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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4274

[Docket No. RBS–20–BUSINESS–0032]

RIN 0570–AA99

Intermediary Relending Program; Correction

AGENCY: Rural Business-Cooperative Service, Department of Agriculture (USDA).

ACTION: Final rule; correcting amendment.

SUMMARY: On December 21, 2021, Rural Development's Rural Business-Cooperative Service (hereinafter referred to as ''the Agency'') published a document that completed a revision to the Intermediary Relending Program (IRP) regulations to streamline process, provide clarity on the daily administration of the program, and incorporate program updates. Following the final implementation of the final rule, the Agency found that a correction due to an error, is necessary. This document corrects the final rule.

DATES: Effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT: For information specific to this notice contact Michele Brooks, Director, Regulations Management, Rural Development Innovation Center—Regulations Management, USDA, 1400 Independence Avenue SW, STOP 1522, Room 4266, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Email *michele.brooks@usda.gov.*

SUPPLEMENTARY INFORMATION: The Rural Business-Cooperative Service is issuing a correction to the final rule that published December 21, 2021, at 86 FR 72151. In that rule, an inadvertent error provided an incorrect section reference in § 4274.333(b)(4)(iii). This correcting amendment provides the proper information.

List of Subjects in 7 CFR Part 4274

Community development, Loan programs-business, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, the Rural Business-Cooperative Service corrects 7 CFR part 4274 with the following correcting amendment:

PART 4274—DIRECT AND INSURED LOANMAKING

■ 1. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

■ 2. Amend § 4274.333 by revising (b)(4)(iii) to read as follows:

§ 4274.333 Loan agreements between the Agency and the intermediary.

* * * * *

(b) * * *

(4) * * *

(iii) Annual proposed budget for the following year that meets the requirements of § 4274.332(b)(2); and

* * * * *

Karama Neal,

Administrator, Rural Business-Cooperative Service, U.S. Department of Agriculture.

[FR Doc. 2022–06830 Filed 3–31–22; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 217, and 286

[Docket No. USCBP–2021–0014; CBP Dec. 22–07]

RIN 1651–AB14

Implementation of the Electronic System for Travel Authorization (ESTA) at U.S. Land Borders

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This rule amends Department of Homeland Security (DHS) regulations to implement the Electronic System for Travel Authorization (ESTA) requirements under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, for noncitizens who intend to enter the United States under the Visa Waiver Program (VWP) at land ports of entry. Currently, noncitizens from VWP countries must provide certain biographic information to U.S. Customs and Border Protection (CBP) officers at land ports of entry on a paper I–94W Nonimmigrant Visa Waiver Arrival/Departure Record (Form I–94W). Under this rule, these VWP travelers will instead provide this information to CBP electronically through ESTA prior to application for admission to the United States. DHS has already implemented the ESTA requirements for noncitizens who intend to enter the United States under the VWP at air or sea ports of entry.

DATES: This rule is effective May 2, 2022. Comments must be received on or before May 2, 2022.

ADDRESSES: You may submit comments, identified by docket number, by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2021–0014.

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Due to relevant COVID–19-related restrictions, CBP has temporarily suspended its on-site public inspection of submitted comments.

FOR FURTHER INFORMATION CONTACT: Sikina S. Hasham, Director, Electronic System for Travel Authorization (ESTA), Office of Field Operations, 202–325–8000, *sikina.hasham@cbp.dhs.gov.*

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. U.S. Customs and Border Protection (CBP) also invites comments on the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Written comments must be submitted on or before May 2, 2022. CBP will consider those comments and make any changes appropriate after consideration of those comments.

II. Executive Summary

The Visa Waiver Program (VWP) permits eligible citizens and nationals from 40 participating countries to apply for admission to the United States at ports of entry for periods of 90 days or less for business or pleasure without first obtaining a nonimmigrant B–1, B–2, or B–1/B–2 visa. The Department of Homeland Security (DHS) is amending its regulations to require VWP travelers applying for admission at U.S. land ports of entry to receive a travel authorization via the Electronic System for Travel Authorization (ESTA) from CBP prior to applying for admission to the United States.

A travel authorization via ESTA is a positive determination of eligibility to travel to the United States under the VWP. Travelers without a travel authorization must have a visa issued by a U.S. Embassy or Consulate for admission to the United States.

Currently, VWP travelers applying for admission at U.S. land ports of entry must complete a paper I–94W Nonimmigrant Visa Waiver Arrival/Departure Record (Form I–94W) prior to admission that provides biographical and travel information to CBP. Through this interim rule, instead of completing a paper Form I–94W at land ports of entry, VWP travelers must now provide this information electronically to CBP via ESTA.

DHS has already instituted the ESTA program at air and sea ports of entry. On June 9, 2008, DHS published an interim final rule (IFR), ''Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program,'' in the **Federal Register** (73 FR 32440) (hereafter, ''ESTA Air and Sea IFR'') announcing the creation of the ESTA program for nonimmigrant visitors traveling to the United States by air or sea under the VWP. After a thorough review of the comments received, on June 8, 2015, DHS published in the **Federal Register** (80 FR 32267) a final rule titled ''Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program and the Fee for Use of the System'' (hereafter, ''ESTA Air, Sea, and Fee Final Rule'').[1] Specifically, DHS amended title 8 of the Code of Federal Regulations (CFR) to provide that VWP travelers applying for admission at U.S. air and sea ports of entry must receive a travel authorization from CBP via ESTA. *See* 8 CFR 217.5 (ESTA regulations). The ESTA regulations set forth the general requirements, the time frame for obtaining a travel authorization, the required data elements, the duration of a travel authorization, and the fee for obtaining a travel authorization. With the implementation of ESTA, VWP travelers who arrive at air and sea ports of entry are no longer required to complete a paper Form I–94W.

This interim rule expands the requirements of ESTA to land ports of entry. Specifically, it extends the electronic collection of the information requested on paper Form I–94W to VWP travelers who intend to travel to the United States by land. For these travelers, all the ESTA requirements in 8 CFR 217.5 are identical to air and sea travelers, except for the time frame for receiving a travel authorization.

As provided in 8 CFR 217.5(b), air and sea VWP travelers must receive a travel authorization prior to embarking on a carrier for travel to the United States. Under this interim rule, however, VWP travelers intending to travel to the United States by land must instead receive a travel authorization prior to application for admission to the United States. The different time frames take into account the fact that travel by land is often by privately owned vehicle or on foot and not by carrier, as is usually the case when people travel to the United States by air or sea.

To expedite the admission process, DHS encourages VWP travelers who intend to travel to the United States by land to apply for a travel authorization at least 72 hours in advance of their anticipated arrival at a U.S. land port of entry. By submitting an ESTA application well in advance of anticipated arrival at a land port of entry, a traveler will be able to minimize the likelihood that he or she will be found to be inadmissible under the VWP upon arrival at the port of entry and prevent a potentially long wait time at the border while his or her application is under review.

Implementing ESTA at land ports of entry will expedite the admission of VWP travelers and reduce traveler delays, especially when VWP travelers apply for a travel authorization in advance of travel. A travel authorization will be valid at all ports of entry. Therefore, if a VWP traveler already has a valid travel authorization obtained for air or sea travel, the traveler will not need to obtain another travel authorization for admission at a land port of entry.

Following the implementation of ESTA at U.S. land ports of entry, all VWP travelers are required to complete the electronic version of the paper Form I–94W (*i.e.,* an ESTA application) instead of the paper Form I–94W.

As discussed in Section IV(B) of the Background section, ''Executive Orders 13563 and 12866,'' and detailed in the complete regulatory assessment entitled ''Regulatory Assessment for the

[1] On August 9, 2010, DHS published an IFR in the **Federal Register** (75 FR 47701) to establish a fee for ESTA.

Implementation of the Electronic System for Travel Authorization (ESTA) at U.S. Land Borders Interim Final Rule,'' available at docket number USCBP–2021–0014, this rule will provide immediate benefits to VWP travelers and to CBP. This rule will produce a consistent, modern VWP admission policy, strengthen national security through enhanced traveler vetting, expedite entry processing at land ports of entry, collect Form I–94W information electronically, and reduce inadmissible traveler inspections, generating time and cost savings for CBP and VWP travelers.

III. Background

A. Visa Waiver Program

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security, in consultation with the Secretary of State, may designate countries for participation in the VWP if certain requirements are met. See 8 U.S.C. 1187(c)(2). The INA also sets forth requirements for continued eligibility and termination of VWP status.

Eligible citizens and nationals of VWP countries may apply for admission at a U.S. port of entry as nonimmigrant visitors for a period of ninety (90) days or less for business or pleasure without first obtaining a nonimmigrant B–1, B–2, or B–1/B–2 visa. These travelers, however, must comply with applicable regulations and be admissible under statutory and regulatory requirements.[2] Other nonimmigrant visitors who are not from VWP countries, or visitors from VWP countries who are traveling for purposes other than business or pleasure, must obtain a visa from a U.S. Embassy or Consulate and generally must undergo an interview by consular officials overseas in advance of travel to the United States.

1. Current CBP Processing of VWP Travelers at Land Ports of Entry

The way in which a VWP traveler is processed at a land port of entry depends on the documentation the traveler presents upon application for admission. In some cases, the VWP traveler may be referred to secondary processing. Generally, in secondary processing, the traveler must complete a paper Form I–94W and pay a $6.00 processing fee. CBP estimates that the paper Form I–94W takes 16 minutes (0.2667 hours) to complete.[3]

In secondary, once a VWP traveler completes the paper Form I–94W, a CBP officer enters the traveler's passport and paper Form I–94W information into an internal database and collects the traveler's biometric data (*i.e.,* fingerprints and photograph). CBP uses the data collected on the paper Form I–94W to populate a database of crossing history and admission status in the United States. This database stores the admissions and departures of travelers entering or leaving the United States. The CBP officer also checks the visitor's personal information against lost and stolen passport databases, government watch lists, and other DHS resources. Based on this information, as well as an interview with the traveler, the CBP officer determines whether or not the traveler is admissible to the United States. If admissible, the CBP officer stamps the traveler's paper Form I–94W and passport, provides the traveler with the departure portion of the paper Form I–94W (''I–94W Departure Record'') and grants the traveler admission to the United States for a period of up to 90 days (''90-day VWP admission period'').[4]

The processing of a VWP traveler at a land port of entry may be different if the traveler is within a current 90-day VWP admission period (meaning, the traveler has been processed and admitted into the United States under the VWP within the last 90 days, with or without a current ESTA travel authorization), or if the traveler has a current ESTA travel authorization, but is not within a current 90-day VWP admission period.

In the former case, where the traveler is within a current 90-day VWP admission period, the traveler may generally be processed at CBP's primary inspection. This is because the information typically gathered during secondary processing was already captured earlier through either the traveler's ESTA application (if he or she first arrived in the United States by air or sea) or the Form I–94W (if he or she first arrived in the United States by land). This scenario typically occurs when a VWP traveler who has already been admitted into the United States takes a brief excursion into Canada or Mexico, and then seeks to re-enter the United States to resume his or her visit.

In the latter case, when a VWP traveler has a valid ESTA travel authorization, but is not within a current 90-day VWP admission period, the traveler must go to secondary processing and pay the $6.00 processing fee, but he or she does not need to complete the paper Form I–94W because CBP already has the traveler's relevant information through his or her ESTA application.

If a traveler is refused admission to the United States under the VWP, he or she can visit the nearest U.S. Embassy or Consulate to apply for a nonimmigrant B–1, B–2, or B–1/B–2 visa. This visa would cost a traveler approximately $302 in fees and time costs to obtain.[5] The overall U.S.

[2] For VWP travelers arriving at the United States at air and sea ports of entry, the ESTA requirements as set forth in 8 CFR 217.5 apply. ESTA requirements are described in detail in Section III(B) of the Background section of this document.

[3] Source: U.S. Customs and Border Protection. *Supporting Statement for Paperwork Reduction Act Submission 1651–0111: Arrival and Departure Record (Forms I–94, I–94W) and Electronic System for Travel Authorization (ESTA).* February 12, 2019. Available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-1651-001.* Accessed May 22, 2019.

[4] Generally, admitted VWP visitors must surrender the I–94W Departure Record when leaving the United States. This allows CBP to accurately record traveler departures. However, admitted VWP travelers are not required to surrender the Form I–94W Departure Record when departing the United States for Canada or Mexico for a trip of less than 30 days. These travelers may retain their I–94W Departure Record so that when they resume their visit to the United States, via a land port of entry, they are not required to complete another paper Form I–94W. They may be readmitted into the United States for the balance of time remaining on their 90-day VWP admission period.

[5] The fees to obtain a nonimmigrant B–1, B–2, or B–1/B–2 visa include a $160.00 U.S. Department of State fee for DS–160: Online Nonimmigrant Visa Application processing and an estimated $40.00 in photo, courier, and other miscellaneous expenses. The time cost to obtain a nonimmigrant B–1, B–2, or B–1/B–2 visa is approximately $102, based on the estimated 5-hour time burden to obtain a nonimmigrant B–1, B–2, or B–1/B–2 visa (including the time spent completing Form DS–160: Online Nonimmigrant Visa Application, traveling to a U.S. Embassy or Consulate for the nonimmigrant B–1, B–2, or B–1/B–2 visa interview, waiting for the interview, and undergoing the interview) and a VWP traveler's hourly time value of $20.40. CBP bases the $20.40 hourly time value for VWP travelers on the U.S. Department of Transportation's (DOT) hourly time value of $20.40 for all-purpose, intercity travel by surface-modes, except high-speed rail. For the purposes of this analysis, CBP assumes that the DOT time value, reported in 2015 U.S. dollars, would be the same for 2019. Source of visa processing fee cost: U.S. Department of State. ''Fees for Visa Services.'' Available at *https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/fees-visa-services.html.* Accessed May 7, 2018. Source of photo cost: U.S. Department of State. Supporting Statement for Paperwork Reduction Act Submission: 1405–0015, Application for Immigrant Visa and Alien Registration (Form DS–230). August 3, 2018. Available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201808-1405-001.* Accessed December 20, 2018. Source of other fees: CBP estimates. Source of VWP traveler's hourly time value: U.S. Department of Transportation, Office of Transportation Policy. The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2016 Update). ''Table 4 (Revision 2—2016 Update): Recommended Hourly Values of Travel Time Savings.'' September 27, 2016. Available at *https://www.transportation.gov/sites/dot.gov/files/docs/*

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admission refusal rate for VWP travelers at land ports of entry is low. From fiscal year (FY) 2013 to FY 2017, CBP recorded 4.0 million VWP traveler arrivals at U.S. land ports of entry, with 99.9 percent of arrivals resulting in admissions to the United States and 0.1 percent resulting in refusals based on paper Form I–94W processing.[6]

2. Current CBP Processing of VWP Travelers at Air and Sea Ports of Entry

A nonimmigrant noncitizen arriving at a U.S. air or sea port of entry under the VWP must obtain a travel authorization via ESTA prior to embarking on a carrier for travel to the United States. If the traveler does not have a travel authorization, he or she must hold an unexpired visa issued by a U.S. Embassy or Consulate. *See* Section 217(a) of the INA, 8 U.S.C. 1187(a). *See also* 8 CFR part 217. The relevant history regarding this ESTA requirement is set forth below.

In response to the events of September 11, 2001, Congress enacted the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53 (9/11 Act). To address aviation security vulnerabilities of the VWP, section 711 of the 9/11 Act required the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a fully automated electronic travel authorization system for VWP travelers visiting the United States. The system would collect biographical and other information the DHS Secretary deems necessary to evaluate, in advance of travel, the eligibility of the applicant to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. *See* 8 U.S.C. 1187(h)(3)(A). Prior to the establishment of ESTA, VWP travelers could board planes to the United States and be found inadmissible upon arrival at CBP inspection. By establishing ESTA, DHS is able to identify whether the traveler is likely to be admissible upon arrival before the traveler embarks on travel to the United States.

DHS established the electronic equivalent of the paper Form I–94W process at air and sea ports of entry as set forth in the ESTA Air and Sea IFR (73 FR 32440), published on June 9, 2008, and in the ESTA Air, Sea, and Fee Final Rule (80 FR 32267), published on June 8, 2015. ESTA provides for an electronic collection of the information required on the paper Form I–94W in advance of travel. ESTA fulfills the statutory requirements described in section 711 of the 9/11 Act.

DHS stated in the ESTA Air and Sea IFR that the development and implementation of the ESTA program would eventually allow DHS to automate the requirement that VWP travelers complete a paper Form I–94W prior to being admitted to the United States. *See* 73 FR 32440 at 32443. While the ESTA Air and Sea IFR established the regulations for ESTA, section 711 of the 9/11 Act required DHS to announce implementation of a mandatory ESTA system by publication of a notice in the **Federal Register** no less than 60 days before the date on which ESTA would become mandatory for all VWP travelers. On November 13, 2008, DHS published such a notice in the **Federal Register** (73 FR 67354) announcing that ESTA would be mandatory for all VWP travelers traveling to the United States seeking admission at air and sea ports of entry beginning January 12, 2009. At that point, DHS began an informed compliance period during which VWP travelers who arrived without prior ESTA authorization were not refused admission on that basis, but were instead permitted to complete the paper I–94W upon arrival in the United States. As of June 29, 2010, however, VWP travelers have been required to receive a travel authorization through the ESTA website, *https://www.cbp.gov/esta*, prior to boarding a conveyance destined for a U.S. air or sea port of entry. *See* 80 FR 32267 at 32285. Travelers who do not receive authorization through ESTA may still apply for a nonimmigrant B–1, B–2, or B–1/B–2 visa issued by a U.S. Embassy or Consulate.

On March 4, 2010, the United States Capitol Police Administrative Technical Corrections Act of 2009, Public Law 111–145, was enacted. Section 9 of this law, the Travel Promotion Act of 2009 (TPA), mandated that the Secretary of Homeland Security establish a fee for the use of ESTA and begin assessing and collecting the fee.

On August 9, 2010, DHS published an interim final rule ''Electronic System for Travel Authorization (ESTA); Travel Promotion Fee and Fee for Use of the System'' in the **Federal Register** (75 FR 47701) (hereafter, ''ESTA Fee IFR'') announcing that beginning September 8, 2010, a $4.00 ESTA operational fee would be charged to each ESTA applicant to ensure recovery of the full costs of providing and administering the system and an additional $10.00 Trade Promotion Act (TPA) fee would be charged to each ESTA applicant receiving travel authorization through September 30, 2015.[7] *See* 8 U.S.C. 1187(h)(3)(B), as amended, and 8 CFR 217.5(h).

In response to the request for comments in the ESTA Air and Sea IFR and the ESTA Fee IFR, DHS received a total of 39 submissions. Most of these submissions contained comments providing support, voicing concerns, highlighting issues, or offering suggestions for modifications to the ESTA program. After review and analysis of the comments, on June 8, 2015, DHS published the ESTA Air, Sea, and Fee Final Rule in the **Federal Register** (80 FR 32267) with two substantive regulatory changes. The first change allows the Secretary of Homeland Security to adjust travel authorization validity periods on a per country basis from a general validity period of two years, to a three-year maximum or to a lesser period of time. The second change concerns the TPA fee. In accordance with Section 605 of the Consolidated and Further Continuing Appropriations Act of 2015, DHS extended the end date for assessment of the Travel Promotion Act fee to September 30, 2020. DHS also removed a specific reference to the Pay.gov payment system in order to allow for flexibility in how CBP may collect ESTA fees.

The ESTA Air, Sea, and Fee Final Rule also outlines the various operational changes DHS has implemented since the ESTA program's inception based on the experience DHS gained from operating the ESTA program. For example, VWP travelers who provide an email address to DHS when they submit their application will receive an automated email notification indicating that their travel authorization will expire soon. DHS has also updated the information on the ESTA website to address some of the comments. Finally, DHS has also revised some of the ESTA questions to make them more understandable, removed one of the questions, and added some new questions to improve the screening of travelers before their travel to the United States.[8] All these changes took effect on November 3, 2014.

2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf. Accessed June 11, 2018.

[6] Email correspondence with CBP's Office of Field Operations on April 24, 2015 and May 17, 2018.

[7] On February 9, 2018, section 30203(a) of the Bipartisan Budget Act of 2018, Public Law 115–123, extended the sunset provision of the travel promotion fee through September 30, 2027. On December 20, 2019, section 806 of the Further Consolidated Appropriations Act of 2020, Public Law 116–94, increased the travel promotion fee from $10 to $17. CBP will be publishing a separate rule to reflect these legislative changes.

[8] The ESTA application and the paper Form I–94W are covered by OMB Control Number 1651–0111. The updated questions and additional questions were described in various notices regarding the extension and revision of information

For more details regarding ESTA and the fees associated with ESTA, please see: ESTA Air and Sea IFR; ESTA Fee IFR; and ESTA Air, Sea, and Fee Final Rule. Additional information may also be found on the ESTA website at *https://esta.cbp.dhs.gov*.

B. Expanding ESTA to Land Ports of Entry

From FY 2013 to FY 2017, CBP recorded 4.0 million VWP traveler arrivals at U.S. land ports of entry, with 99.9 percent of arrivals resulting in admissions to the United States and 0.1 percent resulting in refusals based on paper Form I–94W processing. Of the total arrivals, approximately 3.1 million (77.8 percent) were distinct, meaning that they corresponded to VWP travelers required to complete new paper Form I–94Ws and undergo related processing. These distinct travelers were either taking their first trip to the United States by land or they lacked valid Form I–94W Departure Records. The remaining 888,000 arrivals (22.2 percent) were non-distinct, meaning that they corresponded to VWP travelers making repeat visits to the United States using an initial, valid Form I–94W Departure Record.[9]

This interim final rule (hereafter ''ESTA Land IFR'') amends title 8 of the CFR to implement ESTA for noncitizens who intend to travel to the United States under the VWP by land. These travelers must now submit an ESTA application instead of the paper Form I–94W. The rule requires each noncitizen traveling to the United States by land under the VWP to obtain from CBP a travel authorization via ESTA prior to application for admission to the United States. With this expansion of ESTA, all VWP travelers will be required to have a travel authorization in advance of applying for admission to the United States.

As summarized in the Executive Summary and in Section IV(B), ''Executive Orders 13563 and 12866,'' this rule has many benefits. In addition to fulfilling a statutory mandate, ESTA serves the twin goals of promoting border security and legitimate travel to the United States. ESTA increases national security and provides efficiencies in the screening of international travelers by vetting subjects of potential interest before admittance into the United States. The ESTA Land IFR also generates various additional benefits to foreign travelers and DHS (particularly CBP).

VWP travelers intending to arrive at U.S. land ports of entry will benefit from ESTA, especially when the traveler already has a travel authorization or applies for a travel authorization before traveling to the United States. By implementing ESTA at land ports of entry, travelers will no longer have to complete the paper Form I–94W at the land port of entry. This will shorten the admission process at U.S. land ports of entry for both VWP travelers and DHS. Travelers who already have an ESTA travel authorization that is still valid will not have to obtain a new travel authorization or complete the paper Form I–94W when entering at a land port of entry. VWP travelers will also save time by obtaining a travel authorization in advance of travel, which may prevent them from spending time and money to travel to a U.S. land port of entry and possibly be refused admission.

ESTA enables DHS to determine whether a noncitizen is eligible to travel to the United States under the VWP and to identify potential grounds of inadmissibility before the VWP traveler applies for admission at a U.S. land port of entry. By making these determinations before the noncitizen embarks on travel to the United States, DHS will likely be able to reduce the number of noncitizens arriving at U.S. ports of entry who are determined to be inadmissible upon arrival. In turn, this will reduce the number of inadmissible noncitizens that DHS must process for appropriate refusal or removal proceedings upon arrival. Furthermore, by implementing ESTA at land ports of entry, DHS will also likely reduce wait times for other international travelers arriving at U.S. ports of entry. With reduced wait times, DHS will better allocate existing resources towards screening passengers at U.S. ports of entry, thereby facilitating legitimate travel.

As explained more fully in section III(B)(1), ''Obtaining a Travel Authorization,'' as a result of this interim final rule, VWP travelers entering the United States at land ports of entry must receive an ESTA travel authorization prior to application for admission to the United States. This time frame is different from the time frame applicable to VWP travelers entering the United States at air and sea ports of entry. VWP travelers entering the United States at air and sea ports of entry must have a travel authorization prior to boarding a carrier destined for the United States. The different time frames take into account the fact that travel by land is often more spontaneous, and sometimes last minute, and often not by a carrier. DHS will not require land carriers (such as bus and rail companies) to screen passengers or necessitate a travel authorization in advance of arrival to a U.S. land port of entry. Other than the different time frames, the ESTA procedures and requirements for VWP travelers arriving at land ports of entry will be the same as the procedures and requirements for VWP travelers arriving at air or sea ports of entry as provided in 8 CFR 217.5. These procedures and requirements are explained below.

1. Obtaining a Travel Authorization

VWP travelers obtain the required travel authorization by electronically submitting to CBP, via the ESTA website (*https://esta.cbp.dhs.gov*), an application consisting of biographical and other information specified by the Secretary of Homeland Security. The ESTA application captures all data elements included on the paper Form I–94W. To apply for a travel authorization, a traveler should select the ''Apply'' feature on the ESTA web page, enter his or her biographical and travel information as prompted by the fields marked with a red asterisk (the mandatory data elements), enter the optional data elements, if known, and submit the application information. A third party (such as a commercial carrier, travel agent, visa service provider, or relative) may submit an ESTA application on a traveler's behalf. For each travel authorization, the traveler must pay a fee.

CBP will use information included in a traveler's ESTA application to determine the eligibility of the noncitizen to travel to the United States and whether the visitor poses a law enforcement or security risk.[10]

CBP will check information submitted by the traveler, or on behalf of a traveler, in his or her ESTA application against all appropriate databases, including lost and stolen passport databases and appropriate watch lists. CBP may deny the traveler's ESTA application if: (1) A noncitizen does not provide the required information; (2) a noncitizen provides false information; (3) any evidence exists indicating ineligibility to travel to the United States under the VWP; or (4) the travel poses a law enforcement or security risk. Consistent with section 711 of the 9/11 Act, the Secretary, acting through CBP, retains

collection 1651–0111 requesting public comments published in the **Federal Register** on November 26, 2013 (78 FR 70570), February 14, 2014 (79 FR 8984), December 9, 2014 (79 FR 73096), June 23, 2016 (81 FR 40892), and August 31, 2016 (81 FR 60014).

[9] Travelers with a valid Form I–94W Departure Record are those who departed the United States for Canada or Mexico for a trip of less than 30 days.

[10] *See* 8 U.S.C. 1187(h)(3).

discretion to revoke a travel authorization determination at any time and for any reason. *See* 8 U.S.C. 1187(h)(3)(C)(i). If a noncitizen's travel authorization application is denied, the noncitizen may still apply to obtain a visa to travel to the United States from an appropriate U.S. Embassy or Consulate.

To verify that the ESTA application has been approved and a travel authorization has been issued, the traveler must return to the ESTA website to view his or her ESTA status. CBP requires a minimum of two hours to make an ESTA application determination. While most determinations will generally be made in approximately two hours, there is no guarantee that an application will be processed in that time frame and some determinations may take longer. In most cases, the applicant will receive an ESTA decision within 72 hours. An applicant may contact the ESTA Help Desk at the Traveler Communications Center by telephone at 1–202–325–5120 for assistance in processing his or her pending application.

DHS recommends that travelers apply for a travel authorization early in the travel planning process, rather than waiting until the traveler is approaching the port of entry. By planning ahead, a traveler who is unable to obtain a travel authorization will still have time to apply for a nonimmigrant B–1, B–2, or B–1/B–2 visa from a U.S. Embassy or Consulate before travel.

2. Travel Authorization

A travel authorization is a positive determination that a noncitizen is eligible to travel to the United States under the VWP during the period of time the travel authorization is valid. A travel authorization is not a determination that the noncitizen is ultimately admissible into the United States. That determination is made by a CBP officer only after an applicant for admission is inspected by a CBP officer at a U.S. port of entry. In addition, ESTA is not a visa or a process that acts in lieu of any visa issuance determination made by the Department of State.

3. Timeline for Obtaining a Travel Authorization

Each VWP traveler arriving at a U.S. land port of entry must have a travel authorization prior to application for admission at a land port of entry. A VWP traveler who does not have a valid travel authorization at the time he or she applies for admission to the United States at a land port of entry will be ineligible for admission under the VWP.

If a VWP traveler arrives at a U.S. land port of entry without a valid travel authorization and wants to apply for one, the traveler will be permitted to withdraw his or her application for admission, return to Mexico or Canada, submit an ESTA application there, and await receipt of a travel authorization in Mexico or Canada before returning to a U.S. port of entry. Receipt of a travel authorization will take at least two hours from the time that it is submitted. If the traveler's ESTA application is approved, the traveler may return to a U.S. land port of entry to seek admission. If the traveler's ESTA application is not approved, the traveler is not eligible to seek admission to the United States under the VWP. In such a case, the traveler may apply for a nonimmigrant B–1, B–2, or B–1/B–2 visa from a U.S. Embassy or Consulate and then reapply for admission to the United States.

It should be noted that because VWP travelers arriving at U.S. land ports of entry will need to have a travel authorization prior to application for admission, rather than prior to boarding a carrier, land carriers transporting VWP travelers are not responsible for confirming that the VWP traveler is ESTA-compliant. For example, this interim rule would not require bus companies to confirm that their passengers are ESTA-compliant or to transmit any ESTA data elements on behalf of these travelers to CBP.

4. Required ESTA Data Elements

The current ESTA regulations provide that ESTA will collect such information as the Secretary deems necessary to issue a travel authorization as reflected on the ESTA application. *See* 8 CFR 217.5(c). This information is included on the ESTA website. VWP travelers arriving at land ports of entry will have to provide these same data elements. The ESTA website also includes some optional data elements. This data should be provided, if known.

5. Scope of Travel Authorization

Consistent with section 711 of the 9/11 Act, a travel authorization does not restrict, limit, or otherwise affect the authority of CBP to determine a noncitizen's admissibility into the United States during inspection at a port of entry.

6. Duration

The same general rule and exceptions regarding the duration of a travel authorization as set forth in 8 CFR 217.5(d) will apply to a travel authorization issued for travel to air, sea, and land ports of entry. DHS will notify an individual with an approved ESTA authorization at the email address he or she provided in the application when his or her ESTA expiration date is approaching. Subject to certain exceptions, each travel authorization will generally be valid for a period of two years from the date of issuance, meaning a noncitizen may travel to the United States repeatedly within a two-year period without obtaining another authorization.

7. Events Requiring New Travel Authorization

The events requiring a new travel authorization as set forth in 8 CFR 217.5(e) and summarized below are the same regardless of whether the travel authorization was issued for travel to U.S. air, sea, or land ports of entry.

A VWP traveler must obtain a new travel authorization approval if any of the following conditions occurs: (1) The noncitizen is issued a new passport; (2) the noncitizen changes his or her name; (3) the noncitizen changes his or her gender; (4) the noncitizen changes his or her country of citizenship; or (5) the circumstances underlying the noncitizen's previous responses to any of the ESTA application questions requiring a ''yes'' or ''no'' response (eligibility questions) have changed.

8. Fee

The TPA mandated that the Secretary of Homeland Security establish a fee for the use of ESTA and begin assessing and collecting the fee. DHS implemented the fee requirements of the TPA in the ESTA Fee IFR and ESTA Air and Sea Final Rule. VWP travelers applying for a travel authorization to travel to U.S. air and sea ports of entry must pay a $4.00 ESTA operational fee and an additional $10.00 Travel Promotion Act fee through September 30, 2020.[11] [12]

This same fee will apply to VWP travelers arriving at U.S. land ports of entry. For a detailed discussion about this fee, see the ESTA Fee IFR and the ESTA Air and Sea Final Rule.

[11] If the ESTA application is denied, the applicant will be refunded the $10.00 Travel Promotion Act fee. The fee was originally authorized by the TPA through September 30, 2015, but was extended through September 2020 by the Consolidated and Further Continuing Appropriations Act of 2015.

[12] On February 9, 2018, section 30203(a) of the Bipartisan Budget Act of 2018, Public Law 115–123, extended the sunset provision of the travel promotion fee through September 30, 2027. On December 20, 2019, section 806 of the Further Consolidated Appropriations Act of 2020, Public Law 116–94, increased the travel promotion fee from $10 to $17. CBP will be publishing a separate rule to reflect these legislative changes. CBP has not yet begun collecting the higher fee, but will do so after the fee rule has been published.

It is important to note that a noncitizen may travel to the United States repeatedly within the validity period using the same travel authorization, regardless of the mode of transportation used. Therefore, VWP travelers who intend to arrive in the United States at a land port of entry and already have a travel authorization that is still valid will not need to apply for a new travel authorization or pay another ESTA fee.

However, a VWP traveler arriving at U.S. land ports of entry will still have to pay the $6.00 I–94W fee provided for in 8 CFR 103.7(d)(5), unless he or she is entering within a current 90-day VWP admission period. This fee covers processing costs, including those involved in collecting traveler fingerprints.[13] Although the collection of the I–94W data elements will now be done electronically through ESTA, travelers at the land border will continue to receive a printed departure record. This printed departure record is equivalent to the departure portion of the paper Form I–94W. This document will be stamped by the CBP officer who processes the traveler's admission and should be retained by the traveler while he or she is in the United States. VWP visitors who depart from the United States via a land port will generally be required to surrender this document upon leaving the United States.[14] CBP will enter the departure information manually into the appropriate CBP database.[15] The $6.00 fee supports CBP's efforts in issuing these departure records and entering the departure information.

9. Judicial Review

Section 711 of the 9/11 Act amended section 217 of the INA to provide that no court shall have jurisdiction to review an eligibility determination under the electronic travel authorization system. *See* INA section 217(h)(3)(C)(iv), 8 U.S.C. 1187. Accordingly, a determination under ESTA will be final and, notwithstanding any other provision of the law, is not subject to judicial review.

C. Discussion of Regulatory Changes

DHS is amending parts 103, 212, 217, and 286 of title 8 of the CFR, as set forth below, in order to expand the ESTA requirements to VWP travelers arriving at U.S. land ports of entry and to update the regulations.

1. 8 CFR Part 103

Section 103.7(d)(5) of the DHS regulations (8 CFR 103.7), titled ''Form I–94W,'' enumerates the $6.00 fee associated with the issuance of Form I–94W. The paragraph is revised to incorporate a definition of ''issuance'' that reflects the new procedure involved in electronically collecting the traveler's information, then using that information to print a departure record for VWP travelers entering the United States at land ports of entry. The new provision will now clarify that ''the term 'issuance' includes, but is not limited to, the creation of an electronic record of admission or arrival/departure by DHS following an inspection performed by a CBP officer, which may be provided to the nonimmigrant as a printout or other confirmation of the electronic record stored in DHS systems.''

2. 8 CFR Part 212

Section 212.1 of the DHS regulations (8 CFR 212.1), titled ''Documentary requirements for nonimmigrants,'' refers to the Visa Waiver Pilot Program. On October 30, 2000, the Visa Waiver Permanent Program Act, Public Law 106–396, established the VWP as a permanent program and replaced the Visa Waiver Pilot Program. Therefore, this section is amended to remove the reference to the ''Visa Waiver Pilot Program'' and refer instead to the ''Visa Waiver Program.''

3. 8 CFR Part 217

Section 217.1 of the DHS regulations (8 CFR 217.1), titled ''Scope,'' refers to the Visa Waiver Pilot Program. This section is amended to remove the reference to the ''Visa Waiver Pilot Program'' and instead refer to the ''Visa Waiver Program (VWP).''

Section 217.2 of the DHS regulations (8 CFR 217.2) describes the eligibility requirements to travel under the VWP. Specifically, § 217.2(b)(1) provides that in addition to meeting all the requirements for the ''Visa Waiver Pilot Program,'' each applicant must possess a valid, unexpired passport issued by a designated country and present a completed, signed Form I–94W. This provision is amended to delete the reference to Form I–94W and add the new requirement to obtain a travel authorization via ESTA. Also, the paragraph is amended to delete the reference to the ''Visa Waiver Pilot Program'' and refer instead to the ''Visa Waiver Program.''

This rule also makes non-substantive amendments to § 217.2 to make the regulation current, correct, and consistent. Specifically, §§ 217.2(a), (c), and (d) and 217.3(b) are amended to delete the references to the ''Visa Waiver Pilot Program'' and refer instead to the ''Visa Waiver Program (VWP).'' These provisions are also being updated by replacing the legacy Immigration and Naturalization Service position title (''immigration officer'') with the current DHS position title (''CBP officer'').

Section 217.5 (8 CFR 217.5) sets forth the requirements for ESTA. In particular, § 217.5(a) requires nonimmigrant noncitizens intending to travel by air or sea to the United States under the VWP to receive a travel authorization prior to boarding a carrier destined for the United States. This provision is amended to require nonimmigrant noncitizens intending to travel by land to the United States under the VWP to obtain a travel authorization prior to application for admission to the United States at a land port of entry.

Section 217.5(b) specifies the time frames for obtaining a travel authorization through ESTA for VWP travelers arriving at air and sea ports of entry. The paragraph is amended to also specify the time frame for obtaining a travel authorization for VWP travelers arriving at land ports of entry, *i.e.,* prior to application for admission to the United States. Current § 217.5(c) provides that the DHS Secretary may collect certain information to issue a travel authorization and refers to the Form I–94W. When the ESTA program is implemented at U.S. land ports of entry, DHS will no longer require VWP travelers to complete the Form I–94W. Therefore, the paragraph is amended by removing the references to the Form I–94W and referring instead to ESTA.

Current § 217.5(g) provides that once ESTA is implemented as a mandatory program, 60 days following publication by the Secretary of a notice in the **Federal Register**, citizens and eligible nationals of countries that participate in the VWP must comply with the requirements of this section. It further provides that as new countries are added to the VWP, citizens and eligible nationals of those countries will be required to obtain a travel authorization prior to traveling to the United States under the VWP. This language is outdated because it has been overtaken by the following events. First, the

[13] Travelers arriving by air and sea pay the same fee; however, the fee is included in the price of the carrier tickets and is not collected separately upon arrival.

[14] Admitted VWP travelers will not be required to surrender the printed departure record when departing the United States for Canada or Mexico for a trip of less than 30 days. These travelers may retain their printed departure record so that when they resume their visit to the United States, CBP will not have to print another departure record and the traveler may be readmitted into the United States for the balance of time remaining on his or her I–94W Departure Record.

[15] This process differs from the departure process at air and sea ports of entry where departure information is received and recorded electronically.

Secretary published the referenced notice in the **Federal Register** on November 13, 2008 (73 FR 67354), and ESTA was implemented as a mandatory program for VWP travelers arriving at air and sea ports 60 days later. Second, this interim final rule expanding ESTA to VWP travelers arriving at land ports of entry will be effective 30 days after publication. Third, the provision about new countries is now fully covered by the general provision about travel authorization in § 217.5(a). Therefore, the outdated language is deleted.

4. 8 CFR Part 286

Part 286 of the DHS regulations (8 CFR part 286) concerns immigration user fees. Specifically, § 286.9 describes the fee for processing applications and issuing documentation at land border ports of entry. This section will be amended to delete the references to the ''Visa Waiver Pilot Program'' and refer instead to the ''Visa Waiver Program.''

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

1. Procedural Rule Exception

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b)) and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, the APA provides an exception to this prior notice and comment requirement for ''rules of agency organization, procedure, or practice'' 5 U.S.C. 553(b)(A). This interim final rule is a procedural rule promulgated for efficiency purposes that falls within this exception.

This rule is procedural because it merely changes the method of submission for an existing reporting requirement for nonimmigrant noncitizens pursuant to existing statutes and regulations. *See* 8 U.S.C. 1103, 1184 and 1187. *See also* 8 CFR 212.1, 299.1, and 8 CFR parts 2 and 217. The rule merely changes the manner in which noncitizens seeking admission to the United States under the VWP, at ports of entry along the land border, present information to DHS and does not alter the rights or interests of those noncitizens as they seek admission to the United States. Such arriving noncitizens will no longer be required to complete and submit the paper Form I–94W. Instead, all required information will be submitted to DHS electronically through the ESTA website. In addition, this rule neither affects the substantive criteria by which CBP officers inspect noncitizens upon arrival nor the nature of the information at CBP's disposal.

2. Foreign Affairs Function Exception

This interim final rule is also exempt from the rulemaking provisions of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as it involves a foreign affairs function of the United States. This rule advances the President's foreign policy goals and directly involves relationships between the United States and its noncitizen visitors.

ESTA is an integral part of the administration of the VWP, a program that involves an inherently foreign affairs function of the United States. Specifically, the VWP, which is administered by DHS in consultation with the Department of State, enables eligible citizens or nationals of designated countries to travel to the United States for tourism or business for stays of 90 days or less without first obtaining a visa, provided they meet certain requirements. Among other things, a traveler must have a valid authorization through ESTA. As part of the ESTA screening process, CBP reviews available information regarding ESTA applicants to determine whether they present a concern to U.S. national security or law enforcement (to include immigration enforcement) interests. Accordingly, any rulemaking actions undertaken to implement ESTA at land ports of entry are exempt from APA notice and comment requirements. However, DHS is interested in receiving public comments on this interim final rule and, therefore, is providing the public with the opportunity to comment without delaying implementation of this rule.

B. Executive Orders 13563 and 12866

Executive Orders (EOs) 13563 (''Improving Regulation and Regulatory Review'') and 12866 (''Regulatory Planning and 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.

This rule is not a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this rule. Although this rule is not subject to the requirements of Executive Orders 13563 and 12866 due to the foreign affairs exception, DHS has reviewed this interim final rule to ensure its consistency with the regulatory philosophy and principles set forth in those Executive orders. DHS has also prepared a regulatory impact assessment to help inform stakeholders of the impacts of this rule, which DHS has summarized below. The complete assessment can be found in the public docket for this rulemaking at *www.regulations.gov.*

1. Purpose of Rule

This rule will extend the regulatory requirements of ESTA to the land environment per the 9/11 Act. For VWP travelers arriving at U.S. land ports of entry (POEs), all the ESTA requirements currently in 8 CFR 217.5 will remain the same as the requirements for VWP travelers arriving at air and sea ports, except for the time frame for obtaining the travel authorization. Under the ESTA Land IFR, VWP travelers intending to travel to the United States by land must receive a travel authorization prior to application for admission to, rather than prior to embarking on a carrier destined for, the United States. These travelers may obtain the required travel authorization by submitting an electronic application to CBP through the ESTA website (*https://esta.cbp.dhs.gov/esta/*) and paying the ESTA application fee, which consists of an operational fee and Travel Promotion Act (TPA) fee valid until FY 2021.[16] The ESTA application serves as an electronic version of the paper Form I–94W, asking for the same biographical, personal, and trip-related information currently requested on the paper Form I–94W as well as several additional security-related questions not on the paper Form I–94W but typically asked during paper Form I–94W processing. CBP will use the ESTA application information to assess a traveler's likely admissibility and any potential risks to the United States. Based on this assessment, CBP will either grant or deny an ESTA travel authorization, which will generally take two hours for CBP to complete. If CBP grants an ESTA travel authorization, the authorization

[16] As previously stated, on February 9, 2018, section 30203(a) of the Bipartisan Budget Act of 2018, Public Law 115–123, extended the sunset provision of the travel promotion fee through September 30, 2027. On December 20, 2019, section 806 of the Further Consolidated Appropriations Act of 2020, Public Law 116–94, increased the travel promotion fee from $10 to $17. *See* 8 U.S.C. 1187(h)(3)(B), as amended, and 8 CFR 217.5(h). CBP will be publishing a separate rule to reflect these legislative changes. This analysis does not capture these changes.

will generally be valid for a period of two years from the date of issuance (barring revocation), meaning that the VWP traveler granted the authorization may travel to the United States repeatedly within a two-year period without obtaining another authorization. If CBP denies an ESTA travel authorization, CBP will refer the VWP traveler denied the authorization to a U.S. Embassy or Consulate to apply to obtain a visa, like in the current paper Form I–94W environment.

If a VWP traveler arrives without an advance ESTA travel authorization, CBP will generally advise the traveler to complete the ESTA application in an area outside of the U.S. land POE. In this case, the traveler may be permitted to withdraw his or her application for admission, and once withdrawn, travel back to either Canada or Mexico, apply for the ESTA authorization there, and typically wait two hours to receive his or her authorization status. Once approved, the traveler can then return to a U.S. land POE to apply for admission.

In addition to fulfilling a statutory mandate, this rule will strengthen national security through enhanced traveler vetting, streamline Form I–94W processing through automation, reduce inadmissible traveler arrivals, and produce a uniform VWP admission policy in all U.S. travel environments, which will benefit VWP travelers, CBP, and the public.

2. Population Affected by Rule

This rule will affect VWP travelers, CBP, and the public. Due to numerous factors that affect travel, CBP uses two different projection methods to estimate the population of VWP travelers affected by this rule over a 10-year period of analysis spanning from FY 2019 to FY 2028. Under these methods, CBP estimates that VWP travelers will submit between 3.2 million and 4.1 million ESTA applications for land admission during the period of analysis, though CBP will deny about 3,200 to 4,100 of these applications and related travel authorizations (see Table 1).[17] These denials will be higher with ESTA's enhanced vetting, though the extent is unknown.[18] Given ESTA's existing requirements in the U.S. air and sea environments, some of the application figures in Table 1 may correspond to travelers who already have valid ESTA travel authorizations first obtained for travel to the United States by air and sea that will allow them to avoid completing travel authorizations with this rule. However, the number of such travelers is unknown.

TABLE 1—PROJECTED ESTA APPLICATIONS WITH RULE

Fiscal year	Method 1 (primary estimate)—with rule			Method 2—with rule		
	ESTA application approvals	ESTA application denials	Total ESTA applications	ESTA application approvals	ESTA application denials	Total ESTA applications
2019	323,504	324	323,828	349,190	350	349,540
2020	323,504	324	323,828	359,317	360	359,677
2021	323,504	324	323,828	371,894	372	372,266
2022	323,504	324	323,828	385,281	386	385,667
2023	323,504	324	323,828	398,381	399	398,780
2024	323,504	324	323,828	411,926	412	412,338
2025	323,504	324	323,828	425,932	426	426,358
2026	323,504	324	323,828	440,413	441	440,854
2027	323,504	324	323,828	455,870	456	455,843
2028	323,504	324	323,828	470,870	471	471,341
Total	3,235,040	3,240	3,238,280	4,068,591	4,073	4,072,664

Note: Estimates may not sum to total due to rounding.

CBP plans to conduct extensive outreach on ESTA's requirements in the land environment prior to the effective date of this rule through electronic messaging, informational bulletins, and travel partner meetings.[19] Nevertheless, some VWP travelers may not be fully aware of this rule's requirements when traveling to the United States via land. CBP estimates that 4 percent of the projected ESTA applications in FY 2019 will correspond to VWP travelers who arrive to U.S. land POEs without advance ESTA travel authorizations. CBP believes that this share will decrease to 1 percent of annual ESTA applications for FY 2020 through FY 2028 due to the time and costs associated with arriving without an ESTA travel authorization and increased knowledge of ESTA's requirements.[20] As shown in Table 2, CBP projects that 42,000 to 51,000 VWP travelers will arrive to U.S. land POEs without advance ESTA travel authorizations over the period of analysis. CBP believes that the vast majority of these arrivals will occur at U.S. land POEs along the northern border based on the relatively high volume of VWP traveler arrivals at those POEs.[21]

[17] Note that the estimates in this table are based on historical VWP traveler arrivals prior to FY 2019. Poland officially joined the VWP on November 11, 2019 (*see* 84 FR 60316 (November 8, 2019)), and Croatia officially joined the VWP on December 1, 2021 (*see* 86 FR 54029 (September 30, 2021)), so these estimates do not account for VWP travelers from Poland or Croatia. A small number of temporary business or pleasure visitors from Poland and Croatia who would now be eligible for the VWP (and subject to this rule) enter the United States at land POEs each year.

[18] Source: Email correspondence with CBP's Office of Field Operations on March 16, 2016.

[19] Source: Correspondence with CBP's Office of Field Operations on November 26, 2018.

[20] Source: Email correspondence with CBP's Office of Field Operations on September 11, 2018.

[21] About 90 percent of VWP land traveler admissions between FY 2013 and FY 2017 occurred at U.S. land POEs along the northern border. Sources: Email correspondence with CBP's Office of Field Operations on May 17, 2018, and correspondence on November 26, 2018.

TABLE 2—PROJECTED ARRIVALS OF VWP TRAVELERS AT U.S. LAND POEs WITHOUT ADVANCE ESTA TRAVEL AUTHORIZATIONS

Fiscal year	Method 1 (primary estimate)—with rule	Method 2—with rule
	Total VWP traveler arrivals without advance ESTA travel authorizations	Total VWP traveler arrivals without advance ESTA travel authorizations
2019	12,953	13,982
2020	3,238	3,597
2021	3,238	3,723
2022	3,238	3,857
2023	3,238	3,988
2024	3,238	4,123
2025	3,238	4,264
2026	3,238	4,409
2027	3,238	4,558
2028	3,238	4,713
Total	42,095	51,214

Note: Estimates may not sum to total due to rounding.

With this rule, CBP anticipates that the nearly 3,200 to 4,100 VWP travelers with ESTA application and travel authorization denials between FY 2019 and FY 2028 will forgo travel to the United States under the VWP altogether because they will be refused admission at U.S. land POEs without travel authorizations. These ESTA denials will result in 3,200 to 4,100 fewer distinct and total VWP traveler arrivals than projected in the absence of this rulemaking. CBP assumes that these ESTA denials will only affect the number of distinct arrivals anticipated with this rule and not the number of non-distinct arrivals. CBP estimates that the number of non-distinct arrivals of VWP travelers with valid departure coupons that generally allow for the avoidance of secondary processing and Form I–94W fee payments with this rule will be the same number projected without this rule, ranging from 1.0 million to 1.3 million over the period of analysis (see Table 3). The remaining 3.6 million to 4.6 million VWP land traveler arrivals projected with this rule will represent distinct arrivals requiring CBP's primary and secondary processing and Form I–94W fee payments (see Table 3). In total, VWP land traveler arrivals are expected to reach 4.7 million to 5.9 million during the period of analysis with this rule (see Table 3). To the extent that the application denials with this rule are greater than projected, the number of total arrivals will be fewer than shown in Table 3.

TABLE 3—PROJECTED ARRIVALS OF VWP TRAVELERS AT U.S. LAND POEs WITH RULE

Fiscal year	Method 1 (primary estimate)—with rule			Method 2—with rule		
	Distinct arrivals	Non-distinct arrivals	Total arrivals	Distinct arrivals	Non-distinct arrivals	Total arrivals
2019	363,528	103,824	467,352	392,392	112,068	504,460
2020	363,528	103,824	467,352	403,771	115,318	519,089
2021	363,528	103,824	467,352	417,904	119,354	537,258
2022	363,528	103,824	467,352	432,948	123,651	556,599
2023	363,528	103,824	467,352	447,668	127,855	575,523
2024	363,528	103,824	467,352	462,889	132,202	595,091
2025	363,528	103,824	467,352	478,628	136,696	615,324
2026	363,528	103,824	467,352	494,901	141,344	636,245
2027	363,528	103,824	467,352	511,727	146,150	657,877
2028	363,528	103,824	467,352	529,126	151,119	680,245
Total	3,635,280	1,038,240	4,673,520	4,571,954	1,305,757	5,877,711

Note: Estimates may not sum to total due to rounding.

This rule's impact on CBP operations depends on its changes to VWP traveler arrivals and processing, whereas its effect on the public depends on its ability to deter otherwise inadmissible VWP travelers from traveling to the United States.

3. Costs of Rule

CBP will sustain ESTA-related maintenance, operation, and administration costs with this rule's implementation; however, CBP believes that the ESTA application fee collected from VWP travelers in the air, sea, and land environments will completely offset the ESTA Land IFR's costs to the agency. Thus, this rule will not introduce any unreimbursed costs to CBP. Instead, VWP travelers required to complete an ESTA application will bear all the direct costs of this rule. As stated earlier, this rule will require applicable VWP travelers to submit an ESTA application, pay the accompanying ESTA application fee, and receive a

travel authorization in advance of admission at a U.S. land POE. Each ESTA application will take a VWP traveler an estimated 23 minutes (0.3833 hours) to complete,[22] at a time cost of $7.82.[23] Depending on whether CBP approves or denies an application and travel authorization, VWP travelers must also pay a $4.00 operational fee, a $10.00 Travel Promotion Act fee (for approved applications only until FY 2021), and typically a foreign transaction fee with their ESTA application.[24]

VWP travelers who arrive to U.S. land POEs without advance travel authorizations will incur time, travel, toll, and internet access expenses to travel to/from Canada and Mexico to apply and wait for an ESTA travel authorization. These travelers will sustain a $36.72 additional CBP processing time cost, a $5.78 additional Canadian or Mexican entry processing time cost, a $4.30 travel cost, and a $40.80 authorization wait time cost while traveling to/from Canada or Mexico to apply and wait for an ESTA travel authorization. Approximately 20 percent of the population of VWP travelers projected to arrive to a U.S. land POE without an advance ESTA travel authorization (see Table 2) will also sustain a toll cost of $3.50. Additionally, of the VWP travelers projected to arrive to a U.S. land POE without an advance ESTA travel authorization (see Table 2), an estimated 28 percent will pay a $2.00 fee to use an internet-accessible computer to apply and wait for their ESTA travel authorization. Considering these advance ESTA travel authorization and wait time costs and the number of VWP travelers projected to arrive without advance ESTA travel authorizations under this alternative, CBP estimates that these authorization requirements will introduce a total undiscounted cost of $4.2 million to VWP travelers between FY 2019 and FY 2028 according to CBP's primary estimation method.

In total, VWP travelers will sustain $49.1 million in undiscounted time, fee, and other costs from this rule over the period of analysis under Method 1, CBP's primary estimation method. In present value terms, this cost to VWP travelers, which represents the total cost of the rule, will measure $38.5 million (using a 7 percent discount rate; see Table 4). On an annualized basis, the cost of this rule will equal $5.1 million under the primary estimation method, as shown in Table 4 (using a 7 percent discount rate).

TABLE 4—TOTAL MONETIZED PRESENT VALUE AND ANNUALIZED COSTS OF RULE, FY 2019–FY 2028

[2019 U.S. dollars]

	3% Discount rate		7% Discount rate	
	Present value cost	Annualized cost	Present value cost	Annualized cost
Method 1 (Primary Estimate)	$43,929,986	$4,999,936	$38,529,526	$5,126,858
Method 2	53,652,846	6,106,554	46,527,106	6,191,040

Note: The estimates in this table are contingent upon CBP's expectations of the population affected by the rule and the discount rates applied.

4. Benefits of Rule

ESTA's Form I–94W automation, advance-vetting and travel authorization denials, and uniform VWP admission policy will offer benefits (including cost savings) to VWP travelers, CBP, and the public. VWP travelers will experience 24 minutes (0.4 hours) of time savings per distinct arrival from avoided paper Form I–94W processing burdens,[25] at a time cost saving of $8.16.[26] Travelers denied travel authorizations who choose to forgo travel to the United States under the VWP will save 136 minutes (2.2667 hours) in avoided Form I–94W completion time and inadmissible inspection time,[27] at a time cost saving of $46.24, and $6.00 in avoided Form I–94W fee costs.[28] Together with the savings from Form I–94W automation and travel that does not occur as a result of denied travel authorizations, VWP travelers will enjoy $29.8 million in undiscounted, monetized cost savings from this rule over the period of analysis under the primary estimation method. VWP travelers will also enjoy non-quantified benefits from this rule's uniform admission policy in all U.S. travel environments, which may prevent some travelers from being denied boarding on air or sea carriers because

[22] Source: U.S. Customs and Border Protection. *Supporting Statement for Paperwork Reduction Act Submission 1651–0111: Arrival and Departure Record (Forms I–94, I–94W) and Electronic System for Travel Authorization (ESTA).* February 12, 2019. Available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-1651-001.* Accessed May 22, 2019.

[23] $20.40 hourly time value × 0.3833-hour time burden to complete ESTA application = $7.82 (rounded). CBP bases the $20.40 hourly time value for VWP travelers on the U.S. Department of Transportation's (DOT) hourly time value of $20.40 for all-purpose, intercity travel by surface-modes, except high-speed rail. For the purposes of this analysis, CBP assumes that the DOT time value, reported in 2015 U.S. dollars, would be the same for 2019. Source: U.S. Department of Transportation, Office of Transportation Policy. *The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2016 Update).* ''Table 4 (Revision 2—2016 Update): Recommended Hourly Values of Travel Time Savings.'' September 27, 2016. Available at *https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf.* Accessed June 11, 2018.

[24] When CBP applies the average foreign currency transaction fee rate to the ESTA application and TPA fees, the full ESTA application cost is $14.42 for travelers granted travel authorizations through FY 2020.

[25] Sources: U.S. Customs and Border Protection. Supporting Statement for Paperwork Reduction Act Submission 1651–0111: Arrival and Departure Record (Forms I–94, I–94W) and Electronic System for Travel Authorization (ESTA). February 12, 2019. Available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-1651-001.* Accessed May 22, 2019; email correspondence with CBP's Office of Field Operations on November 30, 2012.

[26] Based on the assumed hourly time value for VWP travelers of $20.40. $20.40 hourly time value × 0.4 hours saved from forgone paper Form I–94W application and certain secondary processing time burdens = $8.16 (rounded).

[27] This includes the time it takes to complete a paper Form I–94W (16 minutes, or 0.2667 hours) and complete an inadmissible traveler inspection (120 minutes, or 2 hours). For the purposes of this analysis, CBP assumes that this time burden includes any time burdens incurred at a U.S. land POE as an inadmissible VWP traveler. This average time burden is greater than the time burden for VWP travelers who simply arrive to a U.S. land POE without an advance ESTA authorization because general inadmissibility examinations, such as those for travelers who are outright inadmissible due to reasons such as criminal history, outstanding warrant, or an expired passport, typically require examinations that are more thorough and require added processing time. Source: Email correspondence with CBP's Office of Field Operations on March 16, 2016, correspondence on November 26, 2018, and email correspondence on May 23, 2019.

[28] Based on the assumed hourly time value for VWP travelers of $20.40. $20.40 hourly time value × 2.2667 hours saved from forgone inadmissible arrival time burdens = $46.24 (rounded).

they do not have an ESTA travel authorization.

Similar to VWP travelers, CBP will enjoy 8 minutes (0.1333 hours) of time savings per distinct arrival from this rule's Form I–94W automation,[29] at a time cost saving of $11.58.[30] CBP will also save 120 minutes (2 hours) in avoided traveler inspection time per inadmissible traveler inspection avoided through ESTA's implementation in the land environment,[31] at a time cost saving of $173.74.[32] Overall, this rule's Form I–94W automation and forgone arrivals by those denied travel authorizations will offer $42.7 million in undiscounted, monetized cost savings to CBP between FY 2019 and FY 2028 under the primary estimation method. Note that these are not budgetary savings—they are savings that CBP will dedicate to other agency mission areas, such as improving border security or expediting the processing of travelers. In addition to these monetized benefits, ESTA's advance and robust traveler screening process will offer the benefit of strengthened national security, which the public will enjoy.

In total, this rule will offer undiscounted cost savings totaling $72.5 million between FY 2019 and FY 2028 under the primary estimation method. When discounted, these savings will measure $54.5 million in present value and $7.2 million on an annualized basis (using a 7 percent discount rate; see Table 5). This rule will also strengthen national security and introduce a uniform VWP admission policy in all U.S. travel environments, providing non-quantifiable benefits to travelers and the public. These estimates vary according to the projection method and discount rate applied.

TABLE 5—TOTAL MONETIZED PRESENT VALUE AND ANNUALIZED BENEFITS (COST SAVINGS) OF RULE, FY 2019–FY 2028

[2019 U.S. dollars]

	3% Discount rate		7% Discount rate	
	Present value benefit	Annualized benefit	Present value benefit	Annualized benefit
Method 1 (Primary Estimate)	$63,692,790	$7,249,260	$54,479,874	$7,249,260
Method 2	79,452,253	9,042,940	67,252,192	8,948,784

Note: The estimates in this table are contingent upon CBP's expectations of the population affected by the rule and the discount rates applied.

5. Net Impact of Rule

Table 6 summarizes the monetized and non-monetized costs and benefits of this rule to VWP travelers, CBP, and the public. As shown, the total monetized present value net benefit (or net cost saving) of this rule is $16.0 million, while its annualized net benefit totals $2.1 million according to CBP's primary estimation method (using a 7 percent discount rate). In addition to these monetized impacts, this rule will strengthen national security through its advance and more robust traveler screening process and produce a uniform VWP admission policy in all U.S. travel environments, though these benefits are unmeasured. These estimates vary according to the projection method and discount rate applied.

TABLE 6—NET BENEFIT OF RULE, FY 2019–FY 2028

[2019 U.S. dollars]

	3% Discount rate		7% Discount rate	
	Present value	Annualized	Present value	Annualized
Method 1 (Primary Estimate)				
Total Cost:				
Monetized	$43,929,986	$4,999,936	$38,529,526	$5,126,858
Non-Monetized, but Quantified				
Non-Monetized and Non-Quantified				
Total Benefit, Incl. Cost Savings:				
Monetized (Cost Saving)	63,692,790	7,249,260	54,479,874	7,249,260
Non-Monetized, but Quantified				
Non-Monetized and Non-Quantified	Strengthened national security and uniform VWP admission policy.		Strengthened national security and uniform VWP admission policy.	
Monetized (Net Cost Saving)	$19,762,805	$2,249,324	$15,950,348	$2,122,403
Non-Monetized, but Quantified				

[29] Sources: U.S. Customs and Border Protection. *Supporting Statement for Paperwork Reduction Act Submission 1651–0111: Arrival and Departure Record (Forms I–94, I–94W) and Electronic System for Travel Authorization (ESTA).* February 12, 2019. Available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-1651-001.* Accessed May 22, 2019; email correspondence with CBP's Office of Field Operations on November 30, 2012.

[30] $86.87 fully loaded hourly wage rate for CBP officers × 0.1333 hours saved per distinct VWP traveler arrival = $11.58 (rounded). CBP bases the $86.87 hourly wage on the FY 2019 salary, benefits, and non-salary costs (*i.e.,* fully loaded wage) of the national average of CBP officer positions. Source of wage rate: Email correspondence with CBP's Office of Finance on June 1, 2018.

[31] Source: Email correspondence with CBP's Office of Field Operations on March 16, 2016, correspondence on November 26, 2018, and email correspondence on May 23, 2019.

[32] Based on the fully loaded hourly wage rate for CBP officers of $86.87. $86.87 fully loaded hourly wage rate for CBP officers × 2 hours saved per inadmissible traveler inspection avoided = $173.74 (rounded).

