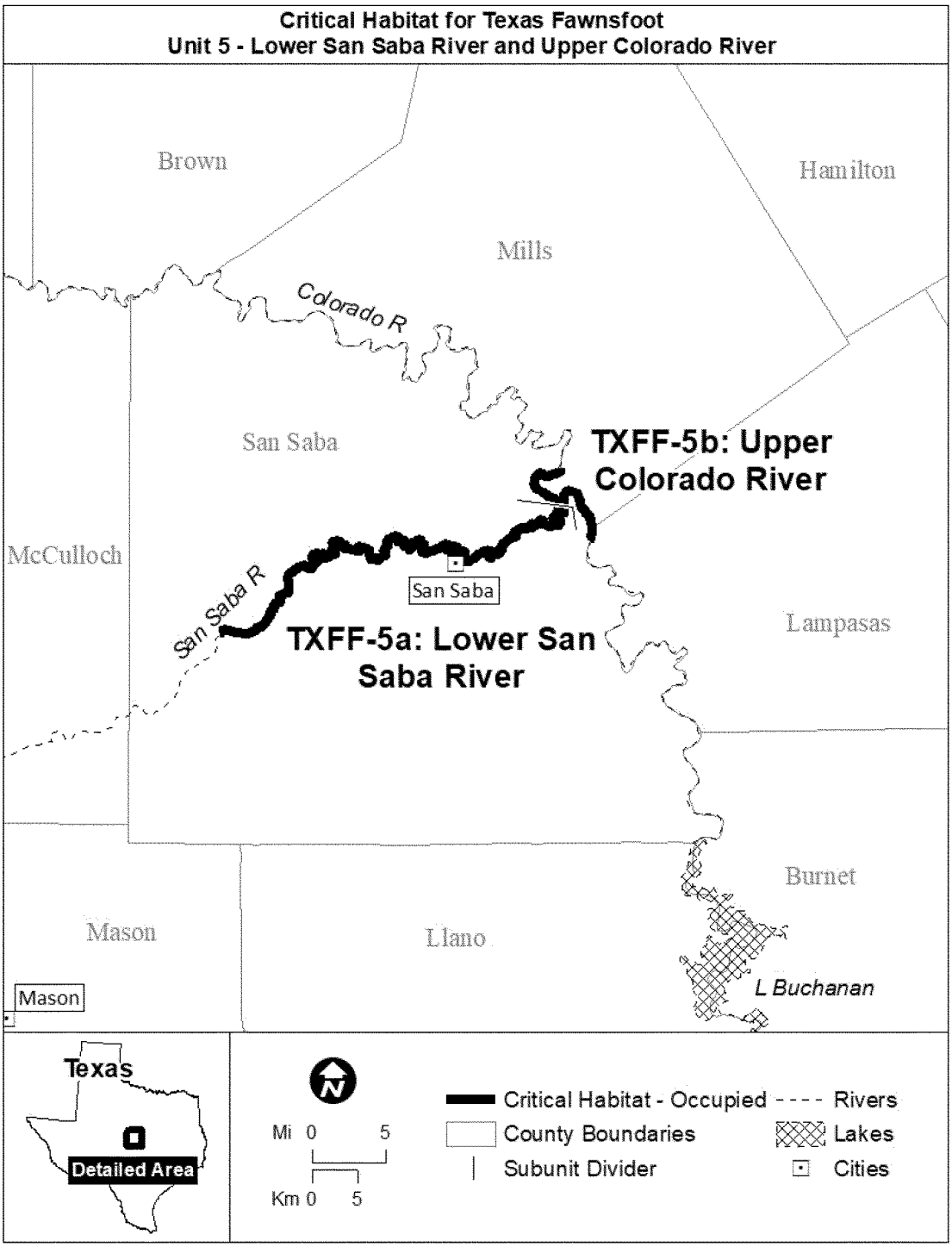
(8) Map of Unit TXFF–3: Lower Brazos River follows:



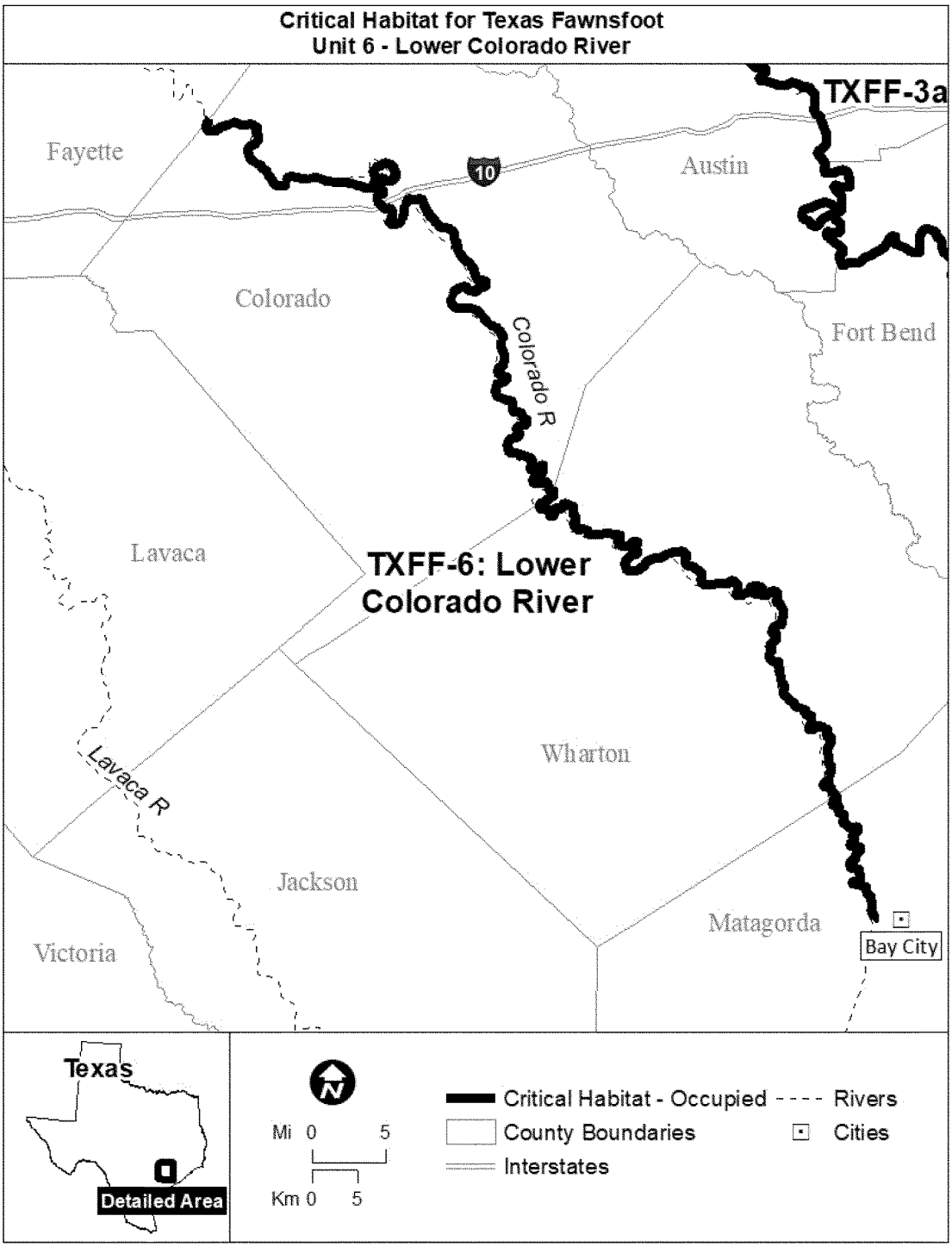
(9) Map of Unit TXFF–4: Little River follows:



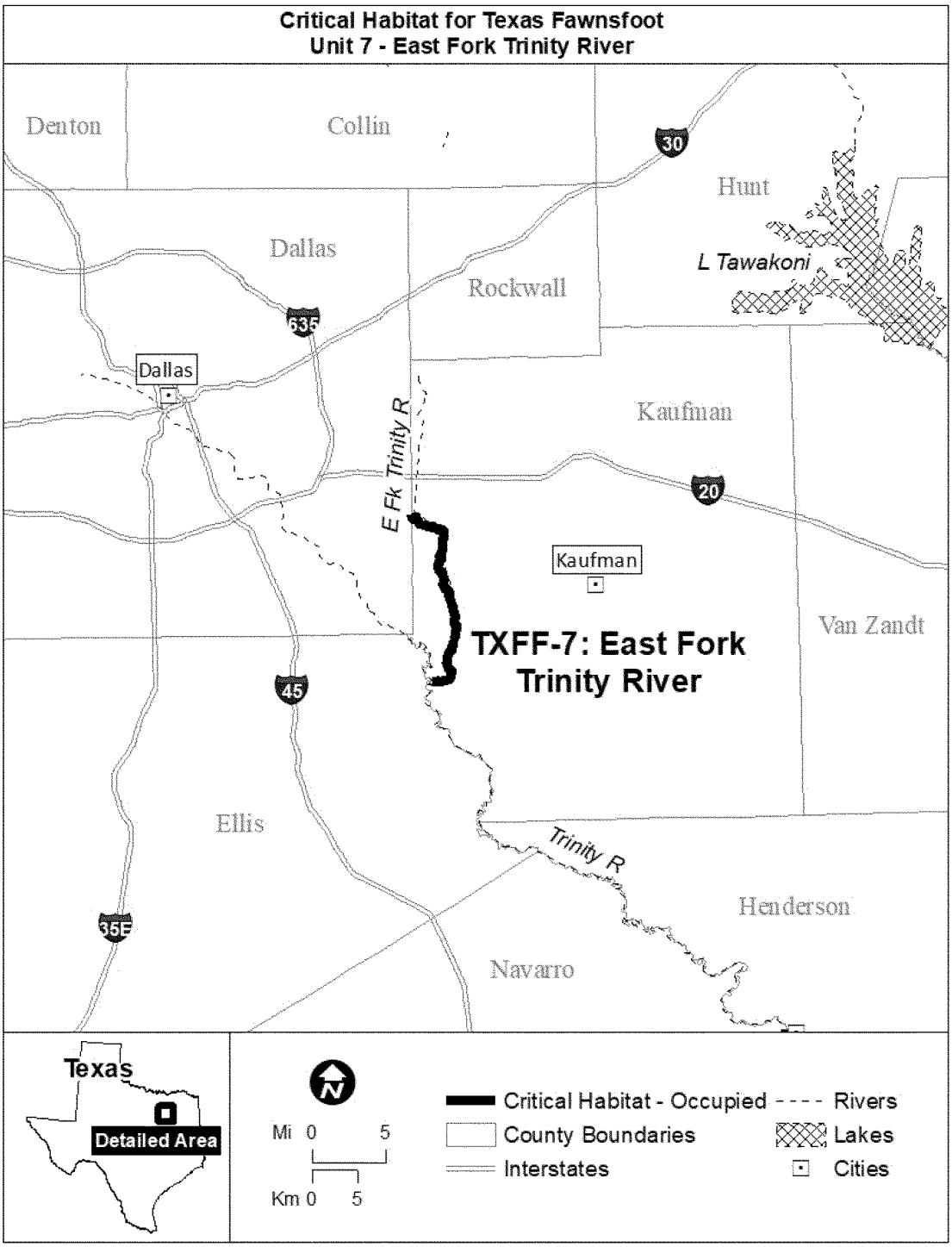
(10) Map of TXFF–5: Lower San Saba and Upper Colorado River follows:



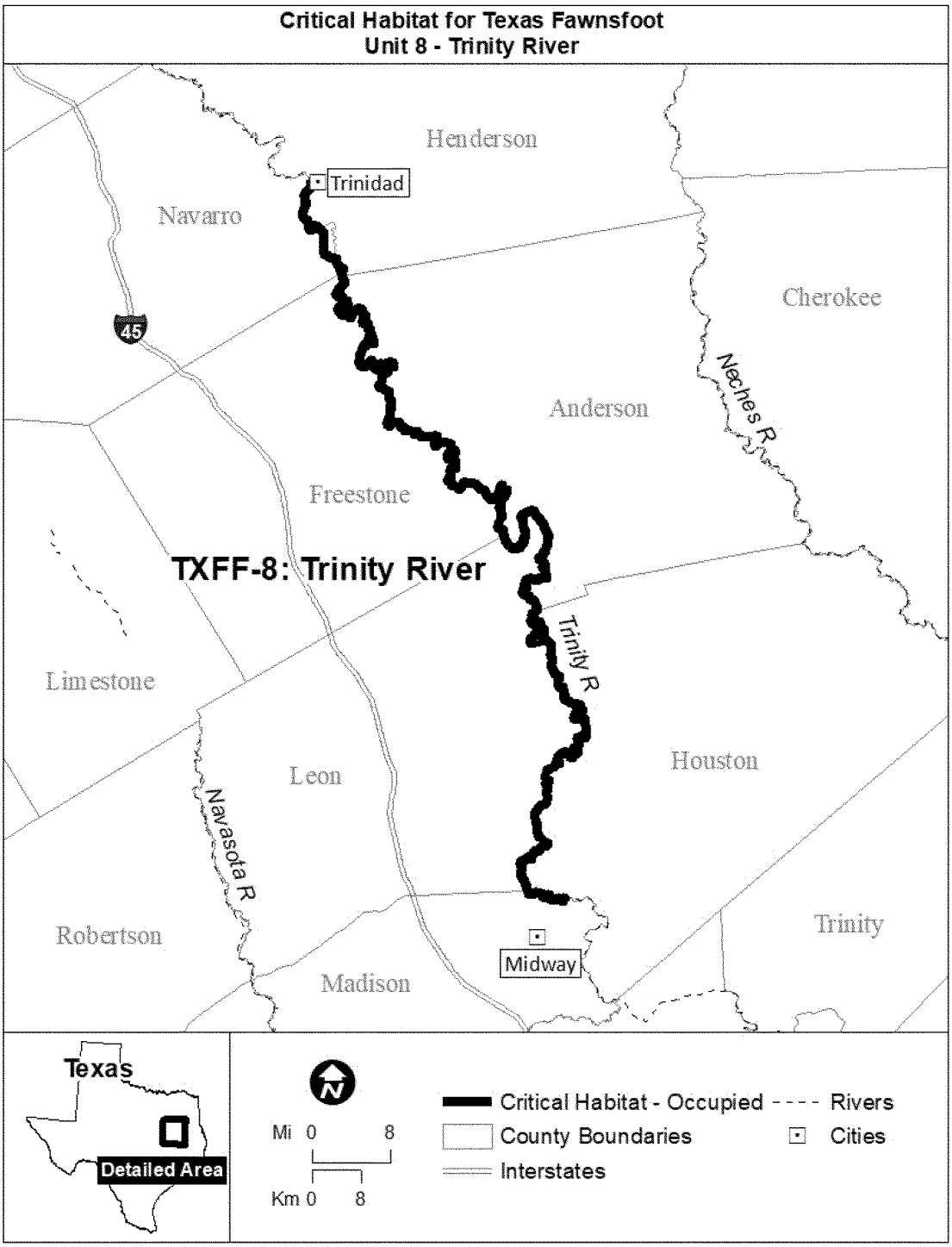
(11) Map of Unit TXFF–6: Lower Colorado River follows:



(12) Map of Unit TXFF–7: East Fork Trinity River follows:



(13) Map of Unit TXFF–8: Trinity River follows:



* * * * *

Guadalupe Orb (*Cyclonaias necki*)

(1) Critical habitat units are depicted for Caldwell, Comal, DeWitt, Gonzales, Guadalupe, Kendall, Kerr, and Victoria Counties, Texas, on the maps in this critical habitat entry.

(2) Within these areas, the physical or biological features essential to the conservation of Guadalupe orb consist of the following components within waters and streambeds up to the ordinary high-water mark:

(i) Flowing water at rates suitable to keep riffle habitats wetted and well-oxygenated and to prevent excess sedimentation or scour during high-flow events but not so high as to dislodge individuals;

(ii) Stable riffles and runs with substrate composed of cobble, gravel, and fine sediments;

(iii) Channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictus olivaris*), and tadpole madtom (*Noturus gyrinus*) present; and

(iv) Water quality parameters within the following ranges:

(A) Dissolved oxygen >2 mg/L;

(B) Salinity <2 ppt;

(C) Total ammonia <0.77 mg/L total ammonia nitrogen;

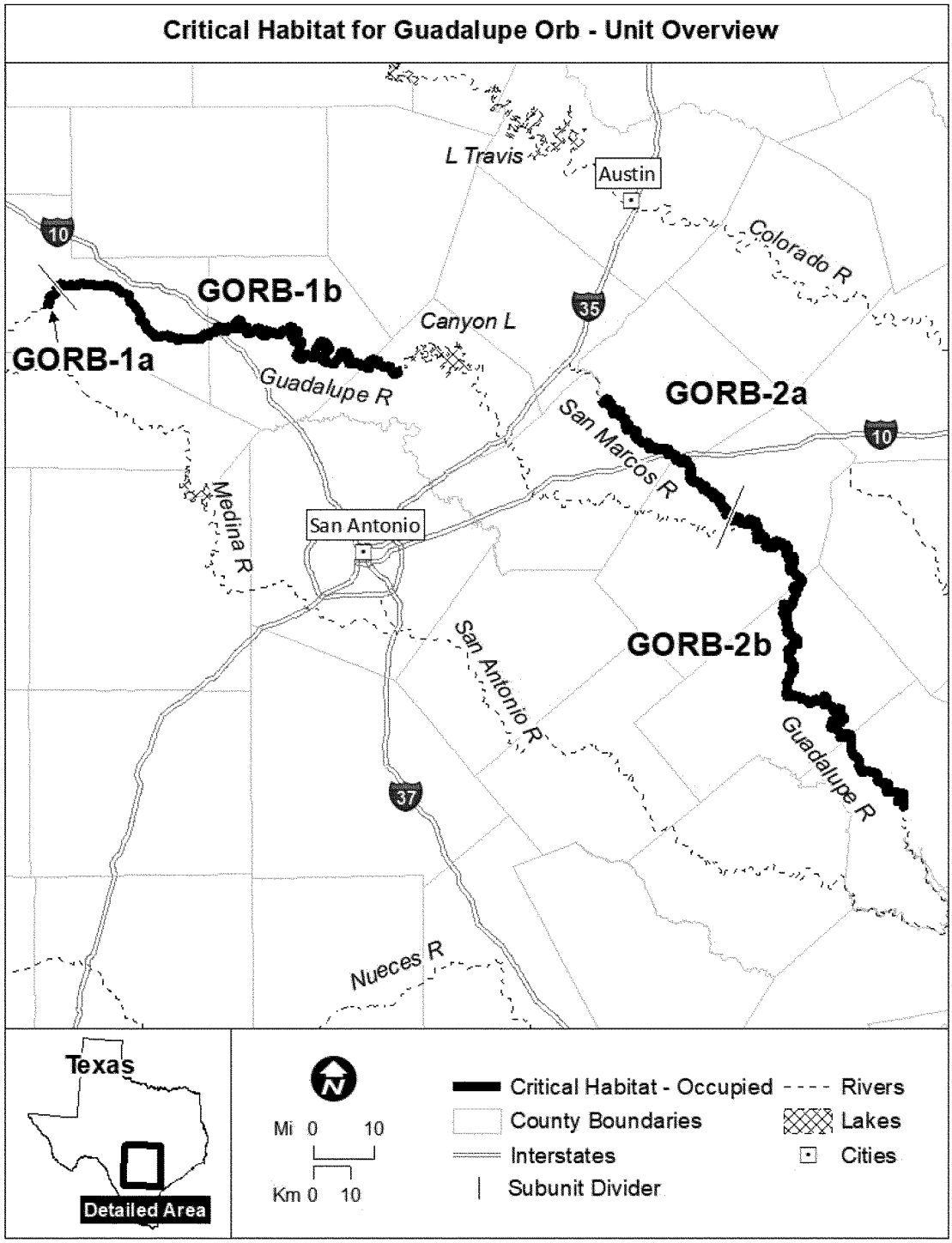
(D) Water temperature <29 °C (84.2 °F); and

(E) Low levels of contaminants.