TABLE 6—NET BENEFIT OF RULE, FY 2019–FY 2028—Continued

[2019 U.S. dollars]

	3% Discount rate		7% Discount rate	
	Present value	Annualized	Present value	Annualized
Non-Monetized and Non-Quantified	Strengthened national security and uniform VWP admission policy.		Strengthened national security and uniform VWP admission policy.	
Method 2				
Total Cost:				
Monetized	$53,652,846	$6,106,554	$46,527,106	$6,191,040
Non-Monetized, but Quantified				
Non-Monetized and Non-Quantified				
Total Benefit, Incl. Cost Savings:				
Monetized (Cost Saving)	79,452,253	9,042,940	67,252,192	8,948,784
Non-Monetized, but Quantified				
Non-Monetized and Non-Quantified	Strengthened national security and uniform VWP admission policy.		Strengthened national security and uniform VWP admission policy.	
Monetized (Net Cost Saving)	$25,799,407	$2,936,386	$20,725,086	$2,757,744
Non-Monetized, but Quantified				
Non-Monetized and Non-Quantified	Strengthened national security and uniform VWP admission policy.		Strengthened national security and uniform VWP admission policy.	

Notes: The estimates in this table are contingent upon CBP's expectations of the population affected by the rule and the discount rates applied. Estimates may not sum to total due to rounding.

C. 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, CBP is not required to prepare a regulatory flexibility analysis for this rule.

D. Unfunded Mandates Reform Act of 1995

This rule will not result in 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, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB).

OMB-approved collection 1651–0111 will be amended to reflect the new applicants that will be using the ESTA website as a result of this interim final rule. CBP estimates that this rule will result in an additional 323,828 respondents (ESTA applicants) annually and an additional 124,123 burden hours.[33] Of the 323,828 new ESTA respondents, CBP estimates that 323,504 will receive a travel authorization and 324 will not. Collection 1651–0111 will be revised to reflect the new total annual estimates for ESTA as follows:

Estimated number of annual respondents: 23,333,828.

Estimated number of annual responses: 23,333,828.

Estimated time burden per response: 23 minutes (0.3833 hours).

Estimated total annual time burden: 8,943,856 hours.

These respondents include new and repeat ESTA applicants. Only new applicants or applicants whose authorization has expired will be required to pay the ESTA fee. The additional 323,828 ESTA applicants introduced with this rule will pay the ESTA fee, which will result in an additional estimated cost of $4,530,352 for this collection of information. This cost is based on the additional number of respondents granted a travel authorization through ESTA annually (323,504) multiplied by (×) the $14.00 ESTA fee to apply and receive a travel authorization = $4,529,056, plus the additional number of respondents denied a travel authorization through ESTA (324) multiplied by (×) the $4.00

[33] CBP uses the number of ESTA applications projected in FY 2019 under Method 1 of the regulatory impact analysis for this estimate because it is CBP's primary estimation method.

ESTA operational fee = $1,296, for a total of $4,530,352.[34]

OMB-approved collection 1651–0111 will also be revised to reflect the elimination of CBP's paper Form I–94W for land travelers, which is an additional result of this rule. The current approved number of estimated annual respondents for the paper Form I–94W of 941,291 will be removed. Respondents will now be categorized under ''ESTA'' on the collection because the paper Form I–94W data will now be collected electronically through ESTA.

H. Privacy Interests

DHS published an ESTA Privacy Impact Assessment (PIA) for the interim final rule announcing ESTA at air or sea ports of entry on June 9, 2008. Additionally, at that time, DHS prepared a separate System of Record Notice (SORN) that was published in conjunction with the IFR on June 9, 2008. DHS has updated these documents since that time and the most current ESTA PIA and SORN are available for viewing at: *https://www.dhs.gov/privacy-documents-us-customs-and-border-protection.*

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passport and visas, Reporting and recordkeeping requirements.

8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping.

Amendments to the Regulations

For the reasons stated in the preamble, DHS is amending 8 CFR parts 103, 212, 217, and 286 as set forth below.

[34] These costs do not account for foreign transaction fees that respondents may incur with their ESTA application.

PART 103—IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54; 125 Stat. 550; 31 CFR part 223.

■ 2. Amend § 103.7 by revising paragraph (d)(5) to read as follows:

§ 103.7 Fees.

* * * * *

(d) * * *

(5) *Form I–94W.* For issuance of Form I–94W or other Nonimmigrant Visa Waiver Arrival/Departure record at a land border port-of-entry under section 217 of the Act: $6.00. The term 'issuance' includes, but is not limited to, the creation of an electronic record of admission or arrival/departure by DHS following an inspection performed by a CBP officer, which may be provided to the nonimmigrant as a printout or other confirmation of the electronic record stored in DHS systems.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 3. The authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; section 7209 of Pub. L. 108–458 (8 U.S.C. 1185 note); Title VII of Pub. L. 110–229 (8 U.S.C. 1185 note); 8 CFR part 2; Pub. L. 115–218.

Section 212.1(q) also issued under section 702, Pub. L. 110–229, 122 Stat. 754, 854.

§ 212.1 [Amended]

■ 4. Amend § 212.1 by removing the word ''Pilot'' from the heading and text of paragraph (i).

PART 217—VISA WAIVER PROGRAM

■ 5. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

§ 217.1 [Amended]

■ 6. Amend § 217.1 by removing the word ''Pilot'' and removing the parenthetical ''(VWPP)'' and adding in its place ''(VWP)''.

■ 7. Amend § 217.2 as follows:

■ a. Remove the word ''Pilot'' wherever it appears; and

■ b. Revise paragraphs (b)(1) and (c)(2).

The revisions read as follows:

§ 217.2 Eligibility.

* * * * *

(b) * * *

(1) *General.* In addition to meeting all of the requirements for the Visa Waiver Program specified in section 217 of the Act, each applicant must possess a valid, unexpired passport issued by a designated country and obtain a travel authorization via the Electronic System for Travel Authorization (ESTA) as provided in § 217.5.

* * * * *

(c) * * *

(2) *Applicants arriving at land border ports of entry.* Any Visa Waiver Program applicant arriving at a land border port of entry must provide evidence to the CBP officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land border port of entry will be charged a fee as prescribed in § 103.7(d)(5) of this chapter for issuance of Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form. A round-trip transportation ticket is not required.

* * * * *

§ 217.3 [Amended]

■ 8. Amend § 217.3(b) by removing the word ''Pilot''.

■ 9. Amend § 217.5 as follows:

■ a. Revise paragraphs (a), (b), and (c); and

■ b. Remove and reserve paragraph (g).

The revisions read as follows:

§ 217.5 Electronic System for Travel Authorization.

(a) *Travel authorization required.* Each nonimmigrant alien intending to travel by air, sea, or land to the United States under the Visa Waiver Program (VWP) must, within the time specified in paragraph (b) of this section, receive a travel authorization, which is a positive determination of eligibility to travel to the United States under the VWP via the Electronic System for Travel Authorization (ESTA), from CBP. In order to receive a travel authorization, each nonimmigrant alien intending to travel to the United States by air, sea, or land under the VWP must provide the data elements set forth in paragraph (c) of this section to CBP, in English, in the manner specified herein, and must pay a fee as described in paragraph (h) of this section.

(b) *Time*—(1) *Applicants arriving at air or sea ports of entry.* Each alien

falling within the provisions of paragraph (a) of this section and intending to travel by air or sea to the United States under the VWP must receive a travel authorization via ESTA prior to boarding a carrier destined for travel to the United States.

(2) *Applicants arriving at land ports of entry.* Each alien falling within the provisions of paragraph (a) of this section and intending to travel by land to the United States under the VWP must receive a travel authorization via ESTA prior to application for admission to the United States.

(c) *Required elements.* CBP will collect such information as the Secretary deems necessary to issue a travel authorization as reflected in the ESTA application.

* * * * *

PART 286—IMMIGRATION USER FEE

■ 10. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1356; Title VII of Public Law 110–229; 8 CFR part 2.

§ 286.9 [Amended]

■ 11. Amend § 286.9(b)(2) as follows:
■ a. Remove the word ''Pilot''; and
■ b. Add the words '', as prescribed in § 103.7(d)(5) of this chapter,'' after ''Form I–94W''.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2022–06366 Filed 3–31–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0280; Project Identifier AD–2021–00504–T; Amendment 39–21984; AD 2022–06–18]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 767–2C series airplanes. This AD was prompted by a report of multiple nuisance caution ''RECIRC SMOKE'' engine indication and crew alerting system (EICAS) messages that may occur when water accumulates in the alternative ventilation system (AVS) duct. This AD requires replacing the alternative ventilation duct having a certain part number with a new part number, and for certain airplanes, changing the insulation blanket to install the drain hose. This AD also prohibits the installation of an alternative ventilation duct, part number (P/N) 216T2101–704, on any airplane. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 18, 2022.

The FAA must receive comments on this AD by May 16, 2022.

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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0280; 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 street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3569; email: *Brandon.Lucero@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA has received a report indicating multiple nuisance caution ''RECIRC SMOKE'' EICAS messages that may occur when water accumulates in the AVS duct. The AVS duct is at a lower position than the recirculation smoke detector tubing, and therefore, there is a potential for water to leak onto the AVS duct. Water accumulation in the AVS duct can block AVS system airflow into the airplane, creating a loss of conditioned inflow and result in cold or hot flight deck temperatures. This condition, if not addressed, could affect the flightcrew's ability to maintain continued safe flight and landing. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

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

AD Requirements

This AD requires replacing the alternative ventilation duct having P/N 216T2101–704 with new P/N 216T2101–707, and for certain airplanes, changing the insulation blanket to install the drain hose. This AD also prohibits the installation of an alternative ventilation duct, P/N 216T2101–704, on any airplane.

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.

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

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2022–0280 and Project Identifier AD–2021–00504–T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may

amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3569; email: *Brandon.Lucero@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

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

Costs of Compliance

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

ESTIMATED COSTS *

Action	Labor cost	Parts cost	Cost per product
Replacement and drain hose installation.	Up to 5 work-hour × $85 per hour = $425.	Up to $5,490	Up to $5,915.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

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:

2022–06–18 The Boeing Company: Amendment 39–21984; Docket No. FAA–2022–0280; Project Identifier AD–2021–00504–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 18, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 767–2C series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of multiple nuisance caution ''RECIRC SMOKE'' engine indication and crew alerting system (EICAS) messages that may occur when water accumulates in the alternative ventilation system (AVS) duct. The FAA is issuing this AD to address water accumulation in the AVS duct, which can block AVS system airflow into the airplane, creating a loss of conditioned inflow and result in cold or hot flight deck temperatures, and potentially affect the flightcrew's ability to maintain continued safe flight and landing.

(f) Compliance

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

(g) Replacement and Installation

Within 36 months after the effective date of this AD: Replace the alternative ventilation duct having part number (P/N) 216T2101–704 with P/N 216T2101–707; and change the insulation blanket to install the drain hose, as applicable; in accordance with a method approved by the Manager, Seattle ACO Branch, FAA.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install an alternative ventilation duct, P/N 216T2101–704, on any airplane.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

For more information about this AD, contact Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3569; email: *Brandon.Lucero@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on March 10, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–06871 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0232]

RIN 1625–AA08

Special Local Regulation; Bonita Tideway, Brigantine, NJ

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for navigable waters of the Bonita Tideway near Brigantine, NJ. This action is needed to provide for the safety of life on these navigable waters during a rowing competition on April 2, 2022, and April 3, 2022. This rulemaking prohibits persons and vessels from being in the regulated areas during the enforcement period unless authorized entry by the Captain of the Port (COTP), Delaware Bay Zone or a designated representative.

DATES: This rule is effective from 4 p.m. on April 2, 2022, through 1 p.m. April 3, 2022. This rule will be enforced from 4:30 p.m. to 7:30 p.m. on April 2, 2022, and from 7:30 a.m. to 12:30 p.m. on April 3, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0232 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 on this rule, call or email MST1 Jennifer Padilla, Waterways Management Division, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271–4889, email *Jennifer.l.padilla@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 Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor required a change of location from the planned event area near Atlantic City, NJ. The sponsor notified the Coast Guard on March 17, 2022, of the location move to Brigantine, NJ. Publishing an NPRM would be impracticable and contrary to the public interest, because we must establish this special local regulation by April 2, 2022, to ensure the safety of participants and the public. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels traversing through the regulated area.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to provide for the safety of life on these navigable waters during a rowing competition on April 2, 2022, and April 3, 2022.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Secretary has delegated ports and waterways authority, with certain reservations not applicable here, to the Commandant via DHS Delegation No. 00170.1(II)(70), Revision No. 01.2. The Commandant has further delegated these authorities within the Coast Guard as described in 33 CFR 1.05–1 and 6.04–6. The Coast Guard has determined that the Stockton University Rowing competition could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels traversing through the regulated areas. In order to protect the safety of all waterway users, including event participants and spectators, this rule establishes a special local regulation on April 2, 2022, and April 3, 2022, within specified waters of Bonita Tideway, Brigantine, NJ. This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated area during the periods of enforcement, unless authorized by the Captain of the Port (COTP), or designated Event Patrol Commander.

IV. Discussion of the Rule

This rule establishes a special local regulation from 4:00 p.m. on April 2, 2022, until 1 p.m. on April 3, 2022. The special local regulation will be enforced from 4:30 p.m. to 7:30 p.m. on April 2, 2022, and from 7:30 a.m. to 12:30 p.m. on April 3, 2022. The regulated area will cover all navigable waters of Bonita Tideway in Brigantine, NJ, within a polygon bounded by the following: Originating on the northern portion at approximate position latitude 39°24′33″ N, longitude 074°22′28″ W; thence southwest across the Bonita Tideway to the shoreline to latitude 39°24′22″ N, longitude 074°22′49″ W; thence southwest along the shoreline to

latititude 39°23′49″ N, longitude 074°23′33″ W; thence across the Bonita Tideway to the shoreline at latitude 39°23′43″ N, longitude 074°23′33″ W; thence north along the shoreline to the point of origin. The duration of the regulated area is intended to protect participants and waterway users in these navigable waters before, during, and after the scheduled event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Bonita Tideway. Vessels will be able to transit the regulated area during the enforcement period as directed by the Event Patrol Commander (PATCOM) or official patrol vessel.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting only 10 hours over two days that will prohibit or restrict entry within the regulated area during a rowing competition. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A memorandum for record (MFR) 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T05–0232 to read as follows:

§ 100.T05–0232 Special Local Regulation; Bonita Tideway, Brigantine, NJ.

(a) *Regulated area.* All navigable waters of the Bonita Tideway in Brigantine, NJ, within the polygon bounded by the following: Originating on the northern portion at approximate position latitude 39°24′33″ N, longitude 074°22′28″ W; thence southwest across the Bonita Tideway to the shoreline to latitude 39°24′22″ N, longitude 074°22′49″ W; thence southwest along the shoreline to latititude 39°23′49″ N, longitude 074°23′33″ W; thence across the Bonita Tideway to the shoreline at latitude 39°23′43″ N, longitude 074°23′33″ W; thence north along the shoreline to the point of origin.

(b) *Definitions.* The following definitions apply to this section:

(1) *Captain of the Port Representative* or *COTP Representative* means a commissioned, warrant, or petty officer of the Coast Guard designated by name by the Captain of the Port to verify an event's compliance with the conditions of its approved permit.

(2) *Event Patrol Commander* or *Event PATCOM* means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign, or any state or local law enforcement vessel approved by the Captain of the Port in accordance with current local agreements.

(3) *Non-participant* means a person or a vessel not registered with the event sponsor either as a participant or an official patrol vessel.

(4) *Official patrol vessel* or *official patrol* means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign, or any state or local law enforcement vessel approved by the Captain of the Port in accordance with current local agreements.

(5) *Participant* means any person or vessel registered with the event sponsor as participating in the event or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Patrol of the marine event.* The COTP may assign one or more official patrol vessels, as described in § 100.40, to the regulated event. The Event PATCOM will be designated to oversee the patrol. The patrol vessel and the Event PATCOM may be contacted on VHF–FM Channel 16. The Event PATCOM may terminate the event, or the operation of any vessel participating in the marine event, at any time if deemed necessary for the protection of life or property.

(d) *Special local regulations*—(1) *Controls on vessel movement.* The Event PATCOM, COTP Representative, or official patrol vessel may forbid and control the movement of all persons and vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, the person or vessel being hailed must immediately comply with all directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) *Directions, instructions, and minimum speed necessary.* (i) The operator of a vessel in the regulated area must stop the vessel immediately when directed to do so by a COTP Representative or official patrol vessel and then proceed only as directed.

(ii) A person or vessel must comply with all instructions of the Event PATCOM, COTP Representative, or official patrol vessel.

(iii) A non-participant must contact the Event PATCOM or an official patrol vessel to request permission to either enter or pass through the regulated area. If permission is granted, the non-participant may enter or pass directly through the regulated area as instructed by the Event PATCOM or official patrol vessel at a minimum speed necessary to maintain a safe course that minimizes wake and without loitering.

(3) *Postponement or cancellation.* The COTP or Event PATCOM may postpone or cancel a marine event at any time if, in the COTP's sole discretion, the COTP determines that cancellation is necessary for the protection of life or property.

(e) *Enforcement period.* This section will be enforced from 4:30 p.m. to 7:30 p.m. on April 2, 2022, and from 7:30 a.m. to 12:30 p.m. on April 3, 2022.

Dated: March 29, 2022.

Jonathan D. Theel,

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

[FR Doc. 2022–06922 Filed 3–31–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0170]

Special Local Regulations; Marine Events Within the Captain of the Port Zone Columbia River

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations at various locations in the Sector Columbia River Captain of the Port Zone. This action is necessary to provide for the safety of life on these navigable waters during marine events. These regulations prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: The regulations in 33 CFR 100.1302, Table 1, will be enforced for the regulated areas identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified in this document.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.1302, Table 1, for the following events only during the hours specified on the dates listed in the following Table:

TABLE 1—DATES AND TIMES OF ENFORCEMENT OF 33 CFR 100.1302 SPECIAL LOCAL REGULATIONS AT VARIOUS LOCATIONS IN THE SECTOR COLUMBIA RIVER CAPTAIN OF THE PORT ZONE IN 2022

Number	Date	Event	Location
1	June 3, 2022 from 6:30 a.m. to 5:30 p.m.	Spring Testing Hydroplane Races.	Kennewick, WA, Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.

TABLE 1—DATES AND TIMES OF ENFORCEMENT OF 33 CFR 100.1302 SPECIAL LOCAL REGULATIONS AT VARIOUS LOCATIONS IN THE SECTOR COLUMBIA RIVER CAPTAIN OF THE PORT ZONE IN 2022—Continued

Number	Date	Event	Location
2	July 9, 2022 from 10 a.m. to 7 p.m.	The Big Float, group inner-tube float.	Portland, OR. Regulated area includes all navigable waters of the Willamette River, in Portland Oregon, enclosed by the Hawthorne Bridge, the Marquam Bridge, and west of a line beginning at the Hawthorne Bridge at approximate location 45°30′50″ N; 122°40′21″ W, and running south to the Marquam Bridge at approximate location 45°30′27″ N; 122°40′11″ W.
3	July 29, 2022 thru July 31, 2022 from 5:30 a.m. to 6:30 p.m.	Kennewick Hydroplane Races	Kennewick, WA, Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.
4	August 13, 2022 from 10:30 a.m. to 1:30 p.m.	Swim the Snake	Perry, WA. Regulated area includes all navigable waters, bank-to-bank of the Snake River, 500 yards upstream and 500 yards downstream from the Washington State Highway 261 Bridge at the approximate position of 46°35′23″ N; 118°13′10″ W.

All coordinates are listed in reference Datum NAD 1983.

During the enforcement periods, as reflected in § 100.1302, Table 1, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign. In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: March 27, 2022.

M. Scott Jackson,

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

[FR Doc. 2022–06903 Filed 3–31–22; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15

[ET Docket No. 14–165, GN Docket No. 12–268, ET Docket No. 20–36 and ET Docket No. 04–186; FCC 22–6; FRS 78919]

Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Unlicensed White Space Device Operations in the Television Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts orders resolving pending issues associated with white space devices and databases. The actions being taken will provide additional certainty to white space device users, manufacturers and database administrators to enable unlicensed white space devices to operate efficiently and protect other spectrum users, in particular wireless microphone users. In the Second Order on Reconsideration, the Commission addresses petitions for reconsideration of the requirement established in the Commission's *White Spaces Report and Order* that white space databases ''push'' channel availability changes to white space devices when a licensed wireless microphone operator registers in the white space database to use a TV channel. The Commission removes the push notification requirement and replaces it with a simpler rule that requires certain white space devices to re-check the database more frequently. In the Order, the Commission denies a petition for reconsideration of the Office of Engineering and Technology's (OET's) designation of Nominet UK (now RED Technologies) as a white space database administrator.

DATES: Effective May 2, 2022.

FOR FURTHER INFORMATION CONTACT: Hugh VanTuyl, Office of Engineering and Technology, (202) 418–7506 or *Hugh.VanTuyl@FCC.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, *Second Order on Reconsideration and Order*, ET Docket No. 14–165, GN Docket No. 12–268, ET Docket No. 20–36 and ET Docket No. 04–186; FCC 22–6, adopted January 25, 2022 and released January 26, 2022. The full text of this document is available for public inspection and can be downloaded at: *https://www.fcc.gov/document/fcc-takes-action-unlicensed-white-space-device-database-issues.* When the FCC Headquarters reopens to the public, the full text of this document also will be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to *FCC504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Procedural Matters

Final Regulatory Flexibility Analyses. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this Second Order on Reconsideration on small entities. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) (86 FR 38969, July 23, 2021). The Commission sought written public comment on the proposals in the *NPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. Accordingly, the Commission has

prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the document on small entities. The present FRFA conforms to the RFA and can be viewed under Appendix C of the item at: *https://www.fcc.gov/document/fcc-takes-action-unlicensed-white-space-device-database-issues.*

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

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

Synopsis

Background

The existing rules prescribe communications between white space devices and a white space database to provide interference protection to other spectrum users—both to authorized services and protected users generally and to licensed wireless microphone operations that are registered at particular times and locations in the database. To provide general protection to authorized services (*e.g.,* primary and secondary broadcast television users in the TV bands, wireless service providers in the 600 MHz service band) and protected users (*e.g.,* TV translator receive sites and Multiple Video Program Distributor (MVPD) receive sites), white space devices must re-check the database at least once per day to obtain the list of available channels at the location where the device operates. The Commission established these timeframes because most protected services listed in its databases do not change on a frequent basis, and because the Commission provides updated data to the white space database administrators only once every weekday. To protect licensed wireless microphones operating in the TV bands that are registered in the white spaces database, the Commission requires more frequent communications in the event of microphone usage registrations that need more timely protection. In the 2015 *White Spaces Report and Order,* the Commission adopted the push notification requirement, which it believed to be an efficient way of achieving this objective. Furthermore, because licensed wireless microphone operations can be registered in any white space database, the Commission required that a white space database administrator share registration information with the other databases in a timely fashion.

The Commission's decision to adopt the push notification requirement was intended to provide protection to licensed wireless microphone operations that may, upon registering to operate on specified TV channels, need quick protection from potential interference from white space device operations. Prior to adopting the *Incentive Auction R&O* in 2014, which required repurposing and auctioning some TV band spectrum for new 600 MHz wireless service, the Commission had reserved two TV channels where white space devices were not permitted to operate to ensure that there would be spectrum available for wireless microphones used in applications such as electronic news gathering for which it is not possible to register the operating location in the database at least 24 hours in advance. In the *Incentive Auction R&O,* the Commission decided to no longer designate two unused television channels for wireless microphones and instead took steps to improve the operation of the white space database to provide more immediate protection to wireless microphones. To ensure that registered wireless microphone users continue to receive protection in a timely manner, the Commission then proposed in its 2014 *White Spaces NPRM* to: (1) Require fixed and Mode II personal/portable white space devices to re-check the database at time intervals not to exceed 20 minutes, (2) eliminate the rule that allows a white space device to continue operating until 11:59 p.m. on the following day if it cannot establish contact with the database, and (3) require database administrators to share wireless microphone registration information between databases within ten minutes.

In the *White Spaces Report and Order* adopted in August of 2015 the Commission sought to balance the concerns of white space device and wireless microphone proponents when it adopted the push notification requirement in place of the proposed 20-minute re-check requirement to meet its objectives. The Commission was concerned that requiring all white space devices to re-check a database (regardless of their location) for a list of available channels every twenty minutes could unnecessarily burden the database administrators, adversely affect operation of white space devices relying on batteries for operation, and increase costs for white space device users. To ensure that channels would continue to be available for wireless microphones used for events that cannot be anticipated, such as late-breaking news events, the Commission concluded at that time, as suggested by parties in the record, that a reasonable and workable approach to accomplishing its goals was to require that database administrators ''push'' information to white space devices only in areas where licensed wireless microphones will be used, rather than requiring all white space devices to re-check a database every twenty minutes. Under this approach, when a database administrator receives a registration request for immediate access to particular channels for licensed wireless microphone use, the database administrators would, within ten minutes, share the licensed wireless microphone's channel registration information among themselves and within 20 minutes of receiving that information, would ''push'' information about changes in channel availability to fixed and Mode II personal/portable white space devices. The Commission provided white space database administrators 12 months after the effective date of the rules, until December 23, 2016, to comply with this new requirement.

Petitions for reconsideration. Google and NAB each filed a petition requesting that the Commission reconsider the push notification requirement, although each express different concerns with the requirement. Google contends that the Commission failed to recognize that, as a technical matter, requiring databases to ''push'' information to devices is at least as burdensome as requiring devices to ''pull'' information from databases. Google states that in order for a database to send information to a white space device, the device must either request information very frequently to simulate a push, which dramatically increases server utilization and reduces battery life in devices relying on such a power source, or the device must maintain a persistent connection with the database, which uses bandwidth and reduces battery life by preventing the device

from entering a sleep mode. It argues that the push rule would limit the use of battery powered, low-bandwidth, or remote white space devices designed to operate for very long periods on a single battery charge. It also argues that unless an unlicensed device makes frequent ''pulls'' from the database or maintains a persistent, open connection, security features implemented on the device or network may block database messages from reaching the device. Google further argues that limiting the geographic area for database pushes does not reduce the burden on unlicensed devices or databases because there is no way for a database to communicate information to a particular device unless all devices in all locations continually check for updates.

NAB argues that the push notification requirement is insufficient for providing technical assurance that white space devices will actually receive messages and cease operation on channels registered for use by licensed wireless microphones, and is concerned that white space devices may be used in internal private networks protected by firewalls that prevent external messaging. NAB states that if the Commission maintains the push notification approach, it must modify the rules to require that white space devices be capable of receiving notifications, including when they are not in operation or connected to the internet, and further that devices send the database a confirmation when they have received and complied with a push notification.

Petitioners and commenting parties disagree, however, on what they view as the appropriate approach going forward. Google requests that the Commission require white space devices to contact the database more frequently on two designated ''fast polling'' channels, an approach similar to the one that Google had made in response to the *White Spaces NPRM* that the Commission had previously rejected in the *White Spaces Report and Order.* Google again suggests that the Commission can protect licensed wireless microphones by identifying two channels on which unlicensed devices would be required to query the database every 20 minutes, while allowing white space devices operating on other channels to check the database only once daily. It argues that designating two ''fast-polling'' channels would minimize the burden of constant rechecking on unlicensed devices and database operators, while providing adequate protection for wireless microphones used during breaking news events. Microsoft agrees with Google's suggestion. Google and Microsoft point out that under the previous rules only two channels were available on short notice for exclusive wireless microphone use and argue that because licensed wireless microphone users have access to a dedicated four-megahertz channel in the 600 MHz duplex gap and the ability to reserve channels in advance of predictable events like games and concerts, designating two fast-polling channels would leave wireless microphone operators no worse off than before.

NAB requests that, in place of a push notification, the Commission require white space devices operating on any channel to contact the database every 20 minutes for an updated list of available channels, consistent with the Commission's proposal in the *White Spaces NPRM.* NAB argues that requiring white space devices to contact the database to check on channel availability more frequently, coupled with a requirement that devices cease operation if they cannot contact the database, is simpler, more efficient, more cost-effective, and will provide greater protection for licensed wireless microphones without requiring manufacturers to redesign devices. Shure agrees with NAB's suggestion.

Regarding Google's proposed solution of creating two fast-polling channels, NAB contends that Google misinterprets the intent of the Commission's push requirement and fails to reflect the policy balance the Commission attempted to strike. NAB states that limiting polling to two channels does not provide licensed operations with the same capability and protection as under the Commission's previous rules or the same capability and protection as the Commission sought to provide with the push requirement. NAB further argues that Google's claim that polling on all channels would drive up database costs and adversely decrease device battery life is specious because the entire TV white space database is less than a couple of hundred kilobytes of data. Google counters that the issue is the frequency of database requests, not the size of the database or the amount of information transmitted in each request, and that increasing the number of requests 72-fold per day per device will be a burden on the database as white space devices become more widely deployed.

Only Key Bridge, a database administrator, disagrees that implementing a push capability for white space devices and databases is impractical. It argues that the Commission's requirement to implement push notifications is sound and should be upheld, and that the Commission should reject Google's and NAB's objections that managing white space devices is too difficult to implement.

Push Notification Waiver Order. By late 2016, while the petitions on push notification remained pending, no manufacturers had yet obtained certification for equipment that was capable of meeting the push notification requirement. Absent Commission action, all approved white space devices would have been required to cease operation no later than December 23, 2016. Accordingly, on December 22, 2016, the Commission adopted the *Push Notification Waiver Order* temporarily waiving the push notification requirements. OET has periodically extended this waiver several times since then, most recently on September 30, 2021 when it extended this waiver through March 31, 2022, or until the Commission takes final action on the petitions for reconsideration of the push notification rules, whichever comes earlier. As a result of these successive waiver orders, the push notification requirement has never come into effect. The Commission notes that since issuance of these waiver orders, no party has submitted additional suggestions for Commission consideration relating to the pending petitions.

Discussion

The record before the Commission shows that the push notification requirement is viewed as problematic by advocates for licensed wireless microphone and white space device operations alike. The Commission's goal all along has been to adopt rules that would serve to protect licensed wireless microphones quickly following registration while also minimizing the burden on white space device operations. Although the Commission believes that a push notification approach is technically achievable, and notes that it has required access systems with rapid response times that, like the push notification, are more complicated than a periodic database re-check in other bands (such as in the Citizens Broadband Radio Service), the Commission agrees with most commenters and concludes that there is no reason to require a push notification approach with respect to white space devices and the white space database system. As discussed below, replacing the push notification requirement with a more frequent re-check requirement will meet the requisite need for protecting a limited number of registered wireless microphones, and does so in a sufficiently expeditious

fashion while not increasing the cost and complexity of white space devices and the database system by avoiding the need to redesign existing white space devices and the database system.

Therefore, on reconsideration, the Commission replaces the push notification requirement for fixed and Mode II personal/portable devices operating in the TV bands, except for narrowband devices (which are addressed in the Further Notice), with a simpler and more easily implementable approach, namely requiring that these fixed and personal/portable white space devices re-check the white space database at least once every hour, *i.e.,* no longer than 60 minutes between re-checks. This frequent re-check requirement will protect licensed wireless microphone operations shortly following their database registration and will effectively protect registered licensed wireless microphone operations. The Commission adopts the requirement for white space devices to check the database every hour rather than every 20 minutes as it previously proposed because the Commission believe that this time-frame will be sufficient to accommodate licensed wireless microphones for unplanned events while reducing threefold the number of database rechecks each day. Reducing the number of database rechecks is important to ensure efficient white space device operation, reduce overhead on the networks, and maximize battery life for white space devices that are not connected to a reliable power source. To further reduce the impact on network traffic and white space devices, the Commission will not require devices that are in a sleep mode to re-check the database until they emerge from that state. Informed by the record before it, both by objections to the push notification requirement and by subsequent developments with regard to white space device operations, the Commission again seeks to reach the right balance between licensed wireless microphone users and white space device users that share use of unused spectrum in the TV bands. The Further Notice seeks comment on the database re-check interval that should apply to the narrowband IoT white space devices and the mobile white space devices that the Commission authorized in the recently adopted *2020 White Spaces Report and Order.*

Although NAB and wireless microphone interests have requested requiring that white space devices re-check the database every 20 minutes, the Commission believes that requiring a re-check every 60 minutes will be sufficient and, by relying on a re-check approach instead of the more complex push notification approach, the Commission decision will serve to ensure the kind of reliable and effective protection those parties seek. The Commission also retains the requirement for database administrators to share Part 74 wireless microphone registration information with all other white space databases within ten minutes of a registration submission from a wireless microphone licensee. The Commission finds that these requirements will ensure that licensed wireless microphones used for electronic newsgathering and other unplanned uses can receive reliable and reasonably immediate protection from white space devices. In the Commission's considerations, it takes into account that, following completion of the Incentive Auction in 2017, licensed wireless microphone users have immediate and exclusive access to a 4-megahertz portion of the 600 MHz duplex gap and can also use a 2-megahertz portion of the 600 MHz guard band where white space devices are not permitted to operate, and that these wireless microphone operators potentially could make use of the 6-megahertz of the 600 MHz duplex gap available for unlicensed operations if white space devices are not operating at that location. Also, in many parts of the country the Commission would expect that there are likely to be one or more unused vacant TV channels available for wireless microphones that are not being used by white space devices.

The balanced approach that the Commission is adopting also does not impose an unreasonable burden on white space devices or database systems. Importantly, this approach is easily implementable. All currently approved white space devices already have the capability to re-check the white space databases at least once per day for a list of all available channels in their area, and updating software or firmware, or redesigning devices to increase the frequency of database checking is a fairly simple matter. The Commission also concludes that requiring fixed and personal portable white space devices, except for narrowband IoT devices to re-check on an hourly basis, rather than every 20 minutes as previously proposed, sufficiently balances concerns of the white space device proponents concerned about potential battery issues while meeting the Commission's goal of quickly ensuring licensed wireless microphone access to TV channels for late-breaking events. The Commission also recognizes the concerns of Google and Microsoft that frequently waking a device from a sleep mode or preventing a device from entering a sleep mode to perform more frequent database checks or receive push notifications, could needlessly reduce the operational time of a battery powered device. Accordingly, the Commission will not require white space devices in sleep mode to contact the database. The Commission also believes that the increase in database traffic by changing to an hourly re-check interval will not be problematic for the white space database as computing power readily available today should be more than sufficient to manage twenty-four queries per day per white space device.

The Commission notes, however, as the number of white space devices that contact the database increases, more frequent re-checks from a significantly larger number of devices could have an impact on the databases. The Commission continues to believe that a push notification system could in some implementations potentially be more efficient if the number of white space devices that must contact the database is large. Accordingly, while the Commission is not requiring implementation of a push notification system, it is retaining an option for white space device manufacturers and database administrators in the future to develop and implement such a system, as had been permitted by the rules in effect prior to the *White Spaces Report and Order.* However, the Commission is not specifying detailed technical requirements for a push notification system. The Commission encourages the industry, if it determines that the need develops, to collaborate on a standard for push notifications to white space devices and the Commission will revisit this issue as necessary to facilitate the development and deployment of a system developed by industry that provides at least the same degree of protection to protected services as the rules the Commission is adopting herein.

The Commission rejects the suggestion by Google and Microsoft that the Commission should limit more frequent database re-checking to white space devices operating on only two designated channels, a reprise of the approach that the Commission previously rejected in the *White Spaces Report and Order* in 2015. The Commission does so for the same reasons. Because only a few channels would be designated for ''fast polling,'' this approach is less flexible in meeting the needs of wireless microphone users for immediate access to spectrum because broadcasters covering breaking news events may have wireless

microphones that operate on channels other than those designated for ''fast polling.''

Conforming edits. Because the Commission is adopting a 60-minute re-check requirement for most fixed and personal/portable white space devices operating in the TV bands, it is also modifying certain other rules to conform its rules to this change. In particular, the Commission's changes involve modifying existing rule provisions related to the requirement for white space devices to access the database on a daily basis.

Under current rules, a white space device is required to re-check the database at least once per day to obtain a list of available channels for operation. The rules also provide that if a white space device subsequently is unable to make contact with a database, operation is permitted to continue until 11:59 p.m. on the following day, and if by then, it cannot contact the database, it must cease operation until such time as it re-establishes contact. The Commission proposed eliminating these provisions when it proposed in its 2014 *White Spaces NPRM* to adopt a 20-minute re-check requirement for addressing registered licensed wireless microphone operations. When, however, the Commission adopted the push notification requirement in the *White Spaces Report and Order* instead of a 20-minute re-check requirement, it concluded that it should not eliminate the then-existing daily re-check rule and instead would leave in place the requirement that white space devices re-check the database at least once per day to obtain the list of available TV channels at the location where the device operates.

Because the Commission now adopts a 60-minute re-check requirement for fixed and personal/portable white space devices operating in the TV bands, other than narrowband IoT devices (discussed in the Further Notice), the Commission modifies the rules that require white space devices to only re-check the database once a day to obtain a list of available channels, and that permit these devices to continue operating using a channel on that list until 11:59 p.m. the following day when it cannot contact a database on a given day. Maintaining these rules would be inappropriate since this would allow white space devices that cannot contact a database to operate for a significantly longer time period than the 60-minute re-check interval the Commission is requiring for protecting licensed wireless microphones operating in the TV bands. The Commission notes that in response to its proposal in the *White Spaces NPRM* to require that white space devices re-check the database every 20 minutes, several commenters agreed that the daily re-check provision in the rules, and permitting white space device to continue operating until 11:59 p.m. the following day when it is unable to contact the database, should be eliminated. Some commenters cautioned, though, that the Commission should permit a white space device to retry contacting the database one or more times before requiring that it discontinue operating because a white space device may occasionally be unable to make contact with the database within the designated polling interval. The Commission agrees. Accordingly, to ensure that white space devices may continue to operate during short network outages, the Commission will require fixed and personal/portable white space devices operating in the TV bands to cease operation after two failed scheduled checks, *i.e.,* 120 minutes. This requirement will ensure that a white space device cannot continue to operate for an extended period of time on a channel that may be registered for use by a licensed wireless microphone in the event the white space device cannot contact a database to verify the list of available channels. This approach also is analogous to the current requirement that a white space device must cease operation after a time period no greater than two failed scheduled checks (a maximum of 48 hours for a re-check interval of 24 hours). The Commission retains the current re-check requirements for white space devices that operate outside of the TV bands as well as for narrowband and mobile devices, but seeks comment in the Further Notice on whether it should change the re-check requirements for those devices.

Because the Commission is reducing the length of time that white space devices may continue to operate when they cannot contact the database, it correspondingly reduces the time interval over which white space devices must adjust their channel usage in accordance with licensed wireless microphone scheduling information provided by the database. The Commission therefore requires that the white space database provide registered licensed wireless microphones scheduling information for the two hour time period after the white space device contacts the database. The white space device must adjust its use of channels in accordance with this scheduling information, *i.e.,* it must cease using the channel during the times when a licensed wireless microphone is scheduled to use it. The Commission selects a time period of two hours because that is the maximum time that a white space device may operate if it is unable to contact the database. The Commission does not require white space devices operating outside the TV bands, *i.e.,* in the 600 MHz service bands, the upper 6-megahertz portion of the 600 MHz duplex gap and on channel 37, to adjust their use of channels in accordance with scheduling information provided by the white space database because wireless microphones do not operate on those frequencies on a licensed basis and thus there will be no scheduling information for the database to provide.

The Commission modifies Section 15.711 to implement the changes to the database re-check interval discussed above, and to streamline the applicable rules. Specifically, it revises paragraph (i) to remove the push notification requirement and replaces it with an option for manufacturers to develop a push notification system as the pre-2015 rules allowed. The Commission moves the requirement for white space databases to share licensed wireless microphone registrations with other white space databases within ten minutes from Section 15.711(i)(1) to Section 15.715(l). The Commission revises Section 15.711(h) to place the database re-check requirements for fixed and Mode II personal/portable devices in a single paragraph, rather than in separate paragraphs as under the current rules.

Transition. The Commission also adopts provisions establishing the transition requirements for white space device compliance with the newly established re-check requirements as set forth herein. The Commission notes that increasing the frequency of database checks can generally be done by reprogramming a white space device's software or firmware, thus enabling the new requirement to be met relatively quickly. Accordingly, the Commission requires that devices for which a certification application is approved by a Telecommunication Certification Body (TCB) beginning six months after the effective date of the rules must comply with the hourly database re-check requirement that replaces the daily re-check requirement. The Commission also requires that within six months after the effective date of the rules, all white space devices imported into or marketed within the United States comply with these requirements, regardless of when they were certified. Because white space devices already deployed generally should be able to download a software upgrade, the

Commission also requires that previously approved fixed white space devices that can be re-programmed comply with the faster re-check requirement six months after the effective date of the rules. Finally, the Commission modifies Section 15.37(j) to specify these transition dates for the faster database re-check interval in place of the transition dates for the push notification requirement that the Commission eliminates.

Order

In this Order, the Commission denies NAB's petition for reconsideration of OET's 2018 action designating Nominet UK as a white space database administrator. OET referred this petition to the Commission for action pursuant to Section 1.106(a) of the rules. Nominet addressed concerns raised by NAB shortly after it filed its petition. The Commission notes that in 2020 Nominet's database was subsequently transferred to RED Technologies, which currently serves as a white spaces database administrator.

Background. Pursuant to the white spaces rules, the Commission can designate one or more entities to administer a white space database system that provides lists of available channels to fixed, mobile and Mode II personal/portable white space devices. On November 16, 2017, Nominet filed a proposal with OET seeking to administer a white space database. After seeking comment on Nominet's proposal, on June 11, 2018, the Commission's OET designated Nominet as a white space database administrator, subject to certain conditions, including that Nominet's database would be subject to a 45-day public trial period before it would be made available for actual use by white space devices to allow interested parties an opportunity to check that the database is providing accurate results.

Following the 45-day public trial period, on September 19, 2018, OET gave final approval for Nominet to operate its white space database system. OET found that Nominet's white space database system was compliant with the Commission's rules and ready for operation, based on its own examination and testing of the Nominet database system and on the results of the public trial, including comments submitted to Nominet during and after the trial and Nominet's responses to those comments. As OET noted, during the trial period Nominet indicated that it successfully resolved three issues raised by NAB concerning Nominet's database system, including concerns about its channel availability calculator.

On October 19, 2018, NAB filed a petition for reconsideration of OET's designation of Nominet as a white space database administrator. NAB states that its review of Nominet's database indicated that it contains incorrect channel information for hundreds of TV stations and that it provides at least one incorrect available channel at more than three-quarters of twenty-six locations analyzed. NAB states that the Nominet database is extracting the wrong information from the Commission database and that its approval should be revoked until Nominet addresses these issues. NAB further argues that OET should rework its internal processes and policies for approval of white space database administrators to ensure that sufficient testing is performed to detect errors, including testing with actual white space devices.

Nominet responded to NAB's petition by agreeing that NAB had identified discrepancies, but asserts that those discrepancies arose due to difficulties experienced when importing TV station data from the Commission's new Licensing and Management System (LMS), which had replaced the Commission's Consolidated Database System (CDBS). Nominet explains that it was the first database administrator required to use the LMS, and that all published material by the FCC regarding how to apply the white space rules to TV data pertains to CDBS, which had been used by all previous database administrators. Nominet concludes by stating it promptly addressed NAB's concerns, and that the changes required to correct the import procedure were applied on October 24, 2018, only days after NAB filed its petition for reconsideration on October 19, 2018. NAB did not respond directly to Nominet's response or identify specific ongoing errors that needed remedying.

The Commission notes that, subsequent to the designation of Nominet as a white space database administrator, and in response to a petition submitted by NAB in 2015, the Commission took steps in the *2019 White Spaces Order* to improve the accuracy and reliability of the fixed white space device data in the white space databases and ensure that the potential for these devices to cause harmful interference to protected services is minimized. Specifically, the Commission required all fixed white space devices to incorporate a geo-location capability such as GPS and eliminated the option that permitted the geographic coordinates of a fixed device to be determined by a professional installer. The Commission also adopted rules that allow the use of external geo-location sources by a fixed white space device when the device is used at a location where its internal geo-location capability does not function, such as deep inside a building. In addition, the Commission required fixed white space devices to re-check their geographic coordinates at least once a day and report the coordinates to the white space database.

Discussion. The Commission denies the NAB petition for reconsideration of OET's designation of Nominet as a white space database administrator. The Commission finds that the database errors discovered by NAB, which were immediately corrected by Nominet, are not grounds to revoke the designation of Nominet as a white space database administrator. As Nominet notes in its response to NAB's petition, Nominet was the first white space database administrator required to obtain TV station data from the Commission's new LMS instead of the older, well-understood CDBS. The LMS has a more sophisticated data structure than the CDBS, thus requiring new and more complex algorithms than those used by other white space database administrators to extract the proper TV station facility information (''extraction logic'') for input into the white space database. OET worked closely with Nominet to test the new extraction logic using Nominet's trial database to ensure that it functioned correctly. It appears that Nominet failed to include all of the updates made to the test database reviewed by OET in the final version that it made available for commercial use. As noted above, Nominet took action to remedy specific concerns raised by NAB. While the Commission is denying NAB's petition, the Commission underscores that it appreciates NAB bringing these concerns to the attention of the Commission and Nominet so that the errors could be remedied. However, the Commission does not believe that these errors show any fundamental deficiency on the part of the database administrator but appear to be the result of issues related to the Commission's transition from the CDBS to the LMS combined with an inadvertent failure by Nominet to include all of the latest updates in its final version of the database. Nominet promptly recognized its ongoing responsibility for remedying concerns brought to its attention. As noted above, in 2020, Nominet transferred its database to RED Technology, and NAB did not indicate any concerns about this transfer.

The Commission takes seriously the integrity of the white space database since that is the primary means to

prevent white space devices from causing harmful interference to TV reception and other protected services. As noted above, the Commission at the suggestion of NAB took steps to increase the integrity of the white space database subsequent to the 2018 designation of Nominet as a white space database administrator. The changes adopted in the *2019 White Spaces Order* will ensure that fixed white space devices provide accurate coordinates to the white space database by requiring the incorporation of a geo-location mechanism in all fixed devices, as well as periodic re-checking of the coordinates by the white space device. The *2019 White Spaces Order* also clarifies the registration requirements for fixed white space devices. These changes reduce the likelihood that fixed devices will report incorrect coordinates to the database, which could result in harmful interference to TV reception and protected services, as well as ensure the database contains accurate registration information that could be used to help track down any devices that cause harmful interference. OET will continue to work with any white space database administrator as well as any other interested party to ensure that the database provides accurate lists of available channels to white space devices.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in Sections 4(i), 302, 303(b), (c), (e), (f), (r), and 307 of the Communications Act of 1934, as amended, and sections 6403 and 6407 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156, 47 U.S.C. 154(i), 302, 303(b), (c), (e), (f), (r), 307, 1452, 1454, this Second Order on Reconsideration, Further Notice of Proposed Rulemaking, and Order *is hereby adopted.*

It is further ordered that the petitions for reconsiderations filed by Google, Inc. and the National Association of Broadcasters on December 23, 2015 in ET Docket No. 14–165 *are granted in part and denied in part* to the extent described herein.

It is further ordered that Part 15 of the Commission's rules *is amended* as specified in Appendix A of the Second Order on Reconsideration, Further Notice of Proposed Rulemaking, and Order, and such rule amendments *will become effective* 30 days after the date of publication in the **Federal Register**.

It is further ordered that the waiver of Sections 15.37(j) and 15.711(i) of the Commission's rules, 47 CFR 15.37(j) and 15.711(i), adopted by the Commission on September 30, 2021, DA 21–349, *is extended* until the effective date of the rules adopted herein.

It is further ordered that the petition for reconsideration of Nominet UK's designation as a white space database administrator filed by the National Association of Broadcasters on October 19, 2018 in ET Docket No. 04–186 *is hereby denied.*

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

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 2. Amend § 15.37 by revising paragraph (j) to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(j) White space devices which are approved by Telecommunication Certification Bodies beginning [six months after the effective date of the rules] shall comply with the database re-check requirements in § 15.711(h) of this part. White space devices that are in operation, imported or marketed beginning [six months after the effective date of the rules] shall also comply with these requirements.

* * * * *

■ 3. Amend § 15.711 by revising paragraphs (c)(2)(iii), (d)(4), (h) and (i) to read as follows:

§ 15.711 Interference avoidance methods.

* * * * *

(c) * * *

(2) * * *

(iii) A fixed white space device shall access the database at least as frequently as specified in paragraph (h) of this section to verify that the operating channel(s) and corresponding power levels continue to remain available. The fixed device's registration information shall be updated if the geographic coordinates reported to the database differ by more than ±50 meters from the previously registered coordinates.

* * * * *

(d) * * *

(4) A Mode II personal/portable white space device that has been in a powered state shall re-check its location and access the database at least as frequently as specified in paragraph (h) of this section to verify that the operating channel(s) and corresponding power levels continue to be available.

* * * * *

(h) *Database re-check requirement.* (1) Fixed and Mode II personal/portable devices, except for narrowband devices, operating in the television bands.

(i) A device that has been in a powered-on state shall access the white space database at least once every 60 minutes to verify that the operating channel(s) and associated maximum power levels continue to be available at its location. Devices shall adjust their channel usage in accordance with the most recent channel availability schedule information provided by the white space database for the two-hour period beginning at the time of the device last accessed the database for a list of available channels.

(ii) If a device fails to successfully contact the white space database, it may continue to operate until no longer than 120 minutes after the last successful contact, at which time it must cease operations until it reestablishes contact with the white space database and re-verifies its list of available channels and associated maximum power levels.

(2) Narrowband devices operating in the television bands and fixed and Mode II personal/portable devices operating outside of the television bands.

(i) A device that has been in a powered-on state shall access the database at least once a day to verify that the operating channel(s) and associated maximum power levels continue to be available at its location.

(ii) If a device fails to successfully contact the white space database during any given day, it may continue to operate until 11:59 p.m. of the following day at which time it must cease operations until it re-establishes contact with the white space database and re-verifies its list of available channels and corresponding power levels.

(i) *Push notifications.* Device manufacturers and database administrators may implement a system that pushes updated channel availability information from the

database to white space devices. However, the use of such systems is not mandatory, and the requirements for white space devices to validate the operating channel and to cease operation in accordance with paragraph (h) of this section continue to apply if such a system is used.

* * * * *

■ 4. Amend § 15.715 by revising paragraph (l) to read as follows:

§ 15.715 White space database administrator.

* * * * *

(l) If more than one database is developed, the database administrators shall cooperate to develop a standardized process for providing on a daily basis or more often, as appropriate, the data collected for the facilities listed in § 15.713(b)(2) to all other white space databases to ensure consistency in the records of protected facilities. In response to a request for immediate access to a channel by a licensed wireless microphone user, white space database administrators are required to share the licensed microphone channel registration information to all other white space database administrators within 10 minutes of receiving each wireless microphone registration.

* * * * *

[FR Doc. 2022–06503 Filed 3–31–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375, DA 22–52; FR ID 77980]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the *Mandatory Data Collection Order,* DA 22–52, issued by the Commission's Wireline Competition Bureau (WCB or Bureau) and Office Economics and Analytics (collectively WCB/OEA) on January 18, 2022. In that *Order,* WCB/OEA adopted instructions, a reporting template, and a certification form related to a data collection regarding calling services for incarcerated people. OMB approved the data collection on March 1, 2022. This document establishes an effective date for the *Mandatory Data Collection Order.* Responses to to the Third Mandatory Data Collection are due June 30, 2022.

DATES: The effective date of the order published March 23, 2022 at 87 FR 16560 is April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Erik Raven-Hansen, Pricing Policy Division, Wireline Competition Bureau, (202) 418–1532, or email *erik.raven-hansen@fcc.gov.@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on March 1, 2022, OMB approved, for a period of three years, the information collection requirements adopted on January 18, 2022, in the *Mandatory Data Collection Order,* DA 22–52, published March 23, 2022 at 87 FR 16560. The OMB Control Number is 3060–1300. The Commission publishes this document as an announcement of the effective date of the requirements for the Mandatory Data Collection.

In the *Mandatory Data Collection Order,* WCB/OEA directed that requirements for the Mandatory Data Collection adopted in that *Order* would become effective on the date specified in a document published in the **Federal Register** announcing OMB approval. We note that inmate calling services (ICS) providers' responses to the data collection are due no later than June 30, 2022.

If you have any comments on the Mandatory Data Collection, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20002. Please include the OMB Control Number, 3060–1300, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on March 1, 2022 for the information collection requirements contained in WCB/OEA's *Mandatory Data Collection Order.* Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1300.

The foregoing notification is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total data collection burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1300.

OMB Approval Date: March 1, 2022.

Expiration Date: March 31, 2025.

Title: Inmate Calling Service (ICS) 2022 One-time Data Collection, WC Docket No. 12–375, FCC 21–60.

Form Numbers: FCC Form 2302(a) and FCC Form 2302(b).

Respondents: Business or other for profit.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time per Response: 355 hours on average.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 7,100 hours.

Total Annual Cost: No cost.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 4(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 617 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 617.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: The Commission anticipates treating as presumptively confidential any particular information identified as proprietary by calling services providers.

Needs and Uses: Section 201 of the Communications Act of 1934, as amended (Act), 47 U.SC. 201, requires that calling services providers' interstate and international rates and practices be just and reasonable. Section 276 of the Act, 47 U.S.C. 276, requires that payphone service providers (including calling services providers) be fairly compensated for completed calls.

On May 24, 2021, the Commission released the Third Report and Order (86 FR 40682, July 28, 2021), Order on Reconsideration (86 FR 40340, July 28, 2021), and Fifth Further Notice of Proposed Rulemaking (86 FR 40416,

July 28, 2021), WC Docket No. 12–375, FCC 21–60 (*2021 ICS Order*), in which it continued its reform of the calling services marketplace. In that *Order,* the Commission, among other actions, delegated authority to WCB/OEA to implement a data collection for ICS providers. Pursuant to that delegation, WCB/OEA adopted the *Mandatory Data Collection Order,* including the instructions, reporting template, and certification form for the data collection, on January 18, 2022.

Federal Communications Commission.

Lynne Engledow,

Deputy Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 2022–06517 Filed 3–31–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–2021–0001]

RIN 2127–AM32

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: On January 14, 2021, NHTSA published an interim final rule in response to a petition for rulemaking from the Alliance for Automotive Innovation. The interim final rule applied the adjusted civil penalty rate applicable to automobile manufacturers that violate relevant corporate average fuel economy (CAFE) standards beginning with vehicle Model Year (MY) 2022. The interim final rule also requested comment. In light of a subsequent Executive order and the agency's review of comments, NHTSA reviewed and reconsidered that interim final rule, a process that included a supplemental notice of proposed rulemaking (SNPRM) to consider the appropriate path forward and to allow interested parties sufficient time to provide comments. As a result of this review and reconsideration, including a careful consideration of the comments received in response to the SNPRM, NHTSA is repealing the interim final rule and reverting to the December 2016 final rule that would apply the adjustment for the CAFE civil penalty rate beginning with Model Year 2019. In this rule, NHTSA is also applying the statutorily required annual adjustments through 2022. Going forward, NHTSA will continue to make the mandatory adjustments to the CAFE civil penalty rate, as required by law for all civil monetary penalties.

DATES:

Effective date: This rule is effective as May 31, 2022.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than May 16, 2022.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Deputy Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Fourth Floor, Washington, DC 20590.

Docket: All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information 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 either electronically through *www.regulations.gov* or in hard copy at the following location: Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The telephone number for the docket management facility is (202) 366–9324. The docket management facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kuppersmith, Office of Chief Counsel, NHTSA, email *michael.kuppersmith@dot.gov,* telephone (202) 366–2992, facsimile (202) 366–3820, 1200 New Jersey Ave. SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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A. CAFE Statutory and Regulatory Background

NHTSA sets [1] and enforces [2] corporate average fuel economy (CAFE) standards for the United States light-duty automobile fleet, and in doing so, assesses civil penalties against manufacturers that violate applicable standards and are unable to make up the shortfall with credits.[3] The civil penalty amount for CAFE violations was originally set by statute in 1975, and beginning in 1997, included a rate of $5.50 per each tenth of a mile per gallon (0.1) that a manufacturer's CAFE performance falls short of its compliance obligation. This shortfall amount is then multiplied by the number of vehicles in that manufacturer's fleet.[4] The basic equation for calculating a manufacturer's civil penalty amount, before accounting for credits, is as follows:

(penalty rate, in $ per 0.1 mpg per vehicle) × (amount of shortfall, in tenths of an

[1] 49 U.S.C. 32902. The authorities vested in the Secretary under chapter 329 of Title 49, U.S.C., have been delegated to NHTSA. 49 CFR 1.95(a).

[2] 49 U.S.C. 32911, 32912.

[3] Within statutory constraints, credits may be either *earned* (for over-compliance by a given manufacturer's fleet, in a given model year), *transferred* (from one fleet to another), or *purchased* (in which case, another manufacturer earned the credits by over-complying and chose to sell that surplus). 49 U.S.C. 32903.

[4] A manufacturer may have up to three fleets of vehicles, for CAFE compliance purposes, in any given model year—a domestic passenger car fleet, an imported passenger car fleet, and a light truck fleet. Each fleet belonging to each manufacturer has its own compliance obligation, with the potential for either over-compliance or under-compliance. There is no overarching CAFE requirement for a manufacturer's total production.

mpg) × (# of vehicles in manufacturer's fleet).[5]

Starting with Model Year 2011, the Energy Independence and Security Act of 2007 (EISA) provided for credit transfers among a manufacturer's various fleets.[6] The law also provided for trading between vehicle manufacturers, which has allowed vehicle manufacturers the opportunity to acquire credits from competitors rather than paying civil penalties for violations. Manufacturers can choose to carry back credits to apply to any of three model years before they are earned or carry them forward to apply to any of the five model years after they are earned.

In complement to NHTSA's regulation of fuel economy, the Environmental Protection Agency (EPA) regulates the emissions of light-duty vehicles. These regulations include standards to regulate greenhouse gas emissions from the light-duty fleet. The Clean Air Act requires EPA to set greenhouse gas (GHG) emissions standards from light-duty vehicles since EPA has made an ''endangerment finding'' that greenhouse gases ''cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health or welfare.''[7] Although NHTSA and EPA have different roles and independent enforcement and compliance obligations, and operate under different statutory authority, the agencies work together to achieve the goals of their respective statutes, and their light-duty vehicle fuel economy rulemakings are harmonized to the extent possible to work in tandem. However, the CAFE program is subject to various statutory requirements not applicable to the EPA GHG program. One such requirement, for example, requires automakers to meet a separate average fleet requirement for automobiles that are manufactured domestically.[8] The Clean Air Act does not include a similar requirement for EPA's GHG standards.

[5] The process of determining civil penalties occurs after the end of a model year, following NHTSA's receipt of final reports from the Environmental Protection Agency (EPA). See 77 FR 62624, 63126 (Oct. 15, 2012). NHTSA uses the penalty rate from the calendar year that is the same as the model year to assess CAFE violations. For example, NHTSA will assess the civil penalties for Model Year 2022 vehicles using the 2022 calendar year rate—even if NHTSA ultimately assesses the penalty in a later calendar year.

[6] Public Law 110–140, 104.

[7] 42 U.S.C. 7521, *see also* 74 FR 66495 (Dec. 15, 2009) (''Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act'').

[8] 49 U.S.C. 32902(b)(4).

B. Civil Penalties Inflation Adjustment Act Improvements Act of 2015

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act (2015 Act), Public Law 114–74, Section 701, was signed into law. The 2015 Act required Federal agencies to promulgate an interim final rule to make an initial ''catch-up'' adjustment to the civil monetary penalties they administer, and then to make subsequent annual adjustments. The 2015 Act limited the initial adjustment to 150 percent of the then-current penalty.

In a February 24, 2016 memorandum, the Director of the Office of Management and Budget (OMB) provided initial guidance to all Federal agencies on how to calculate the initial adjustment required by the 2015 Act.[9] The initial ''catch-up'' adjustment was based on the change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year the penalty amount was established or last adjusted by Congress and the October 2015 CPI–U. The February 24, 2016 memorandum contained a table with a multiplier for the change in CPI–U from the year the penalty was established or last adjusted to 2015. To arrive at the adjusted penalty, the agency multiplied the penalty amount when it was established or last adjusted by Congress, excluding adjustments under a prior adjustment statute, by the multiplier for the increase in CPI–U from the year the penalty was established or adjusted. Ensuing guidance from OMB identifies the appropriate multiplier for agencies to use to calculate the subsequent annual adjustments.[10]

[9] Memorandum from the Director of OMB to Heads of Executive Departments and Agencies, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Feb. 24, 2016), available online at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2016/m-16-06.pdf.*

[10] Memorandum from the Director of OMB to Heads of Executive Departments and Agencies, Implementation of the 2017 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 16, 2016), available online at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-11_0.pdf;* Memorandum from the Director of OMB to Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2017), available online at *https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf;* Memorandum from the Director of OMB to Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 14, 2018), available online at *https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf;* Memorandum from the Acting Director of OMB to Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 16, 2019), available online at *https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf;* Memorandum from the Director of OMB to Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 23, 2020), available online at *https://www.whitehouse.gov/wp-content/uploads/2020/12/M-21-10.pdf.*

C. NHTSA's Actions to Date Regarding CAFE Civil Penalties

1. Initial Interim Final Rule

On July 5, 2016, NHTSA published an interim final rule, adopting the adjustments required by the statute for all civil penalties under its administration, following the procedure and the formula in the 2015 Act. One of the adjustments NHTSA made at the time was raising the civil penalty rate for CAFE violations from $5.50 to $14.[11] NHTSA also indicated in that interim final rule that the Secretary's statutory authority under the Energy Policy and Conservation Act (EPCA) to establish an additional increase for such violations would similarly need to be adjusted from the statutory cap of $10 to $25, but did not codify this change in the regulatory text. In the preamble discussion, NHTSA provided detailed discussion of the authority granted in Public Law 95–619, 402, 92 Stat. 3255 (Nov. 9, 1978), which allowed the Secretary of Transportation to establish a new civil penalty for each .1 of a mile a gallon by which the applicable average fuel economy standard under EPCA exceeds the average fuel economy for automobiles to which the standard applies manufactured by the manufacturer during the model year. NHTSA explained that these amendments, codified in 49 U.S.C. 32912(c), state that the new civil penalty cannot be more than $10. NHTSA further explained that applying the multiplier for the increase in CPI–U for 1978 in Table A of the February 24, 2016 memorandum (3.54453) to the $10 maximum penalty the Secretary is permitted to establish under 49 U.S.C. 32912(c) results in an adjusted civil penalty of $35. NHTSA then explained that because this calculation would result in an increase of greater than 150 percent, the adjusted maximum civil penalty that the Secretary is permitted to establish under 49 U.S.C. 32912(c) is $25 (current maximum penalty $10 × 2.5). NHTSA concluded that because the new maximum penalty that the Secretary is permitted to establish under

[11] 81 FR 43524 (July 5, 2016).