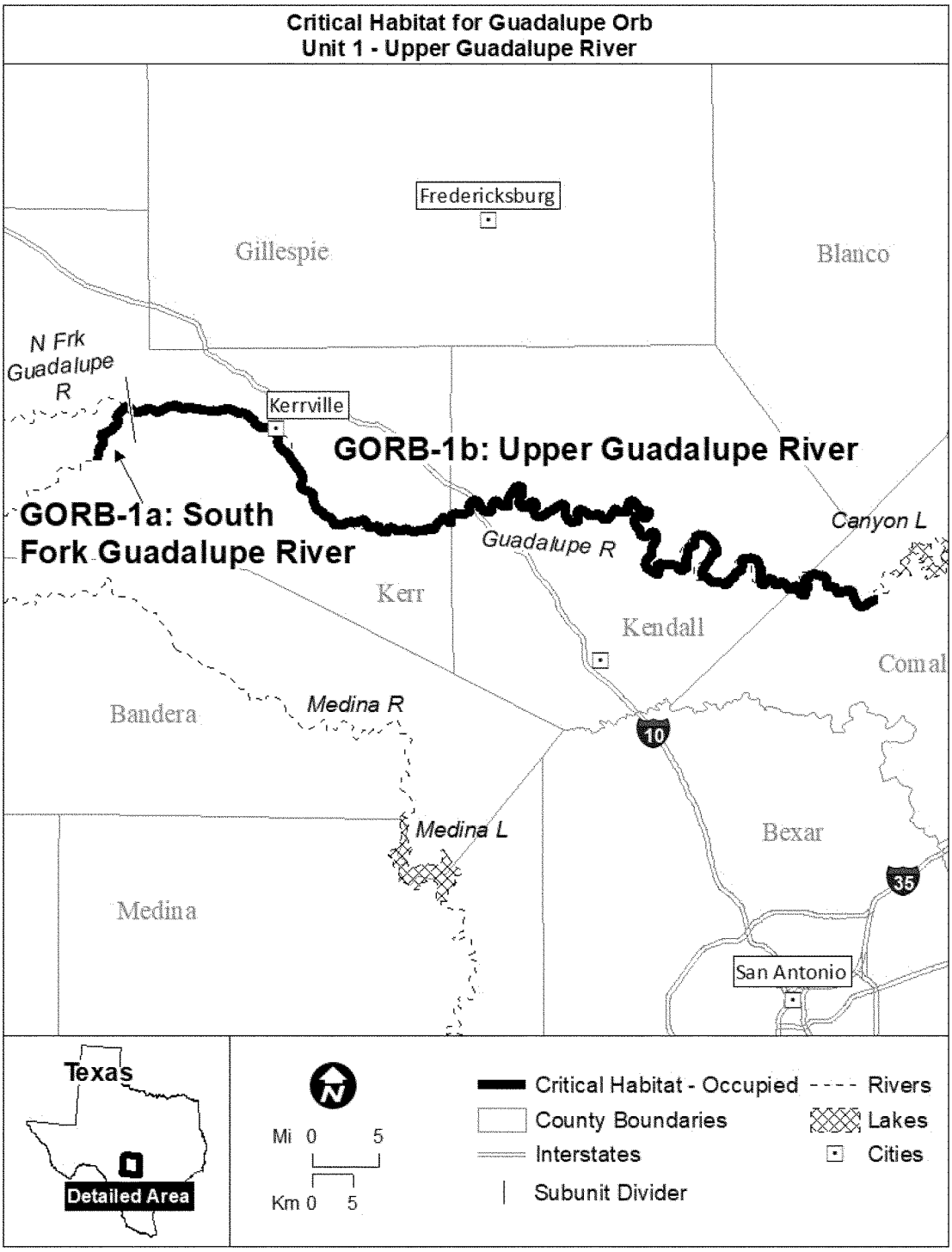
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) 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–R2–ES–2019–0061.

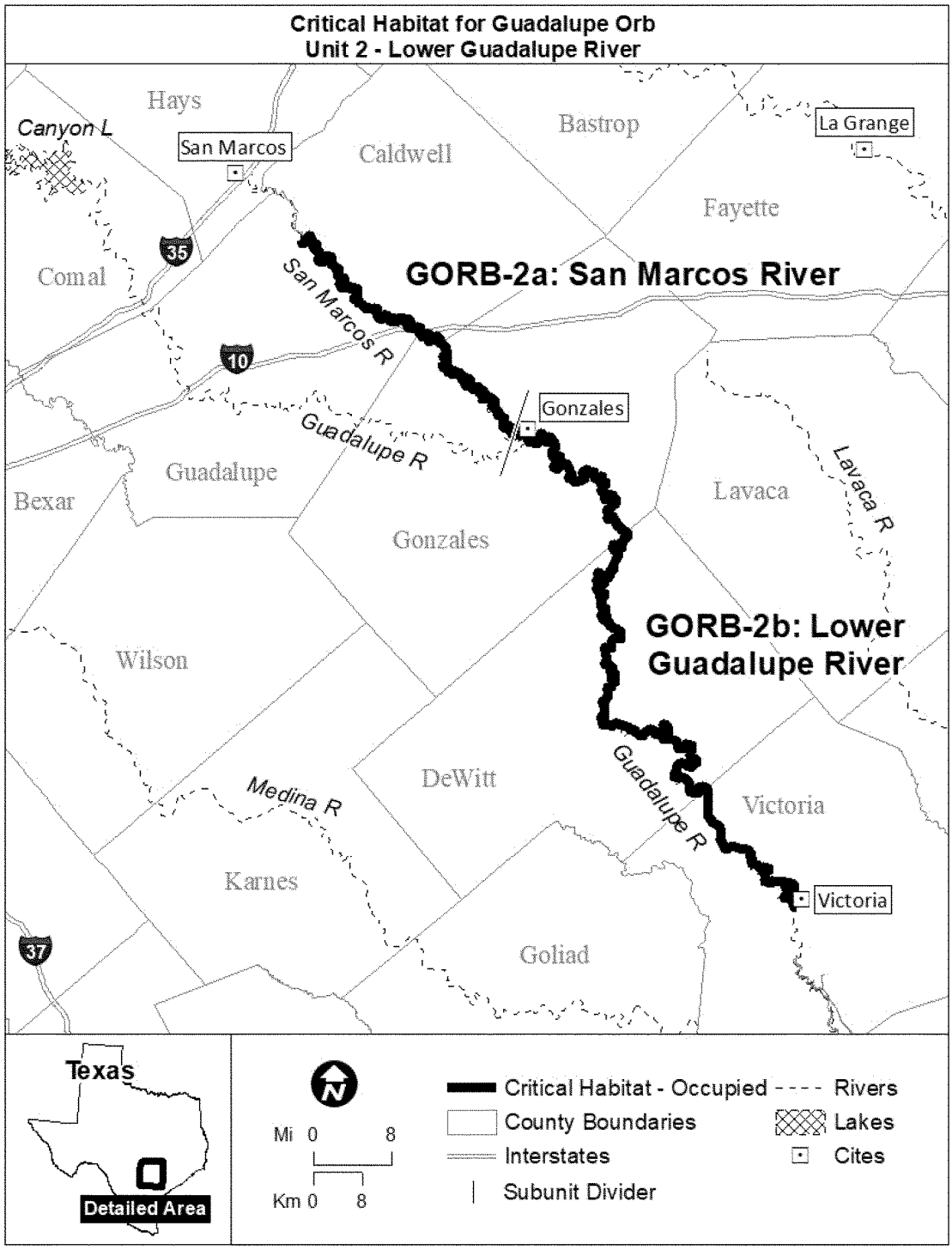
(5) *Note:* An index map of the critical habitat designations for the Central Texas mussels, which includes the Guadalupe orb, can be found in this paragraph (f) at the entry for the Guadalupe fatmucket. An index map of critical habitat units for the Guadalupe orb follows:


Critical Habitat for Guadalupe Orb - Unit Overview
L Travis
Austin
Colorado R
GORB-1b
GORB-1a
Canyon L
Guadalupe R
GORB-2a
San Marcos R
Medina R
San Antonio
GORB-2b
San Antonio R
Guadalupe R
Nueces R
10
35
37
Texas
Detailed Area
Mi 0 10
Km 0 10
Critical Habitat - Occupied
County Boundaries
Interstates
Subunit Divider
Rivers
Lakes
Cities

(6) Map of Unit GORB–1: Upper Guadalupe River follows:



(7) Map of Unit GORB–2: Lower Guadalupe River follows:



* * * * *

Texas Pimpleback (*Cyclonaias petrina*)

(1) Critical habitat units are depicted for Brown, Coleman, Colorado, Concho, Kimble, Lampasas, Mason, McCulloch, Menard, Mills, San Saba, Tom Green, and Wharton Counties, Texas, on the maps in this critical habitat entry.

(2) Within these areas, the physical or biological features essential to the conservation of Texas pimpleback consist of the following components within waters and streambeds up to the ordinary high-water mark:

(i) Flowing water at rates suitable to keep riffle habitats wetted and well-oxygenated and to prevent excess sedimentation or scour during high-flow events but not so high as to dislodge individuals;

(ii) Stable riffles and runs with substrate composed of cobble, gravel, and fine sediments;

(iii) Channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictus olivaris*), and tadpole madtom (*Noturus gyrinus*) present; and

(iv) Water quality parameters within the following ranges:

(A) Dissolved oxygen >2 mg/L;

(B) Salinity <2 ppt;

(C) Total ammonia <0.77 mg/L total ammonia nitrogen;

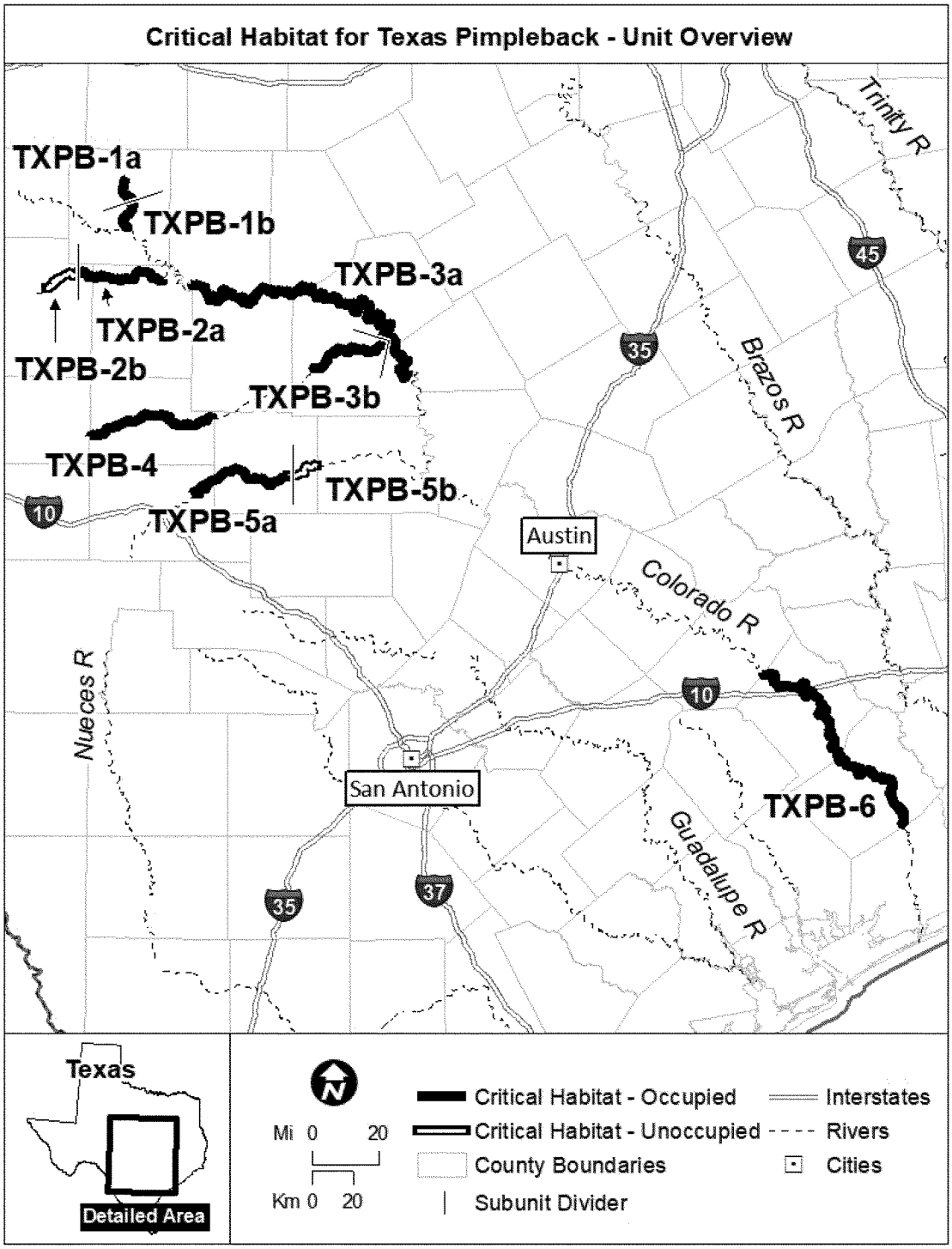
(D) Water temperature <29 °C (84.2 °F); and

(E) Low levels of contaminants.

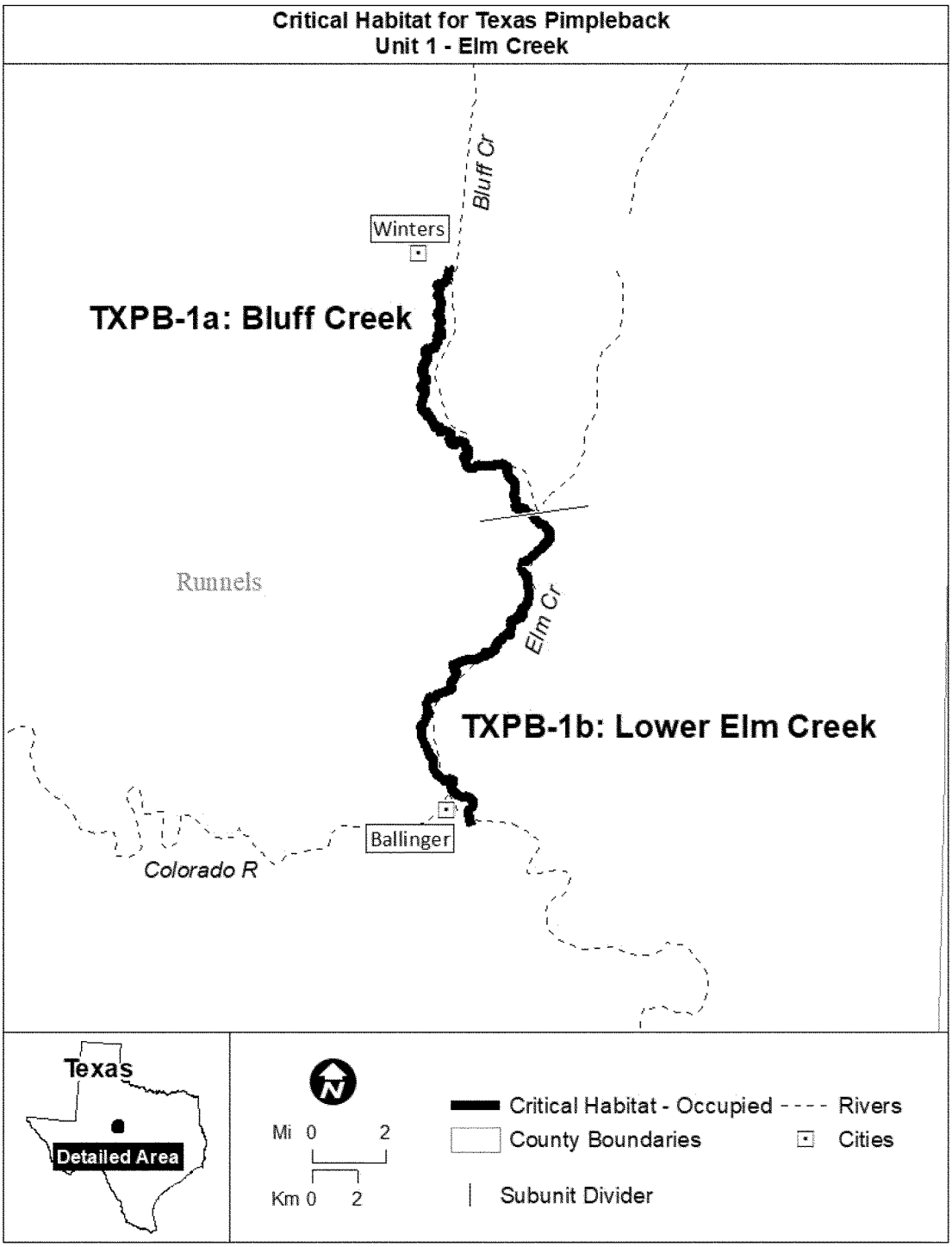
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) 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–R2–ES–2019–0061.