49 U.S.C. 32912(c) is $25, the new adjusted civil penalty in 49 CFR 578.6(h)(2) of $14 does not exceed the maximum penalty that the Secretary is permitted to impose. NHTSA addresses the adjustments that occurred to the statutory cap since that time and codifies the adjusted cap in this final rule. That initial interim final rule became effective on August 4, 2016.

2. Initial Petition for Reconsideration and Response

On August 1, 2016, the then-Alliance of Automobile Manufacturers and the Association of Global Automakers (since combined to form the Alliance for Automotive Innovation) jointly petitioned NHTSA for reconsideration of the CAFE penalty provisions issued in the interim final rule.[12] The Alliance and Global joint petition raised concerns with the impact that the increased penalty rate would have on CAFE compliance costs, which they estimated to be at least $1 billion annually. Specifically, the petition identified several issues, including retroactivity. The petitioners were concerned that applying the penalty increase associated with model years that had already been completed or for which a company's compliance plan had already been ''set'' was a retroactive application of the adjustment.

In response to the joint petition, NHTSA issued a final rule on December 28, 2016.[13] In that rule, NHTSA agreed that raising the penalty rate for model years already fully complete at the time the 2015 Act was enacted would be inappropriate, given that courts generally disfavor the retroactive application of statutes, and that applying penalties to model years that were already completed could not deter non-compliance, incentivize compliance, or lead to any improvements in fuel economy. NHTSA also agreed that raising the rate for model years for which product changes were infeasible due to lack of lead time from the enactment of the 2015 Act did not seem consistent with Congress's intent that the CAFE program be responsive to consumer demand. Accordingly, NHTSA stated that it would not apply the adjusted penalty rate of $14 (plus any other required adjustments that occurred or may occur) until Model Year 2019, as the agency believed that 2019 would be the first year after the 2015 Act in which product changes could reasonably be made in response to the higher penalty rate. This final rule had an effective date of January 27, 2017.

3. NHTSA Reconsideration

Beginning in January 2017, NHTSA took a series of actions to delay the effective date of the December 2016 final rule, ultimately leading to a rule announcing that the effective date would be delayed indefinitely.[14] In April 2018, the United States Court of Appeals for the Second Circuit vacated NHTSA's indefinite delay of the rule's effective date, stating that the December 2016 rule was in force.[15]

In July 2019, NHTSA finalized a rule determining, in part, that the 2015 Act did not apply to the CAFE civil penalty rate. On September 9, 2019, the Institute for Policy Integrity at New York University School of Law (IPI) submitted a petition for reconsideration of NHTSA's July 2019 final rule. IPI argued that the rule was unreasonable and not in the public interest because it did not properly account for the associated costs and benefits. Additionally, IPI challenged NHTSA's statutory interpretations.

On August 31, 2020, the United States Court of Appeals for the Second Circuit vacated the July 2019 rule and ruled again that the December 2016 rule was in force.[16] The Second Circuit denied panel rehearing on November 2, 2020. NHTSA did not issue a decision on the IPI petition prior to the Second Circuit's decision vacating the rule.

4. Subsequent Petitions and Interim Final Rule

Following the Second Circuit's decision, on October 2, 2020, NHTSA received a petition for rulemaking from the Alliance for Automotive Innovation (Auto Innovators) requesting that the adjustment to $14 not be applied until Model Year 2022.[17] According to the Auto Innovators' petition, ''Model Years 2019 and 2020 are effectively lapsed now,'' and ''[m]anufacturers are unable to change MY 2021 plans at this point.'' The Auto Innovators argued that, as in the December 2016 rule, applying the increased penalty to any violations that cannot practically be remedied does not serve the statutory purposes of deterring prohibited conduct or incentivizing favored conduct. According to the Auto Innovators, doing so would effectively be punishing violators retroactively.

In addition to relying on the reasoning of the December 2016 rule as it applied to the increase based on the timing of the enactment of the 2015 Act, the Auto Innovators' petition noted, but did not provide detailed evidence of, the significant economic impact suffered by the industry due to COVID–19. Accordingly, the Auto Innovators' petition also cited the now-revoked Executive Order 13924,[18] requiring Federal agencies to take appropriate action—consistent with applicable law—to combat the economic emergency caused by COVID–19. Several individual vehicle manufacturers submitted supplemental information to NHTSA further articulating the negative economic position they were in due to the COVID–19 public health emergency and the potential and significant adverse economic consequences of the increased civil penalty rate.

After considering the issues raised, NHTSA granted the Auto Innovators' petition and promulgated an interim final rule providing that the increase[19] will apply beginning with Model Year 2022. The interim final rule stated that applying the increased civil penalty rate to vehicles in Model Years 2019, 2020, and 2021 would not result in additional fuel savings and would impose higher penalties retroactively because those model years were already completed, or, for Model Year 2021, production plans were set prior to the Second Circuit's decision striking down the 2019 rule. The interim final rule relied in large part on the reasoning in the December 2016 final rule, though it did not discuss the extent to which the four years between the two rules should affect that reasoning. Additionally, the interim final rule addressed the negative economic impact on the automotive sector caused by the global outbreak of COVID–19.[20] That interim final rule

[12] Jaguar Land Rover North America, LLC also filed a petition for reconsideration in response to the July 5, 2016 interim final rule raising the same concerns as those raised in the joint petition. Both petitions, along with a supplement to the joint petition, can be found in Docket No. NHTSA–2016–0075 at *www.regulations.gov.*

[13] 81 FR 95489 (December 28, 2016).

[14] 82 FR 8694 (January 30, 2017); 82 FR 15302 (March 28, 2017); 82 FR 29009 (June 27, 2017); 82 FR 32139 (July 12, 2017).

[15] Order, ECF No. 196, *Natural Res. Def. Council* v. *NHTSA,* Case No. 17–2780 (2d Cir. Apr. 24, 2018); *see also Natural Res. Def. Council* v. *NHTSA* (*NRDC*), 894 F.3d 95, 116 (2d Cir. 2018) (''The Civil Penalties Rule, 81 FR 95,489, 95,489–92 (December 28, 2016), no longer suspended, is now in force.'').

[16] *New York* v. *NHTSA,* 974 F.3d 87 (2d Cir. 2020).

[17] The Auto Innovators also submitted a supplement to its petition on October 22, 2020. The petition, the supplement, and other supporting materials were posted with the interim final rule and can be found in Docket No. NHTSA–2021–0001 at *www.regulations.gov.*

[18] *See* Executive Order 14018, 86 FR 11855, ''Revocation of Certain Presidential Actions'' (Feb. 24, 2021).

[19] The rate is increasing to $14, plus any required adjustments that occurred or may occur. 49 CFR 578.6(h)(2).

[20] The reasoning for the interim final rule is set forth more fully in the January 14, 2021 document published at 86 FR 3016.

amended the relevant regulatory text accordingly—effective immediately and without having afforded prior notice or the ability to comment in advance—and requested comment within ten days. The interim final rule also noted that IPI's petition was moot, and, to the extent it was not moot, NHTSA denied it.

The interim final rule is currently the subject of legal challenges that have been consolidated in the Second Circuit.[21]

5. Supplemental Notice of Proposed Rulemaking

Before NHTSA's interim final rule was published but after the agency had announced, through the publication of the Fall 2020 Unified Agenda of Regulatory and Deregulatory Actions, that it had initiated a rulemaking in response to the Auto Innovators' petition, NHTSA received two letters regarding the rulemaking: One jointly from the State of New York, the Natural Resources Defense Council, and the Sierra Club, and one from Tesla.[22] These letters raised concerns with NHTSA's rulemaking, particularly with the entities' inability to review or comment on the Auto Innovators' petition for rulemaking in advance. NHTSA did not respond to these letters prior to the publication of the interim final rule, but NHTSA included both letters in the docket when the interim final rule was published and noted that they would ''be treated as comments for appropriate consideration.'' [23]

After the interim final rule was published, NHTSA received eight more substantive comments.[24] NHTSA received comments from:

- The Attorneys General of California, New York, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, Washington, and Vermont; [25]
- American Council for an Energy-Efficient Economy, Center for Auto Safety, Center for Biological Diversity, Consumer Federation of America, Consumer Reports, The Ecology Center (Michigan), Environmental Law and Policy Center, Interfaith Power & Light, Sierra Club, Union of Concerned Scientists; [26]
- Natural Resources Defense Council and Sierra Club; [27]
- The Institute for Policy Integrity at New York University School of Law; [28]
- Tesla; [29]
- The Alliance for Automotive Innovation; [30]
- The National Automobile Dealers Association (NADA); [31] and
- An anonymous individual.[32]

Most of the comments opposed the interim final rule, raising serious procedural, legal, and substantive concerns. In general, these comments argued that NHTSA did not have the authority to delay the application of the adjusted rate beyond Model Year 2019 and that, regardless, NHTSA would have to do so through notice-and-comment, not by an interim final rule that was effective immediately without prior notice and without the opportunity to comment in advance. In supporting these arguments, the commenters relied, in part, upon the two earlier decisions by the Second Circuit.

Most of these comments also challenged the interim final rule as arbitrary and capricious on multiple grounds. For example, the comments discussed that applying the increased rate before Model Year 2022 would not be retroactive because the increased rate was originally applied in 2016 when it was still prospective—both in the initial interim final rule in July 2016 and in the rule in response to the initial petition for reconsideration in December 2016—and NHTSA's subsequent actions that were invalidated by the Second Circuit did not change that fact. In these commenters' view, manufacturers have been on notice of the increase since well before Model Year 2019, and any reliance to the contrary was undue. These comments argued that this was particularly true given the rulings from the Second Circuit litigation, in which many of these commenters and the Auto Innovators were involved, with the predecessor organizations having intervened and participated in this litigation. The comments further argued that delaying the application of the increased rate would affect future compliance because manufacturers may be incentivized to hold credits for model years when the higher rate will apply. That is, a credit earned at the $5.50 rate is likely to be more valuable—either for the manufacturer's own use or to sell to another manufacturer—in a model year when the rate increases to at least $14 (although credits must be used within a limited number of years before they expire). The comments also argued that the interim final rule improperly analyzed the economic effects of the COVID–19 pandemic, for example, by not accounting for any positive economic data and disregarding that some of the relevant conduct occurred before the pandemic.

These comments also argued that the interim final rule violated the National Environmental Policy Act of 1969 (NEPA), by, for example, not taking a hard look at the environmental consequences of the action and ignoring the environmental harms that may result from delaying the penalty increase. Lastly, in response to NHTSA's request for comment about whether the adjustment should be delayed further until Model Year 2023, these comments opposed any additional delay. Some of these comments also expressed concern with the short ten-day comment period provided by the interim final rule—and only after the rule was already effective without any opportunity to comment beforehand.

Two of the comments supported the interim final rule. The Auto Innovators reiterated the reasoning set forth in its petition, which NHTSA granted in the interim final rule. According to the Auto Innovators, the interim final rule was consistent with NHTSA's December 2016 rule; appropriately accounted for the industry's production and design processes, including the unforeseen challenges of the COVID–19 public health emergency; and fairly implemented the Second Circuit's decision. The Auto Innovators also noted that Model Year 2022 vehicles could have begun being produced as early as January 2, 2021—about two weeks before the interim final rule was published—but it believes NHTSA was reasonable to make the adjustment applicable beginning in Model Year 2022, declining to request a further delay in the adjustment to Model Year 2023. NADA supported the Auto

[21] *Natural Res. Def. Council* v. *NHTSA,* No. 21–139 (2d Cir.) (consolidated with *New York* v. *NHTSA,* No. 21–339 (2d Cir.) and *Tesla, Inc.* v. *NHTSA,* No. 21–593, transferred from No. 21–70367 (9th Cir.)). This litigation is currently being held in abeyance pending NHTSA's reconsideration of the interim final rule.

[22] NHTSA–2021–0001–0001; NHTSA–2021–0001–0009.

[23] 86 FR 3016, 3023 n.74 (Jan. 14, 2021).

[24] NHTSA received a ninth comment that simply said, ''Help.'' NHTSA–2021–0001–0018. Without any additional information, NHTSA cannot reasonably address or respond to this commenter's concern. After the close of the comment period, NHTSA also received a letter from two U.S. Representatives regarding the economic harms of applying the adjustment before Model Year 2022. NHTSA–2021–0001–0046. NHTSA is treating this letter as a comment for this rulemaking and addressing the issue it raises in this final rule. *See* 49 CFR 553.23.

[25] NHTSA–2021–0001–0017.

[26] NHTSA–2021–0001–0015.

[27] NHTSA–2021–0001–0013.

[28] NHTSA–2021–0001–0011.

[29] NHTSA–2021–0001–0012.

[30] NHTSA–2021–0001–0014.

[31] NHTSA–2021–0001–0016.

[32] NHTSA–2021–0001–0019.

Innovators' comment, adding that increased CAFE civil penalties before Model Year 2022 would lead to higher vehicle prices for consumers or manufacturer shifts in available offerings, without any associated environmental or safety benefits.

On January 20, 2021—while the post-promulgation comment period for the interim final rule was still open—the President issued Executive Order 13990, entitled ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' E.O. 13990 directs the heads of all agencies to immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are, or may be inconsistent with, or present obstacles to, the policy set forth in E.O. 13990: A policy ''to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.'' [33] The Secretary of Transportation expressly identified the January 14, 2021 CAFE civil penalties interim final rule as subject to E.O. 13990.[34]

In accord with E.O. 13990 and the Secretary's determination, and in light of the significant concerns raised by the commenters after the interim final rule was issued, NHTSA began reviewing and reconsidering the January 14, 2021 interim final rule. Specifically, NHTSA considered repealing the interim final rule and reverting to the December 2016 final rule that would apply the adjusted rate beginning with Model Year 2019—the rule that the Second Circuit has said twice is ''now in force.'' [35]

NHTSA believed that an additional period of public comment would aid the agency in its reexamination of the issues involved in the interim final rule. Considering the importance of this rulemaking and the short comment period—ten days—previously provided to interested parties, NHTSA published a supplemental notice of proposed rulemaking (SNPRM) on August 20, 2021, to provide the public with an appropriate amount of time to comment and to enable NHTSA to more fully review and consider the issues.[36] In doing so, NHTSA expressly requested comment on whether it should proceed to a final rule that repeals the interim final rule and reverts to the December 2016 final rule, restoring the application of the increased CAFE civil penalty rate beginning with Model Year 2019. NHTSA also accepted comments on whether the adjustment should apply beginning with a model year later than Model Year 2019, with commenters arguing for such a position asked to explain how it is consistent with the 2015 Act and the Second Circuit's decisions. NHTSA also noted it would consider comments already submitted in response to the interim final rule as part of its review and the anticipated promulgation of a final rule following the comment period. The comment period for the SNPRM closed on September 20, 2021.

D. Overview of the Comments Received

In addition to the comments received in response to the interim final rule,[37] NHTSA received seventeen substantive comments in response to the SNPRM.[38] NHTSA received comments from:

- The Attorneys General of California, New York, Connecticut, Delaware, Illinois, Iowa, Maryland, Massachusetts, New Jersey, Oregon, Pennsylvania, Washington, and Vermont; [39]
- Natural Resources Defense Council and Sierra Club; [40]
- Tesla; [41]
- The Institute for Policy Integrity at New York University School of Law; [42]
- The Alliance for Automotive Innovation; [43]
- Stellantis (FCA US LLC); [44]
- Jaguar Land Rover North America LLC; [45]
- Ferrari; [46]
- The National Automobile Dealers Association (NADA); [47] and
- Private citizens and anonymous individuals.[48]

The majority of comments submitted in response to the interim final rule and to the supplemental notice of proposed rulemaking support returning to the December 2016 final rule. These comments primarily argue that NHTSA lacked the statutory authority to issue the January 2021 interim final rule. These comments also generally argue that retroactivity was not an issue: Automakers were already aware as of December 2016 that the adjustment would apply in Model Year 2019 and beyond. It was not until Model Year 2019 was already nearly complete that NHTSA issued a final rule changing that, which the Second Circuit subsequently determined was legally invalid. The predecessor organizations of Auto Innovators participated in that litigation as intervenors and were well aware of the possibility that the Second Circuit would restore the applicability of the adjusted rate beginning with Model Year 2019. In fact, the Second Circuit decision expressly stated that the court understood the effect of its decisions to be that the increased penalty amount was in effect. Accordingly, these commenters argue

[33] 86 FR 7037, 7037 (Jan. 25, 2021).

[34] Memorandum from the Acting General Counsel of DOT to the Chief Counsel and Acting Deputy Administrator of NHTSA and Special Advisor, ''Implementation of Executive Order 13990, entitled 'Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis' '' (Feb. 22, 2021). *https://www.transportation.gov/sites/dot.gov/files/2021-02/Memo-to-NHTSA.pdf.*

[35] *Nat. Res. Def. Council* v. *Nat'l Highway Traffic Safety Admin.,* 894 F.3d 95, 116 (2d Cir. 2018); *New York* v. *Nat'l Highway Traffic Safety Admin.,* 974 F.3d 87, 101 (2d Cir. 2020).

[36] 86 FR 46811 (Aug. 20, 2021).

[37] Shortly prior to publication of the interim final rule, NHTSA received two letters regarding the rulemaking. Both letters are included in the docket for this matter and were treated as comments for appropriate consideration.

[38] An eighteenth comment only expressed a desire to have the sides of the freeways in the Los Angeles area cleaned. NHTSA–2021–0001–0030. As NHTSA is required to consider only relevant matter in finalizing a rule, this comment is outside the scope of this rulemaking.

[39] NHTSA 2021–0001–0039. After the close of the comment period, the Attorneys General of New York, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington jointly submitted an additional letter regarding the need to adjust the CAFE civil penalty rate for 2022. NHTSA–2021–0001–0047. NHTSA is treating this letter as a comment for this rulemaking and addressing the issue it raises in this final rule. *See* 49 CFR 553.23.

[40] NHTSA 2021–0001–0037.

[41] NHTSA–2021–0001–0036.

[42] NHTSA 2021–0001–0038.

[43] NHTSA 2021–0001–0043.

[44] NHTSA 2021–0001–0042. Stellantis requested confidential treatment for the business information included in its comment, pursuant to 49 CFR part 512. As with the companies that requested confidential treatment for some of the business information included in each of their individual submissions supplementing the Auto Innovators' petition that resulted in the interim final rule, the public version of Stellantis' submission can be found in the docket for this action at *www.regulations.gov.*

[45] NHTSA 2021–0001–0040.

[46] NHTSA–2021–0001–0044. NHTSA received this comment after the comment period closed, but still considered it in promulgating this final rule. Under NHTSA's regulations, ''[l]ate filed comments will be considered to the extent practicable.'' 49 CFR 553.23.

[47] NHTSA 2021–0001–0041.

[48] NHTSA–2021–0001–0028; NHTSA 2021–0001–0029; NHTSA 2021–0001–0032; NHTSA 2021–0001–0033; NHTSA 2021–0001–0034; NHTSA 2021–0001–0035; NHTSA 2021–0001–0045.

that it would be appropriate for NHTSA to revisit the interim final rule's characterization of the application of the adjustment beginning with Model Year 2019 as ''retroactive.'' Moreover, these commenters raised concerns regarding the procedures that the agency used in issuing the interim final rule, which did not proceed through a more typical notice-and-comment process and which made the rule effective immediately upon publication. In addition, these commenters urged NHTSA to further review and consider the Second Circuit's prior decisions and, in light of the ongoing litigation, assess the legal risk of leaving the interim final rule in place, as the interim final rule was based on an assertion of discretion that is in conflict with the 2015 Act and the Second Circuit's decisions.

The comments in favor of retaining the interim final rule largely re-raised the reasoning of the December 2016 final rule, noting that the affected model years have already lapsed or largely lapsed, and design and production cycles for the affected model years were already locked in based on the unadjusted CAFE civil penalty rate. These comments also described the economic harm that applying the adjusted rate would have on the industry, which is already facing difficult economic conditions due to the effects of COVID–19, microchip shortages, and other supply chain issues.

E. Response to the Comments

1. Agency Reconsideration

As a threshold matter and as NHTSA has explained before, NHTSA, like all agencies, must continually consider a range of possible statutory interpretations and reassess their validity, including in response to changed circumstances or when questions arise regarding the legality of the prior action—particularly when a Federal court already has ruled twice on related issues. Not only is it an agency's responsibility to reevaluate its interpretations to ensure they are legally sound, an agency is allowed to change its interpretations, within reason, based on evolving notions about the appropriate balance of varying policy considerations. NHTSA is permitted to change its views based upon its experience and expertise, provided that the requirements of the Administrative Procedure Act (APA) and other governing statutes are met. To do so, an agency must show that it is aware it is changing its position and must provide a reasoned explanation for the change.[49]

In the SNPRM, NHTSA expressly acknowledged that it was reconsidering the January 2021 interim final rule as a result of E.O. 13990, the Secretary's related determination, the significant concerns raised by commenters in the earlier rulemakings on this issue, further review and consideration of the Second Circuit's prior decisions, and in light of the pending litigation. NHTSA provided a reasoned explanation for its tentative decision in the SNPRM that it does not have discretion over when the required adjustment should begin to take effect, and after careful consideration of the relevant information, finalizes and elaborates on that decision here. In particular, NHTSA concludes that the interim final rule was procedurally flawed and did not appropriately carry out the clear command from the Second Circuit's decision that struck down the 2019 final rule.

As explained further below, NHTSA does not believe that ''its prior policy has engendered serious reliance interests that must be taken into account,'' which may require the agency to ''provide a more detailed justification than what would suffice for a new policy created on a blank slate.'' [50] Nonetheless, NHTSA has provided ''a more detailed justification'' in the following discussion. Moreover, the administrative and public process leading to this rule has been more thorough than the process leading to the interim final rule. NHTSA undertook extensive agency review, issued an SNPRM, gave the public an opportunity to comment in advance, and responded to those comments in detail here. By contrast, NHTSA promulgated the interim final rule without notice, with only a brief window for public comments, and without the opportunity to comment in advance.

2. Procedural Issues

NHTSA promulgated the January 2021 interim final rule without providing notice and without providing the opportunity to comment in advance. NHTSA also made the interim final rule effective immediately and only provided ten days after publication for comments. The interim final rule did not explain why the post-promulgation comment period was so short, even though NHTSA could have provided more time for comments given that the rule was already in effect.

Upon review, NHTSA agrees with the commenters that argue that these procedural issues alone merit repeal of the interim final rule. The Second Circuit previously held that changing the effective date of the rule that was in force at the time would generally require notice-and-comment.[51] For the January 2021 interim final rule, NHTSA concluded that good cause existed for immediate implementation of the rule without prior notice and comment on the grounds that it was impracticable to delay publication of the interim final rule for notice and comment, public comment was unnecessary, and the agency's action was in the public interest. However, as many of the affected manufacturers and their trade association have noted for other purposes, the affected model years were either completed or already underway at the time of the interim final rule. There was no pressing emergency that would have made it impracticable to provide notice and request comment in advance.

Public comment was also necessary. While the 2015 Act provides that the first adjustment shall be made through an interim final rulemaking without public comment, NHTSA's first adjustment was made in an interim final rule in July 2016 with a subsequent final rule issued in December 2016. The January 2021 interim final rule was issued years later—after multiple rounds of requests for comments in other notices on this same issue.

Moreover, NHTSA should have sought comment given the public interest. NHTSA was aware of the public interest in this issue, having received multiple rounds of comments from a variety of entities and having proceeded through two rounds of litigation. While the automotive industry argued in its petition that it has faced unprecedented economic challenges arising from the COVID–19 national emergency, NHTSA did not consider any countervailing evidence, discussed further below. Additionally, any economic harm—which would only be caused by manufacturers' failures to comply with the applicable CAFE standards—does not outweigh the public interest in commenting on the change in advance. Indeed, affording the public the opportunity to comment on the petition in advance would have given NHTSA additional insight into the impact of the COVID–19 national emergency on the industry.

Because NHTSA lacked good cause, the interim final rule also should not have gone into effect immediately upon

[49] *Encino Motorcars, LLC* v. *Navarro,* 579 U.S. 211, 221 (2016); *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515–16 (2009).

[50] *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

[51] *Natural Res. Def. Council* v. *NHTSA,* 894 F.3d 95, 113 (2d Cir. 2018).

publication in the **Federal Register** under 5 U.S.C. 553(d)(3) and 5 U.S.C. 808(2).[52]

3. Statutory Authorization

In the interim final rule, NHTSA described its authority to issue the rule as based on its specific statutory authority to administer the CAFE program and its general statutory authority to do so efficiently and in the public interest.[53] NHTSA also explained that the procedure established in the Energy Policy and Conservation Act (EPCA)[54] to increase the CAFE civil penalty rate implies that NHTSA has the broader authority to oversee the administration and enforcement of the rate more generally.[55] NHTSA also noted that for the CAFE civil penalty to be covered by the 2015 Act, NHTSA must have the authority to assess or enforce it, and thus oversee and administer it as appropriate.[56]

For the reasons explained by the Second Circuit and the comments, NHTSA did not have statutory authority to promulgate the interim final rule.[57] As the Second Circuit noted, ''an agency may only act within the authority granted to it by statute.''[58] Neither the 2015 Act, which applied to all Federal agencies, nor EPCA authorized NHTSA to issue an interim final rule delaying the application of the previously-issued adjustment.[59] To the contrary, the Second Circuit has concluded that the 2015 Act contains a ''highly circumscribed schedule for penalty increases'' that confers ''no discretion to the agencies regarding the timing of the adjustments.''[60]

Further, as the Second Circuit made clear, the procedure in EPCA that allows NHTSA to increase the CAFE civil penalty rate does not conflict with the agency's duty to comply with the 2015 Act,[61] which includes the timing of when the adjustment will apply. To the contrary, the limited nature of the specific statutory procedure in EPCA for increasing the CAFE penalty rate (apart from the 2015 Act) suggests that Congress was restricting the scope of NHTSA's power, authorizing it to increase the CAFE civil penalty rate only under certain circumstances. Note that, as NHTSA has previously explained, EPCA acts as a ''one-way ratchet'' with no means for lowering the CAFE civil penalty rate[62] or conferring NHTSA any discretion over when penalties ought to be assessed. The 2015 Act and its procedures for adjustments are consistent with EPCA.

To the extent that the 2015 Act affords NHTSA any discretion to act, NHTSA concludes that its discretion would be limited. For example, the 2015 Act provides express procedures and deadlines for agencies to apply the adjustments. It also provides narrow exceptions for the amount of the adjustment and only for the initial ''catch-up'' adjustment. The purposes of the 2015 Act, as Congress stated in the Act itself, include ''allow[ing] for regular adjustment for inflation of civil monetary penalties'' and ''maintain[ing] the deterrent effect of civil monetary penalties and promote compliance with the law.''[63] NHTSA notes that the CAFE civil penalty rate was established as $5 in 1975 and held constant at $5.50 since 1997 and that making the required adjustment aligns with the legislative purpose of catching up the rate for the lack of adjustments. Accordingly, NHTSA would decline to delay the adjustment further, even if it had the discretion to do so.

4. Retroactivity

In the January 2021 interim final rule being repealed by this action, NHTSA accepted the industry petition's argument that applying the increased civil penalty rate to completed or largely completed model years would raise serious retroactivity concerns.[64] NHTSA acknowledged that retroactivity generally is not favored in the law and concluded that imposing a higher civil penalty rate for model years already completed or nearly so would not have incentivized improvements to fuel economy, given the industry timelines for the design, development, and production of new vehicles.[65]

While retroactivity generally is not favored in the law, there is no rule that Congress cannot legislate retroactively. The 2015 Act expressly recognizes that it may have a partially retroactive effect; that is part of the statute's design and Congress's intent. The statute provides that ''[a]ny increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, *including those whose associated violation predated such increase,* which are assessed after the date the increase takes effect.''[66]

Nonetheless, NHTSA now concludes that the effect of the adjustment here applying beginning in Model Year 2019 is not retroactive. As NHTSA mentioned in the SNPRM, automakers were aware, as of December 2016, that the adjustment would apply beginning with Model Year 2019. The Second Circuit confirmed that an immediate adjustment was compelled by the 2015 Act, which long preceded Model Year 2019.[67] Indeed, the Auto Innovators acknowledge that ''manufacturers knew there was a possibility that the $14 civil penalty rate might be applied to MYs 2019 to 2021 vehicles.''[68] It was not until Model Year 2019 was already nearly complete that the agency issued a final rule changing that—a rule that the Second Circuit subsequently determined was legally invalid. Auto Innovators (through its predecessor entities) participated in that litigation as an intervenor and was well aware of the possibility that the Second Circuit would—and indeed, did—restore the applicability of the adjustment beginning with Model Year 2019. Accordingly, NHTSA has reconsidered and rejected its previous characterization of the application of the adjustment beginning with Model Year 2019 as ''retroactive.''

Any violation of the CAFE standards for Model Years 2019 through 2021 occurred or will occur well after NHTSA confirmed in December 2016 that it would apply penalties beginning with Model Year 2019—in response to a petition from industry to delay the effective application of the penalty increase precisely *to* Model Year 2019. Indeed, industry had reason to believe from the enactment of the 2015 Act and NHTSA's July 2016 adjustments that the adjustments could have applied

[52] The interim final rule also stated that a delayed effective date was not required because, under 5 U.S.C 553(d)(2), it ''relieve[d] a restriction'' by allowing additional time before the higher penalty rate would have begun to apply. Regardless of whether NHTSA continues to believe that delaying the application of a higher penalty rate counts as relieving a restriction, the lack of good issue and other procedural issues would still merit repeal of the interim final rule.

[53] 86 FR 3016, 3019–20 (Jan. 14, 2021).

[54] Public Law 94–163, 89 Stat. 871 (1975). EPCA created a comprehensive approach to federal energy policy, including establishing the CAFE program.

[55] 86 FR 3016, 3020 (Jan. 14, 2021).

[56] 86 FR 3016, 3020 (Jan. 14, 2021).

[57] To the extent that the interpretation of NHTSA's statutory authority in the interim final rule was reasonable, NHTSA nonetheless concludes that a different interpretation is appropriate now, for the reasons described throughout this rule.

[58] *NRDC,* 894 F.3d at 108. Agencies do possess some inherent powers, but issuing an interim final rule to delay the application of a previously-issued rule is not one of them.

[59] *See id.* at 112 (noting that EPCA provides no authority ''to delay the penalty as part of'' NHTSA's ''responsibility for administering the fuel economy portions of that statute'').

[60] *New York* v. *NHTSA,* 974 F.3d 87, 100 (2d Cir. 2020); *Natural Res. Def. Council* v. *NHTSA,* 894 F.3d 95, 109, 113 n.12 (2d Cir. 2018).

[61] *See New York,* 974 F.3d at 99–100.

[62] 84 FR 36007, 36021 (July 26, 2019).

[63] 28 U.S.C. 2461 note, sec. 2(b)(1)–(2).

[64] 86 FR 3016, 3020–21 (Jan. 14, 2021).

[65] 86 FR 3016, 3020–21 (Jan. 14, 2021).

[66] 28 U.S.C. 2461 note, sec. 6 (emphasis added).

[67] *Natural Res. Def. Council* v. *NHTSA,* 894 F.3d 95, 109 (2d Cir. 2018).

[68] Auto Innovators Comment, at 6.

immediately, or in any event, well before Model Year 2019. To the extent that manufacturers did not have notice by the 2015 Act itself, they unquestionably had notice by NHTSA's 2016 rules. The industry previously argued that vehicle designs are often fixed years in advance. Thus, by the time NHTSA promulgated its July 2019 final rule (that was promptly challenged in litigation and was subsequently vacated by the Second Circuit), automakers' designs for Model Years 2019 through 2021 were likely largely set already. At that time, NHTSA's regulations stated that the CAFE civil penalty adjustment to $14 (plus any other adjustments that needed to be made) would go into effect beginning with Model Year 2019. There was no guarantee at that time that NHTSA would have issued a rule reversing course and blocking the adjustment, and any attempt to do so would have been legally vulnerable. Any automakers that made their plans for Model Years 2019 through 2021 thinking that penalties would not increase did so at their own risk and in defiance of the Second Circuit's decisions.

The Second Circuit ruled that NHTSA's previous actions to delay or avoid the adjustment were unlawful, ultimately determining—twice—that the adjustment was ''now in force.'' [69] And the Auto Innovators concede that the Court's determinations that the adjustment is ''now in force'' is currently ''having effects on manufacturers' decisions with regard to future model-year fuel economy decisions,'' even though the interim final rule remained on the books until the effective date of this final rule.[70] That some manufacturers may have chosen to base their compliance decisions and production plans on the chance that NHTSA may take additional action to attempt to delay or avoid the adjustment despite legal vulnerability is a risk they took on their own, aware of the circumstances. The Auto Innovators' argument is expressly based on *assumptions* manufacturers made about how the Administration was ''likely'' to act.[71] These manufacturers—particularly those, as noted by the Auto Innovators, that participated in the court proceedings through their trade associations—were aware (or at least should have been aware) of the possibility that their predictions regarding NHTSA's actions would ultimately prove incorrect.[72] That possibility is not enough to create retroactivity concerns.

The Auto Innovators did argue that the statutory purposes of an adjustment are ''primarily deterrent,'' as stated in the 2015 Act and acknowledged by the Second Circuit.[73] However, the first purpose listed in the statute—and also recognized by the Second Circuit as ''a primary purpose'' of the statute [74]—is to ''allow for regular adjustment for inflation of civil monetary penalties.'' [75] Making the initial ''catch-up'' adjustment will allow NHTSA to conduct the required subsequent annual adjustments in line with the agency's other civil penalties that have already been adjusted on a regular basis. Furthermore, establishing the increased rate may have a deterrent effect in future model years as the rate continues to increase. And, indeed, the fact that automakers knew that an adjustment under the statute was likely at the time of the statute's passage, as well as upon the adoption of the 2016 rule—as the Auto Innovators acknowledged—very likely served as a deterrent for those manufacturers who opted to meet fuel economy standards rather than pay penalties.

Moreover, the Auto Innovators note elsewhere that imposing an appropriately adjusted rate to vehicles in Model Years 2019 to 2021 could still have future environmental impacts.[76] In any event, these purpose-based policy concerns, even if correct, are insufficient to override the language and structure of the governing statute, as the Second Circuit has plainly interpreted it.

The Auto Innovators also noted that ''in the December 2016 Final Rule, NHTSA recognized the need for lead time (and in fact used the 18-month CAFE statutory lead time as a proxy) when initially delaying applicability of the $14 civil penalty rate to MY 2019.'' [77] NHTSA does acknowledge the importance of lead time for manufacturers, but concludes here that manufacturers did receive appropriate lead time for Model Years 2019 through 2021 when the timing of the adjustment was established in December 2016—established at that time in response to a request from industry for delay. Under the interim final rule, the mandatory adjustment would not be applied until Model Year 2022, *i.e.,* to vehicles sold *more than five years* after the statutory deadline for agencies to make their initial adjustments.

NHTSA also notes that it does not need to give 18 months' lead time before this adjustment becomes effective. The statutory lead time provision in EPCA for increasing the CAFE civil penalty rate expressly refers to the specific process described in that paragraph for increasing the penalty rate, not to adjustments required to be made pursuant to a separate statute.[78] The 2015 Act established the timing NHTSA and all other federal agencies were required to follow for the initial catch-up adjustment and the process for doing so through an interim final rulemaking without notice-and-comment.

NHTSA will make the mandatory adjustments to the CAFE civil penalty rate going forward, as required by law for all civil monetary penalties.

5. Reliance Interests

For similar reasons, to the extent that industry relied on the CAFE civil penalty rate not being adjusted as required by the statute, any such reliance was unreasonable and was at those manufacturers' own risk—prior to the promulgation of the January 2021 interim final rule or after.

In the January 2021 interim final rule, NHTSA concluded that the industry's reliance on the $5.50 rate was reasonable, as NHTSA reconsidered application of the 2015 Act by proposing in 2018 that the 2015 Act did not apply and finalizing the proposal in

[69] *New York,* 974 F.3d at 101; *NRDC,* 894 F.3d at 116.

[70] Auto Innovators Comment, at 7.

[71] Auto Innovators Comment, at 7 (''[Manufacturers] had every reason to *assume* that, if the rule under review in the New York case were vacated, NHTSA would have the authority to undertake the same non-retroactivity analysis that the Obama Administration Department of Transportation undertook in the December 2016 Final Rule. They also had every reason to *assume* that NHTSA was *likely* to opt for a first model year later than MY 2019 for the application of the $14 civil penalty rate and was *not precluded* by either Second Circuit decision from doing so.'' (emphasis added)).

[72] At least one manufacturer had been budgeting for the possibility of paying civil penalties with the adjustment in effect before the July 2019 final rule was enacted. *See* IPI Comment, at 7.

[73] *See* 28 U.S.C. 2461 note, sec. 2(b)(2); *see also id.,* sec. 2(a)(2); *NRDC,* 894 F.3d at 109.

[74] *NRDC,* 894 F.3d at 109.

[75] 28 U.S.C. 2461 note, sec. 2(b)(1).

[76] Auto Innovators Comment, at 10. The Auto Innovators argue that ''the imposition of the $14 civil penalty rate to MYs 2019 to 2021 vehicles actually could have deleterious environmental impacts: Penalties that lead to increases in the prices of newer vehicles could discourage consumers from purchasing more efficient, cleaner vehicles.'' *Id.* While NHTSA agrees that applying the adjusted rate to Model Year 2019 to Model Year 2021 vehicles could have environmental effects, NHTSA believes it is likely that manufacturers have already priced in the potential of having to pay increased penalties—if not during the earlier rounds of litigation and rulemaking, then very likely when the SNPRM was made public.

[77] Auto Innovators Comment, at 7.

[78] ''A higher amount prescribed under subparagraph (A) of this paragraph is effective for the model year beginning at least 18 months after the regulation stating the higher amount becomes final.'' 49 U.S.C. 32912(c)(1)(D).

2019.[79] However, manufacturers knew (or should have known) that the CAFE civil penalty rate was going to be adjusted when the 2015 Act was enacted, when NHTSA issued its initial catch-up adjustments in July 2016, and when NHTSA issued its response to industry's petition in December 2016 establishing the timing of the adjustment (and accommodating the industry's request for additional lead time in doing so). Indeed, the industry petition in 2016 acknowledged and did not challenge that the 2015 Act applied to the CAFE civil penalty rate.[80] While there was subsequent rulemaking on the issue, industry participants were also aware that there was litigation over the subsequent rules—indeed, they participated actively in the litigation—and they relied on those subsequent rules at their own risk. Once the Second Circuit vacated each of the rules, the industry had no basis for relying on either of those agency actions.[81] By industry's own argument, to the extent that manufacturers relied on the July 2019 final rule, much less the January 2021 interim final rule, the planning for Model Years 2019 to 2021 was already or largely complete. This was not a longstanding policy in effect for years before. Moreover, the interim final rule, by definition, was an interim rule that remained subject to change following public comment. It was also quickly subject to legal challenge and agency reconsideration. In particular, the President issued Executive Order 13990, directing review of the interim final rule and other regulations, just one week after the interim final rule was published in the **Federal Register** and while the post-promulgation comment period was still open. Given this short window, there was minimal time for manufacturers to reasonably rely on the interim final rule remaining in effect.

Furthermore, there are countervailing reliance interests to consider here. It is very likely that some manufacturers relied on the 2015 statute, the July 2015 initial catch-up adjustment, and the December 2016 final rule in planning for an adjustment to be in effect for Model Year 2019 and continued to do so given the uncertainty of the legal challenges to NHTSA's subsequent actions regarding the CAFE civil penalty rate.[82] And manufacturers had a strong financial incentive to do so, given that the value of credits for over-complying with the standards would be expected to increase dramatically with the initial adjustment to the CAFE civil penalty rate.[83] Delaying the application of the adjustment would almost certainly diminish the value of those credits.

As noted in the comments,[84] industry could have asked the Second Circuit to invoke its equitable discretion and to remand to NHTSA without vacatur, but they did not do so in either case that has already been decided (nor in the pending case challenging the January 2021 interim final rule). The Court also did not do so on its own, instead confirming twice its conclusion that the December 2016 rule was ''now in force.'' [85]

6. Economic Impact of the COVID–19 Pandemic and Other Factors

In the January 2021 interim final rule, NHTSA concluded that, based on the available information, applying the adjustment to the CAFE civil penalty rate beginning in Model Year 2019 might inhibit economic recovery from the effects of the pandemic, while applying the adjustment beginning in Model Year 2022 was an appropriate action to take for the purpose of promoting job creation and economic growth, citing Executive Order 13924, ''Regulatory Relief To Support Economic Recovery.'' [86]

Executive Order 13924 has since been revoked.[87] Moreover, because NHTSA now concludes that it did not have the authority to issue the interim final rule and lacks discretion regarding when to apply the adjustment, there is no opportunity for NHTSA to consider the economic impact of the COVID–19 pandemic or other economic impacts such as those caused by supply chain shortages and microchip shortages in determining when to apply the adjustment.[88] It is true that the 2015 Act did allow an agency to make the first adjustment of the amount of a civil monetary penalty by less than the otherwise required amount if increasing the civil monetary penalty by the otherwise required amount would have a negative economic impact, or if the social costs of increasing the civil monetary penalty by the otherwise required amount outweighed the benefits.[89] However, NHTSA's attempt to apply this exception through the ''negative economic impact'' prong was vacated by the Second Circuit as too late, and the statute provides that the exception could only be applied to the initial ''catch-up'' adjustment. Accordingly, there is no need for NHTSA to evaluate the economic evidence now to determine when it should apply the required adjustment; as the Second Circuit held, NHTSA has no such discretion.

Regardless, the economic record on this question is mixed. For example, despite the industry having lower sales in the middle of 2020, sales bounced back in 2021. Indeed, NADA reported ''incredibly high sales in April 2021, . . . the fourth highest monthly total since the year 2000,'' [90] Demand also remained ''strong,'' despite ''new-vehicle average transaction prices reach[ing] record highs at the end of second quarter.'' [91] Additional information reported by the manufacturers themselves also shows evidence of economic success, despite the challenges presented by the COVID–19 pandemic, microchip shortages, and other supply chain issues.[92]

NHTSA also notes that the CAFE civil penalty formula incorporates the number of vehicles manufactured, so if production is reduced because of lower sales, supply chain issues, or microchip shortages, then the CAFE civil penalty

[79] 86 FR 3016, 3021 (Jan. 14, 2021).

[80] *NRDC,* 894 F.3d at 102 (''[I]ndustry petitioners conceded that 'NHTSA was obligated to take some action in response to the Improvements Act' and 'NHTSA [was] not empowered to exempt the CAFE program from this directive.' '').

[81] *See* States Attorneys General Comment, at 5 (citing *Envtl. Def.* v. *Leavitt,* 329 F. Supp. 2d 55, 64 (D.C. Cir. 2004) (''[T]he vacatur restores the status quo before the invalid rule took effect and the agency must initiate another rulemaking proceeding if it would seek to confront the problem anew.'' (internal citations and quotations omitted))); *Nat'l Fuel Gas Supply Corp.* v. *Fed. Energy Regulatory Comm'n,* 59 F.3d 1281, 1288 (D.C. Cir. 1995); *see also United States* v. *Sec. Indus. Bank,* 459 U.S. 70, 79 (1982) (''The principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student.'')).

[82] *See, e.g.,* Tesla Comment on IFR, NHTSA–2021–0001–0012, at 9.

[83] *See, e.g.,* Tesla Comment at 9–10.

[84] State Attorneys General Comment, at 5 (citing *NRDC* v. *EPA,* 808 F.3d 556, 584 (2d Cir. 2015) (when equity demands, remand without vacatur allows agencies to correct legal deficiencies while leaving challenged, unlawful regulations in place); *see also Sugar Cane Growers Coop. of Fla.* v. *Veneman,* 289 F.3d 89, 97–98 (D.C. Cir. 2002) (invoking equitable discretion to remand without vacatur because there was ''no apparent way to restore the status quo ante''); *Allied-Signal, Inc.* v. *U.S. Nuclear Regulatory Comm'n,* 988 F.2d 146, 150–51 (D.C. Cir. 1993)).

[85] *See NRDC,* 894 F.3d at 116; *New York,* 974 F.3d at 101.

[86] 86 FR 3016, 3022 (Jan. 14, 2021).

[87] 86 FR 11855, 11855 (Mar. 1, 2021).

[88] EPCA does, of course, allow the agency to consider general economic impacts in determining whether to further increase the CAFE civil penalty rate under U.S.C. 32912(c)(1), as well as the specific economic conditions of a particular manufacturer in determining whether to compromise or remit a penalty under 49 U.S.C. 32913. However, neither provision is relevant here.

[89] 28 U.S.C. 2461 note, 4(c). Note also that this exception only related to the amount of the adjustment, not the timing of it.

[90] NADA Blog, *NADA Issues 2021 Second Quarter Auto Sales Analysis* (July 8, 2021), *https://blog.nada.org/2021/07/08/nada-issues-2021-second-quarter-auto-sales-analysis/.*

[91] *Id.*

[92] *See, e.g.,* Tesla Comment, at 7–9.

liability will also be reduced (before accounting for credits).

Two additional points bear noting. On the ''front end,'' much of the relevant conduct (*i.e.,* designing and manufacturing) occurred before the COVID–19 pandemic commenced. The earliest cases that were later classified as COVID–19 were first identified in December 2019.[93] By that time, Model Year 2019 was complete for almost the entire industry, and under the industry's own view, the planning for Model Year 2020 had long since been completed by then with planning for Model Year 2021 well underway in the very least. Further, it was not until mid-March 2020 when the World Health Organization (WHO) declared COVID–19 a pandemic and the President declared a national emergency in the United States—approximately halfway through Model Year 2020 and only six months before the beginning of Model Year 2021 for most manufacturers.

On the ''back end,'' NHTSA has not yet assessed CAFE civil penalties for Model Year 2019 and beyond. It is possible that the economic state of the industry will be stronger, perhaps even above average, when those penalties are assessed. And the industry may have accrued or planned to accrue more credits by then to offset any additional penalty liability.

7. Usage of Credits

As noted in the SNPRM, some commenters on this issue have argued that delaying the application of the increased rate would negatively affect future compliance because manufacturers may be incentivized to hold credits for model years when the higher rate will apply. Similar to the economic evidence discussed above, NHTSA lacks discretion to consider manufacturers' planned uses of credits in determining when to apply the required adjustment. The government-wide 2015 Act applies regardless of how manufacturers plan to apply credits to any shortfalls.

Even if NHTSA could consider the use of credits in determining the appropriate timing of the adjustment, the Auto Innovators acknowledge that while manufacturers would likely use their earliest earned credits to offset their shortfalls before those credits expire, there could still be some credits that manufacturers would need to decide whether to use immediately or carry forward to future model years.[94] While the magnitude of the effects of these decisions may be small in the immediately affected model years, the magnitude of the effects could be compounded in future model years in a cascade as additional credits continue to be time-shifted.

8. Additional Adjustments Required by Law

Under the SNPRM, which NHTSA is now finalizing, the civil penalty rate for violations of CAFE standards for model years beginning with MY 2019 was $14, plus any adjustments that occurred or may occur.[95] $14 was the initial ''catch-up'' adjustment made by NHTSA on July 5, 2016, following the procedure and the formula in the 2015 Act. NHTSA is now addressing the adjustments that occurred since that time. Applying the annual adjustment procedures in the 2015 Act (including the requirement to round to the nearest $1) does not result in an increase in the $14 rate for the annual adjustments in 2017 through 2021,[96] but does result in an increase to $15 for 2022. Therefore, NHTSA is codifying the civil penalty rate of $15, along with clarifying regulatory text explaining that the civil penalty rate is $14 for MY 2019 through MY 2021 (and $5.50 for MYs before 2019).

EPCA provides a separate statutory authority for NHTSA to increase the CAFE civil penalty rate based on the impacts on energy conservation and the economy.[97] Any increase pursuant to that authority was initially capped by the statute at $10, based on the original $5 civil penalty rate. In the 2016 interim final rule, NHTSA noted that the 2015 Act, which required an initial adjustment of the CAFE civil penalty rate to $14, also required a corresponding adjustment on the cap under NHTSA's EPCA authority to $25 (from $10). NHTSA explained this in the preamble of the 2016 interim final rule, but this adjustment was inadvertently never codified in NHTSA's regulations.[98] NHTSA is now codifying that adjustment and the necessary adjustments for the intervening years. Applying the multipliers for the subsequent years, the adjusted amount would have remained $25 for 2017, increased to $26 for 2018, increased to $27 for 2019, remained $27 for 2020 and 2021, before being increased to $29 for 2022. Therefore, NHTSA is codifying the cap at $29, and NHTSA will make subsequent annual adjustments as required.

Pursuant to the 2015 Act, NHTSA did not undertake notice or comment to enact these adjustments. The 2015 Act provides clear direction for how to adjust the civil penalties, and states at Section 4(b)(2) that these adjustments shall be made ''notwithstanding section 553 of title 5, United States Code.'' NHTSA will continue to make the mandatory adjustments to the CAFE civil penalty rate and the statutory cap going forward, as required by law for all civil monetary penalties.

F. Rulemaking Analyses and Notices

1. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. OMB has designated this rule as a ''significant regulatory action'' under section 3(f) of Executive Order 12866. The Office of Information and Regulatory Affairs (OIRA) has determined that this rulemaking is ''economically significant'' and a ''major rule'' as NHTSA believes that the difference in the amount of penalties received by the government as a result of this rule are likely to exceed $100 million in at least one of the years affected by this rulemaking and that there may be additional economic effects as discussed below.

As explained in the SNPRM, the adjusted civil penalty rate will likely induce some degree of greater compliance with fuel economy standards as a general matter. Manufacturers that are paying civil penalties for CAFE violations have likely calculated that it is less costly or otherwise preferable to pay the penalties than to meet the statutory and regulatory requirements. An increased penalty rate, as required by the statute, changes this calculation, as it likely raises either the costs of credits a noncompliant manufacturer may choose to purchase, the total penalty amount a manufacturer will pay, or both.

In this final rule, NHTSA is repealing the interim final rule, which delayed the adjusted penalty rate by three model years, two of which are already

[93] ''CDC Museum COVID–19 Timeline,'' *https://www.cdc.gov/museum/timeline/covid19.html.*

[94] Auto Innovators Comment, at 12 (''[O]lder credits will be used to mostly, if not completely, cancel any shortfalls. For this reason, delaying the application of a $14 civil penalty rate to MY 2022 is highly unlikely to affect manufacturers' compliance strategies by allowing them to delay the use of 2017 or later credits to MY 2022.'').

[95] The January 2021 interim final rule also used this language, requiring that the civil penalty rate be $14, plus any adjustments that occurred or may occur. 86 FR 3016, 3026 (Jan. 14, 2021).

[96] The adjusted amount would have rounded down to remain $14 for each required annual adjustment for 2017 through 2021.

[97] 49 U.S.C. 32912(c).

[98] 81 FR 43524, 43526 (July 5, 2016).

complete and the last one which is largely complete. This final rule also codifies the adjusted penalty rate for 2022. An analysis here would be limited to estimating over this short time horizon: (1) Which manufacturers did not produce compliant fleets for Model Years 2019 and 2020 and are likely to not produce compliant fleets for Model Years 2021 and 2022; (2) what the shortfalls will be for those non-compliant manufacturers; and (3) the extent to which those manufacturers will choose to use credits (either their own or those purchased from over-compliant manufacturers) or pay penalties to address these shortfalls. Pointedly, such an analysis would not have sufficient information to account for whether, and if so, how manufacturers will adjust the composition of the fleet for these model years in response to the penalty change.

Any analysis would estimate what the compliance shortfalls will be and whether manufacturers will pay penalties or use credits. These estimates could be used to estimate the effects on individual manufacturers in the form of higher penalty payments, higher payments to other manufacturers for credits, or higher receipts for overcomplying manufacturers for credits sold to other manufacturers. However, NHTSA has only limited ability to estimate what strategies manufacturers will take either to use credits or pay penalties to deal with any noncompliance. That is a decision that each manufacturer must take based on their unique circumstances, and historically, NHTSA is not privy to the financial terms of any trades manufacturers make with each other. In the past, the vast majority of manufacturers pay no penalties, as only five manufacturers have paid civil penalties since Model Year 2011.[99] And only one of those manufacturers faced particularly heavy penalties—even before the $14 rate would have gone into effect—for failing to comply with the minimum domestic passenger car standard, which cannot be made up through the application of transferred or traded credits.[100]

Despite this uncertainty, NHTSA continues to be confident that, based on the experience of recent model years, this rule will lead to at least $100 million difference in the amount of penalties in at least one model year. As explained in the SNPRM, NHTSA projects that the difference in the nationwide fleetwide net shortfall would result in at least $100 million more civil penalties being assessed at the $14 rate than the $5.50 for Model Year 2019.[101] Specifically, based on mid-model year fuel economy performance data and assuming a similar magnitude of production from Model Year 2018 for Model Year 2019, the projected shortfall of 1.3 miles per gallon across the U.S. fleet in Model year 2019 would result in a nationwide fleet-wide net shortfall of approximately $115.4 million at the $5.50 rate or an approximately $293.9 million shortfall at the $14 rate—an approximately $178.5 million difference.

As previously noted, it is expected that much of this increase would likely fall on a single automobile manufacturer and likely is due to a failure to comply with the minimum domestic passenger car standard (which, by law, cannot be made up for through transferred or traded credits).

In addition, NHTSA reiterates that commenters on this issue have raised valid questions about further economic effects, namely that longer-term impacts may vary as a result of manufacturer multi-year planning, the transfer of credits across model years and between manufacturers, and the changing value of credits over time. According to these commenters, if such variation were to occur, applying the $14 penalty rate beginning in Model Year 2019 may result in manufacturers applying credit balances to Model Year 2019 through 2021 vehicles and being incentivized to make fuel economy improvements in their fleet beyond that timeframe. And for manufacturers that do not currently have credits or cannot transfer or trade for them to make up a shortfall of the minimum domestic passenger car standard, applying the adjusted penalty rate beginning in Model Year 2019 places an even greater incentive on future compliance and fuel economy improvements to avoid additional higher penalties going forward, on top of the added benefits of energy conservation and improved environmental and public health benefits.

In any event, based on further consideration of the 2015 Act and the Second Circuit's decisions on this issue, NHTSA believes that that it does not have discretion over when the adjustment should begin to take effect. Further, the 2015 Act provided NHTSA no discretion over what the adjusted rate should be, as that is merely a function of the formula established by Congress and calculated by OMB, and mandated streamlined processes for making both the initial adjustment and any subsequent adjustments that do not require accompanying analyses or public comment.[102]

2. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. NHTSA has considered the impacts of this notice under the Regulatory Flexibility Act and recertifies that this rule would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. 605(b), based on the factual basis provided in the SNPRM. NHTSA requested comment on the economic impact of this rule on small entities. None of the comments NHTSA received in response to the interim final rule or the SNPRM discussed this issue. The Small Business Administration's (SBA) regulations define a small business in part as a ''business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' [103] SBA's size standards were previously organized according to Standard Industrial Classification (''SIC'') Codes. SIC Code 336211 ''Motor Vehicle Body Manufacturing'' applied a small business size standard of 1,000 employees or fewer. SBA now uses size standards based on the North American Industry Classification System (''NAICS''), Subsector 336—Transportation Equipment Manufacturing. This action is expected to affect manufacturers of motor

[99] *See* ''Civil Penalties,'' available online at *https://one.nhtsa.gov/cafe_pic/CAFE_PIC_Fines_LIVE.html.*

[100] 49 U.S.C. 32903(f)(2), (g)(4); 49 CFR 536.9(c).

[101] 86 FR 46811, 46816–17 (Aug. 20, 2021).

[102] The 2015 Act, of course, did allow NHTSA one opportunity at the time of the initial catch-up to use the notice-and-comment process to adjust the rate ''less than the otherwise required amount'' under two conditions, but the Second Circuit rejected NHTSA's belated attempt to use this provision in its decision on the July 2019 final rule. *See New York,* 974 F.3d at 100–01.

[103] 13 CFR 121.105(a).

vehicles. Specifically, this action affects manufacturers from NAICS codes 336111—Automobile Manufacturing, and 336112—Light Truck and Utility Vehicle Manufacturing, which both have a small business size standard threshold of 1,500 employees.

Though civil penalties collected under 49 CFR 578.6(h)(1) and (2) apply to some small manufacturers, low volume manufacturers can petition for an exemption from the Corporate Average Fuel Economy standards under 49 CFR part 525. This would lessen the impacts of this rulemaking on small business by allowing them to avoid liability for penalties under 49 CFR 578.6(h)(2). Small organizations and governmental jurisdictions will not be affected significantly as the price of motor vehicles and equipment ought not to change as the result of this rule.

3. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the [N]ational [G]overnment and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. As noted previously, this rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this rulemaking is expected to generally apply to motor vehicle manufacturers. Thus, the requirements of Section 6 of the Executive order do not apply.

4. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rulemaking does not include a Federal mandate, no unfunded mandate assessment has been prepared.

5. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) [104] directs that Federal agencies proposing ''major Federal actions significantly affecting the quality of the human environment'' must, ''to the fullest extent possible,'' prepare ''a detailed statement'' on the environmental impacts of the proposed action (including alternatives to the proposed action).[105] However, there are some instances where NEPA does not apply. One consideration is whether the action at issue is a non-discretionary action to which NEPA may not apply or for which NEPA may require less detailed analysis.[106]

NHTSA addressed NEPA in promulgating the interim final rule, concluding that even though a NEPA analysis ''is not required, this section [of the preamble to the interim final rule] may serve as the Agency's Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for this interim final rule.'' [107] In the SNPRM, NHTSA again concluded that no further analysis pursuant to NEPA is required in adjusting the penalty rate this time, which is in line with legal precedent concerning non-discretionary agency action.[108] NHTSA reiterates that conclusion here.

Although NHTSA tentatively concluded in the SNPRM (and affirms here) that it does not have discretion on whether to adjust the CAFE civil penalty rate as required by the statute and thus that a NEPA analysis was not required, NHTSA prepared an environmental assessment to evaluate the effects of the timing of such an increase on the environment. When a Federal agency prepares an environmental assessment, the Council on Environmental Quality (CEQ) NEPA implementing regulations require the agency to (1) ''[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact,'' and (2) ''[b]riefly discuss the purpose and need for the proposed action, alternatives . . . , and the environmental impacts of the proposed action and alternatives, and include a listing of [a]gencies and persons consulted.'' [109] Generally, based on the environmental assessment, the agency must make a determination to prepare an environmental impact statement or ''prepare a finding of no significant impact if the [a]gency determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action will not have significant effects.'' [110]

NHTSA solicited public comments on the applicability of NEPA to this action and the contents and tentative conclusions of the Draft EA. The comments were silent on NEPA issues or agreed that no additional analysis was necessary.[111] Having reviewed the comments, this section may serve as the Agency's EA and FONSI for this final rule. NHTSA considered the findings of this EA prior to deciding that the adjusted rate will go into effect beginning in Model Year 2019 and making the subsequent required adjustments through 2022.

I. Purpose and Need

The SNPRM and this final rule set forth the purpose of and need for this action. Pursuant to the 2015 Act and the Second Circuit's decision, NHTSA is required to make an initial ''catch-up''

[104] 42 U.S.C. 4321–4347.

[105] 42 U.S.C. 4332.

[106] *See Dept. of Transp.* v. *Public Citizen,* 541 U.S. 752, 768–69 (2014) (holding that the agency need not prepare an Environmental Impact Statement (EIS) or analyze certain environmental effects in its EA, and stating, ''[s]ince [the Federal Motor Carrier Safety Administration] FMCSA has no ability categorically to prevent the cross-border operations of Mexican motor carriers, the environmental impact of the cross-border operations would have no effect on FMCSA's decisionmaking—FMCSA simply lacks the power to act on whatever information might be contained in the EIS.'').

[107] 86 FR 3025.

[108] 86 FR 46818.

[109] 40 CFR 1501.5(c).

[110] 40 CFR 1501.6(a).

[111] *See* NHTSA–2021–0001–0036, at 5–6 (arguing that the interim final rule was ''procedurally invalid'' for failing to abide by the NEPA requirement to take a hard look at the environmental consequences of the rule, but raising no objections to the NEPA analysis in the SNPRM); NHTSA 2021–0001–0037, at 8 (''[T]he agency need not conduct a NEPA analysis before repealing the Exemption Rule.''); NHTSA 2021–0001–0043, at 13 (''NHTSA's NEPA analysis [in the interim final rule] was adequate,'' and ''to the extent that NHTSA is concerned about the NEPA issue or any of the other procedural issues raised by commenters, this SNPRM proceeding provides the opportunity to promulgate a rule in accordance with applicable procedural standards.'').

adjustment to the civil monetary penalties it administers for the CAFE program. The purpose of the SNPRM and this final rule is to consider the timing of the application of the adjustment to the CAFE civil penalty rate, consistent with the statutory requirements.

II. Alternatives

NHTSA considered two alternatives for this action. The first alternative was to restore the status quo ante prior to the interim final rule, which is adjusting the CAFE civil penalty rate from $5.50 to $14 beginning in Model Year 2019, before making any subsequent required adjustments. This timing was originally established by the December 2016 final rule and was twice made effective by decisions of the Second Circuit. The second alternative was applying the initial adjustment beginning in Model Year 2022, which reflects the action taken in the interim final rule (the No Action Alternative). As noted in the SNPRM, NHTSA was no longer considering the alternative of applying the initial adjustment beginning in Model Year 2023, but NHTSA accepted comments on whether it should consider other alternatives of the adjustment applying beginning with a model year later than Model Year 2019. No commenter suggested any other alternative. This EA describes the potential environmental impacts associated with the two alternatives in comparison with each other.

III. Environmental Impacts of the Action and Alternatives

In the interim final rule, NHTSA asserted that it anticipated no differences in environmental impacts associated with the alternatives of applying the adjustment beginning in Model Year 2019, 2020, 2021, or 2022. NHTSA based this conclusion on the fact that vehicles for Model Years 2019 and 2020 had largely if not entirely been produced already, and many manufacturers were already selling Model Year 2021 vehicles.

As explained in the SNPRM, NHTSA reconsidered whether this assessment is complete after reviewing the comments received in response to the interim final rule. Commenters had argued that, regardless of the impact of this rulemaking action on Model Year 2019 through 2021 vehicles, longer-term impacts may vary as a result of manufacturer multi-year planning, the transfer of credits across model years and between manufacturers, and the changing value of credits over time. If this is correct, applying the adjustment earlier could result in manufacturers applying credit balances to Model Year 2019 through 2021 vehicles and being incentivized to make fuel economy improvements in their fleet beyond that timeframe, rather than paying civil penalties at the $5.50 rate for Model Years 2019 through 2021 and saving the credits for future model years when they could be valued more due to the adjustment. Additionally, for manufacturers without credit balances, the potential application of a significantly higher civil penalty for Model Years 2019 through 2021 may spur more rapid implementation of fuel-saving technology in order to allow the manufacturer to accrue credits that may be carried back to cover the shortfall in Model Years 2019 through 2021.