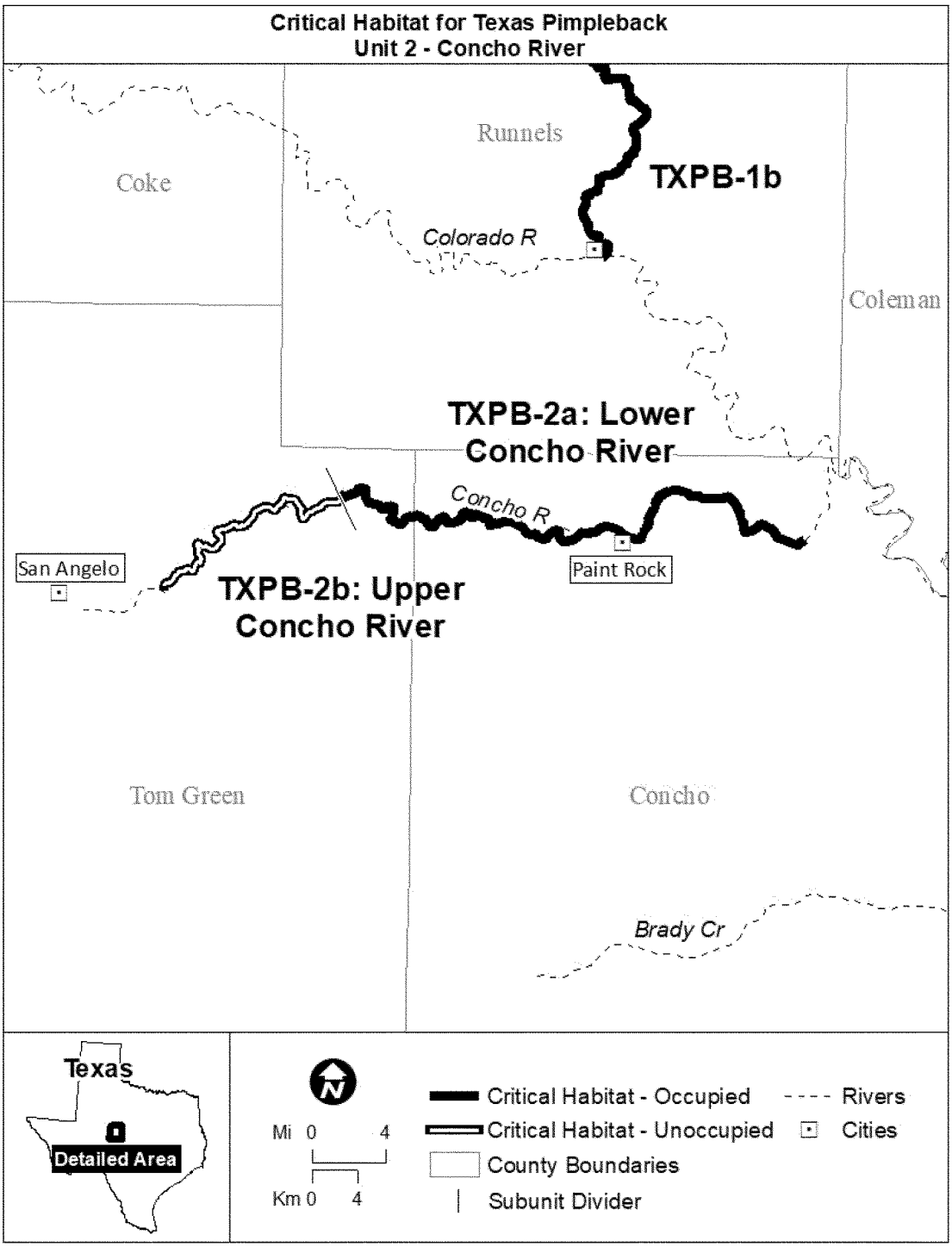
(5) *Note:* An index map of the critical habitat designations for the Central Texas mussels, which includes the Texas pimpleback, can be found in this paragraph (f) at the entry for the Guadalupe fatmucket. An index map of critical habitat units for the Texas pimpleback follows:


Critical Habitat for Texas Pimpleback - Unit Overview
TXPB-1a
TXPB-1b
TXPB-2a
TXPB-2b
TXPB-3a
TXPB-3b
TXPB-4
TXPB-5a
TXPB-5b
TXPB-6
Austin
San Antonio
Trinity R
Brazos R
Colorado R
Nueces R
Guadalupe R
45
35
10
37
Texas
Detailed Area
Mi 0 20
Km 0 20
Critical Habitat - Occupied
Critical Habitat - Unoccupied
County Boundaries
Subunit Divider
Interstates
Rivers
Cities

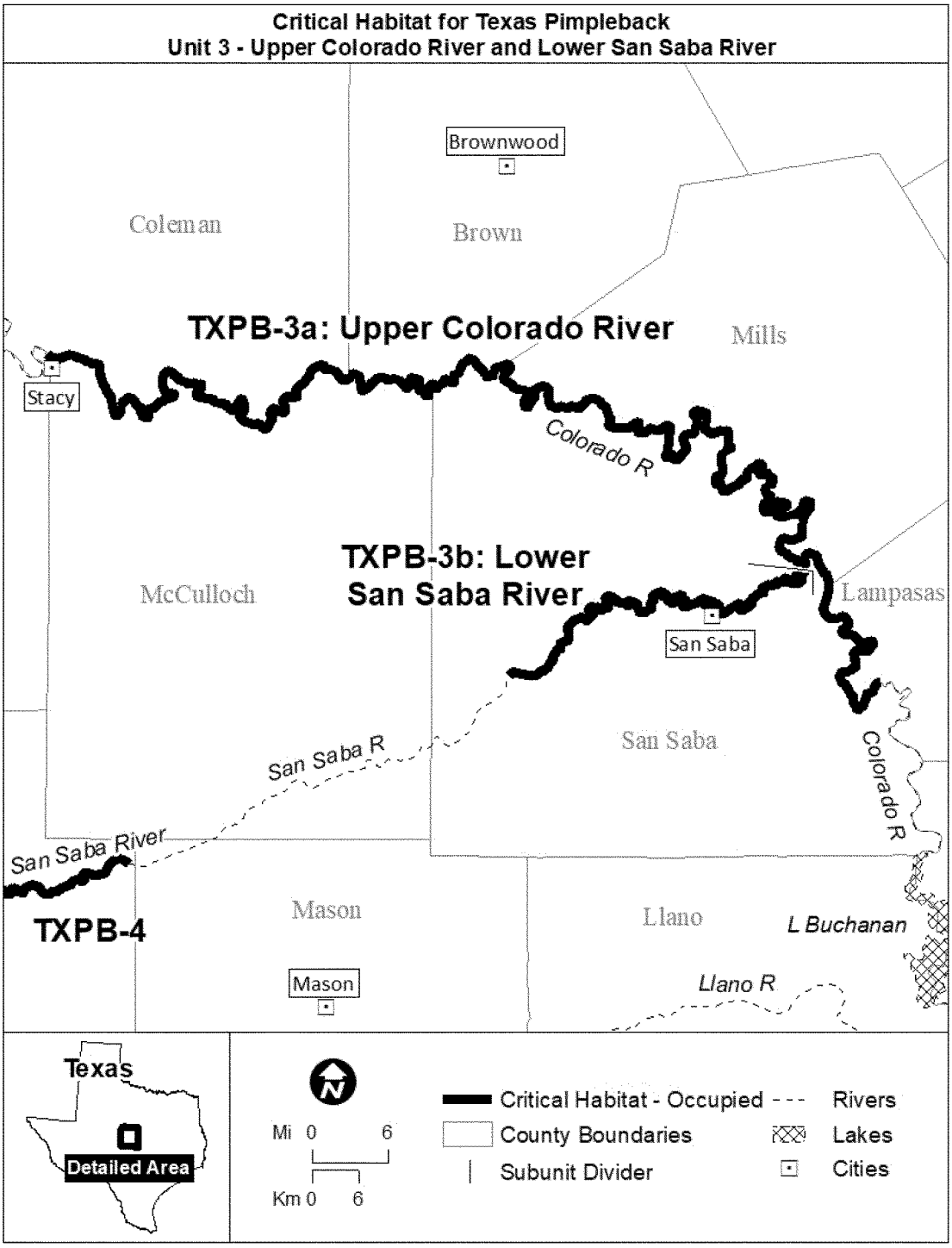
(6) Map of Unit TXPB–1: Elm Creek follows:



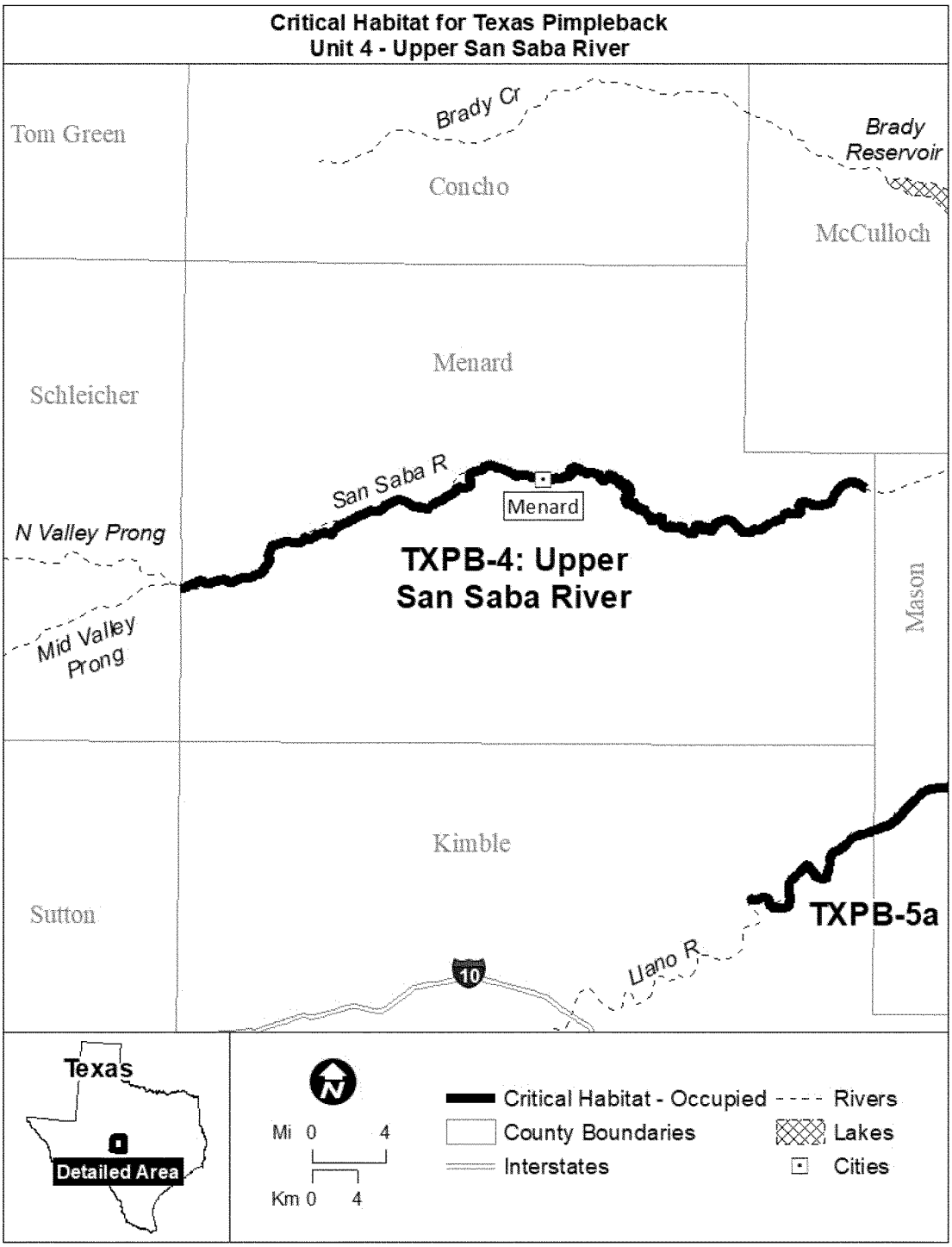
(7) Map of Unit TXPB–2: Concho River follows:



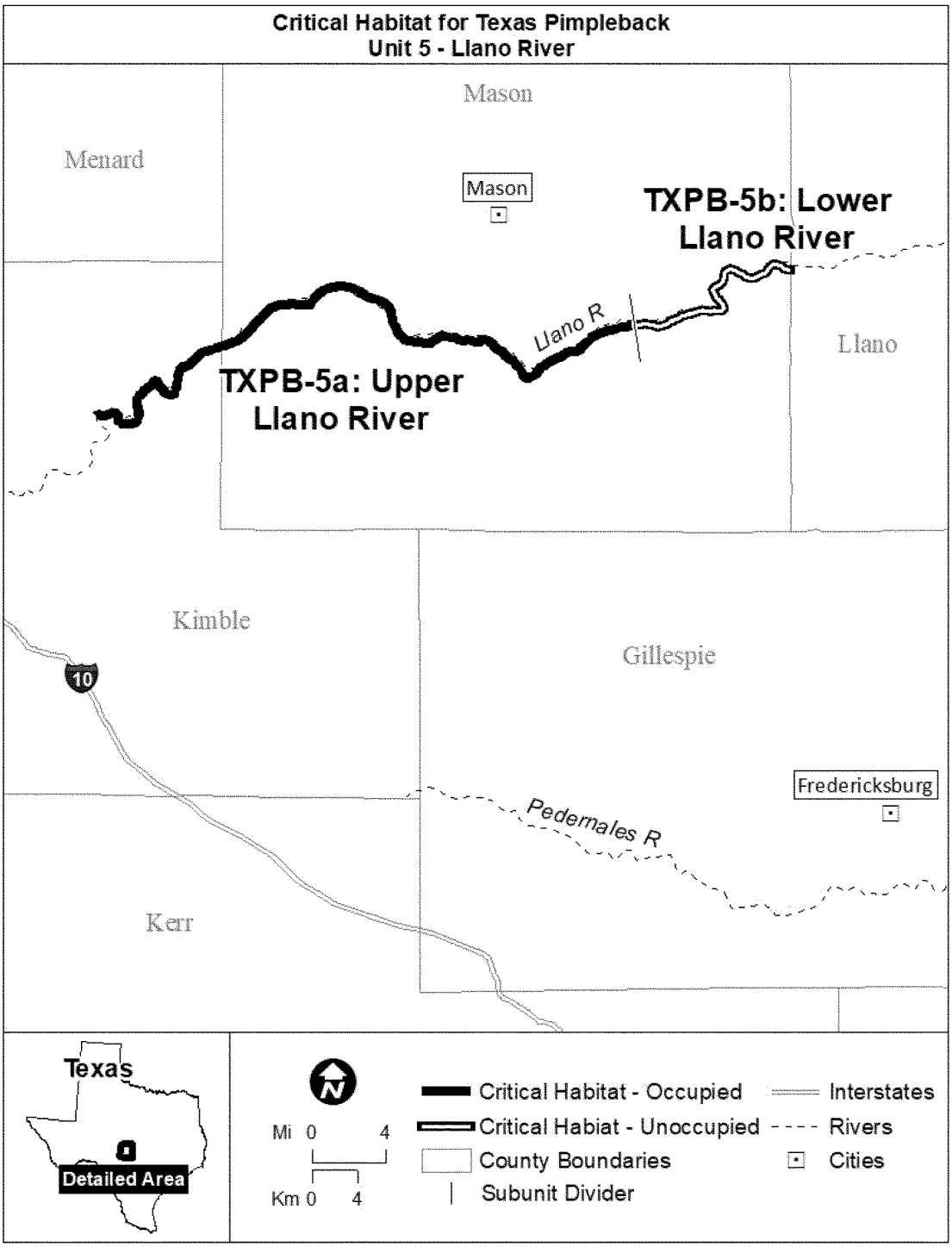
(8) Map of Unit TXPB–3: Upper Colorado River and Lower San Saba River follows:



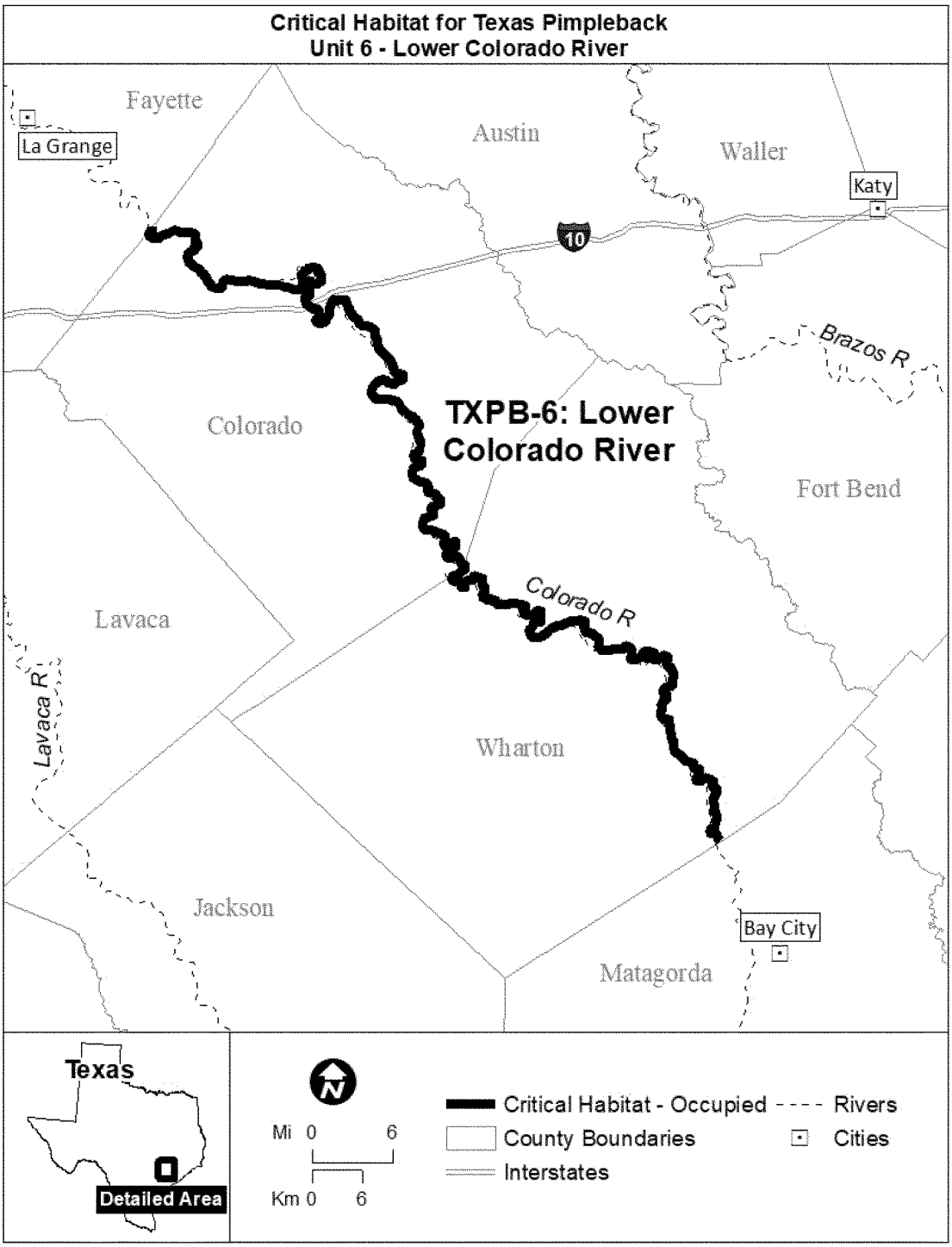
(9) Map of Unit TXPB–4: Upper San Saba River follows:



(10) Map of Unit TXPB–5: Llano River follows:



(11) Map of Unit TXPB–6: Lower Colorado River follows:



False Spike (*Fusconaia mitchelli*)

(1) Critical habitat units are depicted for DeWitt, Gonzales, Kimble, Mason, Milam, San Saba, Victoria, and Williamson Counties, Texas, on the maps in this critical habitat entry.