Overall, NHTSA anticipates that applying the adjustment beginning with Model Year 2019 may lead to the eventual application of more fuel-saving technology, resulting in fewer greenhouse gas emissions and reductions in many criteria and toxic air pollutants compared to applying the adjustment beginning in Model Year 2022.[112] Although Model Years 2019 and 2020 are already completed, and Model Year 2021 is essentially complete, the civil penalty assessment process is not yet complete for any of them, much less for Model Year 2022.[113] As a result, NHTSA does not yet know the anticipated manufacturer compliance shortfall for these model years. Because manufacturers can apply credits across a multi-year window, their decisions about how to apply credits in earlier model years will affect the availability of credits and the application of fuel-saving technology in later model years. However, NHTSA does not know whether and to what degree manufacturers will choose to pay fines in lieu of applying accrued credits, trade credits with other manufacturers, or rely on multi-year planning and credit carry-forward and carry-back to address shortfalls. NHTSA invited comments, information, and analyses from the public on the degree to which this may occur as a result of changes to the civil penalty rate in Model Year 2019 versus Model Year 2022. The Auto Innovators provided an analysis arguing that ''delaying the application of a $14 civil penalty rate to MY 2022 is highly unlikely to affect manufacturers' compliance strategies by allowing them to delay the use of 2017 or later credits to MY 2022'' because ''older credits will be used to mostly, if not completely, cancel any shortfalls.'' [114]

At this time, NHTSA continues to anticipate the impacts to be small. The difference between the alternatives contemplated in this action is only whether or not the initial civil penalty rate increase applies to three Model Years: 2019, 2020, and 2021. NHTSA continues to believe the impacts on those Model Years alone is expected to be de minimis, as all three model years have largely if not entirely been produced already. Further, as NHTSA has addressed in its CAFE rulemakings, many manufacturers have been unwilling to pay civil penalties historically. Those manufacturers may continue to opt to apply credits even if a lower civil penalty rate applied, rather than hold credits for future model years when the civil penalty rate would be higher.

IV. Agencies and Persons Consulted

NHTSA and DOT have consulted with OMB and the U.S. Department of Justice and provided other Federal agencies with the opportunity to review and provide feedback on this rulemaking.

V. Conclusion

NHTSA has reviewed the information presented in this EA and concludes that adjusting the CAFE civil penalty rate beginning with Model Year 2019, as compared to Model Year 2022, would have, at most, a more positive impact on the quality of the human environment to the extent that manufacturers may be more likely to expend credit balances on Model Year 2019 through 2021 vehicles than if the civil penalty rate remained at $5.50 for those model years. Lacking such credits in future years, manufacturers would be more likely to make improvements to the fuel economy of their fleets to avoid paying the higher civil penalty rates that would occur under either alternative. Additionally, higher civil penalty rates in Model Years 2019 through 2021 may cause manufacturers to more rapidly implement fuel-saving technology so that they may accrue credits to be carried back to cover compliance shortfalls. But NHTSA does not expect any differences in the impacts under either of the alternatives to rise to the

[112] See NHTSA's Final Environmental Impact Statements for the CAFE rulemaking for MYs 2017 and beyond (Docket No. NHTSA–2011–0056) and for MYs 2021–2026 (Docket No. NHTSA–2017–0069), both of which illustrate these trends as fuel economy standard stringency increases across alternatives. Both EISs are also available on the agency's fuel economy website: *https://www.nhtsa.gov/laws-regulations/corporate-average-fuel-economy.*

[113] Because NHTSA does not have final model year performance data verified by EPA for these model years, any quantitative projections of the environmental impact across multiple model years would be too speculative to rely upon at this time.

[114] Auto Innovators Comment, at 12.

level of significance that would necessitate the preparation of an Environmental Impact Statement.

VI. Finding of No Significant Impact

NHTSA has reviewed this EA. Based on the EA, NHTSA concludes that implementation of either of the action alternatives (including this final rule) will not have a significant effect on the human environment and that a ''finding of no significant impact'' is appropriate. This statement constitutes the Agency's ''finding of no significant impact,'' and an environmental impact statement will not be prepared.[115]

6. Executive Order 12988 (Civil Justice Reform)

This rulemaking does not have a preemptive effect. For the reasons explained above, this rulemaking does not have a retroactive effect. Judicial review of the interim final rule or a subsequent final rule may be obtained pursuant to 5 U.S.C. 702.

7. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, NHTSA states that there are no requirements for information collection associated with this rulemaking action.

8. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of DOT's 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), or you may visit *https://www.transportation.gov/privacy.*

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Penalties, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 578 is amended as set forth below.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 1. The authority citation for 49 CFR part 578 continues to read as follows:

Authority: Pub. L. 92–513, Pub. L. 94–163, Pub. L. 98–547, Pub. L. 101–410, Pub. L. 102–388, Pub. L. 102–519, Pub. L. 104–134, Pub. L. 109–59, Pub. L. 110–140, Pub. L. 112–141, Pub. L. 114–74, Pub. L. 114–94 (49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32902, 32912, 33114, and 33115); delegation of authority at 49 CFR 1.81, 1.95.

■ 2. Amend § 578.6 by revising paragraph (h)(2) and adding paragraph (h)(3) to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

* * * * *

(h) * * *

(2) Except as provided in 49 U.S.C. 32912(c), a manufacturer that violates a standard prescribed for a model year under 49 U.S.C. 32902 is liable to the United States Government for a civil penalty of $15 (for model years before model year 2019, the civil penalty is $5.50; for model years 2019 through 2021, the civil penalty is $14), multiplied by each .1 of a mile a gallon by which the applicable average fuel economy standard under that section exceeds the average fuel economy—

(i) Calculated under 49 U.S.C. 32904(a)(1)(A) or (B) for automobiles to which the standard applies produced by the manufacturer during the model year;

(ii) Multiplied by the number of those automobiles; and

(iii) Reduced by the credits available to the manufacturer under 49 U.S.C. 32903 for the model year.

(3) If a higher amount for each .1 of a mile a gallon to be used in calculating a civil penalty under paragraph (h)(2) of this section is prescribed pursuant to the process provided in 49 U.S.C. 32912(c), the amount prescribed may not be more than $29 for each .1 of a mile a gallon.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Steven S. Cliff,

Deputy Administrator.

[FR Doc. 2022–06648 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–59–P

[115] 40 CFR 1501.6(a).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[220325–0079]

RIN 0648–BL14

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Final rule.

SUMMARY: This final rule approves changes to the Pacific Halibut Catch Sharing Plan for the International Pacific Halibut Commission's regulatory Area 2A off of Washington, Oregon, and California. In addition, this final rule implements management measures governing the 2022 recreational fisheries that are not implemented through the International Pacific Halibut Commission. These measures include the recreational fishery seasons, quotas, and management measures for Area 2A. These actions are intended to conserve Pacific halibut and provide angler opportunity where available.

DATES: This rule is effective on March 31, 2022.

ADDRESSES: Additional information regarding this action may be obtained by contacting the Sustainable Fisheries Division, NMFS West Coast Region, 1201 NE Lloyd Boulevard Suite 1100, Portland, OR, 97232. For information regarding all halibut fisheries and general regulations not contained in this rule, contact the International Pacific Halibut Commission, 2320 W. Commodore Way Suite 300, Seattle, WA 98199–1287.

FOR FURTHER INFORMATION CONTACT: Kathryn Blair, phone: 503–231–6858, fax: 503–231–6893, or email: *kathryn.blair@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773–773k, gives the Secretary of Commerce (Secretary) responsibility for implementing the provisions of the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Halibut Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The Halibut Act requires that the Secretary adopt regulations to carry out the purposes and objectives of the Halibut Convention and Halibut Act (16 U.S.C. 773c). Additionally, as provided in the Halibut Act, the Regional Fishery Management Councils having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with, approved International Pacific Halibut Commission (IPHC) regulations (16 U.S.C. 773c(c)).

At its annual meeting January 24–28, 2022, the IPHC recommended an Area

2A catch limit of 1,490,000 pounds (lb) (675.9 metric tons (mt)) for 2022. This catch limit is derived from the total constant exploitation yield (TCEY) of 1,650,000 lb (748.4 mt) for Pacific halibut, which includes commercial discards and bycatch estimates calculated using a formula developed by the IPHC. The Area 2A catch limit and commercial fishery allocations are adopted by the IPHC and were published in the **Federal Register** on March 7, 2022 (87 FR 12604) after acceptance by the Secretary of State, with concurrence from the Secretary of Commerce, in accordance with 50 CFR 300.62. Additionally, the March 7, 2022 (87 FR 12604) final rule contains annual domestic management measures and IPHC regulations that are published each year under NMFS' authority to implement the Halibut Convention (50 CFR 300.62).

Since 1988, the Pacific Fishery Management Council (Council) has developed and NMFS has approved annual Catch Sharing Plans that allocate the IPHC regulatory Area 2A Pacific halibut catch limit between treaty Indian and non-Indian harvesters, and among non-Indian commercial and recreational (sport) fisheries. In 1995, the Council recommended, and NMFS approved a long-term Area 2A Catch Sharing Plan (60 FR 14651; March 20, 1995). NMFS has been approving adjustments to the Area 2A Catch Sharing Plan based on Council recommendations each year to address the changing needs of these fisheries. While the full Catch Sharing Plan is not published in the **Federal Register**, it is made available on the Council and NMFS websites.

This rule approves the Council's recommended changes to the Catch Sharing Plan for IPHC regulatory Area 2A. The 2022 Catch Sharing Plan was developed through the Council's public process. This rule implements recreational Pacific halibut fishery management measures for 2022, which include season opening and closing dates. Further details of the changes made for the 2022 Catch Sharing Plan are described in the proposed rule (87 FR 9021; February 17, 2022) and are not repeated here.

As described above, NMFS is adopting recreational fishery management measures, including season dates for the 2022 fishery. The Catch Sharing Plan includes a framework for setting days open for fishing by subarea; under this framework, each state submits final recommended season dates annually to NMFS during the proposed rule comment period. This final rule contains dates for the recreational fisheries (though referred to as ''sport'' in IPHC documents, ''recreational'' will be used in this rule) based on the 2022 Catch Sharing Plan as recommended by the Council and the recommended dates submitted by the states during public comment on the proposed rule.

2022 Recreational Fishery Management Measures

NMFS is implementing the following Area 2A recreational fishery management measures consistent with the Council's Catch Sharing Plan. If there is any discrepancy between the Catch Sharing Plan and Federal regulations, Federal regulations take precedence. The recreational fishing subareas, quotas, fishing dates, and daily bag limits are as follows. These may be modified through inseason actions consistent with 50 CFR 300.63(c). All recreational fishing in Area 2A is managed on a ''port of landing'' basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

Washington Puget Sound and the U.S. Convention Waters in the Strait of Juan de Fuca

The quota for the area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N lat., 124°23.70′ W long. north to 48°24.10′ N lat., 124°23.70′ W long., is 83,210 lb (37.74 mt).

(a) For the area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line at approximately 123°49.60′ W long., fishing is open April 7–9, 14–16, 21–23, 28–30; May 5–7, 12–14, 19–21, 27–29; June 2–4, 9–11, 16–18, 23–25, and 30. If unharvested quota remains after June 30, NMFS may take inseason action to reopen the fishery August 18 through September 30, up to five days per week, on Thursday, Friday, Saturday, Sunday, and Monday of each week, or until there is not sufficient quota for another full day of fishing and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(b) For the area in U.S. waters in the Strait of Juan de Fuca, approximately between 124°23.70′ W long. and 123°49.60′ W long., fishing is open May 5, 7, 12, 14, 19, 21, 27–29; June 2–4, 9–11, 16–18, 23–25, and 30. If unharvested quota remains after June 30, NMFS may take inseason action to reopen the fishery August 18 through September 30, up to five days per week, on Thursday, Friday, Saturday, Sunday, and Monday of each week, or until there is not sufficient quota for another full day of fishing and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(c) The daily bag limit is one halibut of any size per day per person.

Washington North Coast Subarea

The quota for landings into ports in the area off the north Washington coast, west of a line at approximately 124°23.70′ W long. and north of the Queets River (47°31.70′ N lat.), is 133,847 lb (60.71 mt).

(a) Fishing is open May 5, 7, 12, 14, 19, 21, 27, and 29; June 2, 4, 9, 11, 16, 18, 23, 25, and 30. If unharvested quota remains after June 30, NMFS may take inseason action to reopen the fishery August 18 through September 30, up to five days per week, on Thursday, Friday, Saturday, Sunday, and Monday of each week, or until there is not sufficient quota for another full day of fishing and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one halibut of any size per day per person.

(c) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing with recreational gear in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is defined in groundfish regulations at 50 CFR 660.70(b).

Washington South Coast Subarea

The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N lat.), and Leadbetter Point, WA (46°38.17′ N lat.), is 68,555 lb (31.10 mt).

(a) This subarea is divided between the all-depth fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°31.70′ N lat. south to 46°58.00′

N lat. and east of a boundary line approximating the 30-fm (55-m) depth contour. This area (the Washington South coast northern nearshore area) is defined by straight lines connecting all of the following points in the order stated as described by the following coordinates:

(1) 47°31.70′ N lat, 124°37.03′ W long;
(2) 47°25.67′ N lat, 124°34.79′ W long;
(3) 47°12.82′ N lat, 124°29.12′ W long;
(4) 46°58.00′ N lat, 124°24.24′ W long.

The primary fishery season dates are May 5, 8, 12, 15, 19, 22, and 26; June 16, 19, 23, and 26, or until there is not sufficient quota for another full day of fishing and the area is therefore closed. If unharvested quota remains after June 30, NMFS may take inseason action to reopen the fishery August 19 and/or September 23. Any closure will be announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. The fishing season in the Washington South Coast northern nearshore area commences the Saturday subsequent to the closure of the primary fishery in May or June if quota remains in the Washington South Coast subarea allocation, and continues seven days per week until 68,555 lb (31.10 mt) is projected to be taken by the two fisheries combined and the fishery is therefore closed or on September 30, whichever is earlier. If the fishery is closed prior to September 30, or there is insufficient quota remaining to reopen the Washington South coast, northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS, in accordance with Federal regulations at 50 CFR 300.63(c).

(b) The daily bag limit is one halibut of any size per day per person.

(c) Seaward of the boundary line approximating the 30-fm (55-m) depth contour and during days open to the primary fishery, lingcod may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.360(c).

(d) Recreational fishing for groundfish and halibut is allowed within the South Coast Recreational YRCA and Westport Offshore Recreational YRCA. The South Coast Recreational YRCA is defined at 50 CFR 660.70(e). The Westport Offshore Recreational YRCA is defined at 50 CFR 660.70(f).

Columbia River Subarea

The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N lat.), and Cape Falcon, OR (45°46.00′ N lat.), is 19,037 lb (8.64 mt).

(a) This subarea is divided into an all-depth fishery and a nearshore fishery. The nearshore fishery is allocated 500 lb (0.23 mt) of the subarea allocation. The nearshore fishery extends from Leadbetter Point (46°38.17′ N lat., 124°15.88′ W long.) to the Columbia River (46°16.00′ N lat., 124°15.88′ W long.) by connecting the following coordinates in Washington: 46°38.17′ N lat., 124°15.88′ W long. 46°16.00′ N lat., 124°15.88′ W long., and connecting to the boundary line approximating the 40-fm (73-m) depth contour in Oregon. The nearshore fishery opens May 9, and continues on Monday, Tuesday, and Wednesday each week until the nearshore allocation is taken, or on September 30, whichever is earlier. The all-depth fishery is open May 5, 8, 12, 15, 19, 22, and 26; June 2, 5, 9, 12, 16, 19, 23, 26, and 30, or until there is not sufficient quota for another full day of fishing and the area is therefore closed. If unharvested quota remains after June 30, NMFS may take inseason action to reopen the fishery on August 19 and/or September 23. Any closure will be announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS, in accordance with Federal regulations at 50 CFR 300.63(c). Any remaining quota would be transferred to each state in proportion to the allocation formula in the Catch Sharing Plan.

(b) The daily bag limit is one halibut of any size per day per person.

(c) Pacific Coast groundfish may not be taken and retained, possessed or landed when halibut are on board the vessel, except sablefish, Pacific cod, flatfish species, yellowtail rockfish, widow rockfish, canary rockfish, redstripe rockfish, greenstriped rockfish, silvergray rockfish, chilipepper, bocaccio, blue/deacon rockfish, and lingcod caught north of the Washington-Oregon border (46°16.00′ N lat.) may be retained when allowed by Pacific Coast groundfish regulations at 50 CFR 660.360, during days open to the all-depth Pacific halibut fishery. Long-leader gear (as defined at 50 CFR 660.351) may be used to retain groundfish during the all-depth Pacific halibut fishery south of the Washington-Oregon border, when allowed by Pacific Coast groundfish regulations at 50 CFR 660.360.

(d) Taking, retaining, possessing, or landing halibut on groundfish trips is allowed in the nearshore area on days not open to all-depth Pacific halibut fisheries.

Oregon Central Coast Subarea

The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N lat.) and Humbug Mountain (42°40.50′ N lat.), is 269,782 lb (122.37 mt).

(a) The nearshore fishery opens on May 1, seven days per week, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon nearshore fishery of 32,374 lb (14.68 mt), or any inseason revised quota is estimated to have been taken and the season is therefore closed, or on October 31, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00′ N lat. and 42°40.50′ N lat. is defined at 50 CFR 660.71(o).

(b) The spring all-depth fishery opens May 12, seven days per week, through June 30. In the event that there is remaining subarea allocation after June 30, the fishery will also be open July 7–9 and 21–23 or until there is not enough quota remaining for a full day of fishing and the fishery is therefore closed. The allocation to the all-depth fishery is 169,963 lb (77.09 mt).

(c) The summer all-depth fishery opens on August 4–6, 18–20; September 1–3, 15–17, September 29–October 1, 13–15, and 27–29; or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, are estimated to have been taken and the area is therefore closed. NMFS, in accordance with notice procedures in Federal regulations at 50 CFR 300.63(c)(3), will announce on the NMFS hotline (206) 526–6667 or (800) 662–9825 in July whether the fishery will re-open for the summer season in August. Additional fishing days may be opened if enough quota to allow for additional days of fishing remains after the last day of the first scheduled open period. If, after this date, an amount greater than or equal to 60,000 lb (27.2 mt) remains in the combined nearshore, spring, and summer quota, NMFS may take inseason action to reopen the fishery every Thursday, Friday and Saturday, beginning August 4, 5, and 6, and/or the fishery may be open up to seven days a week beginning September 1, ending when there is insufficient quota remaining or October 31, whichever is earlier. If after September 6 an amount greater than or equal to 30,000 lb (13.6 mt) remains in the combined nearshore, spring, and summer quota, and the fishery is not already open every Thursday, Friday and Saturday, NMFS may take inseason action to re-open the fishery every

Thursday, Friday and Saturday, beginning September 8, 9, and 10, through October 31, until there is not sufficient quota for another full day of fishing and the area is closed. At the conclusion of the spring all-depth season, NMFS may increase the bag limit to two fish of any size per person, per day. NMFS, in accordance with notice procedures at 50 CFR 300.63(c)(3), will announce on the NMFS hotline (206) 526–6667 or (800) 662–9825 whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open, and what the bag limit is.

(d) The daily bag limit is one halibut of any size per day per person, unless otherwise specified through inseason action. NMFS, in accordance with notice procedures at 50 CFR 300.63(c)(3), will announce on the NMFS hotline (206) 526–6667 or (800) 662–9825 any bag limit changes.

(e) During days open to all-depth halibut fishing when the groundfish fishery is restricted by depth, when halibut are on board the vessel, no groundfish, except sablefish, Pacific cod, and other species of flatfish (sole, flounder, sanddab), may be taken and retained, possessed or landed, except with long-leader gear (as defined at § 660.351), when allowed by groundfish regulations. During days open to all-depth halibut fishing when the groundfish fishery is open to all depths, any groundfish species permitted under the groundfish regulations may be retained, possessed or landed if halibut are on board the vessel. During days only open to nearshore halibut fishing, flatfish species may not be taken and retained seaward of the 40-fm (73-m) depth contour if halibut are on board the vessel.

(f) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(g) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is defined at 50 CFR 660.70(g)–(i).

Southern Oregon Subarea

The quota for landings into ports in the area south of Humbug Mountain, OR (42°40.50′ N lat.) to the Oregon/California Border (42°00.00′ N lat.) is 8,000 lb (3.63 mt).

(a) The fishery opens May 1, seven days per week, until the quota is taken or October 31, whichever is earlier.

(b) The daily bag limit is one halibut per person with no size limit, unless otherwise specified through inseason action. NMFS, in accordance with notice procedures at 50 CFR 300.63(c)(3), will announce on the NMFS hotline (206) 526–6667 or (800) 662–9825 any bag limit changes.

(c) During days open to the Pacific halibut fishery, when halibut are on board the vessel, no groundfish except sablefish, Pacific cod, and other species of flatfish (sole, flounder, sanddab), may be taken and retained, possessed or landed, except with long-leader gear (as defined at § 660.351) when allowed by groundfish regulations at 50 CFR 660.360.

California Coast Subarea

The quota for landings into ports south of the Oregon/California Border (42°00.00′ N lat.) and along the California coast is 38,740 lb (17.57 mt).

(a) The fishery opens May 1 through November 15, or until the subarea quota is estimated to have been taken and the season is therefore closed, whichever is earlier. NMFS, in accordance with notice procedures at § 300.63(c)(3), will announce any closure on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one halibut of any size per day per person.

Comments and Responses

NMFS published the proposed rule on February 17, 2022 (87 FR 9021). NMFS accepted public comments on the Council's recommended modifications to the 2022 Area 2A Catch Sharing Plan and the proposed 2022 annual management measures through March 4, 2022. NMFS received two comments from state agencies—the Oregon Department of Fish and Wildlife (ODFW) and the California Department of Fish and Wildlife (CDFW)—and one comment from a member of the public.

Comment 1: ODFW submitted a comment recommending final recreational fishing season dates for the 2022 season for the Central Oregon Coast subarea. ODFW hosted a public meeting and an online survey following the IPHC annual meeting. Based on stakeholder input, past fishing effort and harvest rates, and the risk of exceeding the combined spring and summer allocations, ODFW recommended season dates for the spring and summer Central Oregon Coast fisheries. For spring, ODFW recommended open dates of May 12 through June 30, seven days per week. In the event that there is remaining subarea allocation following the initial open dates, ODFW recommended the spring fishery open on July 7, 8, 9 and July 21, 22, and 23. ODFW recommended summer fishery dates on August 4, 5, 6; August 18, 19, 20; September 1, 2, 3; September 15, 16, 17; September 29, 30, October 1; October 13, 14, 15; and October 27, 28, 29; or until the total 2022 all-depth catch limit for the subarea is taken.

Response: NMFS concurs that the ODFW-recommended season dates are appropriate. There are a few differences between the spring and summer season dates NMFS published in the proposed rule and those recommended by ODFW. However, based on the rationale provided by ODFW, NMFS has modified the recreational fishery season dates off of Oregon to those recommended by ODFW in this final rule.

Comment 2: CDFW submitted a comment concurring with the season dates for the fisheries off of California that NMFS published in the proposed rule for the 2022 season. CDFW hosted an online survey following the IPHC annual meeting. Based on public comments received on Pacific halibut fisheries in California and fishing performance in recent years, CDFW recommended season dates of May 1–November 15, or until quota has been attained, whichever comes first.

Response: NMFS concurs that these season dates are appropriate and affirms the recreational fishery season dates off of California in this final rule.

Comment 3: NMFS received one public comment discussing the daily bag limit in California.

Response: Area 2A fisheries are managed by allocating quota catch limit to each sector and subarea, and managing to an Area 2A catch limit that is set by the IPHC at a level that represents a relatively conservative level of harvest, and is consistent with its conservation objectives for the halibut stock. In addition, two out of the last three years, the quota for the California recreational fishery was not fully attained. Therefore, NMFS has determined the recreational bag limit in California is appropriate.

Changes From the Proposed Rule

As described in the response to Comment 1 above, NMFS changed

season dates off of Oregon in this final rule.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, the Secretary of State and the Secretary of Commerce. Additionally, as provided in the Halibut Act, the Regional Fishery Management Councils having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with, approved IPHC regulations (16 U.S.C. 773c(c)). The final rule is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Washington, Oregon, and California.

NMFS prepared an EA for Area 2A Pacific halibut fishery management, and the Assistant Administrator concluded that there will be no significant impacts on the human environment as a result of this rule. The proposed rule (87 FR 9021; February 17, 2022) described where the draft EA could be viewed and how to comment. The public comment period closed March 4, 2022. There were no comments received on the draft EA, and therefore there were no changes or updates resulting from the public comment period. A copy of the Final EA and associated Finding of No Significant Impact are available on NMFS' website at *https://www.fisheries.noaa.gov/west-coast/laws-and-policies/pacific-halibut-actions-nepa-documents.*

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS finds good cause to waive the 30-day delay in the date of effectiveness and make this rule effective on March 31, 2022, in time for the start of recreational Pacific halibut fisheries on April 7, 2022, pursuant to 5 U.S.C. 553(d)(3). The 2022 Catch Sharing Plan provides the framework for the annual management measures and setting subarea allocations based on annual catch limits set by the IPHC. This rule implements 2022 Area 2A subarea allocations as published in the proposed rule (87 FR 9021; February 17, 2022) for the recreational Pacific halibut fishery based on the formulas set in the Catch Sharing Plan and using the 2022 Area 2A catch limit for Pacific halibut set by the IPHC and published by NMFS on March 7, 2022 (87 FR 12604).

Additionally, delaying the effective date of this rule would be contrary to the public interest. The Council's 2022 Catch Sharing Plan approved in this rule includes changes that respond to the needs of the fisheries in each state, including fisheries that begin in early April. The Catch Sharing Plan and management measures were developed through multiple public meetings of the Council, and were described at the IPHC meeting where public comment was accepted. A delay in the effectiveness of this rule for 30 days would result in the fisheries not opening on their intended timelines and on the dates the affected public are expecting. The recreational Pacific halibut fisheries have high participation, and some subareas close months before the end of the season due to subarea allocation attainment. If the fisheries do not open on their intended timelines, fishing opportunity is lost, potentially causing economic harm to communities at recreational fishing ports.

Therefore, a delay in effectiveness could cause economic harm to the associated fishing communities by reducing fishing opportunity at the start of the fishing year. As a result of the potential harm to fishing communities that could be caused by delaying the effectiveness of this final rule, NMFS finds good cause to waive the 30-day delay in the date of effectiveness and make this rule effective upon publication in the **Federal Register**.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The factual basis for the certification was published in the proposed rule and is not repeated here. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: March 28, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart E, is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.63, revise paragraph (c)(1)(iii) to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(c) * * *

(1) * * *

(iii) If any of the recreational fishery subareas north of Cape Falcon, Oregon are not projected to utilize their respective quotas, NMFS may take inseason action to transfer any projected unused quota to another Washington recreational subarea.

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[FR Doc. 2022–06834 Filed 3–31–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 220328–0080]

RIN 0648–BL00

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery of the Atlantic; Amendment 10

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 10 to the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery of the Atlantic (Dolphin and Wahoo FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule revises the annual catch limits (ACLs), accountability measures (AMs), and additional management measures for

dolphin and wahoo. The additional management measures address commercial trip limits, authorized fishing gear, the operator permit (card) requirement for dolphin and wahoo, and the recreational vessel limit for dolphin. Amendment 10 also revises the acceptable biological catch (ABC) and sector allocations for both dolphin and wahoo. The purpose of this final rule and Amendment 10 is to base conservation and management measures for dolphin and wahoo on the best scientific information available and increase net benefits to the fishery.

DATES: This final rule is effective May 2, 2022.

ADDRESSES: Electronic copies of Amendment 10, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-10-changes-catch-levels-sector-allocations-accountability-measures-and-management.*

Written comments regarding the burden hour estimates or any other aspects of the collection of information requirements contained in this final rule may be submitted at any time by email to Adam Bailey, NMFS Southeast Regional Office, *adam.bailey@noaa.gov,* or to *www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The dolphin and wahoo fishery in Federal waters from Maine south to the Florida Keys in the Atlantic is managed under the Dolphin and Wahoo FMP. The Dolphin and Wahoo FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On December 23, 2021, NMFS published a notice of availability for Amendment 10 and requested public comment (86 FR 72911). NMFS approved Amendment 10 on March 17, 2022. On January 14, 2022, NMFS published a proposed rule for Amendment 10 and requested public comment (87 FR 2389). The proposed rule and Amendment 10 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 10 and implemented by this final rule is described below.

Background

The current total ACLs for both dolphin and wahoo were added to the FMP in 2014 through Amendment 5 to the Dolphin and Wahoo FMP (Amendment 5), and are based on the Council's Scientific and Statistical Committee's (SSC) ABC recommendations using the third highest landings value during 1999–2008 (79 FR 32878; June 9, 2014). The landings data during that time period did not include recreational landings from Monroe County, Florida, and were based on recreational data from the Marine Recreational Information Program's (MRIP) Coastal Household Telephone Survey (CHTS) method. In April 2020, the Council's SSC recommended new ABC levels for dolphin and wahoo using the third highest annual commercial and recreational landings value during 1994–2007. These landings include recreational landings from Monroe County, Florida, and used MRIP's Fishing Effort Survey (FES) method, which is considered more reliable and robust compared to the CHTS survey method. The new ABC recommendations for dolphin and wahoo are also based on the new weight estimation procedure from NMFS Southeast Fisheries Science Center (SEFSC) that uses a 15 fish minimum sample size and represents the best scientific information available. This final rule revises the total ACLs for dolphin and wahoo to equal the new ABC values.

The current sector allocations for dolphin were added to the FMP in 2016 through Amendment 8 to the Dolphin and Wahoo FMP (Amendment 8), with 10.00 percent of the total ACL to the commercial sector and 90.00 percent of the total ACL to the recreational sector (81 FR 3731; January 22, 2016). In 2015, the commercial sector was closed because the commercial ACL was met during that fishing year. In Amendment 8, the Council set the commercial allocation at the average of the percentages of the total commercial catch for 2008–2012, and the resulting 10 percent of the total ACL for the commercial allocation was expected to prevent subsequent closures of the commercial sector. The current sector allocations for wahoo were added to the FMP in 2014 through Amendment 5, with 3.93 percent of the total ACL to the commercial sector and 96.07 percent of the total ACL to the recreational sector. The Council decided on these wahoo allocations by balancing long-term catch history with recent catch history, and determined this method as the most fair and equitable way to allocate fishery resources since it considered past and present participation. The current allocations for both dolphin and wahoo were applied to the respective species' total ACLs (equal to the ABCs) to obtain the sector ACLs.

Amendment 10 specifies commercial and recreational allocations for dolphin at 7.00 percent and 93.00 percent, respectively. For wahoo, Amendment 10 specifies commercial and recreational allocations at 2.45 percent and 97.55 percent, respectively. These allocations are applied to the respective species' revised total ACLs (equal to the proposed ABCs) using the third highest landings value during 1994–2007 to determine the new sector ACLs. The revised sector ACLs for dolphin and wahoo were derived from landings which include recreational landings from Monroe County, Florida, use MRIP's FES method, and SEFSC new weight estimation procedure. For dolphin, the Council has determined that the revised sector allocations and revised sector ACLs would avoid a decrease in the current pounds of dolphin available to either sector's ACL. For wahoo, the Council's intent is to maintain the current commercial ACL and allocate the remaining revised ACL to the recreational sector.

Amendment 10 and this final rule do not make any changes to the commercial AMs for dolphin or wahoo. The current recreational AMs for dolphin and wahoo were added to the FMP in 2014 through Amendment 5, and do not contain an in-season AM but instead require monitoring for persistence in recreational landings during the year following any recreational ACL overage. Further, the current recreational post-season AMs state that if the combined commercial and recreational landings exceed the combined commercial and recreational ACLs, and dolphin and wahoo are overfished, the recreational ACL for the following year will be reduced by the amount of the recreational overage in the prior fishing year, and the recreational fishing season will be reduced by the amount necessary to ensure recreational landings do not exceed the reduced ACL. The Regional Administrator (RA) will determine, using the best scientific information available, if a reduction in the recreational ACL and a reduction in the length of the following fishing season is unnecessary. These recreational post-season AMs for dolphin and wahoo are not viable because the post-season AMs would not be triggered as there is not a peer-reviewed stock assessment for dolphin and wahoo, and such assessment is

unlikely to be conducted in the near future. Therefore, there is no likely method to determine their stock status. This final rule establishes a trigger to implement post-season AMs and specifies the post-season AMs that may be triggered for dolphin and wahoo and that are not based on their stock status.

In 2017, Regulatory Amendment 1 to the Dolphin and Wahoo FMP and the associated final rule implemented the current commercial trip limit for dolphin of 4,000 lb (1,814 kg), round weight, that is in effect once 75 percent of the commercial ACL is reached (82 FR 8820; January 31, 2017). Prior to reaching 75 percent of the commercial ACL, there is no commercial trip limit for dolphin. In 2004, the final rule for the original Dolphin and Wahoo FMP implemented the current commercial trip limit for wahoo of 500 lb (227 kg); and a commercial trip limit of 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N latitude, for a vessel that does not have a Federal commercial vessel permit for dolphin and wahoo but has a Federal commercial vessel permit in any other fishery.

In 2004, the final rule for the original Dolphin and Wahoo FMP also implemented the currently authorized commercial gear types in the dolphin and wahoo fishery in the Atlantic Exclusive Economic Zone (EEZ) as automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types (including trap, pot, or buoy gear) other than authorized gear types may not possess dolphin or wahoo. In 2016, a commercial lobster association initially requested that the Council modify the fishing gear regulations to allow the lobster fishery's historical practice of harvesting dolphin by rod and reel while in the possession of lobster pots to continue. This final rule allows a person aboard a vessel in the Atlantic EEZ that possesses both a Federal Atlantic Dolphin/Wahoo commercial permit and any valid Federal commercial permit(s) required to fish using trap, pot, or buoy gear; or is in compliance with permit requirements specified for the spiny lobster fishery in 50 CFR 622.400 to retain dolphin and wahoo caught by rod and reel while in possession of such gear types.

In 2004, the original Dolphin and Wahoo FMP and associated final rule implemented the requirement for a vessel operator or a crew member to hold a valid operator permit (also called an operator card) for the Atlantic dolphin and wahoo commercial permit or a charter vessel/headboat permit for Atlantic dolphin and wahoo to be valid. The operator permit requirement was implemented to improve enforcement within the fishery, aid in data collection, and decrease costs to vessel owners from fishery violations by vessel operators. However, in actuality, the benefits of operator permits to improve enforcement have not occurred as they have not been widely used as an enforcement tool since implementation. Rather, other methods of fishery enforcement, such as vessel permits and landings, have been used by law enforcement within the fishery. Because the expected benefits from operator permits are not being realized, this final rule removes the requirement for operator permits in the dolphin and wahoo fishery.

The current dolphin recreational bag limit of 10 fish per person, not to exceed 60 fish per vessel in the Atlantic EEZ, was implemented by the original Dolphin and Wahoo FMP in 2004. Since then, interest in recreational harvest of dolphin has increased, and Council public testimony, especially from Florida and its constituents, has recommended a decrease in the recreational retention limits to further control recreational harvest. This final rule decreases the dolphin recreational vessel limit for charter vessels and private recreational vessels, excluding headboats. The dolphin individual recreational bag limit of 10 fish per person in the Atlantic EEZ remains unchanged.

Management Measures Contained in This Final Rule

Annual Catch Limits

Dolphin

The current total ACL for dolphin is 15,344,846 lb (6,960,305 kg), round weight. This final rule revises the total ACL for dolphin to 24,570,764 lb (11,145,111 kg), round weight, based on the ABC recommended by the Council's SSC. The revised total ACL is equal to the ABC as described in Amendment 10 and is based upon best scientific information available. Dolphin are highly fecund, spawn throughout a wide geographical range, and have an early age at first maturity with a short generation time. Therefore, dolphin's life-history could most likely support the increase in the total ACL. The Report to Congress on the Status of U.S. Stocks indicates dolphin is not overfished, and is not undergoing overfishing. Additionally, the Council noted that based on the last 20 years of total landings data for dolphin, it appears unlikely that harvest would consistently exceed the revised total ACL. Commercial landings are well tracked through electronic dealer reporting requirements, there is a commercial trip limit in place, and recreational landings for dolphin exhibit relatively low percent standard errors (PSE). The Council also noted that setting the ACL equal to the ABC may allow the dolphin portion of the dolphin and wahoo fishery to take advantage of years of exceptionally high abundance of dolphin.

The current commercial and recreational ACLs for dolphin are 1,534,485 lb (696,031 kg), round weight, and 13,810,361 lb (6,264,274 kg), round weight, respectively. These are based on the current commercial and recreational allocations of 10.00 percent and 90.00 percent, respectively. The revised commercial and recreational ACLs for dolphin are 1,719,953 lb (780,158 kg), round weight, and 22,850,811 lb (10,364,954 kg), round weight, respectively. The revised dolphin sector ACLs are based on the commercial and recreational allocations of 7.00 percent and 93.00 percent, respectively.

Wahoo

The current total ACL for wahoo is 1,794,960 lb (814,180 kg), round weight. This final rule revises the total ACL for wahoo to 2,885,303 lb (1,308,751 kg), round weight based upon the ABC recommended by the Council's SSC. The revised total ACL is equal to the ABC and is based upon best scientific information available. Wahoo also exhibit rapid growth rates, are highly migratory, and are sexually mature at an early age, so their life history also supports an increase in the ACL. The overfishing and overfished status of wahoo is unknown. However, recent studies found that wahoo did not show a negative decline in relative abundance in recent years. The Council noted that commercial landings for wahoo are also well tracked through electronic dealer reporting requirements, there is a commercial trip limit of 500 lb (227 kg), and that recreational landings for wahoo exhibit relatively low PSEs. The Council also noted that setting the ACL equal to the ABC will allow the wahoo portion of the dolphin and wahoo fishery to take advantage of years with exceptionally high abundance of wahoo.

The current commercial and recreational ACLs for wahoo are 70,542 lb (31,997 kg), round weight, and 1,724,418 lb (782,183 kg), round weight, respectively. These are based on the current commercial and recreational allocations of 3.93 percent and 96.07

percent, respectively. The revised commercial and recreational ACLs for wahoo are 70,690 lb (32,064 kg), round weight, and 2,814,613 lb (1,276,687 kg), round weight, respectively. The revised sector ACLs are based on the commercial and recreational allocations of 2.45 percent and 97.55 percent, respectively.

No biological effects are expected to the dolphin and wahoo stocks from these allocation changes because the revised sector ACLs would not change the revised total ACLs for dolphin and wahoo. The commercial sector for dolphin and wahoo has effective in-season AM already in place to help constrain commercial harvest, and this final rule contains modifications to the recreational post-season AMs to both stocks to reduce the risk that the recreational ACL is exceeded. In deciding on new sector allocations, the Council wanted to recognize the needs of the recreational sector for dolphin and wahoo which would exhibit higher landings than previously estimated, given the new accounting of recreational landings using MRIP's FES method. At the same time, the Council did not want to reduce the commercial ACLs on a pound basis for dolphin and wahoo and noted that the revised allocations and sector ACLs would strike a balance between the needs of both sectors.

Accountability Measures

Dolphin

This final rule revises the recreational AMs for dolphin. The current in-season closure and post-season AM based on stock status will be replaced. The revised recreational AM is a post-season AM that would be triggered in the following fishing year if the total ACL (commercial and recreational ACLs, combined) is exceeded. The Council's intent is to avoid closing recreational harvest in-season and extend maximum fishing opportunities to the recreational sector without triggering the recreational AM, as long as the commercial sector is under harvesting its sector ACL. The revised recreational AM trigger will also help ensure sustainable harvest by preventing the total ACL from being exceeded consistently. Once triggered, the revised post-season recreational AM would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in the following year. However, the length of the recreational season would not be reduced if the RA determines, using the best available science, that the season reduction is not necessary to keep the recreational ACL from being exceeded in the following year. The Council noted that there would be a relatively low likelihood of the recreational AM for dolphin being triggered, because the revised recreational ACL is based on the updated ABC, which is set at a relatively high level of landings that is not often observed in the dolphin portion of the dolphin and wahoo fishery. Additionally, any determination that the total ACL had been exceeded would allow for the monitoring of landings during the following season to evaluate whether the elevated landings from the previous fishing year are continuing to persist. That information would inform decisions on whether a fishing season closure would actually need to occur to constrain harvest to the ACL.

Wahoo

This final rule revises the recreational AMs for wahoo. The current in-season closure and post-season AM based on stock status would be replaced. The revised recreational AM is a post-season AM that would be triggered in the following fishing year if the recreational ACLs are constant and the 3-year geometric mean of landings exceeds the recreational ACL. As described in Amendment 10, whenever the recreational ACL is changed, a single year of landings would be used for an overage determination, beginning with the most recent available year of landings, then a 2-year average of landings from that single year and the subsequent year, then a 3-year average of landings from those 2 years and the subsequent year, and thereafter a progressive running 3-year average, calculated as the geometric mean, would be used to determine if the recreational AM trigger has been met. The Council noted this approach would allow the recreational AM to be triggered if the ACL was exceeded on a consistent basis. A 3-year geometric mean would help to smooth the data and potentially avoid implementing restrictive recreational post-season AMs unnecessarily if there was an anomaly in the recreational landings estimates during those 3 years that was not accurately reflecting an actual increase in the harvest of wahoo. It was also noted by the Council that the geometric mean is less sensitive to being affected by abnormally large variations in landings estimates than the arithmetic mean or a single year point estimate. Once triggered, the post-season recreational AM would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in that year. However, the length of the recreational season would not be reduced if the RA determines, using the best available science, that a fishing season reduction is not necessary to keep the recreational ACL from being exceeded in the following year. Additionally, any determination that the ACL had been exceeded would allow for the monitoring of landings for the following season to evaluate whether the elevated landings from the previous year are continuing to persist. That information would inform decisions on whether a late season harvest closure would actually need to occur. The Council also noted the relatively equitable distributed effects of a shortening of the recreational season, as wahoo are often targeted and caught late in the year in many areas of the Atlantic region.

Commercial Trip Limits and Authorized Gear Exemption

For vessels with a commercial permit for Atlantic dolphin and wahoo, under the current trip limits, dolphin and wahoo may only be harvested and possessed with the authorized gear types onboard. These gear types are automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear. Possession on the vessel of any other gear type results in a prohibition of the possession of any dolphin or wahoo.

American lobster fishers requested to the Council that they be allowed to possess dolphin or wahoo while they moved from one lobster pot to the next. The Council considered an authorized gear exemption based on a request from the Atlantic Offshore Lobstermen's Association to allow the historical practice of harvesting dolphin with rod and reel while in the possession of lobster pots to continue and decided to take a broader approach to allow vessels fishing with trap, pot, or buoy gear to possess dolphin or wahoo as long as the dolphin or wahoo were harvested with rod and reel gear. This final rule allows for a new category of commercial trip limits for dolphin and wahoo based on as authorized gear exemption for trap, pot, and buoy gear. This final rule will allow for the harvest and retention of 500 lb (227 kg), gutted weight, of dolphin and 500 lb (227 kg) of wahoo, on board a vessel in the Atlantic EEZ that possesses both an Atlantic Dolphin/Wahoo commercial permit and any valid Federal commercial permit(s) required that allow a vessel to fish using trap, pot, or buoy gear or is in compliance with the permitting requirements for the spiny lobster of the

Gulf of Mexico and South Atlantic as described at 50 CFR 622.400, caught by rod and reel while in possession of such gear types. The commercial trip limits under the authorized gear exemption may not be combined with the current commercial trip limits for commercially permitted dolphin and wahoo vessels. The Council determined that this additional regulatory flexibility would have positive economic effects within the fishery while also limiting the potential for any unforeseen significant increases in commercial landings through the specific setting of the 500 lb (227 kg), gutted weight, trip limit.

Operator Permits

Currently, an operator of a vessel with either a commercial permit or a charter vessel/headboat permit for dolphin and wahoo is required to have an operator permit. Such operator permit must be onboard the vessel and the vessel owner is required to have a permitted operator onboard the vessel while it is at sea or offloading. This operator permit requirement was implemented in 2004, through the original FMP for dolphin and wahoo, as a way to assist in law enforcement efforts within the fishery by holding the vessel operator accountable for any violation of regulations and to aid in data collection (69 FR 30235; May 27, 2004).

This final rule removes the current requirements for operator permits and permitted operators for both the dolphin and wahoo commercial and charter vessel/headboat permitted vessels. At the March 2016 Council meeting, the NMFS Office of Law Enforcement (OLE) gave a presentation on operator permits, and stated that the operator permits are not used extensively by OLE or their law enforcement partners. The Council noted the potential value for operator permits in aiding law enforcement efforts, but the inconsistent requirements between Atlantic fisheries greatly diminishes this utility. Public testimony indicated that operator permits are rarely checked by enforcement personnel during fishing trips and are burdensome for fishermen to renew and maintain. The Council determined that the limited use of operator permits in the dolphin and wahoo fishery did not outweigh the cost to fishermen to obtain the permit, and removing this requirement would yield positive social, economic, and administrative benefits.

Recreational Bag and Vessel Limits for Dolphin

For Atlantic dolphin, the current bag and possession limits are 10 fish per person, not to exceed 60 fish per vessel, whichever is less, except onboard a headboat where the limit is 10 per paying passenger. This final rule decreases the recreational dolphin vessel limit from 60 fish per vessel to 54 fish for charter vessels and private recreational vessels, excluding headboats, in the Atlantic EEZ. The recreational bag limit for private recreational anglers and passengers onboard charter vessels and headboats will remain at 10 fish per person in the Atlantic EEZ. As a result of the possession limit reduction in this final rule, the total estimated annual reduction in recreational landings is expected to be 114,051 lb (51,733 kg), round weight. Data analysis in Amendment 10 demonstrated that most of the recreational trips in the Atlantic EEZ targeting dolphin harvested less than 10 fish per vessel. Therefore, as a result of the very small proportion of recreational trips that might reach the revised vessel limit of 54 fish per vessel, no change in fishing activity or behavior is anticipated. The Council noted that one of the goals of the Dolphin and Wahoo FMP is to maintain a precautionary approach to management. While there is no Southeast Data and Assessment Review stock assessment for dolphin and the stock is listed as not overfished or undergoing overfishing, the Council heard public testimony, particularly from anglers in Florida, that dolphin abundance appears to be low and they are concerned over the health of the dolphin stock and the associated fishery. The Council determined that a coast-wide reduction in the vessel limit was appropriate to maintain consistency of regulations across the region in the retention limits for dolphin and noted that such a change in retention limits would lead to more substantial harvest reductions than a Florida-specific or regional approach.

Management Measures in Amendment 10 Not Contained in This Final Rule

Acceptable Biological Catch

The current ABCs for dolphin and wahoo were added to the FMP in 2014 through Amendment 5, and are based on the Council's SSC's recommendations using the third highest landings value during 1999–2008. These landings did not include recreational landings from Monroe County, Florida, and were based on recreational data from the MRIP CHTS method. In April 2020, the Council's SSC recommended new ABC levels for dolphin and wahoo using the third highest landings value during 1994–2007. These landings include recreational landings from Monroe County, Florida, and used MRIP's FES method, which is considered more reliable by the Council's SSC, the Council, and NMFS, and more robust compared to the MRIP CHTS survey method. The new ABC recommendations within Amendment 10 for dolphin and wahoo are also based on the new weight estimation procedure from the SEFSC that uses a 15 fish minimum sample size and represents the best scientific information available.

Sector Allocations

As discussed, Amendment 10 revises the commercial and recreational allocations for both dolphin and wahoo. For dolphin, the current commercial and recreational allocations are 10.00 percent and 90.00 percent, respectively. The new dolphin sector allocations result in commercial and recreational allocations of 7.00 percent and 93.00 percent, respectively. For wahoo, the current commercial and recreational allocations are 3.93 percent and 96.07 percent, respectively. The new wahoo sector allocations result in commercial and recreational allocations of 2.45 percent and 97.55 percent, respectively.

As discussed, in deciding on new sector allocations, the Council wanted to recognize the needs of the recreational sector for both dolphin and wahoo which would exhibit higher landings than previously estimated with the new accounting of recreational landings using MRIP's FES method. At the same time the Council did not want to reduce the commercial ACLs on a pound basis for dolphin and wahoo and noted that the proposed allocations and sector ACLs would strike a balance between the needs of both sectors.

Goals and Objectives

The goals and objectives of the Dolphin and Wahoo FMP were implemented through the original fishery management plan in 2004 and have not been revised since then. In 2016, the Fisheries Allocation Review Policy (NMFS Policy Directive 01–119) encouraged the use of adaptive management with respect to allocation revisions, and recommended periodic re-evaluation and updating of the management goals and objectives of any FMP to ensure they are relevant to current conditions and needs. Amendment 10 revises these Dolphin and Wahoo FMP goals and objectives in response to the 2016 Fisheries Allocation Review Policy and ensures the goals and objectives reflect the current dolphin and wahoo fishery. Specifically, the revised goals and objectives seek to manage the dolphin and wahoo fishery using a

precautionary approach that maintains access, minimizes competition, preserves the social and economic importance of the fishery, as well as promotes research and incorporation of ecosystem considerations where practicable.

Comments and Responses

NMFS received 52 comment submissions during the public comment period on the notice of availability and proposed rule for Amendment 10. Comment submissions were from the general public, for-hire vessel owners, sport-fishing associations, businesses, and non-governmental organizations. The majority of the comments were against one or more of the proposed actions for dolphin. One of the comments was submitted jointly by various entities and included over 6,000 individual signatories on a petition against approval of Amendment 10 and requested that NMFS instead implement more restrictive management measures for dolphin. NMFS acknowledges and agrees with the comments in favor of the actions in the notice of availability and proposed rule from the general public, recreational sport-fishing interests, and commercial fishing interests. Comments in opposition, and those that requested additional information about the actions contained in the notice of availability and proposed rule, are summarized by topic area below, along with NMFS' responses.

Comment 1: The final recommendations of the Council on Amendment 10, along with underlying conclusions and recommendations of its SSC for the revised ABCs, are not based upon the best scientific information available. For both dolphin and wahoo, the proposed ABC recommendations ignore the most recent 14 years of landings data. For dolphin specifically, the downward population trend in the fishery does not support an increase in the ABC, total ACL, and sector ACLs, in the absence of a stock assessment.

Response: NMFS disagrees. The Council's SSC recommended the ABC for dolphin and wahoo based on Level 4 of their ABC Control Rule for un-assessed species, which is a general procedure used by the SSC for species for which an increase (beyond current range of variability) in catch is not expected to result in a decline of the stock. The SSC had many robust discussions over the range of years to use for recommending the revised ABC to the Council and decided to use years that were more representative of the fishery's historical tendency to harvest these species, without regulations such as ACLs in place at that time. The SSC then evaluated the landings within that time period, for any indication that those average landings had been potentially detrimental to the health of the stock. The SSC did not use the 2008 fishing year in the range of years because of the economic recession at that time. The ACLs for dolphin and wahoo were originally implemented in 2012 (77 FR 15916; March 16, 2012). The 2015 fishing year was a year of unusually high landings of dolphin that resulted in an early closure of the commercial sector (80 FR 36249; June 24, 2015). The SSC also sought to avoid reducing the commercial or recreational sectors' harvest opportunities for dolphin and wahoo absent any adverse biological risk to the stock, especially given the highly migratory nature of the species and its life-history, including high fecundity. Thus, the SSC recommended the Council use the third highest landings value for the time series of 1994–2007. The proposed ABC recommendations for dolphin and wahoo also use MRIP FES data, incorporate recreational landings from Monroe County, Florida, updated commercial landings data, and SEFSC new weight estimation procedures. The ABC recommendations and resulting ACLs for dolphin and wahoo adhere to the SSC's recommendations, and their biological, economic, social, and administrative effects were analyzed using the past 5 years of data and then reviewed by the SSC, NMFS Southeast Regional Office, Council, and SEFSC, who certified Amendment 10 is based on the best scientific information available.

NMFS acknowledges that there is no peer-reviewed stock assessment for dolphin or wahoo (such as the Southeast Data, Assessment, and Review assessment process). However, dolphin are highly fecund, spawn year-round throughout a wide geographical range, have an early age at first maturity, and a short generation time. Therefore, dolphin's life-history could most likely support the increase to the ABC (and ACL), even without a stock assessment.

Further, the difference in accounting for recreational landings under the older MRIP CHTS and newer MRIP FES methods is a factor in the increase in the catch limits. When compared to the most recent 5-year and 3-year average landings, analysis in Amendment 10 revealed the new ACLs for dolphin are not expected to be reached. If they are reached, the current in-season commercial AMs and revised recreational AMs would help to reduce the risk of any overages that could possibly occur in the future.

Comment 2: NMFS should further reduce the recreational vessel limit for dolphin, as the proposed reduction from 60 fish per vessel to 54 fish per vessel in Amendment 10 is not enough to protect the stock.

Response: Despite the lack of a dolphin stock assessment or other biological information indicating a need to reduce dolphin harvest, the Council was responsive to public input expressing harvest related concerns. In Amendment 10, the Council considered a number of vessel limit alternatives for dolphin, including the current 60 dolphin per vessel limit and reduced limits of 54, 48, 42, 40, and 30. Reduced recreational vessel limits for dolphin were particularly recommended by constituents from Florida. The Council, in deciding what vessel limit alternative to select, balanced the economic hardship that any reductions would cause the for-hire industry, especially in North Carolina, with the need to facilitate achieving optimum yield within the fishery. Further, no evidence indicates that, if dolphin were not harvested in North Carolina and areas northward, they would subsequently survive and make it back to Florida. To the contrary, peer-reviewed literature actually indicates movement of dolphin from the Florida Keys to North Carolina and northward. Analysis in Amendment 10 showed that larger reductions in recreational harvest through vessel limit changes was best achieved when considering the entire Atlantic (Maine to Florida on the Atlantic side), and not just Florida, or even Florida, Georgia, and South Carolina combined. In Amendment 10, the Council selected the revised dolphin vessel limit of 54 fish to effect a vessel limit reduction, while balancing the overall needs of the fishery throughout its full range.

Comment 3: Recreational and commercial landings of dolphin have been in decline (especially in the past 5 years), and reduced quantities of larger sized dolphin in the Florida Keys have been observed in past 5–10 years. NMFS and the Council should consider alternative, more proactive methods to conserve dolphin such as: Reducing private recreational bag limit; extending the applicability of the current minimum size limit of 20 inches (50.8 cm), fork length (FL) to all applicable geographical areas (Maine to east coast of Florida), or increasing the minimum size; implementing a lower commercial trip limit; and banning the use longline gear for the commercial sector.

Response: NMFS is aware of reports of the decline in dolphin availability, especially large-sized dolphin in the Florida Keys. This could be due to the

highly migratory fish moving out of the area or going deeper in search of suitable temperature and food availability. Recent peer-reviewed literature supports behavioral thermoregulation by dolphin, and their northern movement in response to increasing sea surface temperature. Studies have shown that seasonal abundance of dolphin along the east coast of the U.S. and the Gulf of Mexico is heavily influenced by sea surface temperature and distance to temperature fronts, chlorophyll-a concentration, and *Sargassum* mats. The Mid-Atlantic and New England Councils have not reported a decline in dolphin availability and large sized fish. In fact, some commenters on the notice of availability and proposed rule for Amendment 10 stated that the perceived paucity of dolphin availability and large sized individuals off Florida was related to warming ocean temperatures and that the fish are not returning as far south as they used to 15 years ago.

Comment 4: NMFS should not approve the proposed post-season recreational AM for wahoo. Creating a shorter fishing season would incentivize a race by recreational fishers to meet the recreational ACL and would represent a disadvantage to fishers whose livelihoods depend on a full fishery season.

Response: NMFS disagrees. The current recreational AM for wahoo which is in place prior to this final rule states that, if recreational landings exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for persistence in increased landings. If the recreational ACL is exceeded, it will be reduced by the amount of the recreational overage in the following fishing year and the recreational season will be reduced only if the species is overfished and the total ACL is exceeded. This current AM cannot be triggered, because there is no stock assessment for wahoo and therefore its stock status is unknown and cannot be determined to be ''overfished.'' There is also no recreational in-season AM for wahoo proposed in Amendment 10. Therefore, a functional and effective post-season AM is required to prevent possible adverse biological effects to the wahoo stock if the recreational ACL is exceeded. The revised post-season recreational AM for wahoo would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in the following year. However, the length of the recreational season will not be reduced if the RA determines, using the best available science, that it is not necessary. The economic effects of a reduced fishing season would depend on the severity of any season reduction, the timing, and the availability of other species that could be suitable substitutes for wahoo. Fishers could also determine the subsequent trade-offs between reduced fishing seasons or lower recreation bag/vessel limits and longer seasons. The possibility of a shorter fishing season occurring as a result of the new recreational AM being implemented could work to dis-incentivize fishers from exceeding the recreational ACL in the first place and thereby help to protect the stock and fishing opportunities.

Additional NMFS Public Comment Feedback

NMFS notes that in March 2022, Florida approved a final rule for the state with the following actions for dolphin that will be effective May 1, 2022, in state waters only: A recreational harvester may not harvest, land, or possess per day more than 5 dolphin; recreational harvesters aboard a private recreational vessel may not collectively possess or land more than 30 dolphin, regardless of the number of licensed or license-exempt persons onboard; and the daily bag and possession limit for captains and crew on for-hire vessels is zero.''

NMFS also notes that size limits, commercial trip limits, and longline gear changes were outside the scope of actions considered by the Council in Amendment 10. NMFS has decided to respond in a general manner to these comments in this final rule given the volume of comments received and interest concerning these issues, even though Amendment 10 does not contain that information. This serves to better inform the public of some of the dolphin regulations.

While a number of commenters requested that a commercial trip limit be put in place, current Federal regulations do in fact already include a dolphin commercial trip limit. The commercial trip limit of 4,000 lb (1,814 kg), round weight, comes into effect when 75 percent of the commercial ACL is reached. With respect to comments requesting changes to the recreational bag limits for dolphin, prohibiting the retention of dolphin by captain and crew, extending the current minimum size limit to all geographical applicable areas (Maine to east coast of Florida), as well as the comments regarding additional changes to the vessel limit, the Council is considering the development of a subsequent amendment for dolphin. The possible new amendment could consider these items for changes by the Council. The commenters' range of suggestions for recreational bag limits (8, 5, or 3 per person), vessel trip limits (54, 40, or 30 fish), minimum size limits (extending range of current limit applicability and increasing the limit to 24 inches (61 cm), FL, could be used as alternatives for these actions if they were to be included in an amendment. The continued use of longline gear by the commercial sector for dolphin may also be considered by the Council in a future amendment.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 10, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being implemented, and the purposes of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this preamble. The objectives of this final rule are to base conservation and management measures on the best scientific information available and increase net benefits to the Nation, consistent with the Magnuson-Stevens Act and its National Standards.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments from SBA's Office of Advocacy on the certification in the proposed rule. NMFS did receive three comments from the public on the economic analysis in Amendment 10. Two comments suggested that Amendment 10 would adversely affect the economy. NMFS disagrees with these comments and believes that Amendment 10 would result in net economic benefits to the Nation. Based on NMFS's analysis, NMFS expects that Amendment 10 would result in net economic benefits of between $9.16 and $10.17 million (in 2019 dollars) per year, on average, over the next 5 years. The comments

provided no specific information that would provide a basis to alter the estimated net benefits.

One comment suggested that Amendment 10 would disproportionately benefit the commercial sector relative to the recreational sector. NMFS disagrees with this comment because the analysis conducted by NMFS indicates that nearly 89 percent of the increase in net economic benefits to the Nation associated with Amendment 10 is expected to accrue to the recreational sector, while about 11 percent of the increase is expected to accrue to the commercial sector. The comment provided no specific information that would provide a basis to alter these estimates, and therefore NMFS continues to believe that the commercial sector would not disproportionally benefit from this final rule.

No changes to this final rule were made in response to public comments. The factual basis for the certification was published in the proposed rule and is not repeated here. Because this final rule is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

This final rule contains a revision to existing collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This final rule revises existing requirements for the collection of information approved under OMB Control Number 0648–0205, Southeast Region Permit Family of Forms. NMFS is removing the requirements for an operator permit in the commercial and for-hire portions of the Atlantic dolphin and wahoo fishery as specified by 50 CFR 622.270(c). For the Federal Permit Application for Southeast Region Issued Operator Card, NMFS estimates this final rule will decrease the annual number of respondents to 74 and decrease the annual number of responses to 74. Further, NMFS estimates the annual burden hours will decrease to 37 hours, and the annual burden cost will decrease to $3,774. Public reporting burden for the Federal Permit Application for Southeast Region Issued Operator Card is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NMFS invites the public and other Federal agencies to comment on any proposed and continuing information collections, which helps NMFS assess the impact of information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted on the following website: *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by using the search function and entering the title of the collection or the OMB Control Number 0648–0205.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 622

Accountability measures, Annual catch limits, Atlantic, Commercial, Dolphin, Fisheries, Fishing, Recreational, Wahoo.

Dated: March 28, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.270;
■ a. Revise paragraphs (a)(1) and (2)
■ b. Revise paragraph (b)(1); and
■ c. Remove and reserve paragraph (c).

The revisions read as follows:

§ 622.270 Permits.

(a) * * *

(1) For a person aboard a vessel to be eligible for exemption from the bag and possession limits for dolphin or wahoo in or from the Atlantic EEZ or to sell such dolphin or wahoo, a commercial vessel permit for Atlantic dolphin and wahoo must be issued to the vessel and must be on board, except as provided in paragraph (a)(2) of this section.

(2) The provisions of paragraph (a)(1) of this section notwithstanding, a fishing vessel, except a vessel operating as a charter vessel or headboat, that does not have a commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery, is exempt from the bag and possession limits for dolphin and wahoo and may sell dolphin and wahoo, subject to the trip and geographical limits specified in § 622.278(a)(3). (A charter vessel/headboat permit is not a commercial vessel permit.)

(b) * * * (1) For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Atlantic dolphin or wahoo, in or from the Atlantic EEZ, a valid charter vessel/headboat permit for Atlantic dolphin and wahoo must have been issued to the vessel and must be on board.

* * * * *

■ 3. In § 622.272, revise paragraph (a)(1) and add paragraph (a)(2) to read as follows:

§ 622.272 Authorized gear.

(a) * * * (1) *Authorized gear.* Except as allowed in paragraph (a)(2) of this section, the following are the only authorized gear types in the fishery for dolphin and wahoo in the Atlantic EEZ: Automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types other than authorized gear types may not possess a dolphin or wahoo.

(2) *Trap, pot, and buoy gear authorization.* A vessel in the Atlantic EEZ that possesses both a valid Federal commercial permit for Atlantic dolphin and wahoo and any Federal commercial permit(s) required that allow a vessel to fish using trap, pot, or buoy gear or that is in compliance with the permitting requirements for the spiny lobster fishery of the Gulf of Mexico and South Atlantic as described at § 622.400, is authorized to retain both dolphin and wahoo harvested by rod and reel while in possession of trap, pot, or buoy gear. See § 622.278(a)(2)(ii) for the amount of dolphin that may be retained under the commercial trip limits as described in this paragraph (a)(2). See § 622.278(a)(1)(ii) for the amount of wahoo that may be retained under the commercial trip limits as described in this paragraph (a)(2).

* * * * *

■ 4. In § 622.277, revise paragraph (a)(1)(i) to read as follows:

§ 622.277 Bag and possession limits.

* * * * *

(a) * * *

(1) * * *

(i) In the Atlantic EEZ—10, not to exceed 54 per vessel, whichever is less,

except on board a headboat, 10 per paying passenger.

* * * * *

■ 5. In § 622.278, revise paragraph (a) to read as follows:

§ 622.278 Commercial trip limits.

* * * * *

(a) *Trip-limited permits*—(1) *Atlantic wahoo.* (i) When using the fishing gear for wahoo and as authorized under § 622.272(a)(1), the trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(ii) When using the fishing gear for wahoo and as authorized and permitted as described under § 622.272(a)(2), the trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). The trip limit in this paragraph (a)(1)(ii) may not be combined with the trip limit specified in paragraph (a)(1)(i) of this section.

(iii) See § 622.280(b)(1) for the limitations regarding wahoo after the ACL is reached.

(2) *Atlantic dolphin.* (i) Once 75 percent of the ACL specified in § 622.280(a)(1)(i) is reached, the trip limit is 4,000 lb (1,814 kg), round weight. When the conditions in this paragraph (a)(3)(i) have been met, the Assistant Administrator will implement this trip limit by filing a notification with the Office of the Federal Register. This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(ii) When using the fishing gear for dolphin and as authorized and permitted as described under § 622.272(a)(2), the trip limit for dolphin in or from the Atlantic EEZ is 500 lb (227 kg), gutted weight. The trip limit in this paragraph (a)(2)(ii) may not be combined with the trip limit specified in paragraph (a)(2)(i) of this section.

(iii) See § 622.280(a)(1) for the limitations regarding dolphin after the ACL is reached.

(3) *Vessels without a Federal dolphin and wahoo commercial permit.* The trip limit for a vessel that does not have a Federal commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery is 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N lat. (A charter vessel/headboat permit is not a commercial vessel permit.)

* * * * *

■ 6. In § 622.280;

■ a. Revise the first sentence of paragraph (a)(1)(i);

■ b. Revise paragraph (a)(2);

■ c. Add paragraph (a)(3);

■ d. Revise the first sentence of paragraph (b)(1)(i); and

■ e. Revise paragraph (b)(2).

The revisions and additions read as follows:

§ 622.280 Annual catch limits (ACLs) and accountability measures (AMs).

(a) * * *

(1) * * *

(i) If commercial landings for Atlantic dolphin, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,719,953 lb (780,158 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

* * * * *

(2) *Recreational sector.* If the total ACL specified in paragraph (a)(3) of this section is exceeded in a fishing year, then during the following fishing year, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season by the amount necessary to ensure that the recreational ACL is not exceeded during the fishing year following the total ACL overage. However, the recreational fishing season will not be reduced in the following fishing year if NMFS determines, based on the best scientific information available, that the reduction in the recreational fishing season is unnecessary. The recreational ACL is 22,850,811 lb (10,364,954 kg), round weight.

(3) *Total ACL.* The total ACL, commercial and recreation ACLs combined, for Atlantic dolphin, is 24,570,764 lb (11,145,111 kg), round weight.

(b) * * *

(1) * * *

(i) If commercial landings for Atlantic wahoo, as estimated by the SRD, reach or are projected to reach the commercial ACL of 70,690 lb (32,064 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

* * * * *

(2) *Recreational sector.* As described in the FMP, if average annual recreational landings, when determined using 3-year geometric mean, exceed the recreational ACL of 2,814,613 lb (1,276,687 kg), round weight, then in the following fishing year, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season by the amount necessary to ensure that the recreational ACL is not exceeded during the fishing year following the recreational ACL overage determination. However, the length of the recreational fishing season will not be reduced in the following fishing year if NMFS determines, based on the best scientific information available, that the reduction in the recreational fishing season is unnecessary.

[FR Doc. 2022–06842 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 63
Friday, April 1, 2022

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 984

[Doc. No. 22–J–0011; AMS–SC–22–0010; SC22–981–1]

Marketing Order for Walnuts Grown and Handled in California (M.O. No. 984); Hearing

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Notification of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Federal Marketing Order No. 984 (Order) regulating the handling of walnuts grown in California. The California Walnut Board (Board), which locally administers the Order, recommended proposed amendments that would eliminate mandatory inspection and certification of inshelled and shelled walnuts, and of shelled walnuts for processing; create a new mechanism for determining and collecting handler assessments; add authority to charge interest for late payments; and remove volume control authority. In addition, the Agricultural Marketing Service (AMS) proposes to make changes to the Order as may be necessary to conform to any amendment that may result from the hearing.

DATES: The hearing will be held April 19–20, 2022, from 8:00 a.m. to 5:00 p.m. Pacific Time (PT) and, if deemed necessary by the presiding administrative law judge, will continue until any other such time as determined by the judge.

ADDRESSES: USDA will conduct the hearing remotely, without gathering in a central location, using the ZOOM audio-video conferencing system. Individuals will be able to testify before the administrative law judge for the hearing record through their own computer or any other technology that supports the ZOOM application. To participate remotely in the hearing via audio-video technology, participant's computers must have operating camera, microphone and audio functions. While not required, individuals wanting to participate as audience members may pre-register by providing their name, phone number and email address to Geronimo Quinones and Matthew Pavone of the Market Development Division, Specialty Crops Program, AMS, USDA, whose contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section below, by 5:00 p.m. Eastern Time (ET), April 12, 2022. All pre-registered individuals will receive an invitation via email prior to the hearing. The invitation will include a link the individuals can click at the start of the hearing on April 19, 2022, and April 20, 2022. Individuals who choose not to pre-register may access the hearing on-line by cutting and pasting *https://www.zoomgov.com/j/1609318451* into their web browser.

Cellular or land-line telephones may be used by individuals who do not have access to a computer with operating camera, microphone and audio functions. To access the on-line hearing by telephone, participants may dial either of the following Zoom generated phone numbers: [669–254–5252 or 646–828–7666 or 669–216–1590 or 551–285–1373].

Individuals who would like to testify (witnesses) may provide electronic copies of any prepared statements and supporting documents to LaShawn Williams of the Market Development Division, Specialty Crops Program, AMS, USDA, via email at *LaShawn.Williams@usda.gov,* so that they can be made public at the time of the hearing. These documents will be published to the AMS website at the following location *https://www.ams.usda.gov/rules-regulations/moa/984-california-walnuts.*

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 308–2339 or Andrew Hatch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Geronimo.Quinones@usda.gov* or *Andrew.Hatch@usda.gov.*

Small businesses may request information on this proceeding by contacting Richard E. Lower, Market Development 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 administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866, 13563, and 13175. The Agricultural Marketing Service (AMS) provided notice of the upcoming hearing to tribal governments through USDA's Office of Tribal Relations.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, 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. A handler is afforded the opportunity for a hearing 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 no later than

20 days after the date of the entry of the ruling.

The hearing is convened in accordance with the provisions of the Act and the applicable rules of practice and procedure governing the formulation and amendment of marketing agreements and orders (7 CFR part 900).

On October 28, 2021, the proposed amendments to Marketing Order No. 984 (7 CFR part 984 (hereinafter referred to as the ''Order'')) were recommended to the Secretary with a request for a public hearing by the Board. The Board also requested the current moratorium on enforcement of mandatory inspection requirements be extended until the effective date of the proposed amendments summarized in this notification, if approved. After reviewing the proposals and other information submitted by the Board, USDA concludes that the proposed amendments to the Order will tend to effectuate the declared policy of the Act, and therefore decided to schedule this matter for a hearing.

The Board administers the Order, with the oversight of USDA. The Board's proposed amendments would modify quality control provisions to remove inspection and certification requirements, create a new mechanism for determining and collecting handler assessments, add authority to charge interest for late payments, and remove volume control authority. The proposals also include changes to various provisions in the ''Assessment Rates'' and ''Administrative Requirements'' subparts of the Order. As proposed, inspection and certification of outbound walnuts would no longer be required, and handler assessments would be calculated based on a proposed assessment rate recommended by the Board and applied to handlers' inbound walnuts instead of outbound walnuts.

In its request to USDA for a public hearing, the Board stated that the proposed amendments are necessary to streamline the Order and if implemented, the resulting Order will better meet current and future industry needs. The Board believes the proposed amendments would eliminate current redundancies in inspection, reduce costs and administrative burden to handlers and the Board, and provide a cost savings to growers.

The Board's request further explained that current handler quality control programs across industry have advanced since the enactment of the Order in 1948. For example, over 300,000 tons of growth of additional production in the last decade has coincided with higher consumer expectations and present-day customer specifications, and each exceed the grades and standards currently required under the Order. As such, the Board is seeking to modernize the Order by eliminating inspection and certification requirements and removing volume control provisions so that the Order focuses primarily on research and promotion.

In the Board's justification for its recommendation to remove volume control, the Board cited how this authority has not been utilized since 1987 and following the indefinite suspension of this authority on June 8, 2020 (85 FR 27107), no economic harm came to producers, handlers or consumers. The Board does not expect to use this authority in the future, and therefore proposed to permanently remove it from the Order.

In the justification for the recommendation on revising quality control regulations, the Board explains that significant investments in processing, storage, technology, and equipment have ensured better food safety programs that are able to maintain higher walnut quality and conditions that exceed the minimum grades and standards currently set forth in the Order. The Board further stated that it is common practice for industry to conduct quality inspections on inbound shipments of walnuts. Current quality regulations for grade and size under the Order require an additional inspection and certification on outbound walnuts. This resulted in two forms of inspections being conducted by handlers: One performed on inbound walnuts and a second on outbound walnuts. The Board stated that these inspections are redundant and unnecessary. Therefore, the Board proposes to remove current grade and size requirements; however, the authority to recommend regulation if needed in the future would remain in place. The inspection and certification requirements for outbound walnuts and walnuts for processing currently prescribed under the Order would also be removed under this proposal. If implemented, the Board states the proposed amendments would remove the redundancy of the outbound inspection, thus reducing costs to both handlers and producers and reducing administrative burden to the Board. Accordingly, inspection and certification requirements for imported walnuts would also be removed.

In the Board's justification for creating a new mechanism to determine assessments, the Board explained that current requirements established under the Order are based on kernelweight pound of walnuts inspected and certified. As such, the proposed elimination of mandatory inspection and certification requirements would remove the Board's ability to collect handler assessments. The proposed new mechanism would change the type of weight used in the calculation, replacing kernelweight with inshell pound. It would also establish the calculating of assessments on walnuts received rather than on walnuts shipped by handlers. If implemented, the Board states this new mechanism, which is adapted from the California Walnut Commission, would require handlers to provide inbound walnut receipts from growers to the Board. The Board has proposed an initial assessment rate of $0.0125 per inshell pound of walnuts that would go into effect with the start of the proposed new mechanism, if it were to be effectuated. The Order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. If the assessment proposal is effectuated, the new assessment mechanism, the annual budget, and the assessment rate would be communicated to handlers through annual pre-season packets and bulletins.

The Board states the current Order language does not provide for the changes necessary for its alignment with current industry practices without undertaking substantive formal and informal rulemaking. As such, the Board recommended several amendments to the Order and associated administrative requirements, summarized as follows:

- Remove § 984.49 Volume regulation, reserve pool authority, and subsequent sections including provisions for volume control. This includes removing: §§ 984.23, 984.26, 984.33, 984.54, 984.56, 984.66, 984.69(b), 984.450(a) and (b), 984.451(c), 984.456, and 984.464(a), and revising: §§ 984.48 and 984.67.
- Modify § 984.50 Grade, quality, and size regulations to remove quality and size regulations and include only the Board's authority and eliminate §§ 984.51 and 984.52 inspection and certification of inshell and shelled walnuts and shelled walnuts for processing. This includes revising: §§ 984.12, 984.32, 984.64, 984.69, 984.77, 984.459(a)(3), and 984.472(b) and removing: §§ 984.450(c), 984.451(a) and (b), 984.452, and 984.464(b) and (c).
- Modifying the definition in § 984.13 ''To handle'' to include ''receive''.
- Revise § 984.69 by changing the calculation of assessments from kernelweight to inshell pound in paragraph (a) and revising paragraph (b) to include an authority to charge for late

payments and/or interest as prescribed by the Board with approval from the Secretary. Corresponding changes would be made to §§ 984.37, 984.48, 984.69, and 984.347.

- Revise § 984.347 to establish an assessment rate of $0.0125 per inshell pound of walnuts.
- Any additional conforming changes resulting from the above proposed amendments.

In its recommendation, the Board stated that the above proposed changes were discussed at several meetings where stakeholders were provided the opportunity to express their views and provide input, and have the broadest possible support from the industry. The Board discussed and recommended the proposed amendments at public meetings on August 17 and September 10, 2021. The Board then voted and approved the proposed amendments. Four of the five proposals received unanimous support, and the proposal to establish an initial assessment rate received seven votes in favor and two opposed.

In addition to the proposed amendments submitted by the Board, AMS proposes to make any such conforming changes to the Order as may be necessary to conform to any amendment that may result from the hearing, or to correct minor inconsistencies and typographical errors.

USDA will oversee this formal rulemaking proceeding. The issuance of this notification of public hearing is the first of several steps in the amendatory rulemaking process, including the issuance of a recommended decision, public comment period, Secretary's decision, grower referendum, and handler sign-up (if the prior steps prove favorable).

The public hearing process will further explain the merits of the proposed amendments. At the hearing, interested persons may provide testimony in support of or in opposition to the proposed amendments. Interested persons will be invited to testify on the possible regulatory and informational impact of the proposed amendments on small businesses.

Interested persons will also be provided the opportunity to file briefs in support of or in opposition to the proposed amendments after the hearing, as well as file exceptions to any recommended decision that may be issued. Finally, any proposed amendments must be approved in a grower referendum before they can be implemented.

USDA will hold the public hearing for the purposes of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the Order; (ii) determining whether there is a need for the proposed amendments to the Order; (iii) determining if there are other alternatives to this program or duplicates of the proposed program; and (iv) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notification, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing in advance should submit electronic copies of such material to LaShawn Williams of the Market Development Division, Specialty Crops Program, AMS, USDA, via email at *LaShawn.Williams@usda.gov.* These documents will be published to the AMS website at the following location *https://www.ams.usda.gov/rules-regulations/moa/984-california-walnuts.* Electronic copies of prepared testimony for presentation at the hearing and electronic copies of evidentiary exhibits and testimony prepared as an exhibit should also be made available on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

From the time the notification of hearing is issued until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees who are or may reasonably be expected to be involved in the decisional process of the proceeding in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Specialty Crops Program, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

USDA may make other such changes to the Order as necessary to conform with amendments that may result from the hearing, or correct minor inconsistencies and typographical errors.

Testimony is invited on the recommended proposals to 7 CFR part 984, or appropriate alternatives or modifications to such proposals.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.12 is revised to read as follows:

§ 984.12 Substandard walnuts.

Substandard walnuts means all walnuts (whether inshell or shelled) that do not meet the minimum standard prescribed for merchantable walnuts whenever regulations are in effect pursuant to § 984.50.

■ 3. Section 984.13 is revised to read as follows:

§ 984.13 To handle.

To handle means to receive, pack, sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, into the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower. However, sales and deliveries by a grower to handlers, hullers, or other processors within the area of production shall not, in itself, be considered as handling by a grower. The term ''to handle'' shall not include sales and deliveries within the area of production between handlers.

■ 4. Section 984.21 is revised to read as follows:

§ 984.21 Handler inventory.

Handler inventory as of any date means all walnuts, inshell or shelled, wherever located, then held by a handler or for his or her account.

§§ 984.23 and 984.26 [Removed and Reserved]

■ 5. Lift the stays on §§ 984.23 and 984.26 and remove and reserve the sections.

■ 6. Section 984.32 is revised to read as follows:

§ 984.32 To certify.

To certify means the issuance of a certification of inspection of walnuts in accordance with regulations issued pursuant to § 984.50.

§ 984.33 [Removed and Reserved]

■ 7. Lift the stay on § 984.33 and remove and reserve the section.

■ 8. Amend § 984.37 by revising paragraphs (b) and (c)(4) to read as follows:

§ 984.37 Nominations.

* * * * *

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their respective Districts. All handlers' votes shall be weighted by the weight of inshell walnuts handled by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) * * *

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the weight of inshell walnuts handled by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates of this paragraph (c)(4). However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this paragraph (c)(4) shall be the nominee for that position.

* * * * *

■ 9. Amend § 984.48 by:

■ a. Revising paragraphs (a) introductory text and (a)(3);

■ b. Lifting the stays on paragraphs (a)(6) and (7); and

■ c. Removing paragraphs (a)(6) and (7) and redesignating paragraphs (a)(8) and (9) as paragraphs (a)(6) and (7), respectively.

The revisions read as follows:

§ 984.48 Marketing estimates and recommendations.

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least 60% of the Board and shall include the following:

* * * * *

(3) Its estimate of the walnuts in the production area;

* * * * *

§ 984.49 [Removed and Reserved]

■ 10. Lift the stay on § 984.49 and remove and reserve the section.

■ 11. Amend § 984.50 by lifting the stay on paragraph (e) and revising the section to read as follows:

§ 984.50 Grade, quality, and size regulations.

(a) The Board may recommend, subject to the approval of the Secretary, regulations that:

(1) Establish handling requirements for particular grades, sizes, or qualities, or any combination thereof, of any or all varieties or classifications of walnuts during any period;

(2) Establish different handling requirements and tolerance limits for particular grades, sizes, or qualities, or any combination thereof, for different market destinations;

(3) Establish different handling requirements for the processing of shelled walnuts and the handling thereof; and

(4) Establish inspection and certification requirements for the purposes of this paragraph (a) and paragraph (b) of this section.

(b) During any period regulations issued under this section are in effect, no handler shall handle or process walnuts into manufactured items or products unless they meet the applicable requirements under this section as evidenced by certification acceptable to the Board.

(c) Regulations issued under this section may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the Board and approval by the Secretary, or other available information; or

(2) That regulations issued under this section no longer tend to effectuate the declared policy of the Act.

§§ 984.51 and 984.52 [Removed and Reserved]

■ 12. Remove and reserve §§ 984.51 and 984.52

§§ 984.54 and 984.56 [Removed and Reserved]

■ 13. Lift the stays on §§ 984.54 and 984.56 and remove and reserve the sections.

■ 14. Amend § 984.64 by:

■ a. Revising the first sentence; and

■ b. Removing ''(a)'' and ''(b)'' in the second sentence.

The revision reads as follows:

§ 984.64 Disposition of substandard walnuts.

During any period when regulations are in effect pursuant to § 984.50, substandard walnuts may be disposed of only for manufacture into oil livestock feed, or such others uses as the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts and with proper safeguards to prevent such walnuts from thereafter entering channels of trade in such markets.

* * *

§ 984.66 [Removed and Reserved]

■ 15. Lift the stay on § 984.66 and remove and reserve the section.

§ 984.67 [Amended]

■ 16. Amend § 984.67 by lifting the stay on paragraph (a) and removing and reserving paragraph (a).

■ 17. Amend § 984.69 by lifting the stay on paragraph (b) and revising the section to read as follows:

§ 984.69 Assessments.

(a) *Requirement for payment.* Each handler shall pay the Board, on demand, his or her pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per inshell pound of walnuts fixed by the Secretary times the pounds of walnuts received by him or her for his or her own account (except as to receipt from other handlers on which assessments have been paid). At any time during or after the marketing year the Secretary may increase the assessment rate as necessary to cover authorized expenses and each handler's pro rata share shall be adjusted accordingly.

(b) *Assessment rate.* The rate set out in this section may be modified by the Secretary, based upon a recommendation of the Board or other available data.

(c) *Late payment.* If a handler does not pay assessments within the time prescribed by the Board, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the Board with approval of the Secretary.

(d) *Accounting.* If at the end of a marketing year the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (d)(2) or (3) of this section, it shall be refunded to handlers from whom collected, and each handler's share of such excess funds shall be the amount of assessments he or she has paid in excess of his or her pro rata share of the actual expenses of the Board.

(2) Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year provided each handler's share of such excess shall be made available to him or her by the Board within five months after the end of the year.

(3) The Board may carry over such excess into subsequent marketing years as a reserve: Provided, that funds already in reserve do not exceed approximately two years' budgeted expenses. In the event that funds exceed two marketing years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two marketing years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any marketing year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended; and

(iv) To meet any other such costs recommended by the Board and approved by the Secretary.

(e) *Advanced assessments and commercial loans.* To provide funds for the administration of the provisions of this part during the part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current season's certifications are available, the Board may accept payment of assessments in advance or may borrow money from a commercial lending institution for such purposes.

(f) *Termination.* Any money collected from assessments hereunder and remaining unexpended in the possession of the Board upon termination of this part shall be distributed in such manner as the Secretary may direct.

■ 18. Section 984.77 is revised to read as follows:

§ 984.77 Verification of reports.

For the purpose of verifying and checking reports filed by handlers or the operations of handlers, the Secretary and the Board through its duly authorized representatives shall have access to any premises where walnuts and walnut records are held. Such access shall be available at any time during reasonable business hours. Authorized representatives shall be permitted to inspect any walnuts held and any and all records of the handler with respect to matters within the purview of this part. Each handler shall maintain complete records on the receiving, holding, and disposition of both inshell and shelled walnuts. Each handler shall furnish all labor necessary to facilitate such inspections at no expense to the Board or the Secretary. Each handler shall store all walnuts held by him or her in such manner as to facilitate inspection and shall maintain adequate storage records, which will permit accurate identification of respective lots and of all such walnuts held or disposed of theretofore. The Board, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

■ 19. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

An assessment rate shall be fixed at $0.125 per inshell pound of walnuts.

§ § 984.450 and 984.451 [Removed and Reserved]

■ 20. Lift the stays on §§ 984.450(a) and (b) and 984.451(c) and remove and reserve the sections.

§ 984.452 [Removed and Reserved]

■ 21. Remove and reserve § 984.452.

§ 984.456 [Removed and Reserved]

■ 22. Lift the stay on § 984.456 and remove and reserve the section.

§ 984.459 [Amended]

■ 23. Amend § 984.459 by removing and reserving paragraph (a)(3).

§ 984.464 [Removed and Reserved]

■ 24. Lift the stay on § 984.464(a) and remove and reserve the section.

■ 25. Amend § 984.472 by revising paragraph (b) to read as follows:

§ 984.472 Reports of merchantable walnuts, received, shipped, and committed.

* * * * *

(b) Reports of walnuts purchased directly from growers by handlers who are manufacturers or retailers shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were purchased. Such reports shall show the quantity of walnuts purchased.

* * * * *

■ 26. Section 984.476 is revised to read as follows:

§ 984.476 Report of walnut receipts produced outside California or the United States.

Each handler who receives walnuts from outside California or the United States shall file with the Board, on CWB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before December 5 for such walnuts received during the period September 1 to November 30; on or before March 5 for such walnuts received during the period December 1 to February 28 (February 29 in a leap year); on or before June 5 for such walnuts received during the period March 1 to May 31; and on or before September 5 for such walnuts received during the period June 1 to August 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–06521 Filed 3–31–22; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 109, 110, and 114

[NOTICE 2022–08]

Independent Spending by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees (Citizens United)

AGENCY: Federal Election Commission.

ACTION: Notice of disposition of petitions for rulemaking.

SUMMARY: The Commission announces its disposition of two Petitions for Rulemaking filed on June 19 and June 22, 2015. The Petitions asked the Commission to revise existing regulations and issue new regulations concerning: Disclosure of certain financing information regarding independent expenditures and electioneering communications, election-related spending by foreign nationals; solicitations of corporate and labor organization employees and members; and the independence of expenditures made by independent-expenditure-only political committees and accounts. Because there were not four affirmative votes in support of the Petitions, the Commission is not initiating a rulemaking.

DATES: April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Ms. Heather Filemyr, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On June 19, 2015, the Federal Election Commission received a Petition for

Rulemaking from Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc. On June 22, 2015, the Commission received a Petition for Rulemaking from Craig Holman and Public Citizen. Both Petitions asked the Commission to revise existing regulations and issue new regulations in four areas in response to the Supreme Court's decision in *Citizens United* v. *FEC,* 558 U.S. 310 (2010), which held that the Federal Election Campaign Act's, 52 U.S.C. 30101–45 (the ''Act''), ban on corporate independent campaign-related spending was unconstitutional.[1]

The first area of regulations the Petitions asked the Commission to revise are those that implement the Act's requirement that every person who makes an electioneering communication aggregating in excess of $10,000 in a calendar year and every person (other than a political committee) that makes independent expenditures in excess of $250 with respect to a given election in a calendar year report certain information to the Commission. 52 U.S.C. 30104(c)(1) and (2), (f); 11 CFR 104.20(b) and (c), 109.10(b), (e). The Petitions asked the Commission to ''[e]nsure full public disclosure of corporate and labor organization independent spending'' by ''requir[ing] that outside spending groups disclose their donors.''

Second, the Act and Commission regulations prohibit foreign nationals from ''directly or indirectly'' making contributions, expenditures, and electioneering communications. 52 U.S.C. 30121(a); 11 CFR 110.20. The Petitions asked the Commission to ''[c]larify that the prohibition on foreign national campaign-related spending restricts such spending by U.S. corporations owned or controlled by a foreign national.''

Third, Commission regulations prohibit corporations and labor organizations from ''[u]sing coercion . . . to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee,'' 11 CFR 114.2(f)(2)(iv), and restrict how corporations and labor organizations may solicit contributions to their separate segregated funds from employees and members. 11 CFR 114.5(a)(2)–(5); *see also* 52 U.S.C. 30118(b)(3). The Petitions asked the Commission to ''[c]larify that corporations and labor organizations are prohibited from coercing their employees and members into providing financial or other support for the corporation's or labor organization's independent political activities.''

Fourth, the Petitions asked the Commission to ''[e]nsure that the expenditures made by'' independent-expenditure-only political committees and accounts, *see, e.g., SpeechNow.org* v. *FEC,* 599 F.3d. 686 (D.C. Cir. 2010), ''are truly independent of federal candidates.''

In response to the Petitions, the Commission published a Notice of Availability (''NOA'') on July 29, 2015 to ask for public comment on the Petitions. 80 FR 45,116 (July 29, 2015). The Commission received approximately 11,759 comments from 11,769 commenters on the NOA. *See* Minutes of An Open Meeting of the Federal Election Commission, December 17, 2015 (approved February 11, 2016) at 8.[2] Of the comments received, 11,414 commenters supported the Petitions. *Id.* Those commenters supporting the Petitions stated, among other reasons, that the new and revised regulations were necessary to provide adequate disclosure to the public and to clarify legal requirements applicable to corporations, labor organizations, and foreign nationals following Supreme Court's decision in *Citizens United.* Other commenters opposed the Petitions. Concerns expressed by those commenters included that revised regulations would be unnecessary, exceed the Commission's statutory authority, and impermissibly burden free speech rights under the First Amendment.

After considering the comments received, the Commission voted on a motion to initiate a rulemaking to adopt the regulations proposed by the Petitioners. *See* Certification of Commission Vote, December 17, 2015.[3] Three Commissioners voted to initiate a rulemaking based on the Petitions, and three Commissioners voted against initiating a rulemaking. *Id.* Among other reasons for supporting a rulemaking, Commissioners who voted in favor of the motion stated that the Commission should open a rulemaking to address significant issues that have arisen following the *Citizens United* decision and that Commission's coordination rules, created prior to the existence of super PACs, are outdated. *See* Minutes of An Open Meeting of the Federal Election Commission, December 17, 2015 (approved February 11, 2016) at 7.[4] Commissioners who voted against the motion reasoned that Congress had considered but not adopted legislative changes following the *Citizen United* decision and expressed the view that the Commission should not act where Congress had failed to do so. Audio Recording of Discussion on Rulemaking Petition: Independent Spending by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees (Citizens United) (Dec. 17, 2015).[5] These Commissioners also stated that coordination by super PACs was adequately addressed by the Commission's existing regulations. *Id.*

The Act requires an affirmative vote of at least four Commissioners to take any action to amend a regulation. *See* 52 U.S.C. 30106(c) and 30107(a)(8). Accordingly, the Commission is not initiating a rulemaking at this time. *Id.; see also* Definition of ''Express Advocacy,'' Notice of Disposition of Petition for Rulemaking, 64 FR 27,478 (May 20, 1999) (denying a petition to initiate a rulemaking because it did not garner the affirmative vote of four Commissioners).

Because the motion to initiate a rulemaking to adopt the regulations proposed by the Petitioners did not receive the required affirmative vote of four or more Commissioners, the Commission is notifying the public that it is not initiating a new rulemaking in response to the Petitions.

Copies of the comments, the NOA, and the Petitions for Rulemaking are available on the Commission's website, *http://www.fec.gov/fosers/* (REG 2015–04 Independent Spending by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees (Citizens United) (2015)).

[1] As the Commission explained in its initial rulemaking addressing the *Citizens United* decision, although the Court did not directly address whether labor organizations, like corporations, also have a First Amendment right to use their general treasury funds for independent expenditures and electioneering communications, the Act and Commission regulations generally treat labor organizations similarly to corporations. *See* Final Rules on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 FR 62,797, 62,798 n.3 (October 21, 2014) (citing 52 U.S.C. 30118; 11 CFR part 114; and Advisory Opinion 2010–11 (Commonsense Ten) at n.3.) The Commission further explained that the Court in *Citizens United,* when addressing corporations, often referred to labor organizations and provided no basis for treating labor organization communications differently than corporate communications under the First Amendment. *Id.* (citing *Citizens United,* 558 U.S. at 318, 343). Therefore, the Commission concluded that the changes to its regulations necessitated by the *Citizens United* decision should apply equally to both corporations and labor organizations. *Id.*

[2] *https://www.fec.gov/resources/updates/agendas/2016/mtgdoc_16-04-a.pdf.*

[3] *https://sers.fec.gov/fosers/showpdf.htm?docid=346628.*

[4] *https://www.fec.gov/resources/updates/agendas/2016/mtgdoc_16-04-a.pdf.*

[5] *https://www.fec.gov/updates/december-17-2015-open-meeting.*

Dated: March 28, 2022.

On behalf of the Commission.

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–06895 Filed 3–31–22; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 115

[NOTICE 2022–09]

Federal Contractors

AGENCY: Federal Election Commission.

ACTION: Notice of disposition of Petition for Rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on November 18, 2014, by Public Citizen. The petitioner asked that the Commission amend its regulations regarding federal contractors to include certain factors for determining whether entities of the same corporate family are distinct business entities for purposes of the prohibition on contributions by federal contractors. Because there were not four affirmative votes in support of the petition, the Commission is not initiating a rulemaking.

DATES: April 1, 2022.

ADDRESSES: All comments must be in writing, addressed to Mr. Robert Mark Knop, Assistant General Counsel, and submitted in hard copy form to the Federal Election Commission, 1050 First St. NE, Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Joseph P. Wenzinger, Attorney, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Part 115 of the Commission's regulations prohibits federal contractors from making contributions or expenditures to any political party, political committee, or federal candidate, or to any person for any political purpose or use. 11 CFR 115.2(a); *see also* 52 U.S.C. 30119(a)(1). Part 115 further prohibits any person from knowingly soliciting a contribution from any federal contractor. 11 CFR 115.2(c); *see also* 52 U.S.C. 30119(a)(2). On November 18, 2014, the Commission received a Petition for Rulemaking from Public Citizen asking the Commission to amend 11 CFR part 115 to include certain factors for determining whether entities of the same corporate family are distinct business entities for purposes of these prohibitions.

The Commission published a Notice of Availability (''NOA'') on March 30, 2015 to ask for public comment on the petition. 80 FR 16595 (Mar. 30, 2015). The Commission received approximately 19,750 comments on the NOA.

After considering the comments received, the Commission voted on a motion to initiate a rulemaking to adopt the regulations proposed by the petition. Three Commissioners voted to initiate a rulemaking based on the petition, and three Commissioners voted against initiating a rulemaking. Certification, Motion to Open a Rulemaking on REG 2014–09 in Response to Public Comment, Agenda Document 15–60–A (Nov. 13, 2015) at 2, *https://sers.fec.gov/fosers/showpdf.htm?docid=346292.*

Commissioners voting to initiate a rulemaking explained that new rules may be necessary to prevent federal contractors from creating ''nominal subsidiaries'' to make political contributions. *See* Audio Recording of Discussion on REG 2014–09 Amendment of 11 CFR 115 (Nov. 10, 2015) (''Audio Recording'') at 1:51–4:10, *https://www.fec.gov/resources/audio/2015/2015111004.mp3* (statement of Commissioner Ellen L. Weintraub) (stating that Act's restrictions ''are at risk of being rendered unenforceable if corporations can skirt the law by creating nominal subsidiaries to make political contributions''); Statement of Commissioner Ann M. Ravel on REG 2014–09 (Amendment of 11 CFR part 115) at 2, *https://sers.fec.gov/fosers/showpdf.htm?docid=* (stating that Act's restrictions could be ''easily evaded by technical legal maneuvering that leaves the intent of the law completely thwarted''). On the other hand, a Commissioner voting against initiating a rulemaking explained that he was ''persuaded by comments'' arguing that Congress passed the federal-contractor ban ''against a background of common-law corporate principles'' that the Commission should not disrupt in the absence of direction by Congress. Audio Recording at 4:13–8:43 (statement of Vice Chairman Matthew S. Petersen) (stating that Commission has not ''been instructed by Congress to disrupt that background understanding, though they've amended the law on a number of different occasions'' in the ''nearly four decades'' the Commission has been applying the federal-contractor ban).

The Act requires an affirmative vote of at least four Commissioners to take any action to amend a regulation. *See* 52 U.S.C. 30106(c) and 30107(a)(8). Accordingly, the Commission is not initiating a rulemaking. *See also* Definition of ''Express Advocacy,'' Notice of Disposition of Petition for Rulemaking, 64 FR 27478 (May 20, 1999) (denying a petition to initiate a rulemaking because it did not garner the affirmative vote of four Commissioners).

Copies of the comments, the NOA, the Petition for Rulemaking, and related documents are available on the Commission's website, *https://www.fec.gov/fosers/* (reference REG 2014–09 Amendment of 11 CFR 115).

Dated: March 28, 2022.

On behalf of the Commission.

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–06898 Filed 3–31–22; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0155; Project Identifier MCAI–2021–00585–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes; Model CL–600–2C11 (Regional Jet Series 550) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; Model CL–600–2D24 (Regional Jet Series 900) airplanes; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by reports of displayed headings changing from MAG to TRU with no pilot action, which may result in misleading heading information on both primary function displays (PFDs) and multi-function displays (MFDs), and misleading course information on flight management systems (FMS). This proposed AD would require amending the existing airplane flight manual (AFM) to provide the flightcrew with updated procedures for accurate heading and course information. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 16, 2022.

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

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

For service information identified in this NPRM, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0155; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0155; Project Identifier MCAI–2021–00585–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–19, issued May 13, 2021 (TCCA AD CF–2021–19) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes; Model CL–600–2C11 (Regional Jet Series 550) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; Model CL–600–2D24 (Regional Jet Series 900) airplanes; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0155.

This proposed AD was prompted by reports of displayed headings changing from MAG to TRU with no pilot action, which may result in misleading heading information on both PFDs and MFDs, and misleading course information on FMS. This misleading information may occur on airplanes with certain inertial reference systems (IRSs); the IRS is part of the navigation system and provides data on the airplane's position. The FAA is proposing this AD to prevent operation outside the terrain and obstacle protection provided in instrument procedure and route designs, which could result in reduced operational safety margins. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

MHI RJ Aviation ULC has issued the following service information, which provides a procedure for revising, among other procedures, the ''Uncommanded True Heading Indication.''

- Section 05–15—Instrument Systems, of Chapter 5, ABNORMAL PROCEDURES, of MHI RJ Model CL–600–2B19 AFM, CSP A–012, Volume 1, Revision 74, dated July 3, 2020.

Bombardier has issued the following service information, which provides a procedure for revising, among other procedures, the ''Uncommanded True Heading Indication.'' These documents are distinct since they apply to different airplane models.

- Section 05–15—Instrument Systems, of Chapter 5, ABNORMAL PROCEDURES, of Bombardier CRJ Series Regional Jet Model CL–600–2C10 (Series 700, 701, 702) and CL–600–2C11 (Series 550) AFM, CSP B–012, Revision 30, dated February 28, 2020.
- Section 05–15—Instrument Systems, of Chapter 5, ABNORMAL PROCEDURES, of Bombardier CRJ Series Regional Jet Model CL–600–2D24 (Series 900) and Model CL–600–2D15 (Series 705) AFM, CSP C–012, Revision 24, dated March 27, 2020.
- Section 05–15—Instrument Systems, of Chapter 5, ABNORMAL PROCEDURES, of Bombardier CRJ Series Regional Jet Model CL–600–2E25 (Series 1000) AFM, CSP D–012, Revision 23, dated February 14, 2020.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

TCCA AD CF–2021–19 requires operators to ''advise all flight crews'' of revisions to the AFM, and thereafter to ''operate the aircraft accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,113 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$94,605

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–0155; Project Identifier MCAI–2021–00585–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 16, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC (type certificate previously held by Bombardier, Inc.) airplanes, certificated in any category, as identified in paragraphs (c)(1) through (3) of this AD.

(1) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes equipped with inertial reference system (IRS) part number (P/N) 465020–0400–0400, 465020–0400–0401, 465020–0400–0402, or 465020–0400–0403.

(2) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2C11 (Regional Jet Series 550) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes, equipped with IRS P/N 465020–0400–0401, 465020–0400–0402 or 465020–0400–0403.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, equipped with IRS P/N 465020–0400–0402 or 465020–0400–0403.

(d) Subject

Air Transport Association (ATA) of America Code 34; Navigation System.

(e) Unsafe Condition

This AD was prompted by reports of displayed headings changing from MAG to TRU with no pilot action, which may result in misleading heading information on both primary function displays (PFDs) and multi-function displays (MFDs), and misleading

course information on flight management systems (FMSs). The FAA is issuing this AD to prevent operation outside the terrain and obstacle protection provided in instrument procedure and route designs, which could result in reduced operational safety margins.

(f) Compliance

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

(g) Amend Existing Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD: Revise the existing AFM to incorporate the information specified in Section 05–15—Instrument Systems, of Chapter 5, ABNORMAL PROCEDURES, of the applicable AFM identified in Figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g) – *AFM Revision*

Airplane Model	AFM Title	AFM Revision/Date
CL-600-2B19	MHI RJ Model CL-600-2B19 AFM, CSP A-012, Volume 1	Revision 74, dated July 3, 2020
CL-600-2C10 and -2C11	Bombardier CRJ Series Regional Jet Model CL-600-2C10 (Series 700, 701, 702) and CL-600-2C11 (Series 550) AFM, CSP B-012	Revision 30, dated February 28, 2020
CL-600-2D15 and -2D24	Bombardier CRJ Series Regional Jet Model CL-600-2D24 (Series 900) and Model CL-600-2D15 (Series 705) AFM, CSP C-012	Revision 24, dated March 27, 2020
CL-600-2E25	Bombardier CRJ Series Regional Jet Model CL-600-2E25 (Series 1000) AFM, CSP D-012	Revision 23, dated February 14, 2020

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–19, issued May 13, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0155.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on March 25, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–06771 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

Docket No. FAA–2022–0385; Project Identifier MCAI–2021–00786–E]

RIN 2120–AA64

Airworthiness Directives; GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Turboprop Engines

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 GE Aviation Czech s.r.o. (GEAC) M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F model turboprop engines. This proposed AD was prompted by the absence of life limits for propeller shaft part number (P/N) M601–6081.6 in the airworthiness limitation section of the applicable GEAC M601 Engine Shop Manual. This AD was also prompted by a report that operators may not have been provided with enough data to determine the accumulated life of certain propeller shafts. For M601F model turboprop engines, this proposed AD would require removal and replacement of the propeller shaft before the propeller shaft accumulates 12,000 flight hours (FHs) since first installation on an engine, or before accumulating 350 FHs after the effective date of this AD, whichever occurs later, with a part eligible for installation. For M601D–11, M601E–11, M601E–11A, M601E–11AS, and M601E–11S model turboprop engines, this proposed AD would require calculation of the accumulated life of the propeller shaft and, depending on the number of accumulated FHs removal and replacement of the propeller shaft with a part eligible for installation. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 16, 2022.

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

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

For service information identified in this NPRM, contact GE Aviation Czech s.r.o., Beranových 65, 199 02 Praha 9, Letňany, Czech Republic; phone: +420 222 538 111. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0385; 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 mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@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–2022–0385; Project Identifier MCAI–2021–00786–E'' 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 Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0154, dated July 1, 2021 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> It has been determined that the life limit for the propeller shaft P/N M601–6081.6 is not published in the applicable ALS for M601 engines. In addition, it has also been reported that some data, which can be used to determine the accumulated life of certain propeller shafts, may have not been provided to operators, so the propeller shaft life limit may not have been implemented correctly.
>
> These conditions, if not corrected, may lead to failure of a propeller shaft, possibly resulting in detachment of the propeller and consequent damage to the engine and/or the aircraft, and reduced control of the aeroplane.
>
> To address this potential unsafe condition, GEAC issued the original issue of the ASB, providing applicable instructions, and EASA issued AD 2021–0052 to require implementation of the applicable life limit and replacing each propeller shaft with a serviceable propeller shaft.
>
> Since that [EASA] AD was issued, additional data, which can be used to determine the accumulated life of certain propeller shafts, and to support an extended compliance time for Group 1 engines, has been made available; GEAC revised accordingly the ASB (now at revision 02).
>
> For the reasons described above, this [EASA] AD partially retains the requirements of EASA AD 2021–0052, which is superseded, introducing updated affected population and different compliance times.

You may obtain further information by examining the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0385.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the EASA AD. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop

in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE Aviation Czech Alert Service Bulletin (ASB) ASB–M601F–72–10–00–0056 [02], ASB–M601D–72–10–00–0072 [02], ASB–M601E–72–10–00–0103 [02], and ASB–M601Z–72–10–00–0056 [02] (single document; formatted as service bulletin identifier [revision number]), dated May 31, 2021. This ASB specifies procedures for calculating the accumulated life of certain propeller shafts. This ASB also specifies procedures for replacing certain propeller shafts. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

For M601F model turboprop engines, this proposed AD would require removal and replacement of the propeller shaft with a part eligible for installation before the propeller shaft accumulates 12,000 FHs since first installation on an engine, or before accumulating 350 FHs after the effective date of this AD, whichever occurs later. For M601D–11, M601E–11, M601E–11A, M601E–11AS, and M601E–11S model turboprop engines, this proposed AD would require calculation of the accumulated life of the propeller shaft and, depending on the number of accumulated FHs, removal and replacement of the propeller shaft with a part eligible for installation.

Differences Between This Proposed AD and the MCAI

EASA AD 2021–0154, dated July 1, 2021, applies to M601D, M601D–1, M601D–2, M601D–11, M601D–11NZ, M601E, M601E–11, M601E–11A, M601E–11AS, M601E–11S, M601E–21, M601F, M601F–11, M601F–22, M601F–32, M601FS, M601T, and M601Z model turboprop engines. This AD does not include M601D, M601D–1, M601D–2, M601D–11NZ, M601E, M601E–21, M601F–11, M601F–22, M601F–32, M601FS, M601T, and M601Z model turboprop engines as these engine models are not type certificated in the United States.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 14 engines installed on airplanes of U.S. registry. The FAA estimates that 7 M601D–11, and 7 M601E–11 model turboprop engines installed on airplanes of U.S. registry would require calculation of the time since new (TSN) of the propeller shaft and removal and replacement of the propeller shaft. The FAA estimates that zero M601E–11A, M601E–11AS, M601E–11S, and M601F model turboprop engines installed on airplanes of U.S. registry would require replacement of the propeller shaft.

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
Calculate the total TSN of the propeller shaft	1 work-hour × $85 per hour = $85	$0	$85	$1,190
Remove and replace the propeller shaft	105 work-hours × $85 per hour = $8,925.	17,827	26,752	374,528

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:

GE Aviation Czech s.r.o. (Type Certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Docket No. FAA–2022–0385; Project Identifier MCAI–2021–00786–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 16, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to:

(1) GE Aviation Czech s.r.o. (GEAC) M601F model turboprop engines with an engine serial number (ESN) listed in Attachment 1, List of Affected Engines—Group 1, of GE Aviation Czech Alert Service Bulletin (ASB) ASB–M601F–72–10–00–0056 [02], ASB–M601D–72–10–00–0072 [02], ASB–M601E–72–10–00–0103 [02], and ASB–M601Z–72–10–00–0056 [02] (single document; formatted as service bulletin identifier [revision number]), dated May 31, 2021 (the ASB);

(2) M601E–11 and M601E–11A model turboprop engines with an ESN listed in Attachment 2, List of Affected Parts—Group 2, of the ASB; and

(3) M601D–11, M601E–11AS, and M601E–11S model turboprop engines with propeller shaft P/N M601–6081.2 or P/N M601–6081.4.

(d) Subject

Joint Aircraft System Component (JASC) Code 7210, Turbine Engine Reduction Gear.

(e) Unsafe Condition

This AD was prompted by the absence of life limits for propeller shaft part number (P/N) M601–6081.6 in the airworthiness limitation section of the applicable GEAC M601 Engine Shop Manual. This AD was also prompted by a report that operators may not have been provided with enough data to determine the accumulated life of certain propeller shafts. The FAA is issuing this AD to prevent the failure of the propeller shaft. The unsafe condition, if not addressed, could result in damage to the engine, damage to the airplane, and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For affected M601F model turboprop engines, before the propeller shaft accumulates 12,000 flight hours (FHs) since first installation on an engine, or before accumulating 350 FHs after the effective date of this AD, whichever occurs later, remove the propeller shaft and replace with a part eligible for installation.

(2) For affected M601D–11, M601E–11, M601E–11A, M601E–11AS, and M601E–11S model turboprop engines:

(i) Within 100 FHs after the effective date of this AD, calculate the total time since new of the propeller shaft in accordance with the Accomplishment Instructions, paragraph 2.2.1, of the ASB.

(ii) Remove the propeller shaft prior to reaching its applicable life limit and replace with a part eligible for installation in accordance with the Accomplishment Instructions, paragraph 2.2.2., of the ASB.

(h) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' on M601F, M601E–11, and M601E–11A model turboprop engines is a propeller shaft identified in the Configuration Description, paragraph 1.5, Table 1, of the ASB, as applicable to the engine model, with a calculated life that has not exceeded the applicable life limit.

(2) For the purpose of this AD, a ''part eligible for installation'' on M601D–11 model turboprop engines is a propeller shaft with P/N M601–6081.2, P/N M601–6081.4, or P/N M601–6081.5, with a calculated life that has not exceeded the applicable life limit.

(3) For the purpose of this AD, a ''part eligible for installation'' on M601E–11AS and M601E–11S model turboprop engines is a propeller shaft with P/N M601–6081.2, P/N M601–6081.5, or P/N M601–6081.6, with a calculated life that has not exceeded the applicable life limit.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

(1) For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: *barbara.caufield@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0154, dated July 1, 2021, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2022–0385.

(3) For service information identified in this AD, contact GE Aviation Czech s.r.o., Beranových 65, 199 02 Praha 9, Letňany, Czech Republic; phone: +420 222 538 111. You may view this reference information at the FAA, Airworthiness Products Section, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on March 25, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–06772 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0388; Project Identifier MCAI–2020–01604–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by reports of the failure of certain primary ejector fuel feed flexible hoses, which may have a thinner liner than specified by design requirements, and are therefore more susceptible to cracking. This proposed AD would require replacing the hoses. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 16, 2022.

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

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

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0388; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0388; Project Identifier MCAI–2020–01604–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–03, dated March 5, 2020 (TCCA AD CF–2020–03) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0388.

This proposed AD was prompted by reports of the failure of primary ejector fuel feed flexible hoses with more than 30,000 flight hours, installed in accordance with Bombardier Service Bulletin 670BA–28–008C, dated January 23, 2003. In four of the events, the fuel was leaking inside the center fuel tank from the cracked inner liner of the hose, and caused a lateral fuel imbalance condition on the airplane. These events resulted in an emergency descent or air turn back (ATB). Subsequent investigation determined that hoses with part numbers (P/N) CC670–62022–3 and CC670–62022–4, and serial numbers 001 through 2470 inclusive, may have a thinner Teflon® liner than specified by the design requirements, and therefore are more susceptible to cracking. Analysis also indicates that, depending on the size of the crack and the resultant amount of fuel leakage, a fuel supply disruption to the engines could be significant enough to cause an inflight engine shutdown (IFSD). The FAA is proposing this AD to address a possible fuel hose leak, which could cause a lateral imbalance with an adverse effect on the airplane's controllability, or could result in a dual IFSD. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 670BA–28–040, dated September 30, 2019. This service information describes procedures for, among other actions, replacing any primary ejector fuel feed flexible hose, (P/N) CC670–62022–3 and CC670–62022–4, having serial numbers 001 through 2470 inclusive. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 457 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
12 work-hours × $85 per hour = $1,020	$2,872	$3,892	$1,778,644

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–0388; Project Identifier MCAI–2020–01604–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 16, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) airplanes identified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) and CL–600–2C11 (Regional Jet Series 550) airplanes, serial numbers 10002 through 10325 inclusive.

(2) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15263 inclusive.

(3) Model CL–600–2E25 (Regional Jet Series 1000), serial numbers 19001 through 19013 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of the failure of certain primary ejector fuel feed flexible hoses, which may have a thinner liner than specified by design requirements, and are therefore more susceptible to cracking. The FAA is issuing this AD to address a possible fuel hose leak, which could cause a lateral imbalance with an adverse effect on the airplane's controllability, or result in a dual inflight engine shutdown (IFSD).

(f) Compliance

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

(g) Required Actions

At the applicable time specified in figure 1 to paragraph (g) of this AD: Replace each hose having part number (P/N) CC670–62022–3 and P/N CC670–62022–4 and serial number 001 through 2470 inclusive, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–28–040, dated September 30, 2019.

BILLING CODE 4910–13–P

Figure 1 to paragraph (g) – *Compliance Schedule*

Airplane Model	Compliance Time
CL-600-2C10 and CL-600-2C11 airplanes, serial numbers 10005 through 10065 inclusive, that have accumulated less than 31,200 flight hours since Bombardier Service Bulletin (SB) 670BA-28-008 was incorporated	Prior to the accumulation of 40,000 flight hours since SB 670BA-28-008 was incorporated
CL-600-2C10 and CL-600-2C11 airplanes, serial numbers 10005 through 10065 inclusive, that have accumulated 31,200 flight hours or more since SB 670BA-28-008 was incorporated	Within 8,800 flight hours after the effective date of this AD
CL-600-2C10 and CL-600-2C11 airplanes, serial numbers 10002 through 10004 inclusive and 10066 through 10325 inclusive, that have accumulated less than 31,200 total flight hours as of the effective date of this AD	Prior to the accumulation of 40,000 total flight hours
CL-600-2C10 and CL-600-2C11 airplanes, serial numbers 10002 through 10004 inclusive and 10066 through 10325 inclusive, that have accumulated 31,200 total flight hours or more as of the effective date of this AD	Within 8,800 flight hours after the effective date of this AD
CL-600-2D15 and CL-600-2D24 airplanes, serial numbers 15001 through 15263 inclusive, that have accumulated less than 31,200 total flight hours as of the effective date of this AD	Prior to the accumulation of 40,000 total flight hours
CL-600-2D15 and CL-600-2D24 airplanes, serial numbers 15001 through 15263 inclusive, that have accumulated 31,200 total flight hours or more as of the effective date of this AD	Within 8,800 flight hours after the effective date of this AD
CL-600-2E25 airplanes, serial numbers 19001 through 19013 inclusive, that have accumulated less than 31,200 total flight hours as of the effective date of this AD	Prior to the accumulation of 40,000 total flight hours
CL-600-2E25 airplanes, serial numbers 19001 through 19013 inclusive, that have accumulated 31,200 total flight hours or more as of the effective date of this AD	Within 8,800 flight hours after the effective date of this AD

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–03, dated March 5, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0388.

(2) For more information about this AD, contact Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.*

(3) For Bombardier service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on March 25, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–06769 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0300; Airspace Docket No. 22–AAL–19]

RIN 2120–AA66

Proposed Revocation of Colored Federal Airway Blue 8 (B–8); Shishmaref, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Colored Federal airway Blue 8 (B–8) in the vicinity of Shishmaref, AK due to the pending decommissioning of

Shishmaref, AK, (SHH) Non-directional Beacon (NDB).

DATES: Comments must be received on or before May 16, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0300; Airspace Docket No. 22–AAL–19 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0300; Airspace Docket No. 22–AAL–19) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0300; Airspace Docket No. 22–AAL–19.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from the dependency on NDBs. The advances in technology have allowed for alternate navigation methods to support decommissioning of high cost ground navigation equipment. The FAA conducted a non-rulemaking study in accordance with FAA Order JO 7400.2, Procedures for Handling Airspace Matters in 2020 on SHH due to the ongoing high cost of maintenance and repairs. As a result of the study, there were no objections received and the FAA added SHH to the schedule to be decommissioned.

Colored Federal airway B–8 navigates from SHH to the Tin City, AK, (TNC) NDB. The decommissioning of SHH would render B–8 unusable. This proposal would revoke B–8 in its entirety. The loss of B–8 would be mitigated by a planned future United States Area Navigation Route.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke Colored Federal airway B–8 in the vicinity of Shishmaref, AK due to the decommissioning of SHH. B–8 currently navigates between SHH and TNC. The FAA proposes to revoke B–8 in its entirety.

Colored Federal airways are published in paragraph 6009(d) of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway listed in this document would be removed subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of

Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6009(d) Colored Federal Airways

* * * * *

B–8 [Remove]

* * * * *

Issued in Washington, DC, on March 28, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06816 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–6263–P–01]

RIN 2502–AJ59

Increased Forty-Year Term for Loan Modifications

AGENCY: Office of Housing, HUD.

ACTION: Proposed rule.

SUMMARY: HUD's current regulations allow mortgagees to modify a Federal Housing Administration (FHA) insured mortgage by recasting the total unpaid loan for a term limited to 360 months to cure a borrower's default. This proposed rule would amend HUD's current regulation to allow for mortgagees to recast the total unpaid loan for a new term limit of 480 months. Increasing the maximum term limit to 480 months would allow mortgagees to further reduce the borrower's monthly payment as the outstanding balance would be spread over a longer time frame, providing more borrowers with FHA-insured mortgages the ability to retain their homes after default. This change would also align FHA with modifications available to borrowers with mortgages backed by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), which both currently provide a 40-year loan modification option.

DATES: Comment Due Date: May 31, 2022.

ADDRESSES: HUD invites interested persons to submit comments to the Office of the General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt, HUD recommends that comments be mailed at least two weeks in advance of the public comment deadline.

2. Electronic Submission of Comments. Comments may also be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted using one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Comments. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at HUD Headquarters, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055. This is not a toll-free number. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elissa Saunders, Department of Housing and Urban Development, 451 7th Street SW, Suite 9278, Washington, DC 20410–4000; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may contact the numbers above via TTY by calling the Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Housing Administration (FHA) was established by Congress in 1934 to improve nationwide housing standards, to provide employment and stimulate industry, to improve conditions with respect to home mortgage financing, to prevent speculative excesses in new mortgage investment, and to eliminate the necessity for costly second mortgage

financing.[1] HUD's regulations for Title II FHA single family forward mortgage insurance are codified in 24 CFR part 203. These regulations address mortgagee eligibility requirements and underwriting procedures, contract rights and obligations, and the mortgagee's servicing obligations. These regulations also address a mortgagee's obligations to offer loss mitigation options when a mortgagor defaults on a loan, as provided in 24 CFR 203.501.

Mortgagees are required to consider utilizing deeds in lieu of foreclosure, pre-foreclosure sales, partial claims, assumptions, special forbearance, and recasting of mortgages.[2] In 1996, the Balanced Budget Downpayment Act, I (Pub. L. 104–99, approved January 26, 1996) amended sections 204 and 230 of the National Housing Act to provide that HUD may pay insurance benefits to a mortgagee to recompense the mortgagee for its actions to provide an alternative to the foreclosure of a mortgage that is in default. These actions may include special forbearance, loan modification, and/or deeds in lieu of foreclosure, all upon terms and conditions as the mortgagee shall determine in the mortgagee's sole discretion, within guidelines provided by HUD.[3] In response, HUD promulgated an interim final rule (61 FR 35014, July 3, 1996), followed by a final rule (62 FR 60124, November 6, 1997) adding loss mitigation options to 24 CFR part 203. One of these options allows mortgagees to modify a mortgage for the purpose of changing the amortization provisions and recasting the total unpaid amount due for a term not exceeding 360 months from the date of the modification.[4]

II. This Proposed Rule

HUD proposes to amend 24 CFR 203.616, which allows a mortgagee to modify a mortgage for the purpose of changing the amortization provisions by recasting the total unpaid amount due for a new term, by replacing the current maximum of 360 months with a new maximum of 480 months.

Allowing mortgagees to provide a 40-year loan modification would support HUD's mission of fostering homeownership by assisting more borrowers with retaining their homes after a default episode while mitigating losses to FHA's Mutual Mortgage Insurance (MMI) Fund. HUD believes there are situations in which a mortgagee seeks to engage in loss mitigation but is unable to provide loss mitigation to a degree sufficient to prevent default. In such cases, an additional 120 months on the length of the recast mortgage would allow for a lower, more sustainable monthly payment.

Many borrowers who have become delinquent would have difficulty making payments at the monthly rate of their mortgage before default. Therefore, a lower monthly payment is a key element to bring the mortgage current, prevent imminent re-default, and ultimately retain their home and continue to build wealth through homeownership. HUD anticipates that a 40-year loan modification as part of loss mitigation could decrease a borrower's monthly principal and interest payment by a meaningful amount sufficient to prevent several thousand borrowers a year from foreclosure by increasing a borrower's ability to afford the modified payment. Given the large number of FHA-insured mortgages that have been originated or refinanced in the past few years in a historically low interest rate environment, simply extending out the term of a mortgage in default for another 30 years at a similar interest rate would not provide a substantial reduction to a borrower's monthly mortgage payment.

Additionally, borrowers impacted by the COVID–19 pandemic, including those who may re-default in the future after having received a loss mitigation option under COVID–19 policies, may need a 40-year loan modification to obtain affordable monthly payments that would allow them to stay in their homes. This would also reduce losses to the MMI Fund as fewer properties would be sold at a loss in foreclosure or out of FHA's real estate-owned (REO) inventory.[5]

All else held equal, borrowers who choose a 40-year loan modification would be subject to slower equity accumulation and additional interest payments over the course of the modified mortgage relative to a 30-year loan modification. However, to the extent a 40-year modification helps borrowers avoid foreclosure, the slower equity accumulation and additional interest would be greatly outweighed by the benefits of being able to retain their homes. Moreover, a borrower is not obligated to carry the loan for 40 years. FHA data indicates that the average life of a 30-year FHA-insured mortgage is approximately seven years, although it is possible that prepayment behavior could be different with a longer-term loan.

The 40-year mortgage remains rare but has become more commonly recognized in the mortgage industry. The Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, both allow for 40-year mortgage loan modifications.[6] The National Credit Union Association also allows for 40-year mortgages and a federal credit union may set the maturity date for modified or refinanced mortgages beyond the regulatory 40-year maturity limit as long as the terms of the original loan were no more than 40 years. The U.S. Department of Agriculture allows for loan modification up to 40 years where certain conditions are met above the requirements for a 30-year loan modification.[7] By allowing 40-year loan modifications, HUD would align with the GSEs, NCUA, and USDA and ensure that FHA borrowers receive comparable opportunities for home retention.

III. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

[1] 12 U.S.C. 1701 *et seq.*

[2] 24 CFR 203.501.

[3] 12 U.S.C. 1715u.

[4] 24 CFR 203.616.

[5] It is also worth noting that, per its recent press release, Ginnie Mae is now permitting the pooling of 40-year mortgages for the purposes of providing FHA loan modifications with lower payments to help keep borrowers in their homes. Ginnie Mae's mortgage-backed securities include the requirement that loans must be 90 or more days delinquent or have successfully completed a trial payment plan before they can be bought out of a Ginnie Mae pool.

[6] See D2–3.2–07: Fannie Mae Flex Modification (09/09/2020), available at: *https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-D-Providing-Solutions-to-a-Borrower/Subpart-D2-Assisting-a-Borrower-Who-is-Facing-Default-or/Chapter-D2-3-Fannie-Mae-s-Home-Retention-and-Liquidation/Section-D2-3-2-Home-Retention-Workout-Options/D2-3-2-07-Fannie-Mae-Flex-Modification/1042575201/D2-3-2-07-Fannie-Mae-Flex-Modification-09-09-2020.htm*; Freddie Mac Flex Modification Reference Guide, March 2021, available at: *https://sf.freddiemac.com/content/_assets/resources/pdf/other/flex_mod_ref_guide.pdf.*

[7] For more information, see 7 CFR 3555.304.

This proposed rule was determined to be a ''significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more. This proposed rule would increase available loss mitigation options for borrowers and enable more borrowers to avoid foreclosure and remain in their homes. HUD also anticipates that this would have a positive effect on the FHA MMI Fund by lowering defaults. The docket file is available for public inspection on *http://www.regulations.gov* and in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Relay Service at 800–877–8339 (this is a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The change of this proposed rule would be limited to requiring mortgagees to consider and, where appropriate, utilize an extended term limit. Mortgagees are already required to consider mortgage modification so this change should not have an economic impact on mortgagees. If there is an economic effect on mortgagees, it would fall equally on all mortgagees. Further, HUD anticipates that allowing an additional loss mitigation tool would have a net positive economic impact on mortgagees by decreasing the number of defaults and therefore the costs associated with those defaults.

Accordingly, the undersigned certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, and Solar energy.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1707, 1709, 1710, 1715b, 1715z–16, 1715u, and 1715z–21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

§ 203.616 [Amended]

■ 2. Amend § 203.616 by removing the number ''360'' and adding in its place, the number ''480''.