(2) Within these areas, the physical or biological features essential to the conservation of false spike consist of the following components within waters and streambeds up to the ordinary high-water mark:

(i) Flowing water at rates suitable to keep riffle habitats wetted and well oxygenated, and to prevent excess sedimentation but not so high as to dislodge individuals;

(ii) Stable riffles and runs with cobble, gravel, and fine sediments;

(iii) Blacktail shiner (*Cyprinella venusta*) and red shiner (*Cyprinella lutrensis*) present; and

(iv) Water quality parameters within the following ranges:

(A) Dissolved oxygen >2 mg/L;

(B) Salinity <2 ppt;

(C) Total ammonia <0.77 mg/L total ammonia nitrogen;

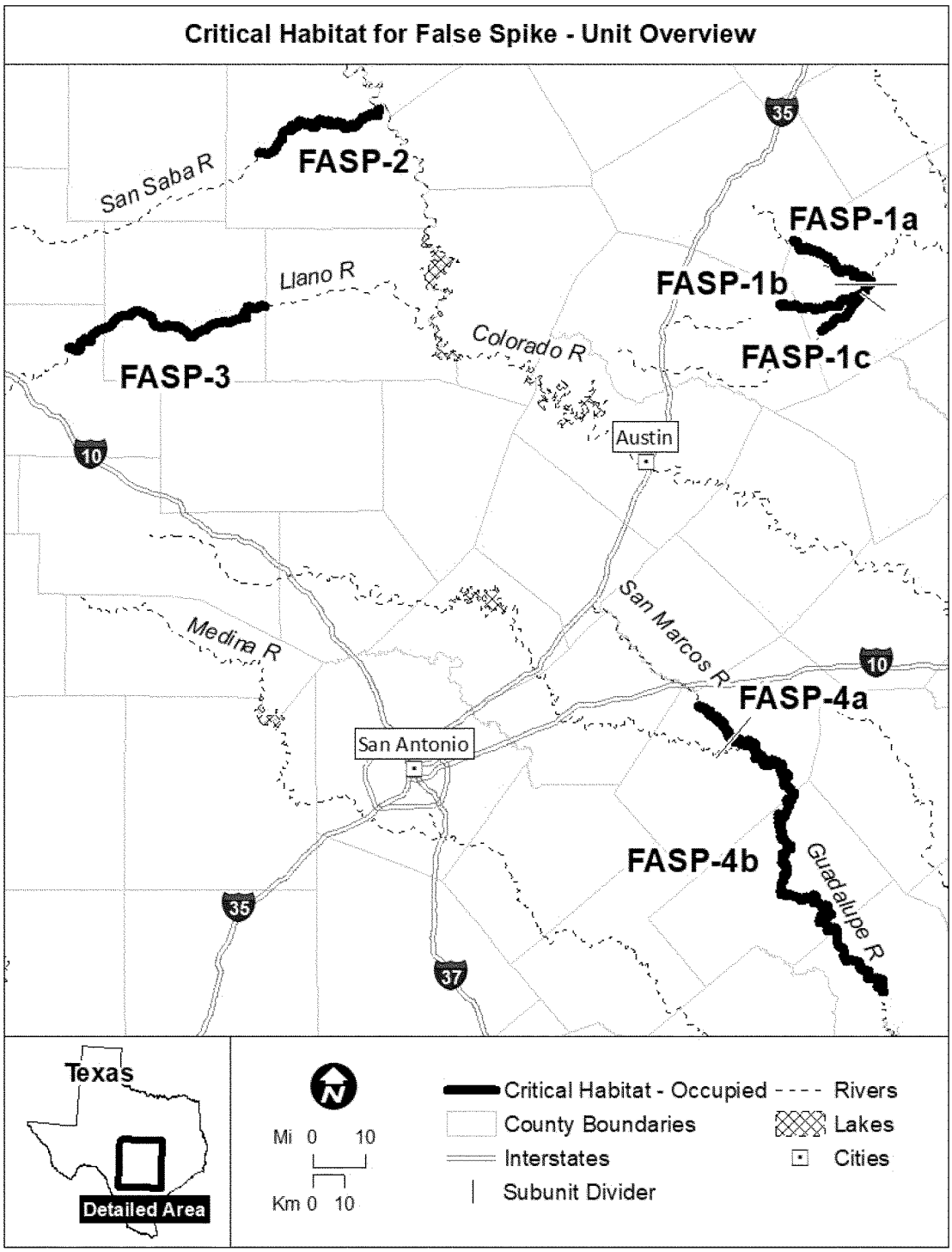
(D) Water temperature <29 °C (84.2 °F); and

(E) Low levels of contaminants.

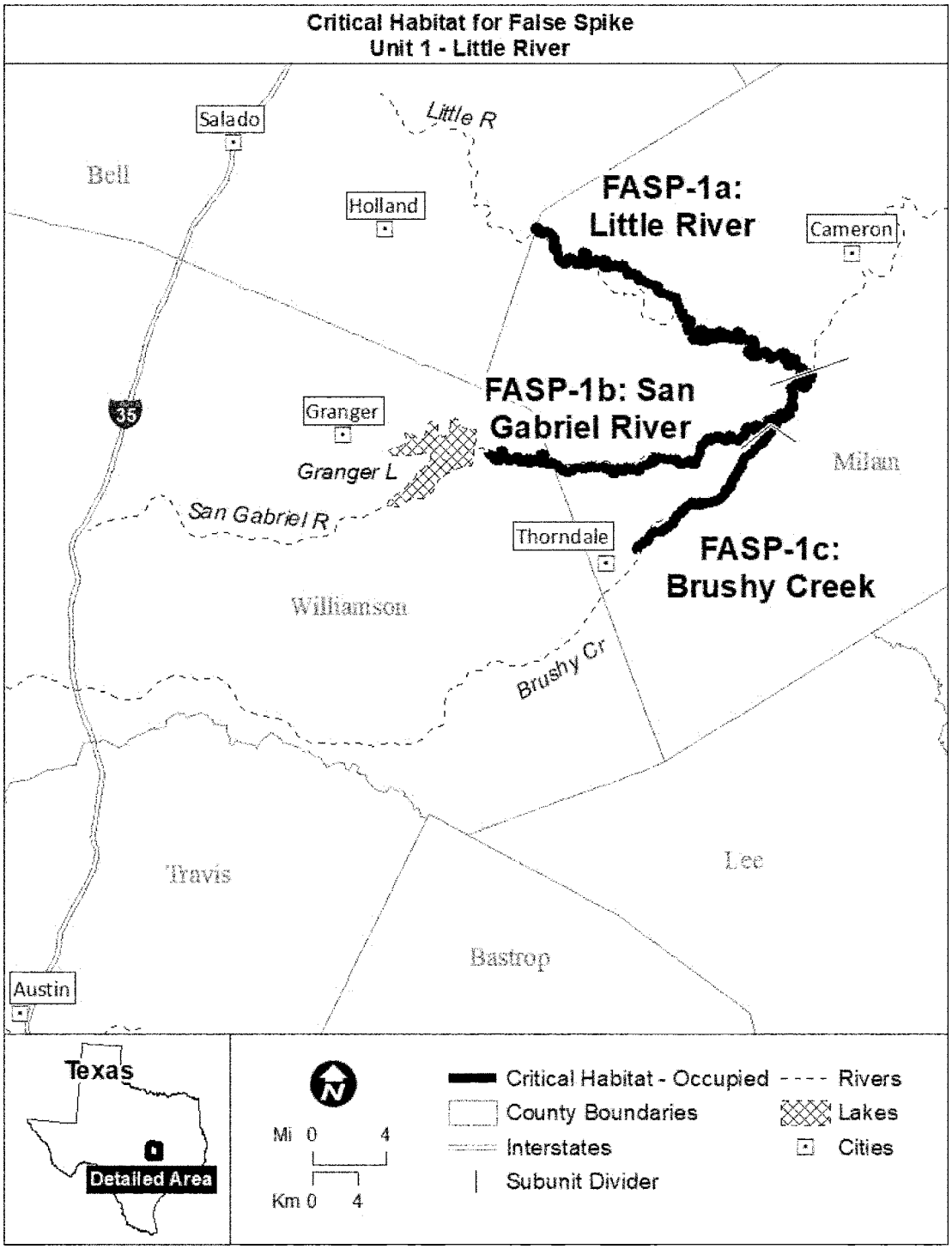
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) 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–R2–ES–2019–0061.

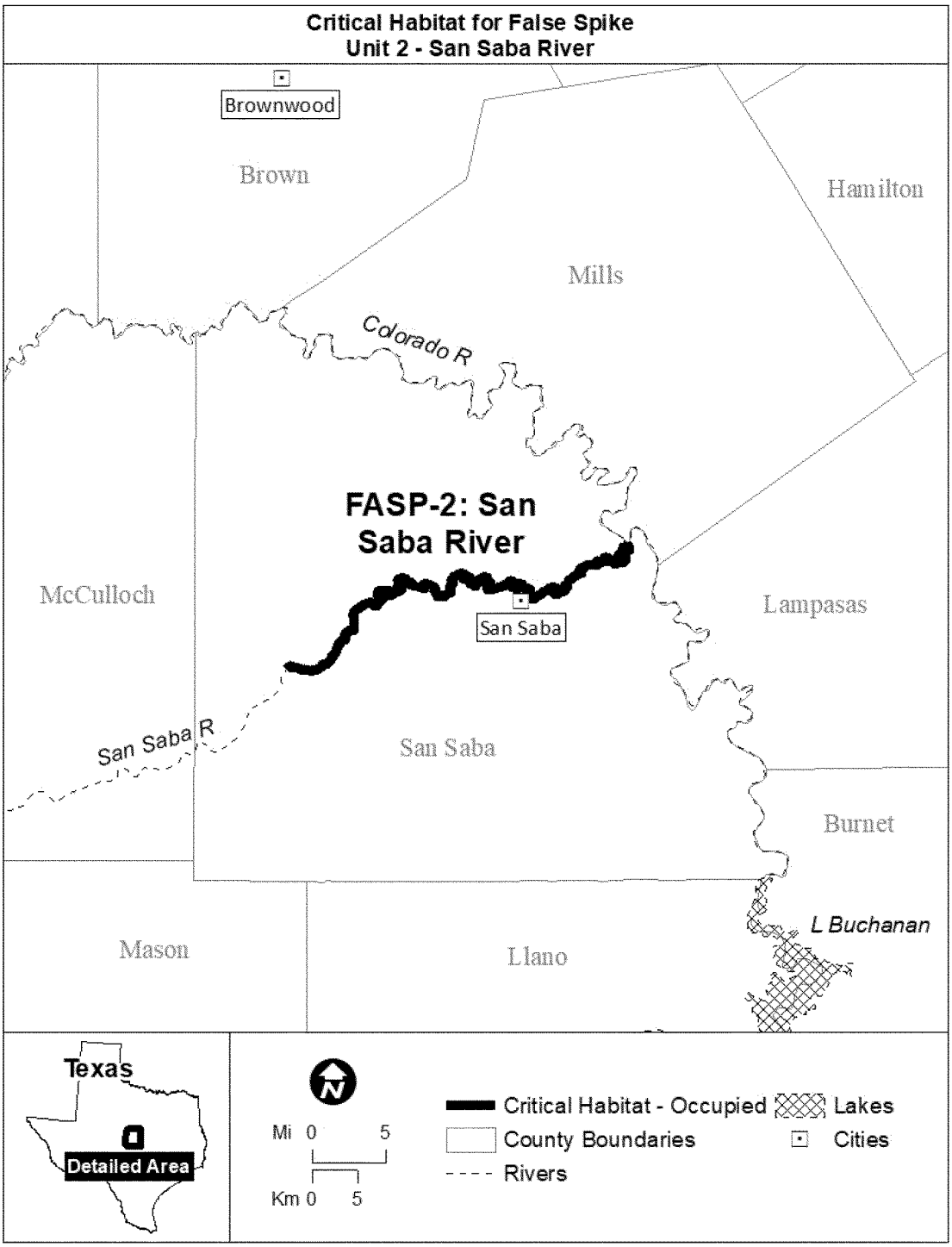
(5) *Note:* An index map of the critical habitat designations for the Central Texas mussels, which includes the false spike, can be found in this paragraph (f) at the entry for the Guadalupe fatmucket. An index map of critical habitat units for the false spike follows:



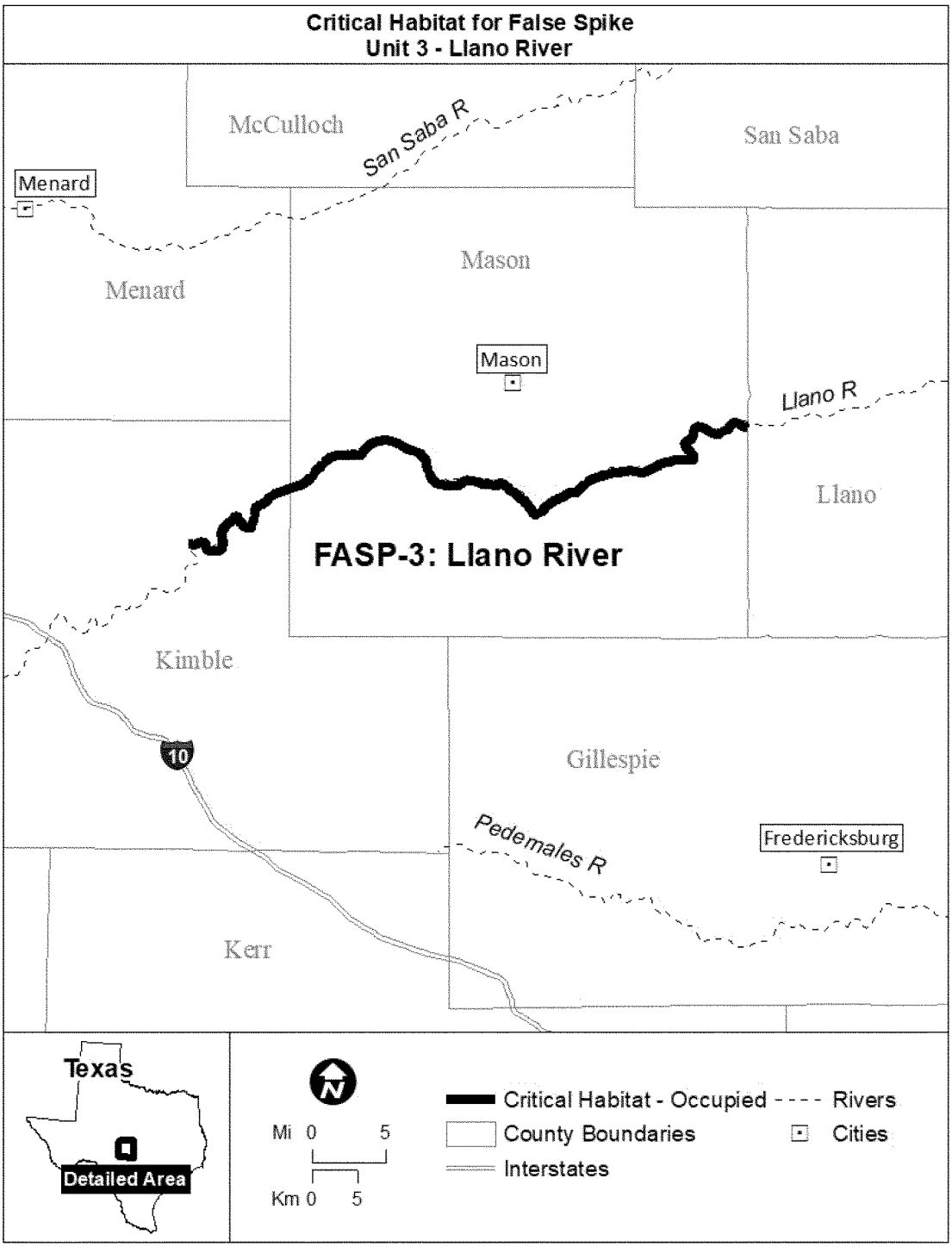
(6) Map of Unit FASP–1: Little River follows:



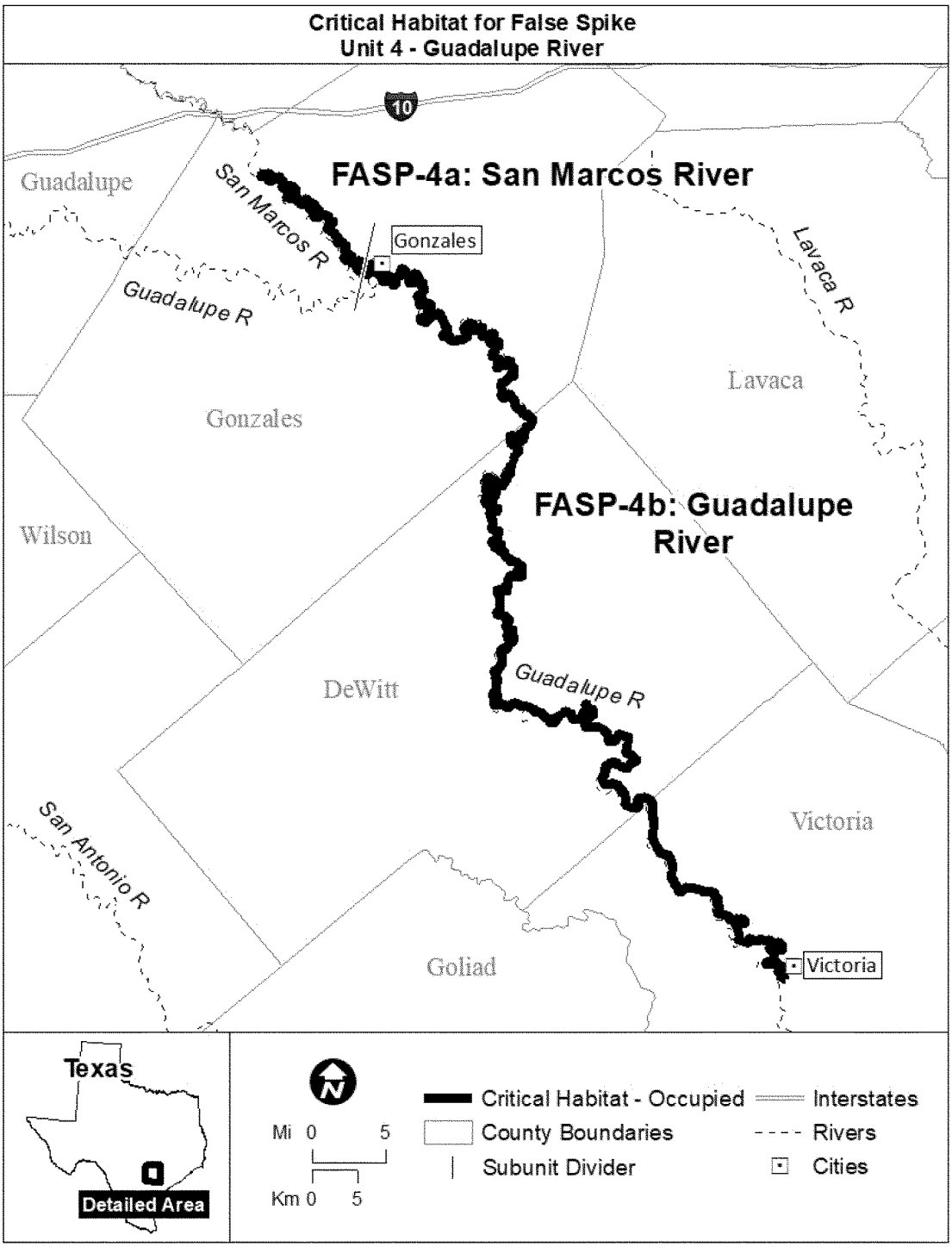
(7) Map of Unit FASP–2: San Saba River follows:



(8) Map of Unit FASP–3: Llano River follows:



(9) Map of Unit FASP–4: Guadalupe River follows:



* * * * *

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director U.S. Fish and Wildlife Service.

[FR Doc. 2021–18012 Filed 8–25–21; 8:45 am]

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