Lopa P. Kolluri,

Principal Deputy Assistant Secretary, Office of Housing-Federal Housing Administration.

[FR Doc. 2022–06875 Filed 3–31–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0163]

RIN 1625–AA00

Safety Zone; Tall Ships Challenge Great Lakes 2022; Erie, PA, Cleveland, OH, and Two Harbors, MN

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create safety zones around each tall ship visiting the Great Lakes during the Tall Ships Challenge 2022 race series. These safety zones will provide for the regulation of vessel traffic in the vicinity of each tall ship in the navigable waters of the United States. The Coast Guard is taking this action to safeguard participants and spectators from the hazards associated with the limited maneuverability of these tall ships and to ensure public safety during tall ships events. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or May 2, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0163 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 LT Jason Radcliffe, 9th District Waterways Management, U.S. Coast Guard; telephone 216–902–6078, email *jason.a.radcliffe2@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

During the Tall Ships Challenge Great Lakes 2022, tall ships will be participating in maritime parades, training cruises, races, and mooring in the harbors of Erie, PA, Cleveland, OH, and Two Harbors, MN. This is a tri-annual event that teaches character building and leadership through sail training. The Tall Ships event seeks to educate the public about both the historical aspects of sailing ships as well as their current use as training vessels for students. Tall ships are large, traditionally-rigged sailing vessels. The event will consist of festivals at each port of call, sail training cruises, tall ship parades, and races between the ports. More information regarding the Tall Ships Challenge 2022 and the participating vessels can be found at *https://www.tallshipschallenge.com/.*

At 12:01 a.m. June 24, 2022, a safety zone will be established around each tall ship participating in this event. The safety zone around each ship will remain in effect as the tall ships travel throughout the Great Lakes. The safety zones will terminate at 12:01 a.m. on August 29, 2022.

These safety zones are necessary to protect the tall ships from potential harm and to protect the public from the hazards associated with the limited maneuverability of tall sailing ships. When operating under sail, they require a substantial crew to manually turn the rudder and adjust the sails, therefore they cannot react as quickly as modern ships. Additionally, during parades of sail, the tall ships will be following a set course through a crowded harbor, and it is imperative that spectator craft stay clear since maneuvering the tall ships to avoid large crowds of spectator craft would not be possible. Due to the high profile nature and extensive publicity associated with this event, each Captain of the Port (COTP) expects a large number of spectators in confined areas adjacent to the tall ships. The combination of large numbers of recreational boaters, congested waterways, boaters crossing commercially transited waterways and low maneuverability of the tall ships could easily result in serious injuries or fatalities. Therefore, the Coast Guard will enforce a safety zone around each ship to ensure the safety of both participants and spectators in these areas. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; DHS Delegation No. 0170.1.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish safety zones from 12:01 a.m. on June 24, 2022, until 12:01 a.m. on August 29, 2022. The safety zones would cover all navigable waters within 100 yards of a tall ship in the Great Lakes. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during the 2022 Tall Ships Challenge. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. If the tall ships are operating in a confined area such as a small harbor and there is not adequate room for vessels to stay out of the safety zone because of a lack of navigable water, then vessels will be permitted to operate within the safety zone and shall travel at the minimum speed necessary to maintain a safe course. The navigation rules shall apply at all times within the safety zone. 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-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone or through it at slow speed in congested areas. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 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 proposed 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 proposed 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 potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under DHS Directive 023–01, Rev. 1, the associated DHS Instruction Manual 023–01–001–01, Rev. 1, and Commandant Instruction on Environmental Planning Policy 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 more than one week. Normally such actions are categorically excluded from further review under paragraph L60(a) 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.

Submitting comments. We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0163 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. 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.

Personal information. 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 to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T09–0163 to read as follows:

§ 165.T09–0163 Safety Zone; Tall Ships Challenge Great Lakes 2022; Erie, PA, Cleveland, OH, and Two Harbors, MN.

(a) *Definitions.* The following definitions apply to this section:

(1) *Navigation rules* means the Navigation Rules, International and Inland (see, 1972 COLREGS (33 CFR chapter I, subchapters D and E) and 33 U.S.C. 2001 *et seq.*).

(2) *Official patrol* means those persons designated by Captain of the Port Buffalo and Sault Ste. Marie to monitor a tall ship safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone, and take other actions authorized by the cognizant Captain of the Port.

(3) *Public vessel* means vessels owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(4) *Tall ship* means any sailing vessel participating in the Tall Ships Challenge 2022 in the Great Lakes.

(b) *Location.* The following areas are safety zones: All navigable waters of the United States located in the Ninth Coast Guard District within a 100 yard radius of any tall ship.

(c) *Regulations.* (1) No person or vessel is allowed within the safety zone unless authorized by the cognizant Captain of the Port, their designated representative, or the on-scene official patrol.

(2) Persons or vessels operating within a confined harbor or channel, where there is not sufficient navigable water outside of the safety zone to safely maneuver are allowed to operate within

the safety zone and shall travel at the minimum speed necessary to maintain a safe course. Vessels operating within the safety zone shall not come within 25 yards of a tall ship unless authorized by the cognizant Captain of the Port, their designated representative, or the on-scene official patrol.

(3) When a tall ship approaches any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the tall ship's safety zone unless ordered by or given permission from the cognizant Captain of the Port, their designated representative, or the on-scene official patrol to do otherwise.

(d) *Effective period.* This section is effective from 12:01 a.m. on June 24, 2022, through 12:01 a.m. on August 29, 2022.

(e) *Navigation rules.* The navigation rules shall apply at all times within a tall ships safety zone.

Dated: March 23, 2022.

M.J. Johnston,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2022–06559 Filed 3–31–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[EPA–HQ–OAR–2016–0186; FRL–8961–01–OAR]

RIN 2060–AV39

Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and the Federal Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is re-proposing a document, first proposed in 2016, which would remove the emergency affirmative defense provisions found in the regulations for state and federal operating permit programs under the Clean Air Act (CAA). The purpose of these provisions has been to establish an affirmative defense that sources can assert in civil enforcement cases when noncompliance with certain emission limitations in operating permits occurs because of qualifying ''emergency'' circumstances. These provisions, which have never been required elements of state operating permit programs, are being removed because they are inconsistent with the enforcement structure of the CAA and court decisions from the U.S. Court of Appeals for the D.C. Circuit. The removal of these provisions is consistent with other EPA actions involving affirmative defenses and would harmonize the enforcement and implementation of emission limitations across different CAA programs.

DATES: Comments must be received on or before May 16, 2022.

Public hearing: If anyone contacts EPA requesting a public hearing by April 6, 2022, the EPA will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: *Comments:* You may send comments, identified by Docket ID No. EPA–HQ–OAR–2016–0186, by any of the following methods:

- Federal eRulemaking Portal*: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2016–0186 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2016–0186.

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OAR–2016–0186 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Corey Sugerik, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–05), Environmental Protection Agency, Research Triangle Park, NC; telephone number: 919–541–3223; email address:*sugerik.corey@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this document is organized as follows:

I. General Information
II. Background
III. Proposed Action
IV. Implementation
V. Environmental Justice Considerations
VI. Statutory and Executive Order Reviews
VII. Statutory Authority

I. General Information

A. Entities Potentially Affected by This Action

Entities potentially affected by this proposed rulemaking include federal, state, local and tribal air pollution control agencies that administer title V operating permit programs, and owners and operators of emissions sources in all industry groups who hold or apply for title V operating permits.

B. Obtaining a Copy of This Document and Other Related Information

The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2016–0186. All documents in the dockets are listed in *https://www.regulations.gov/.* Although listed, 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. Publicly available docket materials are available either in the docket for this action, Docket ID No. EPA–HQ–OAR–2016–0186, or electronically at *https://www.regulations.gov/.*

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions.*

C. Preparing Comments for the EPA

Instructions. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0186, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted by mail as discussed below.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that the Agency can respond rapidly as conditions change regarding COVID–19.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions.* If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office using the email address, *oaqpscbi@epa.gov,* and should include clear CBI markings as described later. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2016–0186. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

D. Participation in Virtual Public Hearing

Please note that because of the current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, the EPA cannot hold in-person public meetings at this time.

To request a virtual public hearing, contact Ms. Pamela Long at (919) 541–0641 or by email at *long.pam@epa.gov.* If requested, the virtual hearing will be held on April 18, 2022. The hearing will convene at 9:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions.*

Upon publication of this document in the **Federal Register**, the EPA will begin pre-registering speakers for the hearing, if a hearing is requested. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions* or contact Ms. Pamela Long at (919) 541–0641 or by email at *long.pam@epa.gov.* The last day to pre-register to speak at the hearing will be April 13, 2022. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have five minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *long.pam@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Ms. Pamela Long at (919) 541–0641 or by email at *long.pam@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing with Ms. Pamela Long and describe your needs by April 8, 2022. The EPA may not be able to arrange accommodations without advanced notice.

II. Background

The EPA has promulgated permitting regulations for the operation of major and certain other sources of air pollutants under title V of the CAA. These regulations, codified in 40 CFR parts 70 and 71, contain the requirements for state operating permit programs and the federal operating permit program, respectively. These regulations currently contain identical provisions describing an affirmative defense that sources may be able to assert in enforcement actions brought for noncompliance with technology-based emission limitations caused by specific emergency circumstances. These ''emergency'' affirmative defense provisions are located at 40 CFR 70.6(g) and 71.6(g).

In 2016, the EPA proposed a rule to remove these affirmative defense provisions from the title V regulations.

81 FR 38645 (June 14, 2016), also available online at: *https://www.govinfo.gov/content/pkg/FR-2016-06-14/pdf/2016-14104.pdf* (the 2016 Proposal). The 2016 Proposal contains a detailed discussion of the background for this proposal, as well as the purpose, basis, rationale, and legal justification for this proposal. The EPA directs readers to the 2016 Proposal for further information. In summary, the EPA based the 2016 Proposal on the interpretation that the enforcement structure of the CAA, embodied in sections 113 and 304, precludes affirmative defense provisions that would operate to limit a court's authority or discretion to determine the appropriate remedy in an enforcement action. 81 FR 38650. This interpretation is informed by the 2014 *NRDC* v. *EPA* decision from the U.S. Court of Appeals for the D.C. Circuit.[1] The EPA believes that the reasoning and logic of that decision extend to regulations concerning operating permit programs under title V. This view aligns the EPA's position on affirmative defenses in title V with positions taken in other CAA program areas, including EPA policy relating to the treatment of startup, shutdown, and malfunction (SSM) periods in state implementation plans (SIPs). (The EPA's policy with respect to SIPs is discussed in an action taken in 2015, *see* 80 FR 33839 (June 12, 2015) (the 2015 SSM SIP Policy), and in the Agency's September 30, 2021, memorandum reinstating the 2015 SSM SIP Policy.[2]) This title V interpretation also aligns with EPA's position on affirmative defenses in New Source Performance Standards (NSPS) under CAA section 111 and National Emission Standards for Hazardous Air Pollutants (NESHAP) under CAA section 112.[3]

The EPA did not finalize the 2016 Proposal. Instead, in a notation accompanying the Spring 2018 Unified Agenda of Federal Regulatory and Deregulatory Actions, the EPA stated: ''The EPA is withdrawing this action via the reg agenda because the agency does not plan to move forward with this rulemaking due to other pending priorities.''[4]

Although the EPA did not move forward at that time with the proposal to remove the emergency affirmative defense provisions from the Title V regulations, the EPA continued to evaluate SSM provisions, including affirmative defenses, in SIPs. In October 2020, the EPA issued a guidance memorandum that, among other things, expressly superseded a portion of the EPA's interpretation of affirmative defenses presented in the 2015 SSM SIP Policy.[5] However, on September 30, 2021, the EPA issued a guidance memorandum that withdrew the October 2020 memorandum in its entirety and reinstated the legal and policy positions expressed in the 2015 SSM SIP Policy in their entirety.[6] Thus, the EPA's current interpretation of affirmative defenses in the context of SIPs is the interpretation set out in the 2015 SSM SIP Policy. As noted in a preceding paragraph, this interpretation in the context of SIPs is similar to the interpretation expressed in the 2016 Proposal for the title V rules.

III. Proposed Action

In this action, the EPA is again proposing to remove the title V emergency affirmative defense provisions, 40 CFR 70.6(g) and 71.6(g). These provisions are inconsistent with the EPA's interpretation of the CAA's enforcement structure and court decisions from the U.S. Court of Appeals for the D.C. Circuit—primarily the 2014 *NRDC* v. *EPA* decision. In summary, the EPA interprets the enforcement structure of the CAA, embodied in sections 113 and 304, to preclude affirmative defense provisions that would operate to limit a court's authority or discretion to determine the appropriate remedy in an enforcement action. The title V affirmative defense provisions the EPA proposes to remove, 40 CFR 70.6(g) and 71.6(g), set forth just such limitations and, consequently, are inconsistent with the rationale of *NRDC* and the enforcement structure of the CAA. The Agency's view that these title V affirmative defense provisions are inconsistent with the CAA and D.C. Circuit precedent is consistent with the EPA's current interpretation of affirmative defenses in the context of other CAA programs, including SIPs and regulations under CAA sections 111 and 112.[7]

Except as modified or updated herein, the EPA is re-proposing the 2016 Proposal. The EPA previously received comments on the 2016 Proposal, including the legal interpretation upon which that former proposal—and the current proposal—are based. The EPA will consider all comments received on the 2016 Proposal as the Agency moves forward with the current rulemaking. Accordingly, commenters need not submit duplicate comments on the current proposal.[8] However, the EPA welcomes comments providing additional information not previously submitted to the Agency.

IV. Implementation

The nature and focus of the proposed action are to remove the affirmative defense provisions from the EPA's regulations at 40 CFR 70.6(g) and 71.6(g). The EPA is not proposing any specific finding with respect to individual state programs or state-issued title V permits that may contain similar provisions. However, if the EPA finalizes this rule as proposed and removes the affirmative defense provisions at 40 CFR 70.6 and 71.6, the Agency expects that some state, local, and tribal permitting authorities will need to remove similar provisions from their EPA-approved part 70 program regulations and submit program

[1] 749 F.3d 1055 (D.C. Cir. 2014).

[2] *See* Memorandum, Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy, 3–4 (September 30, 2021), available at *https://www.epa.gov/system/files/documents/2021-09/oar-21-000-6324.pdf* (September 2021 SSM SIP Memo).

[3] *E.g.,* 85 FR 71490 (November 9, 2020) (proposed rule removing affirmative defense from the NESHAP for polyvinyl chloride and copolymers production); 81 FR 40955 (June 23, 2016) (final rule removing affirmative defense from the NSPS and emission guidelines for commercial and institutional solid waste incineration units); *see also* 81 FR 38649 n.21 (June 14, 2016) (discussion of other NSPS and NESHAP rules in 2016 Proposal).

[4] A copy of the entry on the Regulatory Agenda is available at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=2060-AS96. See also https://www.regulations.gov/docket/EPA-HQ-OAR-2016-0186/unified-agenda* (indicating that the proposed rule was withdrawn on February 23, 2018).

[5] Memorandum, Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans, 6 (October 9, 2020), available at *https://www.epa.gov/system/files/documents/2021-09/2020-ssm-in-sips-guidance-memo.pdf.* In 2020, EPA also took action relating to an SSM-related affirmative defense in a SIP for Texas, withdrawing a SSM ''SIP call'' in part because the SIP-based affirmative defense was deemed to not be inconsistent with the CAA. *See* 85 FR 7232 (February 7, 2020); *see also* 85 FR 23,700 (April 28, 2020) (SIP call withdrawal relating to North Carolina) and 85 FR 73,218 (November 17, 2020) (SIP call withdrawal relating to Iowa). Petitions for review of these withdrawal actions were filed in the United States Court of Appeals for the D.C. Circuit. *See Sierra Club* v. *EPA,* No. 20–1115.

[6] September 2021 SSM SIP Memo, *supra* note 2. This memorandum also announced an intent to revisit, among other things, the 2020 action withdrawing the SSM affirmative defense-related SIP call for Texas. *Id.* at 5. On December 17, 2021, the United States Court of Appeals for the D.C. Circuit granted the EPA's request for a voluntary remand of that 2020 Texas SIP call withdrawal action, as well as the similar SIP call withdrawal actions relating to North Carolina and Iowa, in light of EPA's stated intent to reconsider those actions. *Sierra Club* v. *EPA,* No. 20–1115.

[7] *See* September 2021 SSM SIP Memo. The EPA's interpretation with respect to affirmative defenses in regulations under CAA sections 111 or 112 has not changed since the 2016 Proposal. *See supra* note 3 and accompanying text.

[8] Comments received on the 2016 Proposal are contained in the same docket as the current proposal: Docket ID No. EPA–HQ–OAR–2016–0186.

revisions to the EPA. The EPA also expects that these permitting authorities will need to remove such provisions from individual title V permits. This process will proceed consistent with the existing regulations concerning program and permit revisions. *See, e.g.,* 40 CFR 70.4(a), 70.4(i), 70.7. The EPA's expectations regarding this process are discussed in the 2016 Proposal.

V. Environmental Justice Considerations

The Agency proposes to remove affirmative defense provisions from the EPA's operating permit program regulations. If the rule is finalized, it may also be necessary for state, local and tribal permitting authorities to remove similar affirmative defense provisions from program regulations and from individual title V operating permits. None of these changes would alter the obligations of sources to comply with the underlying emission limits and other standards contained within title V operating permits.

Based on these considerations, the EPA expects that, if this action becomes final as proposed, the effects on minority populations, low-income populations and/or indigenous peoples would not be disproportionately high and adverse.

VI. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0243 (for part 70 state operating permit programs) and 2060–0336 (for part 71 federal operating permit program). In this action, the EPA is proposing to remove certain provisions from the EPA's regulations, which, if finalized, could result in the removal of similar provisions from state, local, and tribal operating permit programs and individual permits. Consequently, states could eventually be required to submit program revisions to the EPA outlining any necessary changes to their regulations and their plans to remove provisions from individual permits. However, this action does not involve any requests for information, recordkeeping or reporting requirements, or other requirements that would constitute an information collection under the PRA.

C. Regulatory Flexibility Act (RFA)

I certify that this action would not have a significant economic impact on a substantial number of small entities under the RFA. This action would not impose any requirements on small entities. Entities potentially affected directly by this proposal include state, local, and tribal governments, and none of these governments would qualify as a small entity. Other types of small entities, including stationary sources of air pollution, would not be directly subjected to the requirements of this action.

D. Unfunded Mandates Reform Act (UMRA)

This action would not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and would not significantly or uniquely affect small governments. The action would impose no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it would neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. One tribal government (the Southern Ute Indian Tribe) currently administers an approved part 70 operating permit program, and one tribal government (the Navajo Nation) currently administers a part 71 operating permit program pursuant to a delegation agreement with the EPA. These tribal governments may be required to take actions if this rule is finalized, including program revisions (for part 70 programs) and eventual permit revisions (for both part 70 and delegated part 71 programs), but these actions will not require substantial compliance costs. The EPA previously consulted with tribal officials when developing the 2016 Proposal and is planning to offer a similar consultation for the current proposal. The EPA also solicits comment from affected tribal governments on the implications of this rulemaking.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act (NTTA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action would not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in section V of this action preamble titled, ''Environmental Justice Considerations''.

VII. Statutory Authority

The statutory authority for this action is provided in CAA sections 502(b) and 502(d)(3), 42 U.S.C. 7661a(b) & (d)(3), which direct the Administrator of the EPA to promulgate regulations establishing state operating permit programs and give the Administrator the authority to establish a federal operating permit program. Additionally, the Administrator determines that this proposed action is subject to the provisions of CAA section 307(d), which establish procedural requirements specific to rulemaking under the CAA. CAA section

307(d)(1)(V) provides that the provisions of CAA section 307(d) apply to ''such other actions as the Administrator may determine.'' 42 U.S.C. 7607(d)(1)(V).

List of Subjects

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Michael Regan,
Administrator.

For the reasons stated in the preamble, the EPA proposes to amend title 40 CFR parts 70 and 71 as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

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

§ 70.6 [Amended]

■ 2. In § 70.6, remove and reserve paragraph (g).

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 71 continues to read as follows:

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

§ 71.6 [Amended]

■ 4. In § 71.6, remove and reserve paragraph (g).

[FR Doc. 2022–06907 Filed 3–31–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2015–0174; FRL–7253.1–01–OW]

RIN 2040–AG21

Restoring Protective Human Health Criteria in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) has determined that Washington's human health criteria (HHC) are not protective of Washington's designated uses and are not based on sound scientific rationale and, accordingly, is proposing to restore protective HHC for Washington's waters. EPA partially approved and partially disapproved Washington's HHC in November 2016, and simultaneously promulgated federal HHC based on sound scientific rationale. In May 2019, EPA reversed its November 2016 disapproval and approved Washington's HHC, and in June 2020 withdrew the 2016 HHC that EPA promulgated for Washington. Based on the best scientific information and analyses currently available, and consideration of these past decisions, EPA has concluded that Washington's existing HHC are not based on sound scientific rationale and are therefore not protective of the applicable designated uses in Washington. EPA is therefore proposing to reinstate the protective and science-based federal HHC that EPA withdrew in June 2020 to protect Washington's waters, including waters where tribes hold treaty-reserved rights to fish.

DATES: Comments must be received on or before May 31, 2022. *Public Hearing:* EPA will hold two public hearings during the public comment period. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearings.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2015–0174, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Standards and Health Protection Division Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OW–2015–0174 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only, to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

EPA is offering two public hearings on this proposed rulemaking. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

FOR FURTHER INFORMATION CONTACT: Erica Fleisig, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–1057; email address: *fleisig.erica@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposed rulemaking is organized as follows:

I. Public Participation
  A. Written Comments
  B. Public Hearings
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  A. Does this action apply to me?
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  C. Prior EPA Actions Related to Washington's Human Health Criteria
IV. Administrator's Determination That New or Revised HHC are Necessary for Washington
  A. Existing Criteria Are Not Protective of Designated Uses of Waters in the State of Washington
  B. Clean Water Act 303(c)(4)(B) Administrator's Determination
V. Derivation of Human Health Criteria for Washington
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E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act of 1995
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0174, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID–19.

B. Public Hearings

Please note that because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time. EPA is offering two online public hearings so that interested parties may also provide oral comments on this proposed rulemaking. For more details on the online public hearings and to register to attend the hearings, please visit *https://www.epa.gov/wqs-tech/federal-human-health-criteria-washington-state-waters.*

II. General Information

A. Does this action apply to me?

Entities that are subject to Clean Water Act (CWA) regulatory programs such as industrial facilities, stormwater management districts, or publicly owned treatment works (POTWs) that discharge pollutants to surface waters of the United States under the State of Washington's jurisdiction could be affected by this rulemaking because the federal water quality standards (WQS) in this rulemaking, once finalized, will be the applicable WQS for surface waters in Washington for CWA purposes. Categories and entities that could potentially be affected by this rulemaking include the following:

Category	Examples of potentially affected entities
Industry	Industrial point sources discharging pollutants to waters of the United States in Washington.
Municipalities	Publicly owned treatment works or similar facilities discharging pollutants to waters of the United States in Washington.
Stormwater Management Districts	Entities responsible for managing stormwater in the State of Washington.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that could be indirectly affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. Background

A. Statutory and Regulatory Background

CWA Section 101(a)(2) establishes as a national goal ''water quality which provides for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, wherever attainable.'' EPA interprets these CWA Section 101(a)(2) goals to include, at a minimum, designated uses providing for the protection of aquatic communities and human health related to consumption of fish and shellfish.[1]

Consistent with the CWA, EPA's WQS program assigns to states and authorized tribes the primary authority for adopting WQS.[2] CWA Section 303(c)(2)(A) and EPA's implementing regulations at 40 CFR part 131 require, among other things, that a state's WQS specify appropriate designated uses of the waters, and water quality criteria that protect those uses. EPA's regulations at 40 CFR 131.11(a)(1) provide that ''[s]uch criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive designated use.''

Under CWA Section 304(a), EPA periodically publishes criteria (including HHC) recommendations for states to consider when adopting water quality criteria for particular pollutants to protect CWA Section 101(a) goal uses. Where EPA has published recommended criteria, states should establish numeric water quality criteria based on EPA's CWA Section 304(a) criteria recommendations, CWA Section 304(a) criteria recommendations modified to reflect site-specific conditions, or other scientifically defensible methods (40 CFR 131.11(b)(1)).

After a state adopts a new or revised WQS, the state must submit it to EPA for review and action in accordance

[1] USEPA. 2000. Memorandum 1BWQSP–00–03. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *https://www.epa.gov/sites/production/files/2015-01/documents/standards-shellfish.pdf.*

[2] 33 U.S.C. 1313(a), (c).

with CWA Section 303(c).[3] If EPA determines that a state's new or revised WQS is not consistent with the requirements of the Act, the state has 90 days to submit a modified standard. If the state fails to adopt a revised WQS that EPA approves, CWA Section 303(c)(4)(A) requires EPA to propose and promulgate a revised or new standard for the waters involved. In addition, CWA Section 303(c)(4)(B) grants the EPA Administrator discretion to determine ''that a revised or new standard is necessary to meet the requirements of [the Act].'' [4] After making such a determination, known as an Administrator's Determination,[5] the agency must ''promptly'' propose an appropriate WQS and finalize it within ninety days unless the state adopts an acceptable standard in the interim.[6]

B. General Recommended Approach for Deriving Human Health Criteria

EPA's 2000 *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* [7] (2000 Methodology) recommends that HHC be designed to reduce the risk of adverse cancer and non-cancer effects occurring from lifetime exposure to pollutants through the ingestion of drinking water and consumption of fish/shellfish obtained from inland and nearshore waters. EPA's practice is to establish a criterion for both drinking water ingestion and consumption of fish/shellfish from inland and nearshore waters combined and a separate criterion based on ingestion of fish/shellfish from inland and nearshore waters alone. This latter criterion applies in cases where the designated uses of a waterbody include supporting fish/shellfish for human consumption but not drinking water supply sources (*e.g.,* non-potable estuarine waters).

As discussed in EPA's 2000 Methodology, EPA recommends basing HHC on two types of toxicological endpoints: (1) Carcinogenicity and (2) noncancer toxicity (*i.e.,* all adverse effects other than cancer). Where sufficient data are available, EPA derives criteria using both carcinogenic and non-carcinogenic toxicity endpoints and recommends the lower (*i.e.,* more stringent) value. Under the 2000 Methodology, HHC for carcinogenic effects are calculated using the following input parameters: Cancer slope factor (CSF), cancer risk level (CRL), body weight, drinking water intake rate, fish consumption rate (FCR), and a bioaccumulation factor(s). HHC for both non-cancer and nonlinear carcinogenic effects are calculated using a reference dose (RfD) and relative source contribution (RSC) in place of a CSF and CRL. The RSC is applied to apportion the RfD among the media and exposure routes of concern for a particular chemical to ensure that an individual's total exposure from all exposure sources does not exceed the RfD. Each of these inputs is discussed in more detail in sections III.B.a through III.B.d of this preamble and in EPA's 2000 Methodology.[8]

a. Cancer Risk Level

EPA's 2000 Methodology generally assumes, in the absence of data to indicate otherwise, that carcinogens exhibit linear ''non-threshold'' dose-responses which means that there are no ''safe'' or ''no-effect'' levels. Therefore, EPA calculates CWA Section 304(a) national recommended HHC for carcinogenic effects as pollutant concentrations corresponding to lifetime increases in the risk of developing cancer. EPA calculates its CWA Section 304(a) national recommended HHC values at a 10^{-6} (one in one million) CRL and recommends CRLs of 10^{-6} or 10^{-5} (one in one hundred thousand) for the general population.[9] EPA notes that states and authorized tribes can also choose a more stringent risk level, such as 10^{-7} (one in ten million), when deriving HHC.

b. Cancer Slope Factor and Reference Dose

A dose-response assessment is required to understand the quantitative relationships between exposure to a pollutant and adverse health effects. EPA evaluates dose-response relationships based on the available data from animal toxicity and human epidemiological studies to derive dose-response metrics. For carcinogenic effects, EPA uses an oral CSF to derive the HHC. The oral CSF is an upper bound, approximating a 95 percent confidence limit, on the increased cancer risk from a lifetime oral exposure to a pollutant. For non-carcinogenic effects, EPA uses the reference dose (RfD) to calculate the HHC. A RfD is an estimate of a daily oral exposure of an individual to a substance that is likely to be without an appreciable risk of deleterious effects during a lifetime. A RfD is often derived from a laboratory animal toxicity multi-dose study from which a no-observed-adverse-effect level (NOAEL), lowest-observed-adverse-effect level (LOAEL), or benchmark dose level can be identified. However, human epidemiology studies can also be used to derive a RfD. Uncertainty factors are applied to account for gaps or deficiencies in the available data (*e.g.,* differences in response among humans) for a chemical. For the majority of EPA's latest (2015) updated CWA Section 304(a) national recommended HHC, EPA's Integrated Risk Information System (IRIS) [10] was the source of both cancer and noncancer toxicity values (*i.e.,* RfD and CSF).[11] For some pollutants, EPA selected risk assessments produced by other EPA program offices (*e.g.,* Office of Pesticide Programs, Office of Water, Office of Land and Emergency Management), other national and international programs, and state programs.

c. Exposure Assumptions

In the 2000 Methodology, EPA states that its assumptions ''afford an overall level of protection targeted at the high end of the general population.'' Toward this end, EPA selects a combination of high-end and central tendency inputs to the criteria derivation equation and avoids ''double counting'' of exposures and combining unlikely co-occurrences. Per EPA's latest CWA Section 304(a) national recommended HHC, EPA uses a default drinking water intake rate of 2.4 liters per day (L/day) and default rate of 22 grams per day (g/day) for consumption of fish and shellfish from inland and nearshore waters, multiplied by pollutant-specific bioaccumulation factors (BAFs) to account for the amount of the pollutant in the edible portions of the ingested species.

EPA's national default drinking water intake rate of 2.4 L/day represents the per capita estimate of combined direct and indirect community water ingestion

[3] 33 U.S.C. 1313(c)(2)(A), (c)(3).

[4] *Id.* at (c)(4)(B).

[5] 40 CFR 131.22(b)

[6] 33 U.S.C. 1313(c)(4)(B).

[7] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004. *https://www.epa.gov/sites/default/files/2018-10/documents/methodology-wqc-protection-hh-2000.pdf.*

[8] *Id.*

[9] EPA's 2000 Methodology also states: ''Criteria based on a 10^{-5} risk level are acceptable for the general population as long as states and authorized tribes ensure that the risk to more highly exposed subgroups (sport fishers or subsistence fishers) does not exceed the 10^{-4} level.''

[10] USEPA. Integrated Risk Information System (IRIS). U.S. Environmental Protection Agency, Office of Research and Development, Washington, DC. *www.epa.gov/iris.*

[11] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

at the 90th percentile for adults ages 21 and older.[12] EPA's national FCR of 22 g/day represents the 90th percentile consumption rate of fish and shellfish from inland and nearshore waters for the U.S. adult population 21 years of age and older, based on National Health and Nutrient Examination Survey (NHANES) data from 2003 to 2010.[13] [14] EPA calculates its CWA Section 304(a) national recommended HHC using a default body weight of 80 kilograms (kg), the average weight of a U.S. adult age 21 and older, based on NHANES data from 1999 to 2006.

One reason EPA has determined that a subset of Washington's 2016 HHC are inadequate is due to their reliance on bioconcentration factors (BCFs) rather than BAFs. To provide background for our discussion below, the history of the agency's use of BCFs and BAFs is reviewed here. Prior to publication of the 2000 Methodology, in which EPA began recommending the use of BAFs to reflect the uptake of a contaminant from all sources by fish and shellfish,[15] EPA relied on bioconcentration factors (BCFs) to estimate chemical accumulation of waterborne chemicals by aquatic organisms. However, BCFs only account for chemical accumulation in aquatic organisms through exposure to chemicals in the water column. In 2000, EPA noted that ''there has been a growing body of scientific knowledge that clearly supports the observation that bioaccumulation and biomagnification occur and are important exposure issues to consider for many highly hydrophobic organic compounds and certain organometallics.'' For that reason, the 2000 Methodology concluded that ''[f]or highly persistent and bioaccumulative chemicals that are not easily metabolized, BCFs do not reflect what the science indicates.'' [16] EPA's 2000 Methodology emphasizes using, when data are available, measured or estimated BAFs, which account for chemical accumulation in aquatic organisms from all potential exposure routes, including, but not limited to, food, sediment, and water.[17] This BAF-based approach includes separate procedures to be used according to the physicochemical properties of the chemical. Separate BAFs for each trophic level are derived to account for potential biomagnification of chemicals in aquatic food webs, as well as physiological differences among organisms that may affect bioaccumulation.[18]

EPA derives national default BAFs, in part, as a resource for states and authorized tribes with limited resources for deriving site-specific BAFs.[19] EPA's approach for developing national BAFs represents the long-term average bioaccumulation potential of a pollutant in aquatic organisms that are commonly consumed by humans across the United States. In the 2015 national CWA Section 304(a) HHC update, EPA relied on field-measured BAFs and laboratory-measured BCFs available from peer-reviewed, publicly available databases to develop national BAFs for three trophic levels of fish.[20] If this information was not available, EPA selected octanol-water partition coefficients (K_{ow} values) from publicly available, published peer-reviewed sources for use in calculating national BAFs. As an additional line of evidence, EPA reported model-estimated BAFs for every chemical based on the Estimation Program Interface (EPI) Suite to support the field-measured or predicted BAFs.[21]

Although EPA uses national default exposure-related input values to calculate CWA Section 304(a) national recommended criteria, EPA's methodology notes a preference for the use of local data, when available, to calculate HHC (*e.g.,* locally derived FCRs, drinking water intake rates and body weights, and waterbody-specific bioaccumulation rates) over national default values. Using local data helps ensure that HHC represent local conditions.[22] EPA also recommends, where sufficient data are available, selecting a FCR that reflects consumption that is not suppressed by fish availability or concerns about the safety of available fish.[23] Deriving criteria using an unsuppressed FCR furthers the restoration goals of the CWA and ensures protection of human health as pollutant levels decrease, fish habitats are restored, and fish availability increases. Moreover, as explained further below, selecting a FCR that reflects unsuppressed fish consumption could be necessary where tribal treaty or other reserved fishing rights apply. In such circumstances, if sufficient data regarding unsuppressed fish consumption levels are unavailable or inconclusive, states should consult with tribes when deciding which fish consumption data should be used in selecting an FCR.

[12] USEPA. 2011. EPA Exposure Factors Handbook. 2011 edition (EPA 600/R–090/052F). *http://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252.*

[13] USEPA. 2014. Estimated Fish Consumption Rates for the U.S. Population and Selected Subpopulations (NHANES 2003–2010). United States Environmental Protection Agency, Washington, DC. EPA 820–R–14–002.

[14] EPA's national FCR is based on the total rate of consumption of fish and shellfish from inland and nearshore waters (including fish and shellfish from local, commercial, aquaculture, interstate, and international sources). This is consistent with a principle that each state does its share to protect people who consume fish and shellfish that originate from multiple jurisdictions.

[15] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004. *https://www.epa.gov/sites/default/files/2018-10/documents/methodology-wqc-protection-hh-2000.pdf* at 5–4. (Explaining that ''[t]he 1980 Methodology for deriving 304(a) criteria for the protection of human health emphasized the assessment of bioconcentration (uptake from water only) through the use of the BCF . . . The 2000 Human Health Methodology revisions contained in this chapter emphasize the measurement of bioaccumulation (uptake from water, sediment, and diet) through the use of the BAF.'').

[16] 65 FR 66444 November 3, 2000.

[17] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004. *https://www.epa.gov/sites/default/files/2018-10/documents/methodology-wqc-protection-hh-2000.pdf.*

[18] USEPA. 2003. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000). Technical Support Document Volume 2: Development of National Bioaccumulation Factors. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–03–030. *https://www.epa.gov/sites/default/files/2018-10/documents/methodology-wqc-protection-hh-2000.pdf.*

[19] 65 FR 66444 November 3, 2000.

[20] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[21] *Id.*

[22] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004. *https://www.epa.gov/sites/default/files/2018-10/documents/methodology-wqc-protection-hh-2000.pdf.*

[23] As noted by the National Environmental Justice Advisory Council in the 2002 publication *Fish Consumption and Environmental Justice,* ''a suppression effect may arise when fish upon which humans rely are no longer available in historical quantities (and kinds), such that humans are unable to catch and consume as much fish as they had or would. Such depleted fisheries may result from a variety of affronts, including an aquatic environment that is contaminated, altered (due, among other things, to the presence of dams), overdrawn, and/or overfished. Were the fish not depleted, these people would consume fish at more robust baseline levels. . . . In the Pacific Northwest, for example, compromised aquatic ecosystems mean that fish are no longer available for tribal members to take, as they are entitled to do in exercise of their treaty rights.''). National Environmental Justice Advisory Council, *Fish Consumption and Environmental Justice,* p.44, 46 (2002) (NEJAC Fish Consumption Report) *available at https://www.epa.gov/sites/default/files/2015-02/documents/fish-consump-report_1102.pdf.*

d. Relative Source Contribution

The inclusion of an RSC factor [24] is important for protecting public health. When deriving HHC for non-carcinogens and nonlinear carcinogens, EPA recommends including an RSC factor to account for sources of exposure other than drinking water and consumption of fish and shellfish from inland and nearshore waters. These other sources of exposure include ocean fish consumption (which is not included in EPA's default national FCR), non-fish food consumption (*e.g.,* fruits, vegetables, grains, meats, poultry), dermal exposure, and inhalation exposure. Using an RSC ensures that the level of a chemical allowed by a water quality criterion, when combined with other exposure sources, will not result in exposures that exceed the RfD and helps prevent adverse health effects from exposure to a given chemical over a person's lifetime. EPA's guidance [25] includes an approach for determining an appropriate RSC for a given pollutant ranging in value from 0.2 to 0.8 to ensure that drinking water and fish consumption alone are not apportioned the entirety of the RfD. This approach, known as the Exposure Decision Tree, considers the adequacy of available exposure data, levels of exposure, relevant sources/media of exposure, and regulatory agendas. As explained below in section V.B.d of this preamble, EPA made science-based adjustments to the application of the RSC in this proposed rulemaking to avoid ''double counting'' exposures. Washington's failure to make such adjustments is another reason for EPA's finding that its HHC are inadequate.

C. Prior EPA Actions Related to Washington's Human Health Criteria

In 1992, EPA promulgated the National Toxics Rule (NTR) at 40 CFR 131.36, establishing chemical-specific numeric criteria for 85 priority toxic pollutants for 14 states and territories (states), including Washington, that were not in compliance with the requirements of CWA Section 303(c)(2)(B). Subsequently, when states covered by the NTR adopted their own criteria for toxic pollutants that were consistent with the CWA and EPA's implementing regulations, EPA amended the NTR to remove those chemical-specific criteria for those states. In 2015, Washington was one of the states that remained covered by the NTR.

On September 14, 2015, the EPA Administrator determined that updated HHC for Washington were ''necessary'' pursuant to CWA Section 303(c)(4)(B). EPA proposed HHC to protect the health of Washington residents, including tribes with treaty-reserved rights to fish.[26] In that proposal, EPA explained that the majority of waters under Washington's jurisdiction are subject to tribal treaty-reserved fishing rights.[27] To give effect to such rights in establishing revised WQS for Washington waters, EPA determined that tribal treaty fishing rights ''appropriately must be considered when determining which criteria are necessary to adequately protect Washington's fish and shellfish harvesting designated uses.'' [28] Specifically, EPA proposed to consider the tribal populations exercising their legal right to harvest and consume fish and shellfish as the general population for purposes of deriving protective HHC. To this end, EPA proposed HHC based on a FCR of 175 g/day and CRL of 10^{-6} to reflect consideration of tribal treaty-reserved rights, as informed by consultation with the tribes and fish consumption surveys of tribal members.[29] In addition to a FCR and CRL calculated to ensure protection of applicable tribal treaty-reserved rights, EPA also utilized other inputs to derive the proposed HHC based on the agency's latest science. Specifically, EPA calculated the proposed HHC using the national trophic level four BAFs and updated chemical-specific RSC values from its June 2015 CWA Section 304(a) criteria updates.[30] EPA's approach to deriving HHC using these inputs is described further in section III.B. of this preamble.

Before EPA finalized the proposed Federal criteria, the State of Washington adopted HHC following an extensive public process and submitted the updated HHC to EPA for review on August 1, 2016. The updated HHC incorporated some of the new data and information from EPA's June 2015 CWA Section 304(a) criteria updates. Washington's HHC were based on the same 175 g/day FCR and 10^{-6} CRL that EPA used to derive the proposed federal HHC, with the exception of the CRL for polychlorinated biphenyls (PCBs).[31] Although Washington used the same FCR and CRL as EPA, because WA's HHC did not use BAFs and used an RSC of 1, the resulting HHC for the majority of pollutants were less stringent than the HHC in EPA's proposed rulemaking.

On November 15, 2016, EPA partially approved and partially disapproved Washington's HHC.[32] For the criteria that were disapproved, EPA concurrently signed a final rule promulgating the Federal criteria it had proposed in 2015.[33] Like EPA's 2015 proposal, the 2016 final rule articulated EPA's conclusion that it is necessary and appropriate to consider tribal treaty-reserved rights within the framework of the CWA, and provided a discussion of the tribal treaties relevant to the State of Washington and applicable case law.[34] The 2016 final rule was informed by public comment that addressed both the proposed criteria and EPA's consideration of tribal treaties, as well as consultation with a number of federally recognized tribes.

As explained further in section IV.A of this preamble, EPA's disapproval of Washington's HHC was largely predicated on Washington's use of input values that were not reflective of sound scientific rationale. In its letter to the State, EPA explained that the agency ''evaluated Washington's criteria values against criteria that EPA determined would be protective of the State's designated uses and scientifically defensible (*e.g.,* based on appropriate bioaccumulation factors (BAFs) and protective relative source contribution (RSC) values of less than 1).'' [35] EPA found that Washington had not demonstrated that the majority of its criteria were based on sound scientific rationale as required by the CWA and EPA's implementing regulations.[36] Specifically for PCBs, EPA found that Washington had not provided adequate support or analysis to justify its use of a chemical-specific CRL (2.3 x 10^{5}) that was less stringent than the CRL used for all other pollutants, and did not explain how the use of this CRL was

[24] ''[RSC] defines the portion of the total exposure that comes from ingestion of water and fish from the ambient water body of interest. Other exposure information such as that from dietary, inhalation, and dermal routes should be considered and accounted for as part of the RSC human exposure analysis.'' *https://www.epa.gov/wqs-tech/supplemental-module-human-health-ambient-water-quality-criteria.*

[25] *Id.*

[26] 80 FR 55,063 (September 14, 2015).

[27] *Id.* at 55,067.

[28] *Id.*

[29] *Id.* at 55,067–68.

[30] *Id.* at 55,068–69.

[31] For PCBs, Washington's criteria were based on a chemical-specific CRL of 2.3×10^{-5}.

[32] Letter from Dan D. Opalski, Director, EPA Region 10 Office of Water and Watersheds to Maia Bellon, Director, Department of Ecology, Re: EPA's Partial Approval/Partial Disapproval of Washington's Human Health Water Quality Criteria and Implementation Tools; Enclosure, Technical Support Document (November 15, 2016) (2016 Partial Approval/Partial Disapproval).

[33] 81 FR 85417, November 28, 2016.

[34] 81 FR 85422–27, November 28, 2016.

[35] 2016 Partial Approval/Disapproval at 3.

[36] *Id.* at 16–17.

protective of the State's designated uses.[37]

With respect to the criteria that EPA approved, the agency also explained that ''while the EPA carefully considers the scientific defensibility and protectiveness of both the inputs used to derive criteria and the resulting criteria values, it is ultimately on the criteria values that the EPA takes approval or disapproval action under CWA Section 303(c).'' [38] After evaluating Washington's criteria against criteria using appropriate scientific inputs, EPA determined that certain of Washington's criteria were as or more stringent than scientifically defensible criteria that the EPA determined would be protective of Washington's designated uses.[39] Accordingly, EPA approved those criteria.[40]

In a petition dated February 21, 2017, several regulated entities requested that EPA reconsider its November 15, 2016, partial disapproval and repeal its concurrent promulgation of Federal criteria.[41] Following the 2017 petition, Washington and several federally recognized tribes with treaty-reserved fishing rights sent letters urging EPA to deny the petition and to leave the federally promulgated HHC in place.[42]

Despite objections from the State and several tribes, on May 10, 2019, EPA granted the 2017 industry petition by reversing the agency's prior partial disapproval of certain HHC and subsequently issuing a final rule withdrawing the federally promulgated criteria.[43] EPA's May 10, 2019 approval concluded that the State's reliance on scientific inputs that were no longer reflective of the latest science was an appropriate risk-management decision.[44] The withdrawal of the federal rule went into effect on June 12, 2020, and as of that date, the HHC submitted by Washington on August 1, 2016 and approved by EPA on May 10, 2019 were in effect for CWA purposes.

On June 6, 2019, the State of Washington filed a complaint challenging the legality of EPA's May 2019 decision to reverse its November 2016 partial disapproval.[45] The Sauk-Suiattle Indian Tribe and Quinault Indian Nation subsequently joined Washington's lawsuit as plaintiff-intervenors. On June 6, 2020, following EPA's withdrawal of the promulgated federal HHC, another lawsuit was filed by the Makah Indian Tribe, the Pacific Coast Federation of Fishermen's Associations, and environmental groups challenging both EPA's withdrawal of the federally promulgated HHC and its May 10, 2019 decision to reverse the November 2016 partial disapproval.[46] In September 2020, the Plaintiffs in the case filed by the State of Washington amended their complaints to also challenge EPA's rule withdrawing the federal HHC.

Consistent with Executive Order 13990,[47] in February 2021, EPA sought and was granted an abeyance in both cases to conduct an initial review to determine whether it intended to reconsider the challenged actions. During this initial three-month abeyance, EPA decided to reconsider the challenged actions. Based on its initial review of the agency's prior actions, EPA sought a longer abeyance from the court, expressing substantial concern that Washington's HHC may not be adequately protective and may not be based on sound scientific rationale. On July 6, 2021, the Court granted EPA an abeyance to reconsider its prior actions and to propose protective HHC for Washington and take final action on the proposal within 18 months.

IV. Administrator's Determination That New or Revised HHC are Necessary for Washington

For the reasons explained below in section IV.A of this preamble, EPA has concluded that the Washington HHC that EPA disapproved in 2016 and later approved in 2019 (the ''2019 Reconsidered HHC'') [48] are not based on sound scientific rationale and are therefore not protective of the applicable designated uses in Washington. Accordingly, as set forth in section IV.B of this preamble, the Administrator has determined pursuant to CWA Section 303(c)(4)(B) that revised HHC are necessary. Pursuant to the authority of CWA Section 303(c)(4)(B), EPA is proposing new standards for Washington waters, as set forth in section V of this preamble.

The agency's determination and its decision to issue the proposed rulemaking are based on application of the CWA and EPA's regulations to the facts before the agency at this time. In reaching the conclusions supporting these decisions, the agency has also carefully evaluated its 2016 and 2019 actions on the State's criteria.

A. Existing Criteria Are Not Protective of Designated Uses of Waters in the State of Washington

EPA has determined that the 2019 Reconsidered HHC do not protect designated uses because the input values on which they rely are not supported by a sound scientific rationale. We review each of those input values—namely an RSC value of 1, BCFs, and a CRL of 2.3×10^5 for PCBs—in turn.

1. RSC Value: Washington's use of an RSC value of 1 to derive HHC is not based on sound scientific rationale as it apportions the entire ''safe'' dose of certain chemicals to drinking water and fish consumption, ignoring exposures to other sources of those chemicals. As discussed in section III.B above of this preamble, other sources of exposure include consumption of ocean fish and other foods (*e.g.,* fruits, vegetables, grains, meats, poultry), dermal exposure, and inhalation exposure, and other routes. Washington's use of an RSC of 1 to derive its criteria is based on the flawed assumption that 100% of human exposure to a pollutant is from fish and drinking water from waters that are subject to the State's WQS. Because humans are exposed to pollutants

[37] *Id.* at 26 (Determining that Washington ''did not provide adequate justification for using the Washington Department of Health cancer risk level for this specific chemical and then adjusting that cancer risk level so that the criteria would be equivalent to the NTR criteria'' and ''did not demonstrate how the criteria were derived using a cancer risk level that is based on scientifically sound rationale and protective of applicable designated uses, including the tribal subsistence fishing portion of the fish and shellfish harvesting use as informed by treaty-reserved fishing rights.'').

[38] *Id.* at 8.

[39] *Id.*

[40] *Id.*

[41] Petition submitted by Northwest Pulp and Paper Association, America Forest and Paper Association, Association of Washington Business, Greater Spokane Incorporated, Treated Wood Council, Western Wood Preservers Institute, Utility Water Act Group and the Washington Farm Bureau.

[42] EPA received letters from the Washington State Department of Ecology, Washington State Attorney General, the Northwest Indian Fisheries Commission, the Lower Elwha Klallam Tribe, the Nooksack Indian Tribe, the Jamestown S'Klallam Tribe, and Earthjustice (on behalf of the Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, and several Washington Waterkeepers).

[43] May 10, 2019 letter and enclosed Technical Support Document from Chris Hladick, Regional Administrator, EPA Region 10, to Maia Bellon, Director, Department of Ecology, Re: EPA's Reversal of the November 15, 2016 Clean Water Act Section 303(c) Partial Disapproval of Washington's Human Health Water Quality Criteria and Decision to Approve Washington's Criteria; Withdrawal of Certain Federal Water Quality Criteria Applicable to Washington, 85 FR 28494 (May 13, 2020).

[44] May 10, 2019 letter at pp. 8, 14–15.

[45] *State of Washington* v. *U.S. Envt'l Prot. Agency,* No. 2:19-cv-884–RAJ (W.D. Wash.).

[46] *Puget Soundkeeper Alliance et al.* v. *U.S. Envt'l Prot. Agency,* No. 2:20-cv-907–RAJ (W.D. Wash.).

[47] 86 FR 7037 (January 25, 2021).

[48] EPA disapproved 143 of Washington's HHC in 2016. In 2019, EPA reversed its disapproval of 141 of those HHC, leaving its disapproval of the two HHC for arsenic in place. This rule addresses the 141 HHC that EPA reversed its decision on in 2019.

through other sources of exposure, this assumption is scientifically unsound.

EPA has considered the statements made by the agency in its 2019 approval of Washington's HHC. In that approval, the agency concluded that the RSC value should be ''evaluated . . . in the context of the overall HHC package,'' noting that Washington used other ''conservative'' inputs such as a FCR of 175 g/day and a 10^{6} CRL.[49] After careful review, the agency concludes that this rationale does not reasonably support the conclusion that the State's criteria protect the designated uses and are based on sound scientific rationale.

First, the CRL utilized by the State is irrelevant to evaluating the reasonableness of the State's RSC because the CRL and RSC are inputs for derivation of criteria for mutually exclusive categories of pollutants: the CRL is an input for deriving criteria for carcinogens, whereas the RSC is an input for deriving criteria for non-carcinogens. Therefore, the CRL cannot offset or compensate for the health risk associated with the State's use of an RSC which assumes that 100% of human exposure to pollutants is from waters covered by the criteria.

Second, while the State's use of a FCR of 175 g/day more accurately represented Washington fish consumers than the prior FCR of 6.5 g/day, that revision did not take into account risks associated with other routes of exposure. Given the lack of any other criteria derivation components that implicitly or explicitly account for other sources of exposure discussed above, the agency concludes that the State's use of an RSC which ignores other sources does not protect designated uses and is not based on sound scientific rationale.

When Washington submitted its criteria in 2016, it asserted that its RSC choice was informed, in part, by the conclusion that the CWA has limited ability to control sources outside of its jurisdiction (*i.e.,* in non-water media).[50] The agency has considered the State's assertions and concludes that they do not support the conclusion that the State's criteria protect designated uses and are based on sound scientific rationale. First, as a factual matter, several of the other pollutant exposure routes that the RSC is intended to account for (*e.g.,* dermal exposure, inhalation) are impacted by water quality.[51] Second, and more fundamentally, EPA's longstanding approach to determining whether water quality criteria protect human health considers the totality of exposure which can contribute to adverse health effects. Even if the CWA does not provide a vehicle for addressing other sources of exposure, the protection of public health requires that those sources be accounted for when HHC are established. In the agency's judgment, this approach to deriving criteria is consistent with and advances the CWA's directive that WQS ''shall be as such to protect the public health or welfare'' (CWA Section 303(c)(2)(A)).

Accordingly, since 2000, EPA has recognized the need to account for contributions from other sources to ensure protection of individuals whose exposure could be greater than indicated by currently available data about exposures from drinking water and freshwater and estuarine fish consumption. The 2000 Methodology recommends that states account for unknown sources of exposure and additional potential exposures to unknown levels from other sources, such as ocean fish consumption, food consumption other than fish, respiratory exposure, and/or dermal exposure. While states can and do make risk management choices in developing criteria, using an RSC value that allocates the entirety of exposure to a subset of specific pathways directly addressed in criteria derivation inappropriately disregards the risks from other exposure routes. In deriving water quality criteria to protect human health, an appropriate exercise of risk management discretion would be to make any necessary adjustments to the pollutant-specific RSCs to account for state-specific or pollutant-specific information about other exposure routes. EPA's 2019 decision reversing our 2016 disapproval of a subset of Washington's HHC rested in part on a conclusion that the disapproval was based solely on Washington's failure to follow EPA's guidance in setting the RSC.[52] To be clear, EPA's guidance informs, but does not dictate, EPA's implementation of applicable statutory and regulatory requirements. Regarding RSC, the guidance recognizes the indisputable fact that exposure to pollutants through routes other than fish consumption can contribute to adverse impacts on human health and therefore need to be considered to ensure that criteria are scientifically sound and protect designated uses, as required by EPA's regulations. EPA's determination in this respect rests on the fact that the State's RSC ignores entirely those other routes of exposure.

As explained in section V below of this preamble, EPA followed the recommended approach in EPA's 2015 CWA Section 304(a) national recommended HHC to derive the water quality criteria in the proposed rulemaking, as well as in the final rule for Washington in 2016. We have applied pollutant-specific RSC values of less than or equal to 0.8 for all non-carcinogens and nonlinear carcinogens.[53] Attributing 80% or less of exposure to drinking water or fish consumption (*i.e.,* using an RSC value less than or equal to 0.8) ensures that an individual's total exposure to a contaminant does not exceed the RfD of non-carcinogenic and nonlinear carcinogenic chemicals.

2. *Use of Bioconcentration Factors (BCFs) instead of Bioaccumulation Factors (BAFs):* Washington used BCFs rather than BAFs to calculate its HHC, despite the availability of data to derive BAFs and EPA's default recommended BAFs. The use of BCFs rather than BAFs, where BAF data are available, to calculate the HHC is inconsistent with sound scientific rationale on the bioaccumulation of pollutants. As noted in section III.B.c of this preamble, BAFs account for the multiple pathways for bioaccumulation of a contaminant in an

[49] May 10, 2019 letter at p. 19.

[50] May 10, 2019 letter at pp. 16–17; *see* Department of Ecology. *Washington State Water Quality: Human health criteria and implementation tools, Overview of key decisions in rule amendment.* August 2016. Ecology Publication No. 16–10–025, p. 37. *https://fortress.wa.gov/ecy/publications/documents/1610025.pdf* (''The use of an RSC to compensate for sources of exposure outside the scope of the Clean Water Act when establishing HHC is a risk management decision that states need to carefully weigh. If the scope of the Clean Water Act is limited to addressing potential exposures from NPDES- or other Clean Water Act regulated discharges to surface water, it could be argued that an RSC of less than 1.0 inappropriately expands of the scope of what the Clean Water Act would be expected to control.'').

[51] From p. 4–16 of the 2000 Methodology: ''A number of drinking water contaminants are volatile and thus diffuse from water into the air where they may be inhaled. In addition, drinking water is used for bathing and, thus, there is at least the possibility that some contaminants in water may be dermally absorbed. Volatilization may increase exposure via inhalation and decrease exposure via ingestion and dermal absorption. The net effect of volatilization and dermal absorption upon total exposure to volatile drinking water contaminants is unclear in some cases and varies from chemical to chemical. Dermal exposures are also important to consider for certain population groups, such as children and other groups with high soil contact.''

[52] For example, the 2019 decision states that the disapproval decision ''appears to treat the 304(a) recommendation to use an RSC range of 0.2–0.8 as a requirement'' and also relied on a Frequently Asked Questions document that ''does not have the force and effect of law.''

[53] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

aquatic organism. BCFs only account for accumulation of a contaminant through water, whereas BAFs account for bioaccumulation through food, sediment, and water. As a result, the magnitude of bioaccumulation by aquatic organisms of certain chemicals can be substantially greater than the magnitude of bioconcentration absorbed solely from water. Using BCFs alone can therefore underestimate the extent of chemical accumulation in aquatic organisms, and can, in turn, affect human health through harmful exposure through fish and shellfish consumption. When data to derive BAFs are unavailable or inconclusive, it may be necessary to use BCFs to provide some approximation of pollutant uptake in aquatic organisms. Washington did have the data needed for the pollutants at issue here. Rather than use EPA's national recommended default BAFs or develop State-specific BAFs, Washington used decades-old national default BCFs that were recommended prior to the development of its current national default recommended BAFs, which are available for states to use in the absence of local data. Thus, because the 2019 Reconsidered HHC are based on BCFs even where scientifically defensible BAFs are available, they are insufficiently protective of Washington's designated uses and therefore do not meet the requirements of the CWA.

When EPA approved Washington's HHC in 2019, the agency acknowledged that Washington had spent several years engaging with stakeholders to develop its HHC. EPA's 2019 approval asserted that Washington ''was preparing to finalize its proposed HHC based on the EPA's prior recommended BCFs, not the new national default BAFs.'' [54] Because of that timing, in 2019 EPA determined that Washington's failure to incorporate BAFs was not a reason for disapproval.

EPA has determined that rationale was not well grounded then and should not apply now. As discussed above in section III.B.c. of this preamble, EPA began recommending the use of BAFs, rather than BCFs, in its 2000 Methodology, 15 years prior to its issuance of revised criteria recommendations in 2015. Furthermore, Washington was aware of the agency's scientific judgment that BAFs more accurately reflect the total uptake of a chemical.[55] The 2015 CWA Section 304(a) recommendations included pollutant-specific national default BAFs for states and authorized tribes to rely on. Even in the absence of these national default BAFs, states could still develop their own BAFs following EPA's 2000 Methodology. Therefore, not only was Washington aware of the science supporting the importance of using BAFs, it also had the opportunity to develop its own BAFs prior to developing its revised HHC and sufficient notice of EPA's nationally recommended pollutant-specific default BAFs.

In approving Washington's criteria relying on BCFs in 2019, EPA also emphasized consideration of the State's prerogative to make its own risk-management decisions. This rationale improperly accepted Washington's justifications for its use of BCFs as ''risk management'' decisions.[56] Washington gave four reasons for using BCFs (1) BCFs are more closely related to the environmental media (water) that is regulated under the CWA; (2) BCFs do not include as many inputs and predictions based on national datasets that may not be reflective of Washington's waters; (3) BCFs have fewer inputs and less uncertainty; and (4) relying on BCFs alone is acceptable under the CWA for criteria development.[57]

These justifications are not risk management decisions. The first one ignores the fact that the other exposure pathways taken into account in a BAF—food consumed by aquatic organisms and sediment—are affected by water quality regulated under the CWA. The second justification disregards the fact that EPA's national default recommended BCFs from 1980 are no more reflective of Washington's waters than EPA's national default recommended BAFs from 2015. As for the third justification, accounting for more exposure pathways may increase the inputs in a BAF calculation, and therefore potentially increase uncertainty. But excluding known sources of chemical accumulation in aquatic organisms because additional inputs have the potential to introduce additional uncertainty is not scientifically supportable. The fourth justification mischaracterizes the use of BCFs. EPA used BCFs prior to 2000 but now only uses those BCFs when data to derive BAFs are unavailable or inconclusive. As noted above, while states have latitude to make risk management decisions in developing WQS, in doing so, that discretion does not go so far as to permit states to make decisions that are not consistent with EPA's regulations which require that criteria be based on sound scientific rationale (40 CFR 131.11).

3. PCB Cancer Risk Level (CRL): The State-adopted HHC for PCBs are not protective of Washington's designated uses because of the selected chemical-specific CRL, which is not based on a sound scientific rationale. Washington adopted HHC for PCBs of 0.00017 µg/L for both ''water + organism'' and ''organism only'' based on a chemical-specific CRL of 2.3×10^{-5}. Washington's selected CRL of 2.3×10^{-5} is akin to a cancer risk of approximately 1 in 43,478, which is a greater risk than the 1 in 100,000 or 1 in 1,000,000 CRLs which are commonly used by states and authorized tribes in their WQS. For all other pollutants except PCBs, Washington used a CRL of 1 in 1,000,000 or 1×10^{-6}. As explained below, Washington's criteria for PCBs do not protect designated uses and are not based on sound scientific rationale.

First, Washington inappropriately links the stringency of its CRL with a value associated with its fish advisory program. In its 2016 submittal, Washington explained that ''[t]he chemical-specific risk level for PCBs was chosen to be consistent with the level of risk/hazard in the toxicity factor used by the [Washington Department of Health] in developing fish advisories.'' [58] The toxicity value that the Washington Department of Health uses for fish advisories is an RfD for the non-cancer impacts of one particular mixture of PCBs. Fish advisory programs are not bound by the same statutory and regulatory obligations as WQS. Setting protective HHC for PCBs requires evaluating the carcinogenic effects of PCBs in addition to the non-cancer impacts, since PCBs are reasonably anticipated to be a human carcinogen.[59] EPA has published a quantitative estimate of carcinogenic risk for PCBs.[60] Relying on a risk level

[54] May 10, 2019 letter at p. 16.

[55] Department of Ecology. *Washington State Water Quality: Human health criteria and implementation tools, Overview of key decisions in rule amendment.* August 2016. Ecology Publication No. 16–10–025, pp. 46–49. *https://fortress.wa.gov/ecy/publications/documents/1610025.pdf.*

[56] May 10, 2019 letter at p. 17.

[57] Department of Ecology. *Washington State Water Quality: Human health criteria and implementation tools, Overview of key decisions in rule amendment.* August 2016. Ecology Publication No. 16–10–025, p. 56. *https://fortress.wa.gov/ecy/publications/documents/1610025.pdf.*

[58] Department of Ecology. *Washington State Water Quality: Human health criteria and implementation tools, Overview of key decisions in rule amendment.* August 2016. Ecology Publication No. 16–10–025, p. 67. *https://fortress.wa.gov/ecy/publications/documents/1610025.pdf.*

[59] U.S. Department of Health and Human Services (HHS). National Toxicology Program. 15th Report on Carcinogens. December 21, 2021. *https://ntp.niehs.nih.gov/whatwestudy/assessments/cancer/roc/index.html.*

[60] *https://iris.epa.gov/static/pdfs/0294_summary.pdf.*

associated solely with an RfD for non-cancer impacts used by the state's fish advisory program is thus not a sound scientific rationale for HHC that must protect against *both* carcinogenic and non-carcinogenic adverse health effects. Additionally, fish advisories are intended to advise the public where current levels of pollution may result in designated uses not being met, whereas under EPA regulations, water quality criteria must be set at levels that ''protect'' the designated use (40 CFR 131.11(a)). Thus, criteria which are based in part on impaired water quality are not consistent with EPA's regulations.[61]

Washington's choice of a less protective CRL for PCBs also cannot be reconciled with the particular characteristics of PCBs in the environment and the science underlying human exposure to PCBs. PCBs are a group of man-made compounds that are highly bioaccumulative in aquatic organisms and have high environmental persistence. Humans are exposed to PCBs through fish and shellfish consumption, and PCBs can accumulate in human tissue, causing adverse health effects. The primary source of exposure to PCBs is through high-fat foods[62] such as higher trophic-level fish. Moreover, these higher trophic-level fish are a major component of a high fish consumers' diet in Washington. While there is no specific CRL mandated by EPA regulations, the selected CRL of 2.3×10^{-5} is over an order of magnitude greater than the CRL Washington uses for all other pollutants. Despite the particular risks present here, EPA has discerned no rationale related to health protection or risk management to support using a less protective pollutant specific CRL for this pollutant, which is of particular environmental concern, than is otherwise applicable for all other pollutants in the State (1×10^{-6} in Washington).

Finally, Washington's PCB criteria are based on an application of the HHC derivation equation that was outcome-determinative. Washington arrived at the PCB CRL by solving for what the CRL would be if the body weight and FCR inputs into the equation were updated and the desired end result was the NTR PCB criteria already in effect at the time. As noted above, Washington began with a CRL based on the level of risk/hazard associated with that the State uses to develop fish advisories. When this CRL, paired with the updated body weight and FCR, resulted in criteria that were less stringent than the NTR PCB criteria, Washington then adjusted the CRL to maintain the NTR value.[63]

Thus, Washington's PCB criteria are the same as the PCB criteria in the NTR that EPA had determined in 2015 to be insufficient because they were based, in part, on a FCR of 6.5 g/day that EPA concluded was not representative of fish consumption in Washington, including consumption by tribes with reserved rights.[64] While the State revised its FCR to 175 g/day, its PCB-specific change to the CRL offset any additional health protection afforded by the FCR adjustment and therefore failed to remedy EPA's previous finding that the criteria did not adequately protect fish consumers in Washington. For the reasons above, EPA concludes that Washington's State-adopted HHC currently in effect for PCBs are not sufficient to protect Washington's designated uses and do not meet the requirements of the CWA.

B. Clean Water Act 303(c)(4)(B) Administrator's Determination

Because the 2019 Reconsidered HHC, which are currently effective for CWA purposes in Washington, are not based on sound scientific rationale and are not protective of the applicable designated uses per the CWA and EPA's regulations at 40 CFR 131.11, EPA determines under CWA Section 303(c)(4)(B) that revised WQS for the protection of human health in Washington waters are necessary to meet the requirements of the CWA. EPA, therefore, proposes to revise these HHC for Washington in accordance with this CWA Section 303(c)(4)(B) Administrator's determination, as set forth in section V of this preamble. EPA's determination is not itself a final action, nor part of a final action, at this time. After consideration of comments on the proposed rulemaking, EPA will take final agency action on this proposed rulemaking. It is at that time that any change to the WQS applicable to Washington waters for CWA purposes would occur.

V. Derivation of Human Health Criteria for Washington

A. Scope of EPA's Proposal

Based on the determination explained above, EPA is proposing Federal criteria that would supersede the 2019 Reconsidered HHC. EPA is not proposing to change or supersede the federal HHC that EPA promulgated for arsenic,[65] methylmercury, or bis (2-chloro-1-methylethyl) ether in 2016 and that remain in place for CWA purposes, nor Washington's HHC that EPA approved in 2016.[66]

The HHC in this proposed rulemaking would apply to surface waters under the State of Washington's jurisdiction, and not to waters within Indian country,[67] unless otherwise specified in federal law.

B. Washington-Specific Human Health Criteria Inputs

a. Fish Consumption Rate, Body Weight, Drinking Water Intake

EPA proposes to derive HHC for Washington using the same FCR of 175 g/day, body weight of 80 kg and drinking water intake rate of 2.4 L/day that Washington used in 2016[68] and that EPA used in its 2016 federal rule.[69] EPA does not have new data or information suggesting a need to revisit those choices at this time, and thus is applying the same rationale here as the agency articulated to support its use of those inputs in the 2016 federal rule.[70] The agency believes it is important to keep these values consistent between the HHC in this rule and the other HHC that this rule will not impact (*i.e.,* the HHC that Washington adopted and EPA approved in 2016, and the federal HHC that remain in place for arsenic, methylmercury, or bis (2-chloro-1-

[61] While EPA has determined that fish advisories may be used in determining attainment of WQS, this is distinct from using such advisories in establishing WQS. *See* Letter from Geoffrey Grubbs, USEPA. 2000. (''EPA considers fish and shellfish tissue pollutant concentrations a scientifically defensible basis for determining attainment of water quality standards.'').

[62] *https://www.atsdr.cdc.gov/csem/polychlorinated-biphenyls/what_routes.html.*

[63] Department of Ecology. *Washington State Water Quality: Human health criteria and implementation tools, Overview of key decisions in rule amendment.* August 2016. Ecology Publication No. 16–10–025, p. 67. *https://fortress.wa.gov/ecy/publications/documents/1610025.pdf.*

[64] As described in EPA's 2016 final Washington WQS rule, 81 FR 85422–26, numerous tribes in Washington have treaty-reserved rights to fish for their subsistence on waters throughout the State. EPA found that tribal members consume far greater quantities of fish in the exercise of those rights than the 6.5 g/day associated with the NTR PCB criteria, and accordingly found that those criteria were insufficiently protective. *See* 80 FR 55066.

[65] EPA promulgated arsenic HHC for Washington in the National Toxics Rule of 1992. EPA's federal rule in 2016 moved the arsenic criteria from 40 CFR 131.36 to 40 CFR 131.45.

[66] EPA is not proposing to change or supersede Washington's HHC for dioxin and thallium that EPA approved in 2019. EPA had previously taken no action on these pollutants in 2016.

[67] *See* 18 U.S.C. 1151 for definition of Indian Country.

[68] Department of Ecology. *Washington State Water Quality Standards: Human health criteria and implementation tools, Overview of key decisions in rule amendment.* August 2016. Ecology Publication no. 16–10–025.

[69] *Revision of Certain Water Quality Standards Applicable to Washington,* 81 FR 85417 (November 28, 2016).

[70] *Id.* at 85,420; 85,426–428.

methylethyl) ether), because these values are associated with the population that the criteria are intended to protect and are not pollutant-specific.

b. Pollutant-Specific Reference Doses and Cancer Slope Factors

EPA proposes to derive HHC for Washington using the same reference doses and cancer slope factors that Washington used in 2016 [71] and that EPA used in its 2016 federal rule.[72] These are the same toxicity values that EPA uses in its CWA Section 304(a) national recommended HHC. While there may be new toxicity information available for certain pollutants that is not yet reflected in EPA's CWA Section 304(a) national recommended HHC, such information has not yet been reviewed through EPA's comprehensive CWA Section 304(a) criteria development process and therefore is not incorporated into this proposal.[73] See Table 1, columns B1 and B3 for a list of EPA's proposed toxicity factors by pollutant.

c. Cancer Risk Level

EPA proposes to derive HHC for Washington using the same CRL of 10^{-6} that Washington used in 2016 [74] and that EPA used in its 2016 federal rule [75] for all pollutants, including PCBs.

EPA's selection of a 10^{-6} CRL is consistent with EPA's 2000 Methodology, which states that EPA intends to use the 10^{-6} level when promulgating water quality criteria for states and tribes, which reflects an appropriate risk for the general population.[76] In addition, as noted above and in EPA's 2016 final rule for Washington,[77] several tribes in Washington have treaty-reserved rights to fish on waters throughout the State. Consistent with those rights, tribal members catch and consume fish for their subsistence. EPA's selection of a 10^{-6} CRL is protective of tribal members exercising their legal right to harvest and consume fish and shellfish at subsistence levels.[78]

Finally, many of Washington's rivers are in the Columbia River basin, upstream of Oregon's portion of the Columbia River. Oregon's criteria for PCBs and other pollutants are based on a FCR of 175 g/day and a CRL of 10^{-6}. EPA's proposal to derive HHC for Washington using a CRL of 10^{-6} along with a FCR of 175 g/day helps ensure that Washington's criteria will provide for the attainment and maintenance of Oregon's downstream WQS as required by 40 CFR 131.10(b).

d. Relative Source Contribution

EPA recommends using an RSC for non-carcinogens and nonlinear carcinogens to account for sources of exposure other than drinking water and consumption of inland and nearshore fish and shellfish (see section III.B.d). In 2015, after evaluating information on chemical uses, properties, occurrences, releases to the environment and regulatory restrictions, EPA developed chemical-specific RSCs for non-carcinogens and nonlinear carcinogens ranging from 0.2 (20 percent) to 0.8 (80 percent) following the Exposure Decision Tree approach described in EPA's 2000 Human Health Methodology.[79] [80]

When EPA promulgated HHC for Washington in 2016, EPA adjusted RSC values using a ratio of the national dataset characterizing all FCRs versus inland and nearshore-only FCRs derived from the NHANES dataset. We then applied this ratio to the proportion of the RfD reserved for inland and nearshore fish consumption in the RSC. We used this adjustment to account for double-counted potential exposure to certain chemicals in certain anadromous fish species (*e.g.,* salmon). This approach involves the following assumptions:

- The pollutant concentrations in anadromous fish are the same as those in inland and nearshore fish; and
- the ratio of all fish to inland and nearshore fish from NHANES data approximates the ratio of inland, nearshore, and anadromous fish to just inland and nearshore fish from Columbia River Inter-Tribal Fish Commission (CRITFC) [81] data (since CRITFC data were used to derive the 175 g/day FCR).

At the 90th percentile rate of consumption, the national adult consumption rate from NHANES data for all fish is 53 g/day and 22 g/day for inland and nearshore-only fish, or a ratio of 2.4. Applying this to an RSC of 0.2 yields 0.48, or 0.5 rounding to a single decimal place. Because the 175 g/day FCR includes some but not all marine species, EPA decided to use this approach to adjust the RSC values. However, EPA only adjusted RSC values to 0.5 for criteria calculations previously using an RSC between 0.2 and 0.5. Criteria derived using an RSC greater than 0.5 remained unchanged. EPA proposes to use these same 2016 RSCs to derive HHC for Washington in this rule, having no new data or information to suggest revising RSCs. The inclusion of protective RSCs in the development of HHC is a science-based decision that protects human health by ensuring that a person's exposure to multiple sources of a chemical is accounted for. See Table 1, column B2 for a list of EPA's proposed RSCs by pollutant.

e. Pollutant-Specific Bioaccumulation Factors

Where data are available, EPA uses BAFs to account for the uptake and retention of waterborne chemicals by aquatic organisms from all surrounding media and to ensure that resulting criteria are science-based and protect designated uses for human health. As in the 2016 federal rule for Washington,[82]

[71] Department of Ecology. *Washington State Water Quality Standards: Human health criteria and implementation tools, Overview of key decisions in rule amendment.* August 2016. Ecology Publication no. 16–10–025.

[72] *Revision of Certain Water Quality Standards Applicable to Washington,* 81 FR 85417 (November 28, 2016).

[73] For example, there are 7 polycyclic aromatic hydrocarbons for which there is new toxicity information available since the promulgation of the 2016 federal rule. Because the CWA Section 304(a) criteria development process can take several years, EPA is not able to review this information and complete this rulemaking by the end of the 18-month abeyance. Once EPA has developed updated CWA Section 304(a) criteria for these pollutants, the State may evaluate its HHC for these pollutants (*e.g.,* during a triennial review), adopt new HHC based on the CWA Section 304(a) updates, and submit these HHC to EPA for review.

[74] Department of Ecology. *Washington State Water Quality Standards: Human health criteria and implementation tools, Overview of key decisions in rule amendment.* August 2016. Ecology Publication no. 16–10–025.

[75] *Revision of Certain Water Quality Standards Applicable to Washington,* 81 FR 85417 (November 28, 2016).

[76] EPA 2000 Methodology, p. 2–6. The Methodology recommends that states set human health criteria CRLs for the target general population at either 10^{-5} or 10^{-6} (p. 2–6) and also notes that states and authorized tribes can always choose a more stringent risk level, such as 10^{-7} (p. 1–12).

[77] 81 FR 85422–26.

[78] In 2016, tribes in Washington State generally viewed 175 g/day as a compromise minimum consumption rate so long as it is coupled with a CRL of 10^{-6}. 2016 Partial Approval/Disapproval p. 15.

[79] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004. *https://www.epa.gov/sites/default/files/2018-10/documents/methodology-wqc-protection-hh-2000.pdf.*

[80] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[81] *Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin* (CRITFC 1994).

[82] *Revision of Certain Water Quality Standards Applicable to Washington,* 81 FR 85417 (November 28, 2016).

EPA proposes to apply the trophic level four BAF from the 2015 CWA Section 304(a) HHC updates in conjunction with the 175 g/day FCR.[83] EPA has no new data or information to suggest an alternative to its 2016 decision to use the trophic level four BAF, given that the species commonly consumed in Washington are trophic level four fish (*e.g.,* salmon). Where science-based BAFs are not available at this time for certain pollutants, EPA proposes to use the BCFs that EPA used the last time it updated its CWA Section 304(a) recommended criteria for those pollutants as the best available scientific information. See Table 1, columns B4 and B5 for a list of EPA's proposed bioaccumulation factors by pollutant.

C. Proposed Human Health Criteria for Washington

EPA proposes 141 HHC for 72 different pollutants (70 organism-only criteria and 71 water-plus-organism criteria) to protect the applicable designated uses of Washington's waters (see Table 1). The proposed HHC are the same criteria that EPA promulgated in 2016. The water-plus-organism criteria in column C1 of Table 1 are the applicable criteria for any waters that include the Domestic Water use (domestic water supply) defined in Washington's WQS (WAC 173–201A–600). The organism-only criteria in column C2 of Table 1 are the applicable criteria for any waters that do not include the Domestic Water use (domestic water supply) and that Washington defines at WAC 173–201A–600 and 173–201A–610 as the following:

- Fresh waters—Harvesting (fish harvesting), and Recreational Uses;
- Marine waters—Shellfish Harvesting (shellfish—clam, oyster, and mussel—harvesting), Harvesting (salmonid and other fish harvesting, and crustacean and other shellfish—crabs, shrimp, scallops, etc.—harvesting), and Recreational Uses.

EPA solicits comment on the criteria and the inputs EPA used to derive these criteria.

TABLE 1—EPA PROPOSED HUMAN HEALTH CRITERIA FOR WASHINGTON

A		B					C	
Chemical	CAS No.	Cancer slope factor, CSF (per mg/kg·d) (B1)	Relative source Contribution, RSC (-) (B2)	Reference dose, RfD (mg/kg·d) (B3)	Bio-accumulation factor (L/kg tissue) (B4)	Bio-concentration factor (L/kg tissue) (B5)	Water & organisms (µg/L) (C1)	Organisms only (µg/L) (C2)
1. 1,1,1-Trichloroethane	71556		0.50	2	10		20,000	50,000
2. 1,1,2,2-Tetrachloroethane	79345	0.2			8.4		0.1	0.3
3. 1,1,2-Trichloroethane	79005	0.057			8.9		0.35	0.90
4. 1,1-Dichloroethylene	75354		0.50	0.05	2.6		700	4,000
5. 1,2,4-Trichlorobenzene	120821	0.029			430		0.036	0.037
6. 1,2-Dichlorobenzene	95501		0.50	0.3	82		700	800
7. 1,2-Dichloroethane	107062	0.0033			1.9		8.9	73
8. 1,2-Diphenylhydrazine	122667	0.8			27		0.01	0.02
9. 1,2-Trans-Dichloroethylene	156605		0.50	0.02	4.7		200	1,000
10. 1,3-Dichlorobenzene	541731		0.50	0.002	190		2	2
11. 1,3-Dichloropropene	542756	0.122			3.0		0.22	1.2
12. 1,4-Dichlorobenzene	106467		0.50	0.07	84		200	200
13. 2,4-Dichlorophenol	120832		0.50	0.003	48		10	10
14. 2,4-Dinitrophenol	51285		0.50	0.002	4.4		30	100
15. 2-Chloronaphthalene	91587		0.80	0.08	240		100	100
16. 2-Methyl-4,6-Dinitrophenol	534521		0.50	0.0003	10		3	7
17. 4,4'-DDD	72548	0.24			240,000		7.9E–06.	7.9E–06
18. 4,4'-DDE	72559	0.167			3,100,000		8.8E–07	8.8E–07
19. 4,4'-DDT	50293	0.34			1,100,000		1.2E–06	1.2E–06
20. Acenaphthene	83329		0.50	0.06	510		30	30
21. Aldrin	309002	17			650,000		4.1E–08	4.1E–08
22. alpha-BHC	319846	6.3			1,500		4.8E–05	4.8E–05
23. alpha-Endosulfan	959988		0.50	0.006	200		6	7
24. Anthracene	120127		0.50	0.3	610		100	100
25. Antimony	7440360		0.50	0.0004		1	6	90
26. Benzo(a) Anthracene	56553	0.73			3,900		0.00016	0.00016
27. Benzo(a) Pyrene	50328	7.3			3,900		1.6E–05	1.6E–05
28. Benzo(b) Fluoranthene	205992	0.73			3,900		0.00016	0.00016
29. Benzo(k) Fluoranthene	207089	0.073			3,900		0.0016	0.0016
30. beta-BHC	319857	1.8			180		0.0013	0.0014
31. Bis(2-Ethylhexyl) Phthalate	117817	0.014			710		0.045	0.046
32. Bromoform	75252	0.0045			8.5		4.6	12
33. Butylbenzyl Phthalate	85687	0.0019			19,000		0.013	0.013
34. Chlordane	57749	0.35			60,000		2.2E–05	2.2E–05
35. Chlorobenzene	108907		0.50	0.02	22		100	200
36. Chlorodibromomethane	124481	0.04			5.3		0.60	2.2
37. Chloroform	67663		0.50	0.01	3.8		100	600
38. Chrysene	218019	0.0073			3,900		0.016	0.016
39. Cyanide	57125		0.50	0.0006		1	9	100
40. Dibenzo(a,h) Anthracene	53703	7.3			3,900		1.6E–05.	1.6E–05
41. Dichlorobromomethane	75274	0.034			4.8		0.73	2.8
42. Dieldrin	60571	16			410,000		7.0E–08	7.0E–08
43. Diethyl Phthalate	84662		0.50	0.8	920		200	200
44. Dimethyl Phthalate	131113		0.50	10	4,000		600	600

[83] Because the surveyed population upon which the 175 g/day FCR is based consumed almost exclusively trophic level four fish (*i.e.,* predator fish species), EPA proposes to use the trophic level four BAF from the 2015 CWA Section 304(a) HHC updates in conjunction with the 175 g/day FCR, in order to derive protective criteria. See *Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin* (CRITFC 1994).

TABLE 1—EPA PROPOSED HUMAN HEALTH CRITERIA FOR WASHINGTON—Continued

A		B					C	
Chemical	CAS No.	Cancer slope factor, CSF (per mg/kg·d) (B1)	Relative source Contribution, RSC (-) (B2)	Reference dose, RfD (mg/kg·d) (B3)	Bio-accumulation factor (L/kg tissue) (B4)	Bio-concentration factor (L/kg tissue) (B5)	Water & organisms (µg/L) (C1)	Organisms only (µg/L) (C2)
45. Di-n-Butyl Phthalate	84742		0.50	0.1	2,900		8	8
46. Endosulfan Sulfate	1031078		0.50	0.006	140		9	
47. Endrin	72208		0.80	0.0003	46,000		0.002	0.002
48. Ethylbenzene	100414		0.50	0.022	160		29	31
49. Fluoranthene	206440		0.50	0.04	1,500		6	6
50. Fluorene	86737		0.50	0.04	710		10	10
51. gamma-BHC; Lindane	58899		0.50	0.0047	2,500		0.43	0.43
52. Heptachlor	76448	4.1			330,000		3.4E–07	3.4E–07
53. Heptachlor Epoxide	1024573	5.5			35,000		2.4E–06	2.4E–06
54. Hexachlorobenzene	118741	1.02			90,000		5.0E–06	5.0E–06
55. Hexachlorobutadiene	87683	0.04			1,100		0.01	0.01
56. Hexachlorocyclopentadiene	77474		0.50	0.006	1,300		1	1
57. Hexachloroethane	67721	0.04			600		0.02	0.02
58. Indeno(1,2,3-cd) Pyrene	193395	0.73			3,900		0.00016	0.00016
59. Methyl Bromide	74839		0.50	0.02	1.4		300	
60. Methylene Chloride	75092	0.002			1.6		10	100
61. Nickel	7440020		0.50	0.02		47	80	100
62. Nitrobenzene	98953		0.50	0.002	3.1		30	100
63. Pentachlorophenol (PCP)	87865	0.4			520		0.002	0.002
64. Phenol	108952		0.50	0.6	1.9		9,000	70,000
65. Polychlorinated Biphenyls (PCBs)		2				31,200	[a]7E–06	[a]7E–06
66. Pyrene	129000		0.50	0.03	860		8	8
67. Selenium	7782492		0.50	0.005		4.8	60	200
68. Tetrachloroethylene	127184	0.0021			76		2.4	2.9
69. Toluene	108883		0.50	0.0097	17		72	130
79. Trichloroethylene	79016	0.05			13		0.3	0.7
71. Vinyl Chloride	75014	1.5			1.7			0.18
72. Zinc	7440666		0.50	0.3		47	1,000	1,000

[a] This criterion applies to total PCBs (*e.g.,* the sum of all congener or isomer or homolog or Aroclor analyses).

D. Applicability

Under the CWA, Congress gave states primary responsibility for developing and adopting WQS for their navigable waters (CWA Section 303(a)–(c)). Although EPA is proposing revised HHC for Washington, Washington continues to have the option to adopt and submit to EPA revised HHC for the State's waters consistent with CWA Section 303(c) and EPA's implementing regulations at 40 CFR part 131. Consistent with CWA Section 303(c)(4), if Washington adopts and submits revised HHC and EPA approves such criteria before finalizing this proposed rulemaking, EPA would not proceed with the final rule for those waters and/or pollutants for which EPA approves Washington's criteria.

If EPA finalizes this proposed rulemaking, and Washington subsequently adopts and submits new HHC, EPA's federally promulgated criteria will remain applicable for purposes of the CWA until EPA withdraws the federally promulgated criteria. EPA would undertake such a rulemaking to withdraw the Federal criteria if and when Washington adopts and EPA approves corresponding criteria that meet the requirements of Section 303(c) of the CWA and EPA's implementing regulations at 40 CFR part 131.

E. Alternative Regulatory Approaches and Implementation Mechanisms

The federal WQS regulation at 40 CFR part 131 provides several tools that Washington has available to use at its discretion when implementing or deciding how to implement these HHC, once finalized. Among other things, EPA's WQS regulation: (1) Specifies how states and authorized tribes establish, modify, or remove designated uses (40 CFR 131.10); (2) specifies the requirements for establishing criteria to protect designated uses, including criteria modified to reflect site-specific conditions (40 CFR 131.11); (3) authorizes and provides a regulatory framework for states and authorized tribes to adopt WQS variances where it is not feasible to attain the applicable WQS at that time (40 CFR 131.14); and (4) allows states and authorized tribes to authorize the use of compliance schedules in NPDES permits to meet water quality-based effluent limits (WQBELs) derived from the applicable WQS (40 CFR 131.15). Each of these approaches is discussed in more detail in the next sections. Whichever approach a state pursues, however, all NPDES permits would need to comply with EPA's regulations at 40 CFR 122.44(d)(1)(i).

a. Designated Uses

EPA's proposed HHC apply to waters that Washington has designated for the following:

- Fresh waters—Harvesting (fish harvesting), Domestic Water (domestic water supply), and Recreational Uses;
- Marine waters—Shellfish Harvesting (shellfish—clam, oyster, and mussel—harvesting), Harvesting (salmonid and other fish harvesting, and crustacean and other shellfish—crabs, shrimp, scallops, etc.—harvesting), and Recreational Uses (see WAC 173–201A–600 and WAC 173–201A–610).

The federal regulation at 40 CFR 131.10(g) provides requirements for establishing, modifying, and removing designated uses when attaining the use is not feasible based on one of the six factors in the regulation. If Washington removes a use and adopts the highest attainable use,[84] the State must also

[84] If a state or authorized tribe adopts a new or revised WQS based on a required use attainability analysis, then it must also adopt the highest attainable use (40 CFR 131.10(g)). The highest attainable use is the modified aquatic life, wildlife, or recreation use that is both closest to the uses

Continued

adopt criteria to protect the newly designated highest attainable use consistent with 40 CFR 131.11. It is possible that criteria other than the federally promulgated criteria would protect the highest attainable use. If EPA finds removal or modification of the designated use and the adoption of the highest attainable use and criteria to protect that use to be consistent with CWA Section 303(c) and the implementing regulation at 40 CFR part 131, the agency would approve the revised WQS. EPA would then undertake a rulemaking to withdraw the corresponding federal WQS for the relevant water(s).

b. WQS Variances

Washington's WQS provide authority to apply WQS variances when implementing federally promulgated HHC, as long as such WQS variances are adopted consistent with 40 CFR 131.14 and submitted to EPA for review under CWA Section 303(c). The federal regulation at 40 CFR 131.3(o) defines a WQS variance as a time-limited designated use and criterion, for a specific pollutant or water quality parameter, that reflects the highest attainable condition during the term of the WQS variance. A WQS variance may be appropriate if attaining the use and criterion would not be feasible during the term of the WQS variance because of one of the seven factors specified in 40 CFR 131.14(b)(2)(i)(A). These factors include a situation where NPDES permit limits more stringent than technology-based controls would result in substantial and widespread economic and social impact. WQS variances adopted in accordance with 40 CFR 131.14 (including a public hearing consistent with 40 CFR 25.5) provide a flexible but defined pathway for states and authorized tribes to issue NPDES permits with limits that are based on the highest attainable condition during the term of the WQS variance. This allows dischargers to make water quality improvements when the WQS is not immediately attainable but may be in the future. When adopting a WQS variance, states and authorized tribes specify the interim requirements of the WQS variance by identifying a quantitative expression that reflects the highest attainable condition (HAC) during the term of the WQS variance, establishing the term of the WQS variance, and describing the pollutant control activities expected to occur over the specified term of the WQS variance. WQS variances provide a legal avenue by which NPDES permit limits can be written to comply with the WQS variance rather than the underlying WQS for the term of the WQS variance. If dischargers are still unable to meet the WQBELs derived from the applicable WQS once a WQS variance term is complete, the regulation allows the State to adopt a subsequent WQS variance if it is adopted consistent with 40 CFR 131.14. EPA is proposing HHC that apply to use designations that Washington has already established. Washington's WQS regulations currently include provisions to use WQS variances when implementing criteria (see WA 173–210A–420), as long as such WQS variances are adopted consistent with 40 CFR 131.14 and approved by EPA. Washington may use the State's EPA-approved WQS variance procedures when adopting such WQS variances.

c. NPDES Permit Compliance Schedules

EPA's regulations at 40 CFR 122.47 and 131.15 address how permitting authorities can use schedules for compliance with a limit in the NPDES permit if the discharger needs additional time to undertake actions like facility upgrades or operation changes to meet a WQBEL based on the applicable WQS. EPA's regulation at 40 CFR 122.47 allows a permitting authority to include a compliance schedule in the NPDES permit, when appropriate and where authorized by the state, to provide a discharger with additional time to meet a WQBEL implementing applicable WQS. EPA's regulation at 40 CFR 131.15 requires that a state that intends to allow the use of NPDES permit compliance schedules adopt specific provisions authorizing their use and obtain EPA approval under CWA Section 303(c) to ensure that a decision to allow a permit compliance schedule is transparent and allows for public input.[85] EPA already has approved Washington's State law provision authorizing the use of permit compliance schedules (see WAC–173–201A–510(4)), consistent with 40 CFR 131.15. Washington's compliance schedule authorizing provision is not affected by this rule. Washington is authorized to grant permit compliance schedules, as appropriate, based on the federal HHC in Washington, if such permit compliance schedules are consistent with EPA's permitting regulation at 40 CFR 122.47.

VI. Economic Analysis

EPA focused its economic analysis on the potential cost impacts to current holders of individual NPDES permits (point sources) and the costs the State of Washington may bear to develop Total Maximum Daily Loads (TMDLs) for waters newly identified as impaired under CWA Section 303(d) using the proposed WQS. Costs might also arise to holders of general permits[86] should the State modify those permits in some manner as a result of the proposed WQS, once finalized. Costs might also arise to sectors whose operations are nonpoint sources of pollutants through implementation of TMDLs or through other voluntary, incentivized, or State-imposed controls. This rule does not directly regulate nonpoint sources and under the CWA states are responsible for the regulation of nonpoint sources. EPA recognizes that controls for nonpoint sources may be part of future TMDLs, but any such future decisions will be made by the State. Nonpoint sources are intermittent, variable, and occur under hydrologic or climatic conditions associated with precipitation events. Data to model and evaluate the potential cost impacts associated with nonpoint sources were not available and any estimate would be too uncertain to be informative. EPA also did not estimate potential sediment remediation costs for this analysis.

These WQS may serve as a basis for development of NPDES permit limits. Washington has NPDES permitting authority and retains considerable discretion in implementing standards. EPA evaluated the potential costs to NPDES dischargers associated with State implementation of EPA's proposed criteria. This analysis is documented in ''Economic Analysis for Water Quality Standards Applicable to the State of Washington,'' which can be found in the record for this rulemaking. Any NPDES-permitted facility that discharges pollutants for which the revised HHC are more stringent than the applicable aquatic life criteria (or for which HHC are the only applicable criteria) could potentially incur compliance costs. The types of affected facilities could include industrial facilities and POTWs discharging wastewater to surface waters (*i.e.,* point sources).

A. Identifying Affected Entities

EPA identified 406 point source facilities that could ultimately be

specified in Section 101(a)(2) of the CWA and attainable, based on the evaluation of the factor(s) in 40 CFR 131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the state demonstrates the relevant use specified in Section 101(a)(2) of the Act and sub-categories of such a use are not attainable (see 40 CFR 131.3(m)).

[85] 80 FR 51022, August 21, 2015.

[86] General permits typically focus on best management practices.

affected by this proposed rulemaking. Of these potentially affected facilities, 73 are major dischargers and 333 are minor dischargers. EPA did not include general permit facilities in its analysis because data for such facilities are limited and requirements typically focus on best management practices. Of the potentially affected facilities, EPA evaluated a sample of 18 major facilities. Minor facilities are less likely to incur costs as a result of implementation of the rule because of the reduced potential for significant presence of toxic pollutants in their effluent. EPA did not have effluent data on toxic pollutants to evaluate minor facilities for this analysis. Table 2 summarizes these potentially affected facilities by type and category.

TABLE 2—POTENTIALLY AFFECTED FACILITIES

Category	Minor	Major	All
Municipal	169	44	213
Industrial	164	29	193
Total	333	73	406

B. Method for Estimating Costs to Point Sources

EPA evaluated the two major municipal facilities with design flows greater than 100 mgd and the largest industrial facility, to attempt to capture the facilities with the potential for the largest costs. For the remaining major facilities, EPA evaluated a random sample of facilities to represent discharger type and category. For all sample facilities, EPA evaluated existing baseline permit conditions, reasonable potential to exceed HHC based on the proposed rulemaking, and potential to exceed projected effluent limitations based on the last three years of effluent monitoring data (if available). Only compliance actions and costs that would be needed above the baseline level of controls are attributable to the proposed rulemaking.

EPA assumes that dischargers would pursue the least cost means of compliance with WQBELs. Compliance actions attributable to the proposed rulemaking may include pollution prevention, end-of-pipe treatment, and alternative compliance mechanisms (*e.g.,* WQS variances). EPA annualizes capital costs, including study (*e.g.,* WQS variance) and program (*e.g.,* pollution prevention) costs, over 20 years using discount rates of 3 percent and 7 percent to obtain total annual costs per facility. To obtain an estimate of total costs to point sources, EPA extrapolates the annualized costs for the random sample based on the flow volume for the sample facilities and the flow volume for all facilities.

C. Results

Based on the results for 18 sample facilities across 10 industrial and municipal categories,[87] EPA did not identify any incremental costs to any major point source discharges of process wastewater from POTWs or industrial facilities attributable to the proposed criteria revisions. This does not mean that EPA anticipates there would be no costs to point sources over time to implement controls or modify processes to meet future permit limits, only that available data did not indicate the immediate need for the facilities evaluated. It would be highly speculative to attempt to estimate potential costs either based on the possibility of measuring pollutant levels at lower levels as a result of future requirements or future technology, or based on changes to facility operations or practices.

One important contributing factor to examining point source costs is the limitations of required analytical methods to measure chemical concentrations in effluents. Nearly half of pollutant parameters addressed in this proposed rulemaking have analytical quantitation limits that are above both the criteria currently in place and the proposed criteria. PCBs are a good example. The current criterion in place is 170 picograms per liter (pg/L) and the proposed criterion is 7 pg/L. However, the State identifies the analytical quantitation limit for effluent measurement as 500,000 pg/L. EPA has completed a multi-laboratory validation of a new analytical method for PCBs (method 1628) that has an average analytical quantitation limit for each PCB congener of approximately 2,000 pg/L, which is a substantial improvement over the current regulatory method, but still well above either the criterion currently in place or the proposed criterion. As a general matter, analytical methods and quantitation limits are subject to change over time. As such, it is important that WQS reflect the necessary level of protection regardless of contemporary limitations of analytical methods.

EPA also evaluated potential administrative costs to the State for developing additional TMDLs under CWA Section 303(d) for any waters that are newly identified as impaired as a result of the proposed criteria. Using available ambient monitoring data, EPA compared pollutant concentrations to the baseline and proposed criteria, identifying waterbodies that may be incrementally impaired (*i.e.,* impaired under the proposed criteria but not under the baseline). EPA identified 36 impairments under the baseline criteria and 66 under the proposed criteria, resulting in 30 potential incremental impairments. The estimated total annual costs for TMDL development range from $98,000 to $179,000, at a 3 percent discount rate, based on single-cause single-waterbody TMDL development costs. Actual costs may be reduced if the State develops multi-cause or multi-waterbody TMDLs.

VII. Statutory and Executive Order Reviews

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

It has been determined that this proposed rulemaking is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

[87] Ten industrial categories (coal mining, food and kindred products, paper and allied products, chemicals and allied products, petroleum refining and related industries, primary metal industries, fabricated metal products, electric, gas and sanitary services, and national security and international affairs) and municipal POTWs.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 131 and has assigned OMB control number 2040–0049.

C. Regulatory Flexibility Act

I certify that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). Small entities, such as small businesses or small governmental jurisdictions, are not directly regulated by this rule. This proposed rulemaking will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule does not alter Washington's considerable discretion in implementing these WQS, nor would it preclude Washington from adopting WQS that EPA concludes meet the requirements of the CWA, either before or after promulgation of the final rule, which would eliminate the need for federal standards. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comments on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This rule could affect federally recognized Indian tribes in Washington because the numeric criteria for Washington will apply to waters adjacent to (or upstream or downstream of) the tribal waters, and because the proposed Washington criteria are informed by tribal reserved rights. Additionally, there are six federally recognized Indian tribes in the Columbia River Basin located in the states of Oregon and Idaho that this rule could affect because their waters could affect or be affected by the water quality of Washington's downstream or upstream waters.

EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. In August 2021, EPA held tribes-only technical staff and leadership consultation sessions to hear their views and answer questions of all interested tribes on the proposed rulemaking. Representatives from approximately 17 tribes and two tribal consortia participated in two leadership meetings held in August 2021. The tribes have repeatedly asked EPA to reinstate the 2016 federal HHC for Washington, which EPA is proposing to do in this rule. EPA considered the input received during consultation with tribes when developing this proposal.

A *Summary of EPA's Pre-Proposal Consultation, Coordination, and Outreach With Federally Recognized Tribes on Potential Restoration of Protective Human Heath Criteria for Washington* is available in the docket for this proposal.

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

This proposed rulemaking is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As noted in section III.A of this preamble, EPA recommends that HHC be designed to reduce the risk of adverse cancer and non-cancer effects occurring from lifetime exposure to pollutants through the ingestion of drinking water and consumption of fish/shellfish obtained from inland and nearshore waters. EPA's proposed HHC for Washington are similarly based on reducing the chronic health effects occuring from lifetime exposure and therefore are expected to be protective of a person's exposure during both childhood and adult years.

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

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

I. National Technology Transfer and Advancement Act of 1995

This proposed rulemaking does not involve technical standards.

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

1. Introduction

EPA defines Environmental Justice (EJ) as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.[88] Three Executive Orders (E.O. 12898,[89] 13985 [90] and 14008 [91]) advance EJ by calling on federal agencies to identify and address disproportionate

[88] Fair treatment means that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental and commercial operations or programs and policies.'' Meaningful involvement occurs when ''(1) potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity [*e.g.,* rulemaking] that will affect their environment and/or health; (2) the public's contribution can influence [the EPA's rulemaking] decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) [the EPA will] seek out and facilitate the involvement of those potentially affected.'' A potential EJ concern is defined as ''the actual or potential lack of fair treatment or meaningful involvement of minority populations, low-income populations, tribes, and tribal peoples in the development, implementation and enforcement of environmental laws, regulations and policies.'' See ''Guidance on Considering Environmental Justice During the Development of an Action.'' Environmental Protection Agency, *www.epa.gov/environmentaljustice/guidanceconsidering-environmental-justice-duringdevelopment-action.* See also *https://www.epa.gov/environmentaljustice.*

[89] Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Available at *https://www.epa.gov/environmentaljustice/federal-actions-address-environmental-justice-minority-populations-and-low,* accessed October 6, 2021.

[90] Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Available at *https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government,* accessed October 6, 2021.

[91] Tackling the Climate Crisis at Home and Abroad. Available at *https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad.* Accessed October 6, 2021.

impacts on historically underserved, marginalized, and economically disadvantaged people. Additionally, EPA has expressed a commitment to conducting EJ analyses for rulemakings as described in the April 30, 2021 revisions to the Cross-State Air Pollution Rule (CSAPR).[92]

EPA believes that this proposed rulemaking, if finalized, is not expected to have disproportionately high and adverse human health or environmental effects on low-income populations, people of color, or tribal populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). In its economic impact analysis, EPA only estimates administrative costs to the State of Washington to develop TMDLs and no incremental costs to point source discharges based on available data, as explained above in Section VI of this preamble. Therefore, EPA does not anticipate that this rule will impose any additional costs or other negative impacts on tribes or other low income or disadvantaged communities.

Instead, this action identifies and ameliorates disproportionately high and adverse human health effects on tribal communities, people of color and low-income populations in Washington by proposing to restore HHC in Washington that account for sound scientific rationale and protect high fish consumers.

Many groups in Washington, such as Asian, Pacific Islanders, and subsistence and recreational tribal and non-tribal fishers consume large amounts of fish and shellfish as part of traditionally influenced diets.[93] The 2019 Reconsidered HHC currently expose these high fish consumers to greater risk from toxic pollutants because the criteria do not accurately account for pollutant bioaccumulation from water into fish and expose fish consumers to a greater risk of cancer from PCB exposure.

Environmental impacts to tribes may be considered under the category of EJ in recognition that tribes may at times be among the disadvantaged communities disproportionately impacted by environmental degradation. Where tribal communities are part of a larger non-tribal community, many of the EJ considerations are very similar to those of other disadvantaged groups. However, there is a very unique set of EJ considerations for tribes, particularly in this context where tribes are exercising their cultural practices and reserved rights off their reservations on state waters.

While the overall impacts to communities with EJ concerns are improved as a result of this rule, by relying on the fish consumption rates based on tribal data, this rule helps ensure that tribal members, in particular, and their treaty-protected activities and resources are protected.[94] Specifically, this rule proposes to establish HHC based on a FCR of 175 g/day reflective of regional tribal FCR survey data[95] to represent and protect higher fish consumers. Because a FCR of 175 g/day is a compromise rate in the absence of conclusive data regarding unsuppressed fish consumption levels, the rule proposes to use a CRL of 10^{-6} to derive HHC for all cancer-causing pollutants, including PCBs, to ensure that the effective CRL for tribes exercising treaty rights to fish is no greater than 10^{-5}.

Central to working with tribes on their environmental issues and opportunities is government to government consultation, which is consistent with Executive Order 13175 (65 FR 67249, November 6, 2000). To ensure that this proposed rulemaking considers the interests and perspective of tribes, we engaged with tribes that may be affected by this action to receive meaningful and timely input from tribal officials as we developed the proposal. See section VII.F for a summary of tribal consultation.

In addition to Executive Orders 12898 and 13175, and in accordance with Title VI of the Civil Rights Act of 1964, each federal agency shall ensure that all programs or activities receiving federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin. With that directive in mind, in August 2011 the Environmental Justice Interagency Working Group established a Title VI Committee to address the intersection of agencies' environmental justice efforts with their Title VI enforcement and compliance responsibilities. If Washington receives federal funds for CWA implementation, they are legally prohibited from discriminating on the basis of race, color or national origin under Title VI when engaging in CWA implementation activities. Additionally, and in compliance with Executive Order 12898, EPA expects that Washington will consider disproportionately high adverse human health and environmental effects on minority and low-income populations when implementing this rulemaking under the CWA.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Michael S. Regan,
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—Federally Promulgated Water Quality Standards

■ 2. Amend § 131.45 by revising paragraph (b) to read as follows:

§ 131.45 Revision of certain Federal water quality criteria applicable to Washington.

* * * * *

(b) *Criteria for priority toxic pollutants in Washington.* The applicable human health criteria are shown in Table 1 to paragraph (b).

[92] 86 FR 23054, 23162 (April 30, 2021) (''Going forward, EPA is committed to conducting environmental justice analysis for rulemakings based on a framework similar to what is outlined here, in addition to investigating ways to further weave environmental justice into the fabric of the rulemaking process including through enhanced meaningful engagement with environmental justice communities.'').

[93] Department of Ecology. *Fish Consumption Rates: Technical Support Document, A Review of Data and Information about Fish Consumption in Washington, Version 2.0 Final.* January 2013. Ecology Publication No. 12–09–058, p.18. *https://apps.ecology.wa.gov/publications/documents/1209058.pdf.*

[94] 80 FR 55063 (September 14, 2015) (''In Washington, many tribes hold reserved rights to take fish for subsistence, ceremonial, religious, and commercial purposes, including treaty-reserved rights to fish at all usual and accustomed fishing grounds and stations in waters under state jurisdiction, which cover the majority of waters in the state. Such rights include not only a right to take those fish, but necessarily include an attendant right to not be exposed to unacceptable health risks by consuming those fish.'').

[95] *Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin* (CRITFC 1994).

TABLE 1 TO PARAGRAPH (B)—HUMAN HEALTH CRITERIA FOR WASHINGTON

A		B					C	
Chemical	CAS No.	Cancer slope factor, CSF (per mg/kg·d) (B1)	Relative source contribution, RSC (−) (B2)	Reference dose, RfD (mg/kg·d) (B3)	Bio-accumulation factor (L/kg tissue) (B4)	Bio-concentration factor (L/kg tissue) (B5)	Water & organisms (µg/L) (C1)	Organisms only (µg/L) (C2)
1. 1,1,1-Trichloroethane	71556		0.50	2	10		20,000	50,000
2. 1,1,2,2-Tetrachloroethane	79345	0.2			8.4		0.1	0.3
3. 1,1,2-Trichloroethane	79005	0.057			8.9		0.35	0.90
4. 1,1-Dichloroethylene	75354		0.50	0.05	2.6		700	4,000
5. 1,2,4-Trichlorobenzene	120821	0.029			430		0.036	0.037
6. 1,2-Dichlorobenzene	95501		0.50	0.3	82		700	800
7. 1,2-Dichloroethane	107062	0.0033			1.9		8.9	73
8. 1,2-Diphenylhydrazine	122667	0.8			27		0.01	0.02
9. 1,2-Trans-Dichloroethylene	156605		0.50	0.02	4.7		200	1,000
10. 1,3-Dichlorobenzene	541731		0.50	0.002	190		2	2
11. 1,3-Dichloropropene	542756	0.122			3.0		0.22	1.2
12. 1,4-Dichlorobenzene	106467		0.50	0.07	84		200	200
13. 2,4-Dichlorophenol	120832		0.50	0.003	48		10	10
14. 2,4-Dinitrophenol	51285		0.50	0.002	4.4		30	100
15. 2-Chloronaphthalene	91587		0.80	0.08	240		100	100
16. 2-Methyl-4,6-Dinitrophenol	534521		0.50	0.0003	10		3	7
17. 4,4′-DDD	72548	0.24			240,000		7.9E–06	7.9E–06
18. 4,4′-DDE	72559	0.167			3,100,000		8.8E–07	8.8E–07
19. 4,4′-DDT	50293	0.34			1,100,000		1.2E–06	1.2E–06
20. Acenaphthene	83329		0.50	0.06	510		30	30
21. Aldrin	309002	17			650,000		4.1E–08	4.1E–08
22. alpha-BHC	319846	6.3			1,500		4.8E–05	4.8E–05
23. alpha-Endosulfan	959988		0.50	0.006	200		6	7
24. Anthracene	120127		0.50	0.3	610		100	100
25. Antimony	7440360		0.50	0.0004		1	6	90
26. Arsenic *	7440382	1.75				44	[a] 0.018	[a] 0.14
27. Benzo(a) Anthracene	56553	0.73			3,900		0.00016	0.00016
28. Benzo(a) Pyrene	50328	7.3			3,900		1.6E–05	1.6E–05
29. Benzo(b) Fluoranthene	205992	0.73			3,900		0.00016	0.00016
30. Benzo(k) Fluoranthene	207089	0.073			3,900		0.0016	0.0016
31. beta-BHC	319857	1.8			180		0.0013	0.0014
32. Bis(2-Chloro-1-Methylethyl) Ether **	108601		0.50	0.04	10		400	900
33. Bis(2-Ethylhexyl) Phthalate	117817	0.014			710		0.045	0.046
34. Bromoform	75252	0.0045			8.5		4.6	12
35. Butylbenzyl Phthalate	85687	0.0019			19,000		0.013	0.013
36. Chlordane	57749	0.35			60,000		2.2E–05	2.2E–05
37. Chlorobenzene	108907		0.50	0.02	22		100	200
38. Chlorodibromomethane	124481	0.04			5.3		0.60	2.2
39. Chloroform	67663		0.50	0.01	3.8		100	600
40. Chrysene	218019	0.0073			3,900		0.016	0.016
41. Cyanide	57125		0.50	0.0006		1	9	100
42. Dibenzo(a,h) Anthracene	53703	7.3			3,900		1.6E–05	1.6E–05
43. Dichlorobromomethane	75274	0.034			4.8		0.73	2.8
44. Dieldrin	60571	16			410,000		7.0E–08	7.0E–08
45. Diethyl Phthalate	84662		0.50	0.8	920		200	200
46. Dimethyl Phthalate	131113		0.50	10	4,000		600	600
47. Di-n-Butyl Phthalate	84742		0.50	0.1	2,900		8	8
48. Endosulfan Sulfate	1031078		0.50	0.006	140		9	
49. Endrin	72208		0.80	0.0003	46,000		0.002	0.002
50. Ethylbenzene	100414		0.50	0.022	160		29	31
51. Fluoranthene	206440		0.50	0.04	1,500		6	6
52. Fluorene	86737		0.50	0.04	710		10	10
53. gamma-BHC; Lindane	58899		0.50	0.0047	2,500		0.43	0.43
54. Heptachlor	76448	4.1			330,000		3.4E–07	3.4E–07
55. Heptachlor Epoxide	1024573	5.5			35,000		2.4E–06	2.4E–06
56. Hexachlorobenzene	118741	1.02			90,000		5.0E–06	5.0E–06
57. Hexachlorobutadiene	87683	0.04			1,100		0.01	0.01
58. Hexachlorocyclopentadiene	77474		0.50	0.006	1,300		1	1
59. Hexachloroethane	67721	0.04			600		0.02	0.02
60. Indeno(1,2,3-cd) Pyrene	193395	0.73			3,900		0.00016	0.00016
61. Methyl Bromide	74839		0.50	0.02	1.4		300	
62. Methylene Chloride	75092	0.002			1.6		10	100
63. Methylmercury	22967926		2.7E–05	0.0001				[b] 0.03 (mg/kg)
64. Nickel	7440020		0.50	0.02		47	80	100
65. Nitrobenzene	98953		0.50	0.002	3.1		30	100
66. Pentachlorophenol (PCP)	87865	0.4			520		0.002	0.002
67. Phenol	108952		0.50	0.6	1.9		9,000	70,000
68. Polychlorinated Biphenyls (PCBs)		2				31,200	[c] 7E–06	[c] 7E–06
69. Pyrene	129000		0.50	0.03	860		8	8
70. Selenium	7782492		0.50	0.005		4.8	60	200
71. Tetrachloroethylene	127184	0.0021			76		2.4	2.9
72. Toluene	108883		0.50	0.0097	17		72	130

TABLE 1 TO PARAGRAPH (B)—HUMAN HEALTH CRITERIA FOR WASHINGTON—Continued

A		B					C	
Chemical	CAS No.	Cancer slope factor, CSF (per mg/kg·d) (B1)	Relative source contribution, RSC (−) (B2)	Reference dose, RfD (mg/kg·d) (B3)	Bio-accumulation factor (L/kg tissue) (B4)	Bio-concentration factor (L/kg tissue) (B5)	Water & organisms (µg/L) (C1)	Organisms only (µg/L) (C2)
73. Trichloroethylene	79016	0.05			13		0.3	0.7
74. Vinyl Chloride	75014	1.5			1.7			0.18
75. Zinc	7440666		0.50	0.3		47	1,000	1,000

[a] This criterion refers to the inorganic form of arsenic only.
[b] This criterion is expressed as the fish tissue concentration of methylmercury (mg methylmercury/kg fish). See *Water Quality Criterion for the Protection of Human Health: Methylmercury* (EPA–823–R–01–001, January 3, 2001) for how this value is calculated using the criterion equation in EPA's 2000 Human Health Methodology rearranged to solve for a protective concentration in fish tissue rather than in water.
[c] This criterion applies to total PCBs (*e.g.,* the sum of all congener or isomer or homolog or Aroclor analyses).
* These criteria were promulgated for Washington in the National Toxics Rule at 40 CFR 131.36, and are moved into 40 CFR 131.45 to have one comprehensive human health criteria rule for Washington.
** Bis(2-Chloro-1-Methylethyl) Ether was previously listed as Bis(2-Chloroisopropyl) Ether.

* * * * *

[FR Doc. 2022–06879 Filed 3–31–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 204, 205, 207, 208, 211, 212, 213, 215, 216, 217, 219, 222, 223, 225, 226, 227, 232, 234, 237, 239, 242, 243, 244, 245, 246, 247, and 252

[Docket DARS–2022–0004]

RIN 0750–AK31

Defense Federal Acquisition Regulation Supplement: Revision of Definition of ''Commercial Item'' (DFARS Case 2018–D066)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule; correction.

SUMMARY: DoD is correcting proposed regulations that published in the **Federal Register** on March 18, 2022. The document included an incorrect hyperlink. This document reflects the correct hyperlink.

DATES: Comments for the proposed rule published March 18, 2022, at 87 FR 15820, continue to be accepted on or before May 17, 2022, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D066, using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2018–D066''. Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D066'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D066 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION: On March 18, 2022, DoD published a proposed rule in the **Federal Register** at 87 FR 15820 titled ''Revision of Definition of ''Commercial Item'' (DFARS Case 2018–D066)''. The hyperlink at the end of the ''I. Background'' section contained an incorrect hyperlink for the referenced Section 809 Panel Report. The correct hyperlink is ''*https://discover.dtic.mil/section-809-panel/*''.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2022–06815 Filed 3–31–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[RTID 0648–XB846]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 8 to the Northeast Skate Complex Fishery Management Plan

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

ACTION: Notice of availability of proposed fishery management plan amendment; request for comments.

SUMMARY: The New England Fishery Management Council has submitted Amendment 8 to the Northeast Skate Complex Fishery Management Plan to NMFS for review and approval. Amendment 8 would update the objectives of the skate fishery management plan, which have been unchanged since the original plan was adopted in 2003. The purpose of this amendment is to ensure that the skate management continues to reflect and address the current needs and condition of the skate fishery. These revisions were initially included in Amendment 5 and subsequently Framework Adjustment 9 to the Northeast Skate Complex Fishery Management Plan before those prior actions were discontinued by the Council. This notice is intended to alert the public to this action and provide an opportunity for comment.

DATES: Comments must be received on or before May 31, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0031, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *https://www.regulations.gov,* and enter ''NOAA–NMFS–2022–0031'' in the Search box;

2. Click the ''Comment'' icon, complete the required fields; and

3. Enter or attach your comments.

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 will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The New England Fishery Management Council prepared a supporting document for this action that describes the proposed revisions to the Northeast Skate management objectives and consistency with applicable law. NMFS prepared a Categorical Exclusion (CE) for this action in compliance with the National Environmental Policy Act, detailing why this action is administrative in nature and may be categorically excluded from requirements to prepare either an Environmental Impact Statement or Environmental Assessment. Copies of the Council document for Amendment 8, CE, and other supporting documents for this action, are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also accessible via the internet at *https://www.nefmc.org/management-plans/skates.*

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Policy Analyst, (978) 281–9180.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council manages a complex of seven skate species (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) off the New England and mid-Atlantic coasts under the Northeast Skate Complex Fishery Management Plan (FMP). This FMP was originally adopted in 2003, and the FMP management goal and objectives have been unchanged since that time.

Over the course of several meetings throughout 2021, the Council determined that some aspects within the existing FMP objectives are out of date and need to be updated. These recommended revisions were originally included in Amendment 5 to the Northeast Skate FMP (85 FR 84304), and subsequently Framework Adjustment 9 to the FMP (86 FR 64186), before both actions were discontinued. On February 1, 2022, the Council voted to submit revisions to the FMP management objectives as Amendment 8.

The purpose of this amendment is to update two of the seven Northeast Skate FMP management objectives that guide and inform regulatory decisions to ensure that skate management continues to reflect and address the current needs and condition of the fishery. This action would update Objectives 2 and 5 to read as follows:

- *Objective 2:* Implement measures to: Protect any overfished species of skates and increase their biomass to target levels and prevent overfishing of the species in the Northeast skate complex—this may be accomplished through management measures in other FMPs (groundfish, monkfish, scallops), skate-specific management measures, or a combination, as necessary.
- *Objective 5:* Promote and encourage skate research for critical biological, ecological, and fishery information based on the research needs identified and updated by the Council.

Although these objectives guide management decisions for the skate fishery, they are not formally codified within the regulatory text. Therefore, this action is administrative in nature with no immediate or direct impact on the fishery and/or the skate regulations. Additional information on these proposed changes can be found in the Council document and CE for this amendment (See **ADDRESSES**).

Public Comment Instructions

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows NMFS as the implementing agency to approve, partially approve, or disapprove any amendment submitted by the Council based on whether the measures/changes are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. As such, NMFS is soliciting public comments on whether the Amendment 8 to the Northeast Skate Complex FMP and its supporting documents are consistent with the Skate FMP, the Magnuson-Stevens Act, and other applicable law. Public comments on this amendment may be submitted through the end of the comment period specified in the **DATES** section of this notice of availability (NOA).

This is an administrative amendment that contains no changes to the regulatory text or specific management measures of the Northeast skate fishery. However, NMFS will still decide whether to approve these recommended changes to the central objectives of the FMP that guide and inform management decisions. All comments received by the end of the comment period on this NOA will be considered in the approval/disapproval decision on Amendment 8. Comments received after the end of the comment period for this NOA will not be considered in the approval/disapproval decision of this action.

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

Dated: March 29, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–06927 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 87, No. 63

Friday, April 1, 2022

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 Research Service

Soliciting Comments on a Draft Outline of a Strategic Plan for Extension of Comment Period

AGENCY: Agricultural Research Service, Department of Agriculture (USDA).

ACTION: Request for public comments; extension of comment period.

SUMMARY: The Subcommittee on Aquaculture (SCA) is extending the comment period on the document is published on March 3, 2022, seeking public comment on a draft outline of the Strategic Plan for Aquaculture Economic Development (SPAED), and information on a planned update to the 1983 National Aquaculture Development Plan (NADP).

DATES: The comment period for FR Doc. 2022–04444, published at 87 FR 12074 on March 3, 2022, is extended. Comments must be received by April 15, 2022, to be assured of consideration.

ADDRESSES: The draft outline of the SPAED can be downloaded at *www.ars.usda.gov/sca/.* Address all comments concerning the SPAED and topics to be covered in the NADP to:

- *Electronic Submissions:* Submit electronic public comments to *AquacultureEcoDev@usda.gov;* or
- *Mail:* Gabriela McMurtry, Attn: Aquaculture Economic Development Plan Comments, Office of Policy, F/AQ, 1315 East-West Highway, 14th Floor, Silver Spring, MD 20910.

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. All comments received are part of the public record and will be made available for public viewing upon request. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or other sensitive information submitted voluntarily by the sender will be publicly accessible.

SUPPLEMENTARY INFORMATION: The Subcommittee on Aquaculture (SCA) is seeking public comment on a draft outline of the Strategic Plan for Aquaculture Economic Development (SPAED), and information on a planned update to the 1983 National Aquaculture Development Plan (NADP). The SCA is a statutory subcommittee that operates under the Committee on Environment of the National Science and Technology Council (NSTC) under the Office of Science and Technology Policy in the Executive Office of the President [National Aquaculture Act of 1980 (Pub. L. 96–362. 94 Stat. 1198, 16 U.S.C. 2801, *et seq.*) and the National Aquaculture Improvement Act of 1985 (Pub. L. 99–198, 99 Stat. 1641)]. In May of 2020, the SCA established a Task Force charged with developing the SPAED, and this Task Force is seeking public comment on a draft outline regarding the goals and objectives to be included. The draft outline is available at *https://www.ars.usda.gov/SCA/.* In addition, the National Aquaculture Act of 1980 required select federal agencies to develop, and update as necessary, the NADP. Last completed in 1983, the NADP describes aquaculture associated technologies, problems, and opportunities in the United States and its territories. It recommends actions to solve problems, and analyzes the social, environmental, and economic impacts of growth in aquaculture. As announced in the **Federal Register** in August 2021, the SCA is updating the NADP, which will incorporate by reference the final and any subsequent updated versions of the National Strategic Plan for Aquaculture Research (NSPAR), the Strategic Plan to Enhance Regulatory Efficiency in Aquaculture (SPEREA), and the SPAED. The NSPAR and the SPEREA are in the final stages of review. Draft versions can be found at *www.ars.usda.gov/sca,* where final versions will be posted once approved. The SCA is seeking comments on additional topics to be covered in the NADP.

Signed at Washington, DC, March 29, 2022.

Yvette Anderson,

Federal Register Liaison Officer, ARS, ERS, NASS.

[FR Doc. 2022–06874 Filed 3–31–22; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena-Lewis and Clark National Forest; Montana; Telegraph Vegetation Project

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement.

SUMMARY: The Helena-Lewis and Clark National Forest, Helena Ranger District, Montana, intends to prepare a draft supplemental environmental impact statement for the Telegraph Vegetation Project. The Telegraph Vegetation Project was approved by Helena-Lewis and Clark Forest Supervisor William Avey on January 9, 2017. When analyzing the wildland urban interface within the Telegraph Vegetation project, the Forest used the Region 1 Healthy Forest Restoration Act wildland urban interface boundary definition, rather than the 2005 Powell County Community Wildland Protection Plan, which defined the wildland urban interface differently. In addition, the Forest conducted 8.4 acres of treatments in lynx habitat under the assumption they were located in the wildland urban interface. However, they were outside of the 2005 Powell County Community Protection Plan wildland urban interface boundary. To address these discrepancies, a supplemental environmental impact statement is being prepared to assess what action should be taken. The draft supplemental environmental impact statement will be circulated.

DATES: Comments concerning the scope of the analysis must be received by May 2, 2022. The draft supplemental environmental impact statement is expected April 2022 and the final supplemental environmental impact statement is expected June 2022.

ADDRESSES: Send written comments to Telegraph Vegetation Project SEIS, Helena District Ranger, 2880 Skyway Drive, Helena, MT 59602. Comments may also be sent electronically to *Comments-northern-helena-helena@usda.gov,* with ''Telegraph Vegetation Project SEIS'' in the subject line or via facsimile to (406) 449–5740.

FOR FURTHER INFORMATION CONTACT: Kathy Bushnell, Helena District Ranger,

(406) 495–3747 or *katherine.bushnell@usda.gov.* Additional information concerning this project may be obtained at *https://www.fs.usda.gov/helena.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The Telegraph Vegetation Project Record of Decision was signed by Helena-Lewis and Clark Forest Supervisor William Avey on January 9, 2017 and with it, the Final Environmental Impact Statement was released to the public. The District Court for the Federal District of Montana rejected a legal challenge to the Telegraph Vegetation Project and that ruling was appealed to the Ninth Circuit Court of Appeals where the case was affirmed in part and remanded without vacatur to allow the Forest Service to reconsider the scope of the project-area wildland-urban interface. Before the Court issued a decision, a discrepancy was identified between the wildland urban interface boundary used for project analysis and the 2005 Powell County Community Protection Plan wildland urban interface boundary. This discrepancy resulted in 50 acres being analyzed as within the wildland urban interface when they were in fact outside of the 2005 Powell County's Community Protection Plan's wildland urban interface boundary. In September of 2019, the Helena-Lewis and Clark National Forest completed pre-commercial thinning on Telegraph units 102 and 107 which contained 8.4 acres of early stand or stand initiation lynx habitat that were within the project wildland urban interface but outside the wildland urban interface under the 2005 Powell County Community Protection Plan.

Purpose and Need for Action

The original purpose, to improve the resiliency, diversity, and reforestation within the Telegraph Vegetation Project, area remains the same. The Draft Supplemental Environmental Impact Statement will update, review, and correct the project analysis and evaluate making changes to the project, including dropping planned treatment acres that are outside the Powell County wildland urban interface and droppings treatment acres to protect lynx habitat within the lynx analysis unit.

Proposed Action

The original proposed action for the Telegraph project remains the same; the 2017 Record of Decision is not vacated nor withdrawn. The draft supplemental environmental impact statement will update and review the effects of the wildland urban interface boundary differences as well as the treatment of 8.4 acres of pre-commercial thinning within lynx habitat that did not fall under the Northern Rockies Lynx Management Direction exemption. In addition, the draft supplemental environmental impact statement will analyze removing units 129 and 164 from treatment, which combined amounts to 30.9 acres. These units, 129 and 164, are located within the same lynx analysis unit as the 8.4 acres of precommercial thinning.

Impacts Under Review

The intent of the draft supplemental environmental impact statement is to review, update, and evaluate dropping treatment units which were analyzed under the Final Environmental Impact Statement. Therefore, the effects of the proposed action are expected to be less than originally analyzed.

Responsible Official

Helena-Lewis and Clark Forest Supervisor.

Scoping Process

A notice of intent published on November 12, 2009 initiated the scoping process for the Telegraph Vegetation Project. The start of a 30-day scoping period began on November 13, 2009. The Project was re-scoped in July of 2012 and a corrected Notice of Intent was published on July 20, 2012. In accordance with 40 CFR 1502.9(c)(4), no scoping will be conducted for this supplemental environmental impact statement.

The Draft Supplemental Environmental Impact Statement will be available for public comment as required by 40 CFR 1503.1. The Draft Supplemental Environmental Impact Statement will be announced for public review and comment in **Federal Register**, on the Forest's website *https://www.fs.usda.gov/projects/helena/landmanagement/projects,* and in the *Helena Independent Record.*

Authority

This Notice of Intent is being published pursuant to regulation (40 CFR 1508.22) implementing the procedural provision of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.).*

Nature of Decision To Be Made

The January 2017 Record of Decision is not being vacated. The Draft Supplemental Environmental Impact Statement will supplement the Telegraph Vegetation Project Final Environmental Impact Statement. The Forest will solicit public comment on its suggested remedy and the associated effects of using units 129 and 164 to remediate the treatment of 8.4 acres within lynx habitat.

Dated: March 11, 2022.

Barnie Gyant,

Associate Deputy Chief, National Forest System.

[FR Doc. 2022–06882 Filed 3–31–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Vegetable Surveys Program. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, questionnaire length, and/or data collection plan. Some of the vegetable production surveys will incorporate sampling of the total population of producers, while the processing surveys will involve a total enumeration of the entire population. Changes are being made to some of the questionnaires to accommodate changes in the industry and to make the questionnaires easier for the respondent to complete. This should help to reduce respondent burden and improve the overall response rates.

DATES: Comments on this notice must be received by May 31, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0037, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

• *Hand Delivery/Courier: Hand deliver to:* Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS—OMB Clearance Officer, at (202) 720–2206 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Vegetable Surveys Program.

OMB Number: 0535–0037.

Expiration Date of Approval: September 30, 2022.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare, and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture. The Vegetable Surveys Program obtains basic agricultural statistics for fresh market and processing vegetables in major producing States. Vegetable statistics are used by the U.S. Department of Agriculture to help administer programs and by growers, processors, and marketers in making production and marketing decisions. The Federal vegetable estimation program now consists of 26 selected crops.

Every 5 years NASS conducts a program review following the completion of the Census of Agriculture. The primary purpose is to ensure that the NASS annual estimating program targets commodities and states most relevant based on the latest available information. The next program review will occur after the 2022 Census of Agriculture.

All questionnaires included in this information collection will be voluntary.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to be between 5 and 20 minutes per respondent per survey.

Respondents: Farms and businesses.

Estimated Number of Respondents: 11,200.

Estimated Total Annual Burden on Respondents: 8,600 hours.

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 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) 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 those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, March 29, 2022.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2022–06951 Filed 3–31–22; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Massachusetts Advisory Committee to the Commission will convene by conference call on Wednesday, April 27, 2022, at 2:00 p.m. (ET). The purpose of the meeting is to vote on proposal and hear from an expert on civil asset forfeiture.

DATES: Wednesday, April 27, 2022, at 2:00 p.m. (ET).

Public WebEx Conference Link (video and audio): https://tinyurl.com/2e2db98t.

To Join by Phone Only: Dial 1–800–360–9505; Access code: 2768 598 6184#.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–921–2212.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, April 27, 2022; 2:00 p.m. (ET).

1. Welcome and Roll call
2. Civil Asset Forfeiture Project Proposal Vote
3. Chair Remarks
4. Civil Asset Forfeiture Briefing
5. Public Comment
6. Other Business

7. Adjourn

Dated: March 29, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–06930 Filed 3–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–880; A–201–847; A–489–824; C–489–825]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea, Mexico, and the Republic of Turkey: Continuation of the Antidumping Duty Orders and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) in their five-year (sunset) reviews that revocation of the antidumping duty (AD) orders on heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Korea (Korea), Mexico, and the Republic of Turkey (Turkey) and the countervailing duty (CVD) order on HWR pipes and tubes from Turkey would likely lead to a continuation or recurrence of dumping and net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD orders on HWR pipes and tubes from Korea, Mexico, and Turkey, and the CVD order on HWR pipes and tubes from Turkey.

DATES: Applicable April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Samantha Kinney or Katherine Johnson (AD), and Jaron Moore (CVD), AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2285, (202) 482–4929, or (202) 482–3640, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2016, Commerce published in the **Federal Register** the AD orders on HWR pipes and tubes from Korea, Mexico, and Turkey, and the CVD order on HWR pipes and tubes from Turkey.[1] On August 2, 2021, the ITC instituted [2] and Commerce initiated [3] the first five-year (sunset) reviews of the *AD Orders,* and the *CVD Order,* pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *AD Orders* would likely lead to a continuation or recurrence of dumping, and that revocation of the *CVD Order* would be likely to lead to the continuation or recurrence of countervailable subsidies.[4] Therefore, Commerce notified the ITC of the magnitude of the margins of dumping and level of countervailable subsidy rates likely to prevail were the orders to be revoked.[5]

On March 23, 2022, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *AD Orders,* and the *CVD Order,* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6]

Scope of the Orders [7]

The merchandise covered by the *Orders* is certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *AD Orders* and the *CVD Order* would likely lead to a continuation or recurrence of dumping, net countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of these *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders,* 81 FR 62865 (September 13, 2016) (*AD Orders*); and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 81 FR 62874 (September 13, 2016) (*CVD Order*) (collectively, *Orders*).

[2] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea, Mexico, and Turkey; Institution of Five-Year Reviews,* 86 FR 41511 (August 2, 2021).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 41439 (August 2, 2021).

[4] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Final Results of the Expedited First Sunset Reviews of Antidumping Duty Orders,* 86 FR 67913 (November 30, 2021); and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 86 FR 69011 (December 6, 2021).

[5] *Id.*

[6] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea, Mexico, and Turkey,* 87 FR 16495 (March 23, 2022).

[7] *See Orders.*

Notification to Interested Parties

These five-year (sunset) reviews and notice are in accordance with sections 751(c) and (d)(2), and 777(i) the Act, and 19 CFR 351.218(f)(4).

Dated: March 28, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–06929 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s): [1]

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–822	731–TA–624	China	Helical Spring Lock Washers (5th Review)	Mary Kolberg, (202) 482–1785.
A–570–045	731–TA–1316	China	HEDP (1st Review)	Thomas Martin, (202) 482–3639.
A–570–815	731–TA–538	China	Sulfanilic Acid (5th Review)	Mary Kolberg, (202) 482–1785.
A–533–806	731–TA–561	India	Sulfanilic Acid (5th Review)	Mary Kolberg, (202) 482–1785.
A–580–886	731–TA–1315	South Korea	Ferrovanadium (1st Review)	Thomas Martin, (202) 482–3639.
A–583–820	731–TA–625	Taiwan	Helical Spring Lock Washers (5th Review)	Mary Kolberg, (202) 482–1785.
C–570–046	701–TA–558	China	HEDP (1st Review)	Thomas Martin, (202) 482–3639.
C–533–807	701–TA–318	India	Sulfanilic Acid (5th Review)	Mary Kolberg, (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[2]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of

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[1] In the sunset initiation notice that published on March 1, 2022, Commerce inadvertently listed the wrong case number for the antidumping duty order on Phosphorous Copper from South Korea. *Initiation of Five-Year (Sunset) Reviews,* 87 FR 11416 (March 1, 2022). The correct case number for Phosphorous Copper from South Korea is A–580–885. This serves as a correction notice.

[2] *See Temporary Rule Modifying AD/CVD Service Requirements Due to* COVID–19, 85 FR 41363 (July 10, 2020).

publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[3]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: March 11, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–06923 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–888]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea) would be likely to lead to the continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2017, Commerce published in the **Federal Register** the CVD order on CTL plate from Korea.[1] On December 1, 2021, Commerce published the notice of initiation of the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce received timely notices of intent to participate in this review from SSAB Enterprises, LLC (SSAB) on December 15, 2021, and from Cleveland-Cliffs Inc. (Cleveland-Cliffs) and Nucor Corporation (Nucor) (collectively, domestic interested parties) on December 16, 2021, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as domestic producers of CTL plate. On January 3, 2022, Commerce received a complete substantive response for the review from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4]

On January 20, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The products covered by the *Order* are CTL plate. For a full description of the scope, *see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is provided in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice.

The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

Producer/exporter	Subsidy rate (percent)
POSCO	4.35
All Others	4.35

Notification Regarding Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Countervailing Duty Order,* 82 FR 24103 (May 25, 2017) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 68220 (December 1, 2021).

[3] *See* SSAB's Letter, ''Notice of Intent to Participate in the First Five-Year Review,'' dated December 15, 2021; *see also* Cleveland-Cliffs's Letter, ''Notice of Intent to Participate in Sunset Review,'' dated December 16, 2021; Nucor's Letter, ''Intent to Participate in Sunset Review,'' dated December 16, 2021.

[4] *See* Domestic Interested Parties' Letter, ''Substantive Response to Notice of Initiation of Sunset Review,'' dated January 3, 2022.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on December 1, 2021,'' dated January 20, 2022.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: March 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Issues Addressed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Rates that Are Likely to Prevail
3. Nature of the Subsidies
VII. Final Results of Review
VIII. Recommendation

[FR Doc. 2022–06926 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979, C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Auxin Solar Inc. (Auxin), the Department of Commerce (Commerce) is initiating country-wide circumvention inquiries to determine whether imports of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components from the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on solar cells and modules from China.

DATES: Applicable April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Paola Aleman Ordaz (Thailand and Vietnam), Office IV, or Chien-Min Yang (Cambodia and Malaysia), Office VII, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769, (202) 482–4031, and (202) 482–5484, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2022, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(c), Auxin filed a circumvention inquiry request alleging that solar cells and modules completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in China are circumventing the *Orders* [1] and, accordingly, should be included within the scope of the *Orders*.[2] Parties have filed numerous letters with Commerce in which they explained their views concerning the requested circumvention inquiries. On March 9, 2022, we extended the deadline to determine whether to initiate these circumvention inquiries by 15 days, in accordance with 19 CFR 351.226(d)(1).[3]

Scope of the Orders

The merchandise covered by these *Orders* is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials. Merchandise covered by these *Orders* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.71.0000, 8501.72.1000, 8501.72.2000, 8501.72.3000, 8501.72.9000, 8501.80.1000, 8501.80.2000, 8501.80.3000, 8501.80.9000, 8507.20.8010, 8507.20.8031, 8507.20.8041, 8507.20.8061, 8507.20.8091, 8541.42.0010, and 8541.43.0010. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive. For a complete description of the scope of the *Orders, see* the Initiation Memorandum.[4]

Merchandise Subject to the Circumvention Inquiries

The circumvention inquiries cover solar cells and modules that have been completed in Cambodia, Malaysia, Thailand, or Vietnam, using parts and components from China, that are then subsequently exported from Cambodia, Malaysia, Thailand, or Vietnam to the United States.

Initiation of Circumvention Inquiries

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce ''will accept the request and initiate a circumvention inquiry.'' Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege ''that the elements necessary for a circumvention determination under section 781 of the Act exist'' and be ''accompanied by information reasonably available to the interested party supporting these allegations.'' Auxin alleged circumvention pursuant to section 781(b) of the Act (merchandise completed or assembled in other foreign countries).

According to section 781(b)(1) of the Act, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, Commerce may find merchandise imported into the United States to be covered by the scope of an order if: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD order or finding or a CVD order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or finding or is produced in the foreign country with respect to which such order or finding applies; (C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD (or CVD) order applies is a significant portion of the total value of the merchandise exported to the United

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012) and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012) (*Orders*).

[2] *See* Auxin's Letter, ''Auxin Solar's Request for an Anti-Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930, As Amended,'' dated February 8, 2022.

[3] *See* Memorandum, ''Extension of Time to Determine Whether to Initiate Anti-Circumvention Inquiry,'' dated March 9, 2022.

[4] *See* Memorandum, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Initiation of Circumvention Inquiries,'' dated concurrently with, and hereby adopted by, this notice (Initiation Memorandum).

States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) The level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country; and (E) whether the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a third country within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) The pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise that was shipped to the third country for completion or assembly is affiliated with the person in the third country who assembles or completes the merchandise that is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country that was completed or assembled have increased after the initiation of the investigation which resulted in the issuance of the order or finding.

Based on our analysis of Auxin's circumvention request, we determined that Auxin satisfied the criteria under 19 CFR 351.226(c), and thus, pursuant to 19 CFR 351.226(d)(1)(ii), we have accepted the request and are initiating the requested circumvention inquiries of the *Orders.* For a full discussion of the basis for our decision to initiate the requested circumvention inquiries, *see* the Initiation Memorandum.[5] Moreover, as explained in the Initiation Memorandum, based on the information provided by Auxin, we have initiated country-wide circumvention inquiries. Commerce has taken this approach in prior circumvention inquiries where the facts warranted initiation on a country-wide basis.[6]

Consistent with the approach taken in prior circumvention inquiries that Commerce initiated on a country-wide basis, we intend to solicit information from certain companies in Cambodia, Malaysia, Thailand, and Vietnam concerning their production of solar cells and modules and their shipments thereof to the United States. A company's failure to completely respond to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Respondent Selection

Commerce intends to base respondent selection on responses to quantity and value questionnaires. Commerce intends to identify the companies to which it will issue the quantity and value questionnaire, in part, based on CBP data. Parties to which Commerce does not issue the quantity and value questionnaire may also respond to the quantity and value questionnaire, which will be available in ACCESS, by the applicable deadline. Commerce intends to place the CBP data on the record within five days of publication of the initiation notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after placement of the CBP data on the record of the relevant inquiry.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of its initiation of the requested circumvention inquiries and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiries that were already subject to the suspension of liquidation and to apply the cash deposit rate that would be applicable if the products were determined to be covered by the scope of the *Orders.* Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(b) of the Act, Commerce has determined that the Auxin' request for circumvention inquiries satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of circumvention inquiries to determine whether U.S. imports of solar cells and modules that have been completed in, and exported from, Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in China, are circumventing the *Orders.* We included a description of the products that are subject to the circumvention inquiries, and an explanation of the reasons for Commerce's decision to initiate these inquiries, in the accompanying Initiation Memorandum.[7] In accordance with 19 CFR 351.226(e)(2), Commerce intends to issue its preliminary determination in these circumvention proceedings no later than 150 days from the date of publication of this notice in the **Federal Register**.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: March 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Circumvention Initiation Memo

I. Summary
II. Background
III. Scope of the Orders
IV. Merchandise Subject to the Circumvention Inquiry
V. Statutory and Regulatory Framework for Circumvention Inquiries
VI. Statutory Analysis for the Circumvention Inquiry
VII. Comments Opposing the Initiation of a Circumvention Inquiry
VIII. Country-Wide Circumvention Inquiries
IX. Recommendation

[FR Doc. 2022–06827 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* Initiation Memorandum.

[6] *See, e.g., Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order,* 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

[7] *See* Initiation Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China: Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that revocation of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5305.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1991, Commerce published the *Orders* on HFHTs from China.[1] On December 1, 2021, Commerce published the notice of initiation of the five-year sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On December 15, 2021, Commerce received a notice of intent to participate in this sunset review from a domestic interested party, Estwing Manufacturing Company, Inc. (domestic interested party) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested party claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of HFHTs. On January 3, 2022, the domestic interested party provided a complete substantive response for this review within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from any other interested parties. On January 20, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Orders.*

Scope of the Orders

The products covered by the *Orders* include heavy forged hand tools, finished or unfinished, with or without handles. For a full description of the scope, *see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in this review, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of the margins likely to prevail if the *Orders* were revoked, are addressed in the accompanying Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included 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 *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* on HFHTs from China would likely lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be margins up to those listed in the chart below:

HFHTs	Margin (percent)
Axes/Adzes (A–570–204)	15.02
Picks/Mattocks (A–570–203)	50.81
Bars/Wedges (A–570–202)	31.76
Hammers/Sledges (A–570–201)	45.42

Administrative Protective Order (APO)

This notice serves as the only reminder to interested parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: March 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Orders*
IV. History of the *Orders*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely to Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2022–06865 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China,* 56 FR 6622 (February 19, 1991) (*Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 68220 (December 1, 2021).

[3] *See* Domestic Interested Party's Letter, ''Notice of Intent to Participate,'' dated December 15, 2021.

[4] *See* Domestic Interested Party's Letter, ''Substantive Response,'' dated January 3, 2022.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on December 1, 2021,'' dated January 20, 2022.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–829]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No-Shipments; 2019–2020; Second Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) published a notice in the

Federal Register on February 8, 2022, in which Commerce announced the final results of the 2019–2020 administrative review of the antidumping duty order on steel concrete reinforcing bar from the Republic of Turkey. This notice corrects the Assessment Rates section to include a sentence regarding Colakoglu Metalurji A.S./Colakoglu Dis Ticaret A.S.'s (Colakoglu) liquidation instructions that was inadvertently omitted.

DATES: Applicable April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Jose Rivera, 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) 482–3642 or (202) 482–0842, respectively.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 8, 2022, in the FR Doc. 2022–02638 on page 7119, in the third column, in the section ''Assessment Rate,'' we inadvertently omitted a sentence related to the liquidation instructions for Colakoglu. The ''Assessment Rate'' section should include the sentence: ''Because we calculated a margin for Colakoglu which is zero or *de minimis* in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.''

Background

On February 8, 2022, Commerce published in the **Federal Register** the notice of the final results of the 2019–2020 administrative review.[1] We inadvertently omitted a sentence in the ''Assessment Rates'' section pertaining to Colakoglu. Thus, we are adding the following sentence in the ''Assessment Rates'' section of the notice: ''Because we calculated a margin for Colakoglu which is zero or *de minimis* in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.'' This notice serves as a notification of this correction to the **Federal Register** notice published on February 8, 2022.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a) and 777(i) of the Tariff Act of 1930, as amended.

Dated: March 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–06866 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020,* 87 FR 7118 (February 8, 2022); *see also Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020; Correction,* 87 FR 10334 (February 24, 2022).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for May 2022

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in May 2022 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Finished Carbon Steel Flanges from India A–533–871 (1st Review)	Jacky Arrowsmith (202) 482–5255.
Finished Carbon Steel Flanges from Italy A–475–835 (1st Review)	Jacky Arrowsmith (202) 482–5255.
Finished Carbon Steel Flanges from Spain A–469–815 (1st Review)	Jacky Arrowsmith (202) 482–5255.
Frozen Warmwater Shrimp from China A–570–893 (3rd Review)	Mary Kolberg (202) 482–1785.
Frozen Warmwater Shrimp from India A–533–840 (3rd Review)	Mary Kolberg (202) 482–1785.
Frozen Warmwater Shrimp from Thailand A–549–822 (3rd Review)	Mary Kolberg (202) 482–1785.
Frozen Warmwater Shrimp from Vietnam A–552–802 (3rd Review)	Mary Kolberg (202) 482–1785.
Welded Stainless Steel Pipe from Taiwan A–583–815 (1st Review)	Jacky Arrowsmith (202) 482–5255.
Welded Stainless Steel Pipe from South Korea A–580–810 (1st Review)	Jacky Arrowsmith (202) 482–5255.
Countervailing Duty Proceedings	
Finished Carbon Steel Flanges from India C–533–872 (1st Review)	Jacky Arrowsmith (202) 482–5255.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in May 2022.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive

comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 11, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–06924 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) Identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

Opportunity To Request a Review: Not later than the last day of April 2022,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period of Review
Antidumping Duty Proceedings	
Argentina: Biodiesel, A–357–820	4/1/21–3/31/22
Bahrain: Common Alloy Aluminum Sheet, A–525–001	10/15/20–3/31/22
Bosnia and Herzegovina: Silicon Metal, A–893–001	12/11/20–3/31/22
Brazil: Common Alloy Aluminum Sheet, A–351–854	10/15/20–3/31/22
Croatia: Common Alloy Aluminum Sheet, A–891–001	10/15/20–3/31/22
Czech Republic: Seamless Carbon and Alloy Steel Standard, A–851–804 Line, and Pressure Pipe	12/21/20–3/31/22
Egypt: Common Alloy Aluminum Sheet, A–729–803	10/15/20–3/31/22
Germany: Common Alloy Aluminum Sheet, A–428–849	10/15/20–3/31/22
Iceland: Silicon Metal, A–400–001	12/11/20–3/31/22
India:	
Carbon and Alloy Steel Threaded Rod, A–533–887	4/1/21–3/31/22
Common Alloy Aluminum Sheet, A–533–895	10/15/20–3/31/22
Indonesia:	
Biodiesel, A–560–830	4/1/21–3/31/22
Common Alloy Aluminum Sheet, A–560–835	10/15/20–3/31/22
Italy: Common Alloy Aluminum Sheet, A–475–842	10/15/20–3/31/22
Oman: Common Alloy Aluminum Sheet, A–523–814	10/15/20–3/31/22
Romania: Common Alloy Aluminum Sheet, A–485–809	10/15/20–3/31/22
Republic of Korea: Phosphor Copper, A–580–885	4/1/21–3/31/22
Serbia: Common Alloy Aluminum Sheet, A–801–001	10/15/20–3/31/22
Slovenia: Common Alloy Aluminum Sheet, A–856–001	10/15/20–3/31/22
Spain: Common Alloy Aluminum Sheet, A–469–820	10/15/20–3/31/22
South Africa: Common Alloy Aluminum Sheet, A–791–825	10/15/20–3/31/22
Taiwan: Common Alloy Aluminum Sheet, A–583–867	10/15/20–3/31/22
Thailand: Rubber Bands, A–549–835	4/1/21–3/31/22
The People's Republic of China:	
1,1,1,2-Tetrafluoroethane (R–134A), A–570–044	4/1/21–3/31/22
Activated Carbon, A–570–904	4/1/21–3/31/22
Aluminum Foil, A–570–053	4/1/21–3/31/22
Alloy and Certain Carbon Steel Threaded Rod, A–570–104	4/1/21–3/31/22
Drawn Stainless Steel Sinks, A–570–983	4/1/21–3/31/22
Magnesium Metal, A–570–896	4/1/21–3/31/22
Non-Malleable Cast Iron Pipe Fittings, A–570–875	4/1/21–3/31/22
Stainless Steel Sheet and Strip, A–570–042	4/1/21–3/31/22
Steel Threaded Rod, A–570–932	4/1/21–3/31/22
Twist Ties, A–570–131	12/10/20–3/31/22
Wooden Cabinets and Vanities and Components Thereof, A–570–106	4/1/21–3/31/22
Turkey: Common Alloy Aluminum Sheet, A–489–839	10/15/20–3/31/22
Countervailing Duty Proceedings	
Bahrain: Common Alloy Aluminum Sheet, C–525–002	8/14/20–12/31/21
India:	
Carbon and Alloy Steel Threaded Rod, C–533–888	1/1/21–12/31/21
Common Alloy Aluminum Sheet, C–533–896	8/14/20–12/31/21
Kazakhstan: Silicon Metal, C–834–811	12/3/21–12/31/22
Mexico: Standard Steel Welded Wire Mesh, C–201–854	12/3/21–12/31/21
Morocco: Phosphate Fertilizers, C–714–001	11/30/20–12/31/21
Russia: Phosphate Fertilizers, C–821–825	11/30/20–12/31/21
The People's Republic of China:	
Aluminum Foil, C–570–054	1/1/21–12/31/21
Carbon and Alloy Steel Threaded Rod, C–570–105	1/1/21–12/31/21
Drawn Stainless Steel Sinks, C–570–984	1/1/21–12/31/21
Stainless Steel Sheet and Strip, C–570–043	1/1/21–12/31/21
Twist Ties, C–570–132	12/1/20–12/31/21
Wooden Cabinets and Vanities and Components Thereof, C–570–107	1/1/21–12/31/21
Turkey: Common Alloy Aluminum Sheet, C–489–840	8/14/20–12/31/21

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov.*[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of April 2022. If Commerce does not receive, by the last day of April 2022, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) New interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) Interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 25, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–06925 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register,** also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR at 53206.

[13] *See Final Rule,* 86 FR at 52335.

[14] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB909]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (in-person/virtual hybrid).

SUMMARY: The Caribbean Fishery Management Council (CFMC) will hold the 178th public hybrid meeting to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The 178th CFMC public hybrid meeting will be held on April 19, 2022, from 9 a.m. to 4:45 p.m., and on April 20, 2022, from 9 a.m. to 4 p.m. AST.

ADDRESSES:

Meeting address: The meeting will be held at the Courtyard by Marriott Isla Verde Beach Resort, 7012 Boca de Cangrejos Avenue, Carolina, Puerto Rico 00979.

You may join the 178th CFMC public hybrid meeting via Zoom, from a computer, tablet or smartphone by entering the following address:

Join Zoom Meeting:
https://us02web.zoom.us/j/83060685915?pwd=VmVsc1orSUtKck8xYk1XOXNDY1ErZz09.
Meeting ID: 830 6068 5915.
Passcode: 995658.

One tap mobile:
+17879451488,,83060685915#,,,,,,0#,,995658# Puerto Rico
+17879667727,,83060685915#,,,,,,0#,,995658# Puerto Rico

Dial by your location:
+1 787 945 1488 Puerto Rico
+1 787 966 7727 Puerto Rico
+1 939 945 0244 Puerto Rico

Meeting ID: 830 6068 5915.
Passcode: 995658.

In case there are problems and we cannot reconnect via Zoom, the meeting will continue using GoToMeeting.

You can join the meeting from your computer, tablet or smartphone. *https://global.gotomeeting.com/join/971749317.*

You can also dial in using your phone. United States: +1 (408) 650–3123 Access Code: 971–749–317.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

April 19, 2022

9 a.m.–9:45 a.m.

—Call to Order
—Roll Call
—Adoption of Agenda
—Consideration of 176th and 177th Council Meetings Verbatim Transcriptions
—Executive Director's Report

9:45 a.m.–10 a.m.

—Outcomes of the Moored Fishery Aggregating Devices (FAD) Working Group Meeting—Rachel O'Malley, Office of International Affairs, Tray and Commerce, NOAA

10 a.m.–10:45 a.m.

—Island-Based Fishery Management Plans (IBFMP) and Amendments Update—María López-Mercer, Sarah Stephenson, SERO/NOAA Fisheries
—IBFMP Implementation Update
—Spiny Lobster Amendment Status Update
—Spiny Lobster Overfishing Limit/Acceptable Biological Catch Update and Council's Request to NOAA Fisheries
—Gear Amendment: Modification to Buoy Gear Status Update

10:45 a.m.–11 a.m.

—Break

11 a.m.–12 p.m.

—Potential Actions for IBFMP Amendments—María López-Mercer, Sarah Stephenson, NOAA Fisheries
—Trawling and Other Net Gear—Options Paper
—Pelagic Species Management Measures—White Paper

12 p.m.–1 p.m.

—Lunch Break

1 p.m.–1:30 p.m.

—Ecosystem-Based Fishery Management Technical Advisory Panel Report—Sennai Habtes, Chair

1:30 p.m.–2 p.m.

—Scientific and Statistical Committee Report—Richard Appeldoorn, Chair

2 p.m.–2:30 p.m.

—Southeast Fishery Science Center Updates—Kevin McCarthy, SEFSC

2:30 p.m.–3:15 p.m.

—District Advisory Panel Chairs Report on March 2022 Meetings (15 minutes each)
—St. Thomas/St. John—Julian Magras, Chair
—St. Croix—Edward Schuster, Chair
—Puerto Rico—Nelson Crespo, Chair

3:15 p.m.–3:30 p.m.

—Identifying Critical Habitats of Juvenile Nassau Grouper in Puerto Rico—Chelsea Harms-Touhy

3:30 p.m.–3:45 p.m.

—Break

3:45 p.m.–4:30 p.m.

—Dolphin Fish Studies on Fish Aggregation Devices—Wessley Merten

4:30 p.m.

—Adjourn for the day

4:45 p.m.

—Closed Session

April 20, 2022

9 a.m.–9:30 a.m.

—Understanding Essential Fish Habitat of Queen and Cardinal Snappers and Associated Fish Communities of the Deep-Water Snapper Fishery: From Fishers' Knowledge to Scientific Language—Jorge García-Sais

9:30 a.m.–10 a.m.

—Characterization of Prey Diversity of the Commercially-Important Queen Snapper (Cartucho) *Etelis oculatus*—Stacey Williams/Diana Beltran

10 a.m.–10:15 a.m.

—Break

10:15 a.m.–10:45 a.m.

—Microplastics in the Caribbean Study—Dalila Aldana

10:45 a.m.–11:30 a.m.

—Outreach and Education Report—Alida Ortiz
—Social Media Report—Cristina Olán

11:30 a.m.–12 p.m.

—Liaison Officers Reports (10 minutes each)
—St. Croix—Mavel Maldonado
—St. Thomas/St. John—Nicole Greaux
—Puerto Rico—Wilson Santiago

12 p.m.–1 p.m.

—Lunch Break

1 p.m.–1:15 p.m.

—Recreational Fisheries Summit—Marcos Hanke/Carlos Farchette

1:15 p.m.–1:45 p.m.

—Fisher-Scientist Concepts—Marcos Hanke

1:45 p.m.–2:45 p.m.

—Enforcement Reports (15-minutes each):
—Puerto Rico—Department of Natural and Environmental Resources
—USVI—Department of Planning and Natural Resources
—U.S. Coast Guard
—NOAA Fisheries Office of Law Enforcement

2:45 p.m.–3 p.m.

—Break

3 p.m.–3:30 p.m.

—Other Business

3:30 p.m.–4 p.m.

—Public Comment Period (5-minute presentations)
—Next Meeting

Note (1): Other than starting time and dates of the meetings, the established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice. Changes in the agenda will be posted to the CFMC website, Facebook, Twitter and Instagram as practicable.

Note (2): Financial disclosure forms are available for inspection at this meeting, as per 50 CFR part 601.

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on April 19, 2022, at 9 a.m. AST, and will end on April 20, 2022 at 4 p.m. AST. Other than the start time on the first day of the meeting, interested parties should be aware that discussions may start earlier or later than indicated in the agenda, at the discretion of the Chair.

Special Accommodations

Simultaneous interpretation will be provided. For simultaneous interpretation English-Spanish-English follow your Zoom screen instructions. You will be asked which language you prefer when you join the meeting.

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

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

Dated: March 28, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–06840 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB907]

Permanent Advisory Committee To Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a public meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) on June 8, 2022. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the PAC will be held via web conference on June 8, 2022, from 11 a.m. to 1 p.m. Hawaii Standard Time (HST) (or until business is concluded). Members of the public may submit written comments on meeting topics or materials; comments must be received by June 3, 2022.

ADDRESSES: The public meeting will be conducted via web conference. For details on how to call in to the web conference or to submit comments, please contact Emily Reynolds, NMFS Pacific Islands Regional Office; telephone: 808–725–5039; email: *emily.reynolds@noaa.gov.* Documents to be considered by the PAC will be sent out via email in advance of the conference call. Please submit contact information to Emily Reynolds (telephone: 808–725–5039; email: *emily.reynolds@noaa.gov*) at least 3 days in advance of the call to receive documents via email. The audio portion of this meeting may be recorded for the purposes of generating notes of the meeting and participation in the meeting constitutes consent to the recording.

FOR FURTHER INFORMATION CONTACT: Emily Reynolds, NMFS Pacific Islands Regional Office; 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone: 808–725–5039; facsimile: 808–725–5215; email: *emily.reynolds@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), the PAC, has been formed to advise the U.S. Commissioners to the WCPFC. The PAC is composed of: (i) Not less than 15 nor more than 20 individuals appointed by the Secretary of Commerce in consultation with the U.S. Commissioners to the WCPFC; (ii) the chair of the Western Pacific Fishery Management Council's Advisory Committee (or the chair's designee); and (iii) officials from the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees). The PAC supports the work of the U.S. National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. More information on the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can be found on the WCPFC website: *http://www.wcpfc.int.*

Meeting Topics

The purpose of the June 8, 2022 meeting is to discuss outcomes of the 2021 regular session of the WCPFC (WCPFC18), U.S. priorities leading up to the 2022 regular session of the WCPFC (WCPFC19) and potential management measures for tunas and other issues of interest.

Special Accommodations

The web conference is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Reynolds at 808–725–5039 by May 25, 2022.

(Authority: 16 U.S.C. 6902 *et seq.*)

Dated: March 28, 2022.

Ngagne Jafnar Gueye,

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

[FR Doc. 2022–06901 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB924]

Virtual Meeting of the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas

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

ACTION: Notice of Advisory Committee's spring meeting.

SUMMARY: The Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT) is announcing the convening of its spring meeting, which will be held virtually.

DATES: A virtual meeting that is open to the public will be held by webinar session on April 11, 2022, from 9 a.m. to 1 p.m. EDT.

ADDRESSES: Please register to attend the open sessions at: *https://forms.gle/V6oEwDEnU6b4wwUeA.* Instructions will be emailed to registered meeting participants before the meeting occurs. Registration will close on April 10, 2022 at 5 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Bryan Keller, Office of International Affairs, Trade, and Commerce, 202–897–9208 or at *bryan.keller@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and discuss information on outcomes of ICCAT's 2021 annual meeting, ICCAT intersessional meetings in 2022, and relevant NMFS research and monitoring activities. An agenda is available from the Committee's Executive Secretary upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Committee will convene separate closed session meetings of its Species Working Groups and an open session Committee meeting in May 2022. These details will be announced in a forthcoming **Federal Register** Notice.

Special Accommodations

The virtual meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to Bryan Keller at 202–897–9208 or *bryan.keller@noaa.gov* at least 5 days prior to the meeting date.

(Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*)

Dated: March 29, 2022.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2022–06897 Filed 3–31–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* May 1, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 1/72022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.
2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are added to the Procurement List:

Service(s)

Service Type: Facility Operations Contract Services
Mandatory for: U.S. Customs & Border Protection, Oroville Border Patrol Station, Oroville, WA
Designated Source of Supply: Bona Fide Conglomerate, Inc., El Cajon, CA
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, BORDER ENFORCEMENT CTR DIV

Michael R. Jurkowski,
Acting Director, Business Operations.

[FR Doc. 2022–06935 Filed 3–31–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* May 1, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following service(s) are proposed for deletion from the Procurement List:

Service(s)

Service Type: Janitorial/Custodial
Mandatory for: Bureau of Land Management, Salt Lake City Field Office and Warehouse, 2370 S Decker Lake Blvd., Salt Lake City, UT
Designated Source of Supply: Community Foundation for the Disabled, Inc., Salt Lake City, UT
Contracting Activity: BUREAU OF LAND MANAGEMENT, BUREAU OF LAND MANAGMENT

Michael R. Jurkowski,
Acting Director, Business Operations.

[FR Doc. 2022–06934 Filed 3–31–22; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

CFTC 2022–2026 Strategic Plan

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for public comment.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is providing notice that it is seeking public comments on its draft 2022–2026 Strategic Plan. This Commission-approved version of the Strategic Plan includes the CFTC's mission, strategic goals, and strategic objectives.

DATES: Comments must be submitted on or before May 2, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments: Send an email to: *StrategicPlan@cftc.gov.*

Paper Comments: Send paper comments to David Frederickson, Strategic Planning Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Instructions: All submissions must include CFTC's agency name and the words ''CFTC 2022–2026 Strategic Plan.'' All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Comments may be posted on CFTC's website, *https://comments.cftc.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. You should submit only information that you wish to make available publicly. The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission that it may deem to be inappropriate for publication, such as obscene language or any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: David Frederickson, Manager, Strategic and Operational Planning, at (202) 418–5218, or email: *DFrederickson@cftc.gov.*

SUPPLEMENTARY INFORMATION: The draft strategic plan is available at the Commission's website at *https://www.cftc.gov/media/7081/CFTC2022_2026StrategicPlan/download.*

Issued in Washington, DC, on March 28, 2022, by the Commission.

Robert Sidman,
Deputy Secretary of the Commission.

[FR Doc. 2022–06867 Filed 3–31–22; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee; Meeting

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a virtual meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday, April 21, 2022; 11 a.m.–5:30 p.m.

Friday, April 22, 2022; 11 a.m.–5:30 p.m.

LOCATION: This meeting will be held digitally via webcast using Zoom. Instructions for Zoom, as well as any updates to meeting times or meeting agenda, can be found on the BERAC meeting website at: *https://science.osti.gov/ber/berac/Meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Tristram West, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–33/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585–1290. Phone (301) 903–5155; fax (301) 903–5051 or email: *tristram.west@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda:

- News from the Office of Biological and Environmental Research
- News from the Biological Systems Science and Earth and Environmental Systems Sciences Divisions
- Report on findings from the BERAC Subcommittee on International Benchmarking
- Report from the BERAC Committee of Visitors on BSSD funding processes
- Briefings from recent Workshops
- BERAC business and discussion
- Public comment

Public Participation: The two-day meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, please send an email request to both Tristram West (*tristram.west@science.doe.gov*) and Andrew Flatness (*andrew.flatness@science.doe.gov*). You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will be limited to five minutes each.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC website: *https://science.osti.gov/ber/berac/Meetings/BERAC-Minutes.*

Signed in Washington, DC, on March 28, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–06878 Filed 3–31–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Change in Control

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of change in control.

	Docket No.
Cameron LNG, LLC	11–145–LNG
Cameron LNG, LLC	11–162–LNG
Cameron LNG, LLC	14–204–LNG
Cameron LNG, LLC	15–36–LNG
Cameron LNG, LLC	15–67–LNG
Cameron LNG, LLC	15–90–LNG
Ecogas Mexico, S. de R.L. de C.V	21–50–NG
ECA Liquefaction, S. de R.L. de C.V	18–144–LNG
Energía Costa Azul, S. de R.L. de C.V	18–145–LNG
Port Arthur LNG, LLC	15–53–LNG
Port Arthur LNG, LLC	15–96–LNG
Port Arthur LNG, LLC	18–162–LNG
Port Arthur LNG Phase II, LLC	20–23–LNG
Sempra Gas & Power Marketing, LLC	20–43–NG
Sempra LNG International, LLC	21–83–NG
Sempra LNG Marketing, LLC	20–52–LNG
Termoelectrica de Mexicali, S. de R.L. de C.V	20–145–NG
Vista Pacifico LNG, S.A.P.I de C.V	20–153–LNG

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) (formerly the Office of Fossil Energy) of the Department of Energy (DOE) gives notice of receipt of a Statement of Change in Control (Statement) filed jointly on February 22, 2022, by the following entities: Cameron LNG, LLC; Ecogas Mexico, S. de R.L. de C.V.; ECA Liquefaction, S. de R.L. de C.V.; Energía Costa Azul, S. de R.L. de C.V.; Port Arthur LNG, LLC; Port Arthur LNG Phase II, LLC; Sempra Gas & Power Marketing, LLC; Sempra LNG International, LLC; Sempra LNG Marketing, LLC; Termoelectrica de Mexicali, S. de R.L. de C.V.; and Vista Pacifico LNG, S.A.P.I de C.V. (collectively, Authorization Holders) in the above-referenced dockets. The Authorization Holders are all affiliates of Sempra Energy and KKR Pinnacle Investor, L.P. (KKR Pinnacle), a subsidiary of KKR & Co. Inc. The Statement describes a change in the Authorization Holders' upstream ownership. The Statement was filed under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later

than 4:30 p.m., Eastern time, April 18, 2022.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov

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 accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Office of Resource Sustainability staff at (202) 586–4749 or (202) 586–7893 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.

FOR FURTHER INFORMATION CONTACT:

Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4749 or (202) 586–7893, *jennifer.wade@hq.doe.gov* or *peri.ulrey@hq.doe.gov*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov*

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

The Authorization Holders state that the ownership change described in the Statement is the result of the acquisition (Transaction) by Black Silverback ZC 2022 LP (Black Silverback), a wholly owned indirect subsidiary of the Abu Dhabi Investment Authority (ADIA) (collectively, Buyer), of a non-controlling 10% interest in the equity of Sempra Infrastructure Partners, LP (SI Partners).[1] As set forth in the Statement, SI Partners is an upstream owner of the Authorization Holders.

The Authorization Holders further state that, at the time of the closing of the Transaction, Sempra Energy will continue to maintain control of SI Partners as the 70% majority owner, with Buyer having certain customary minority protections. As shown in Appendix B to the Statement (Post-Transaction Organizational Structure), KKR Pinnacle will retain its 20% non-controlling equity interest in SI Partners. The Authorization Holders state that Sempra Energy and the other partners of SI Partners will enter into a second amended and restated agreement of limited partnership of SI Partners, which will govern Sempra Energy's and SI Partners' minority owners' respective rights and obligations with respect to their ownership of SI Partners.

Additional details can be found in the Statement, posted on the DOE website at: *https://www.energy.gov/sites/default/files/2022-02/Cameron%20LNG%20LLC%20et%20al.%20-%20Change%20in%20Control%20Filing_.pdf.*

DOE Evaluation

DOE will review the Statement in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Procedures).[2] Consistent with the CIC Procedures, this notice addresses the Authorization Holders' various existing authorizations to export LNG to non-free trade agreement (non-FTA) countries, as identified in the Statement.[3] If no interested person protests the change in control and DOE takes no action on its own motion, the proposed change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorizations inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** to move to intervene, protest, and answer the Authorization Holders' Statement.[4] Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in the Statement. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

As noted, DOE is only accepting electronic submissions at this time. Please email the filing to *fergas@hq.doe.gov.* All filings must include a reference to ''Docket Nos. 11–145–LNG, *et al.*'' in the title line, or ''Cameron LNG, LLC, *et al.* Change in Control'' in the title line.

Please Note: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

The Authorization Holders' Statement, and any filed protests, motions to intervene, notices of intervention, and comments will be available electronically by going to the following DOE Web address: *https://www.energy.gov/fecm/regulation.*

Signed in Washington, DC, on March 29, 2022.

Amy R. Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2022–06932 Filed 3–31–22; 8:45 am]

BILLING CODE 6450–01–P

[1] The Authorization Holders state that ADIA is an independent investment institution established by the Emirate of Abu Dhabi, United Arab Emirates. Accordingly, the described change in control may also require the approval of the Committee on Foreign Investment in the United States (CFIUS). DOE expresses no opinion regarding the need for review by CFIUS. Additional information may be obtained at: *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.*

[2] 79 FR 65541 (Nov. 5, 2014).

[3] The Authorization Holders' Statement also applies to: (1) Their various existing authorizations to export LNG to FTA countries, and (2) their various pending applications to export LNG to non-FTA countries, both as identified in the Statement. DOE will respond to those portions of the Statement separately pursuant to the CIC Procedures, 79 FR 65542.

[4] Intervention, if granted, would constitute intervention only in the change in control portion of these proceedings, as described herein.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI21–1–000]

Badger Mountain Hydro, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI21–1–000.

c. *Date Filed:* March 10, 2021.

d. *Applicant:* Badger Mountain Hydro, LLC.

e. *Name of Project:* Badger Mountain Pumped Storage Project.

f. *Location:* The proposed Badger Mountain Pumped Storage Project would be located near the town of East Wenatchee, in Douglas County, Washington.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Badger Mountain Hydro, LLC; 800 W Main Street, Ste. 1220, Boise, ID 83702; telephone: (208) 246–9925; email: *mshapiro@rplusenergies.com;* Agent Contact: Matthew Shapiro, CEO, Badger Mountain Hydro, LLC; 800 W Main St., Ste. 1220, Boise, ID 83702.

i. *FERC Contact:* Jennifer Polardino, (202) 502–6437, or *Jennifer.Polardino@ferc.gov.*

j. *Deadline for filing comments, protests, and motions to intervene is:* April 27, 2022.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy.

Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number DI21–1–000. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Project:* The proposed closed-loop Badger Mountain Pumped Storage Project would consist of: (1) A 15 to 75-foot-high, 8,000-foot-long earthen embankment forming a 78-acre upper reservoir with a storage capacity of 3,090 acre-feet; (2) a 40-foot-high, 650-foot-long earthen dam and a 15-foot-high, 900-foot-long, secondary earthen embankment forming an 80 acre lower reservoir with a storage capacity of 3,380 acre-feet; (3) underground tunnels connecting the upper and lower reservoirs consisting of: (a) A 17-foot diameter, 200-foot-high vertical shaft; (b) a 17-foot diameter, 5,600-foot-long concrete/steel-lined headrace tunnel; and (c) a 17-foot diameter, 200-foot-long tailrace tunnel; (4) a powerhouse located in a vertical 220-foot-high, 100-foot-diameter shaft located next to the lower reservoir containing two 250 megawatt (MW) reversible pump-turbines/motor generators for a total installed capacity of 500 MW; (5) emergency backup groundwater wells No. 4 and 5 located in East Wenatchee and a new groundwater well located approximately 5 miles southeast of East Wenatchee to provide the initial fill and make-up water for the reservoirs; (6) an 11-mile-long transmission line connecting to the Bonneville Power Administration's Sickler substation; and (7) appurtenant facilities. The proposed project would have an estimated average annual generation of 832,200 megawatt-hours.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06890 Filed 3–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2810–001.
Applicants: Florida Power & Light Company.
Description: Compliance filing: FPL Compliance Filing to Correct Flawed Tariff Records to be effective 9/1/2021.
Filed Date: 3/28/22.
Accession Number: 20220328–5172.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1463–000.
Applicants: Southampton Solar, LLC.
Description: Compliance filing: Compliance Filing and Notice of Change to be effective 3/26/2022.
Filed Date: 3/25/22.
Accession Number: 20220325–5178.
Comment Date: 5 p.m. ET 4/15/22.

Docket Numbers: ER22–1464–000.
Applicants: EnerSmart Murray BESS LLC.
Description: Baseline eTariff Filing: Filing of Market-Based Rate Application to be effective 5/25/2022.
Filed Date: 3/25/22.
Accession Number: 20220325–5181.
Comment Date: 5 p.m. ET 4/15/22.

Docket Numbers: ER22–1465–000.
Applicants: Eastern Shore Solar LLC.
Description: Compliance filing: Compliance Filing and Notice of Change to be effective 3/26/2022.
Filed Date: 3/25/22.
Accession Number: 20220325–5182.
Comment Date: 5 p.m. ET 4/15/22.

Docket Numbers: ER22–1466–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ISA SA No. 6380; Queue No. AD1–087/AD2–202 and Cancellation of IISA SA No. 5142 to be effective 2/25/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5026.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1467–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA/CSA, Service Agreement Nos. 6157/6158; Queue No. AB2–036 to be effective 8/8/2021.
Filed Date: 3/28/22.
Accession Number: 20220328–5027.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1468–000.
Applicants: Louisville Gas and Electric Company.
Description: § 205(d) Rate Filing: Amendment to OMU NITSA to be effective 3/17/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5030.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1469–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3923 Seven Cowboy GIA & 3864 Seven Cowboy IGIA Cancellation to be effective 3/3/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5058.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1470–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: City Utilities of Springfield, Missouri Revisions to Formula Rate to be effective 6/1/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5100.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1471–000.
Applicants: AEP Energy, Inc.
Description: § 205(d) Rate Filing: 1. MBR Tariff to be effective 3/29/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5115.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1472–000.
Applicants: New York State Electric & Gas Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: New York State Electric & Gas Corporation submits tariff filing per 35.13(a)(2)(iii: 205 LGIA between NYISO and NYSEG for High Bridge SA No. 2657—CEII to be effective 3/15/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5118.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1473–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 3920; Queue No. Z1–127 to be effective 7/29/2014.
Filed Date: 3/28/22.
Accession Number: 20220328–5124.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1474–000.
Applicants: AEP Energy Partners, Inc.
Description: § 205(d) Rate Filing: MBR Tariff, FERC Electric Tariff for Market Based Sales to be effective 3/28/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5126.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1475–000.
Applicants: AEP Retail Energy Partners LLC.
Description: § 205(d) Rate Filing: AEP REP Triennial Review to be effective 3/29/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5128.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1476–000.
Applicants: Apple Blossom Wind, LLC.
Description: § 205(d) Rate Filing: Apple Blossom Wind, LLC Market-Based Rate Tariff to be effective 3/29/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5139.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1477–000.
Applicants: Black Oak Wind, LLC.
Description: § 205(d) Rate Filing: Black Oak Wind Market-Based Rate Tariff to be effective 3/29/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5143.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1478–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 4303; Queue AC2–092 to be effective 2/24/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5149.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1479–000.
Applicants: Midcontinent Independent System Operator, Inc., Northern Indiana Public Service Company LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–03–28_SA 3765 NIPSCO-Dunns Bridge 1st Rev E&P (J1333 J1334 J1335) to be effective 3/3/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5166.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1480–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) Rate Filing: Depreciation Rate Update to be effective 1/1/2021.
Filed Date: 3/28/22.
Accession Number: 20220328–5177.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1481–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Tariff Amendment: DEC-Notice of Cancellation of RS–508 to be effective 5/28/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5184.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1482–000.
Applicants: Blythe Mesa Solar II, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 3/29/2022.

Filed Date: 3/28/22.
Accession Number: 20220328–5189.
Comment Date: 5 p.m. ET 4/18/22.

Docket Numbers: ER22–1483–000.
Applicants: Saavi Energy Solutions, LLC.
Description: § 205(d) Rate Filing: Normal filing 2022 to be effective 3/29/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5191.
Comment Date: 5 p.m. ET 4/18/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–32–000.
Applicants: PJM Settlement, Inc.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of PJM Settlement.
Filed Date: 3/25/22.
Accession Number: 20220325–5251.
Comment Date: 5 p.m. ET 4/15/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06892 Filed 3–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1454–000]

LI Solar Generation, 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 LI Solar Generation, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 18, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06889 Filed 3–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1464–000]

EnerSmart Murray BESS 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 EnerSmart Murray BESS LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 18, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06893 Filed 3–31–22; 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: RP22–716–000.
Applicants: Rockies Express Pipeline LLC.
Description: Compliance filing: REX 2022–03–25 Annual Purchase and Sales Report to be effective N/A.
Filed Date: 3/25/22.
Accession Number: 20220325–5088.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: RP22–717–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Compliance filing: TPC 2022–03–25 2021 Annual Purchase and Sales Report to be effective N/A.
Filed Date: 3/25/22.
Accession Number: 20220325–5089.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: RP22–718–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Compliance filing: 3.28.22 Annual Fuel and Losses Retention Calculations to be effective N/A.
Filed Date: 3/28/22.
Accession Number: 20220328–5036.
Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–719–000.
Applicants: Horizon Pipeline Company, L.L.C.
Description: Compliance filing: Horizon Penalty Revenue Crediting Report for Year 2021 to be effective N/A.
Filed Date: 3/28/22.
Accession Number: 20220328–5039.
Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–720–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Compliance filing: Penalty Revenue Crediting Report from July through December 2021 to be effective N/A.
Filed Date: 3/28/22.
Accession Number: 20220328–5040.
Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–721–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—DK Trading and Supply LLC to be effective 4/1/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5044.
Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–722–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Macquarie Energy to be effective 4/1/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5046.
Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: RP22–723–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Mercuria Energy to be effective 4/1/2022.
Filed Date: 3/28/22.
Accession Number: 20220328–5047.
Comment Date: 5 p.m. ET 4/11/22.

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.

Filings in Existing Proceedings

Docket Numbers: RP22–671–001.
Applicants: KO Transmission Company.
Description: Tariff Amendment: Amendment to Transportation Retainage Adjustment Filing to be effective 4/1/2022.
Filed Date: 3/10/22.
Accession Number: 20220310–5144.
Comment Date: 5 p.m. ET 3/30/22.

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: March 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06891 Filed 3–31–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9652–01–R5]

Clean Air Act Operating Permit Program; Petition for Objection To State Significant Operating Permit Modification for BP Products North America, Inc. Whiting Business Unit, Lake County, Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on petition for objection to a Clean Air Act title V significant operating permit modification.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated March 4, 2022, partially granting and partially denying a petition dated July 22, 2021 (Petition), from the Environmental Integrity Project and the Hoosiers Chapter of the Sierra Club (the Petitioners). The Petition requested that EPA object to a significant modification to a Clean Air Act (CAA) title V operating permit issued by the Indiana Department of Environmental Management (IDEM), to BP Products North America, Inc. Whiting Business Unit (BP Whiting), located in Lake County, Indiana.

ADDRESSES: The final Order, the Petition, and other supporting

information are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Beth Valenziano at (312) 886–2703 before visiting the Region 5 office. Additionally, the final Order and Petition are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–2703, *valenziano.beth@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issues arose after this period.

The Petition from the Petitioners requesting that EPA object to the issuance of significant operating permit modification no. 089–43173–00453 issued by IDEM to BP Whiting alleged: (1) The significant permit modification fails to assure compliance with 326 IAC 6.8–2–6(a) of the Indiana State Implementation Plan, which applies to all emissions of particulate matter smaller than 10 microns (PM_{10}) from each boiler stack; (2) the 494.99 ton PM_{10} limit is based on maximum firing rates for the boilers and duct burners that cannot be achieved in practice; (3) the emission rates used to quantify PM_{10} emissions from the boilers are flawed and understate actual emissions by up to 25 percent; and (4) the significant permit modification fails to establish testing, monitoring, or reporting requirements adequate to determine or assure compliance with applicable requirements, including the proposed 12-month PM_{10} limit.

On March 4, 2022, the EPA Administrator issued an Order partially granting and partially denying the Petition. The Order explains the basis for EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review of the Administrator's March 4, 2022, Order shall be filed in the United States Court of Appeals for the appropriate circuit no later than May 31, 2022.

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

Dated: March 17, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–06877 Filed 3–31–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9704–01–OA]

Notification of Public Meetings of the Science Advisory Board Per- and Polyfluoroalkyl Substances (PFAS) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public meetings of the SAB per- and polyfluoroalkyl substances (PFAS) Review Panel (PFAS Review Panel) to discuss their draft report reviewing EPA's Proposed Approaches to the Derivation of a Draft Maximum Contaminant Level Goal for Perfluorooctanoic Acid (PFOA) in Drinking Water; EPA's Proposed Approaches to the Derivation of a Draft Maximum Contaminant Level Goal for Perfluorooctanesulfonic Acid (PFOS) in Drinking Water; EPA's Analysis of Cardiovascular Disease Risk Reduction as a Result of Reduced PFOA and PFOS Exposure in Drinking Water; and EPA's Draft Framework for Estimating Noncancer Health Risks Associated with Mixtures of PFAS.

DATES: The public meetings of the Science Advisory Board PFAS Review Panel will be held on Tuesday, May 3, 2022, from 12 noon to 5 p.m. (Eastern Time), and Friday, May 6, 2022, from 1 p.m. to 5 p.m. (Eastern Time).

ADDRESSES: The meetings will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for details on how to access the meetings.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public meetings may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), via telephone/voice mail (202) 564–2059, or email at *shallal.suhair@epa.gov.* General information concerning the SAB can be found on the EPA website at *http://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB per- and polyfluoroalkyl substances (PFAS) Review Panel (PFAS Review Panel) will hold two public meetings to discuss their draft report reviewing the EPA's four documents about (1) the health effects data to inform the derivation of proposed Maximum Contaminant Level Goals (MCLG) for PFOA and PFOS; (2) the analysis of health risk reduction benefits of potential decreases in drinking water concentrations of PFOA and PFOS and (3) approaches to assess the cumulative risk among mixtures of PFAS.

Technical Contacts: Any technical questions concerning EPA's document titled, ''Proposed Approaches to the Derivation of a Draft Maximum Contaminant Level Goal for Perfluorooctanoic Acid in Drinking Water'' and ''Proposed Approaches to the Derivation of a Draft Maximum Contaminant Level Goal for Perfluorooctanesulfonic Acid in Drinking Water'' should be directed to Brittany Jacobs at *jacobs.brittany@epa.gov.* Any technical questions concerning EPA's document titled, ''Analysis of Cardiovascular Disease Risk Reduction as a Result of Reduced PFOA and PFOS Exposure in Drinking Water'' should be directed to Morgan McCabe at *mccabe.morgan@epa.gov.* Any technical questions concerning EPA's document titled, ''Draft Framework for Estimating Noncancer Health Risks Associated with Mixtures of PFAS'' should be directed to Colleen

Flaherty (*flaherty.colleen@epa.gov*) and/or Jason Lambert (*lambert.jason@epa.gov*).

Availability of Meeting Materials: Prior to the meetings, the agenda and other meeting materials for each meeting will be placed on the SAB website at *http://sab.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB PFAS Review Panel will have the most impact if it provides specific scientific or technical information or analysis for the SAB PFAS Review Panel to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to three minutes. Persons interested in providing oral statements on May 3, 2022, should contact Dr. Sue Shallal, DFO, via email at the contact information noted above by April 26, 2022, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB RFT Review Panel members, statements should be received in the SAB Staff Office by April 26, 2022, for consideration at the public meeting(s). Written statements should be supplied to the DFO via email at the contact information above. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Shallal at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Thomas Brennan,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2022–06876 Filed 3–31–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–010]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed March 21, 2022 10 a.m. EST Through March 28, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20220040, Draft, USACE, CA, Thousand Palms Flood Control Project Draft EIR/EIS, Comment Period Ends: 05/16/2022, Contact: Michael Langley 602–230–6953

EIS No. 20220041, Final Supplement, FHWA, KS, South Lawrence Trafficway, Review Period Ends: 05/02/2022, Contact: Javier Ahumada 785–273–2649

EIS No. 20220042, Draft Supplement, USACE, LA, South Central Coast Louisiana Supplemental Draft Integrated Feasibility Study with Environmental Impact Statement, Comment Period Ends: 05/16/2022, Contact: Joe Jordan 309–794–5791

Dated: March 28, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–06900 Filed 3–31–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than April 18, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Timothy A. Sexton Revocable 2021 Trust, Timothy A. Sexton, as trustee, both of Randalia, Iowa; the Thomas J. Sexton Trust, Thomas J. Sexton, as trustee, the Mark J. Sexton Grantor Trust, Mark J. Sexton, as trustee, the Jennifer S. Walther Grantor Trust, Jennifer S. Walther, as trustee, all of St. Paul, Minnesota; and the Andrew G. Sexton Grantor Trust, St. Paul, Minnesota, Andrew G. Sexton, as trustee, Cedar Falls, Iowa;* to become members of the Sexton Family Control Group, a group acting in concert, to retain voting shares of Britt Bancshares, Inc., St. Paul, Minnesota, and thereby indirectly retain voting shares of First State Bank, Britt, Iowa.

B. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291: Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *David Schornack and Denise Schornack, both of Perham, Minnesota;* to retain voting shares of Cyrus Bancshares, Inc., Alexandria, Minnesota, and thereby indirectly retain voting shares of Hometown Community Bank, Cyrus, Minnesota.

Board of Governors of the Federal Reserve System, March 29, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–06913 Filed 3–31–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 211 0158/Docket No. C–4760]

EnCap/EP Energy; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 2, 2022.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''EnCap/EP Energy; File No. 211 0158'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Nina Thanawala (202–326–2824), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 2, 2022. Write ''EnCap/EP Energy; File No. 211 0158'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to protective actions in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''EnCap/EP Energy; File No. 211 0158'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this Notice and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before May 2, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from EnCap Investments L.P., EnCap Energy Capital Fund XI, L.P., Verdun Oil Company II LLC (''Verdun''), XCL Resources Holdings, LLC (''XCL'') (collectively, ''EnCap''), EP Energy Corporation, and EP Energy LLC (collectively, ''EP Energy'') (together with EnCap, ''Respondents''). The Consent Agreement is designed to remedy the anticompetitive effects that otherwise would result from EnCap's acquisition of EP Energy's crude oil production operations in the Uinta Basin in Utah.

Under the terms of the proposed Decision and Order (''Order'') contained in the Consent Agreement, Respondents have agreed to divest to Crescent Energy Company (''Crescent'') the entirety of EP Energy's crude oil production operations in the Uinta Basin in Utah. Respondents must complete the transfer no later than 10 days after EnCap consummates its acquisition of EP Energy. The Commission has issued, and Respondents have agreed to comply with, an Order to Maintain Assets that requires Respondents to operate and maintain the divestiture assets in the normal course of business through the date the approved buyer acquires the divested assets.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the proposed Order final.

II. The Respondents

Respondent EnCap Investments L.P. is a limited partnership organized and doing business under the laws of Texas and serves as the limited partner for various private equity funds. EnCap Energy Capital Fund XI, L.P. is a private equity fund headquartered in Texas and operating multiple portfolio companies involved in the exploration, production, transmission, marketing and sale of energy, particularly oil and gas. EnCap operates two portfolio companies that are implicated by this transaction: XCL, a producer of waxy crude oil and natural gas in the Uinta Basin headquartered in Houston, Texas, and Verdun, a company also headquartered in Houston, Texas.

Respondent EP Energy Corporation is a corporation organized and doing business under the laws of Delaware. Respondent EP Energy LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in Houston, Texas. EP Energy has production operations in the Uinta Basin in Utah and in the Eagle Ford Shale in Texas.

III. The Transaction

Pursuant to the Membership Interest Purchase Agreement dated July 26, 2021, EnCap, through Verdun, has agreed to acquire EP Energy's crude oil and natural gas production operations in the Uinta Basin in Utah and in the Eagle Ford Shale in Texas (the ''Transaction'').

The Commission's Complaint alleges that the Transaction violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and that the Transaction agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition for the development, production, and sale of Uinta Basin waxy crude to Salt Lake City area refiners.

IV. The Development, Production, and Sale of Uinta Basin Waxy Crude to Salt Lake City Area Refiners

The Commission alleges that the relevant product market in which to analyze the Transaction is no broader than the development, production, and sale of Uinta Basin waxy crude to Salt Lake City area refiners. Uinta Basin waxy crude is classified as yellow or black. Yellow wax has lower levels of sulfur and asphalt and, as a result, requires less processing to refine into petroleum products that meet environmental standards. A narrower market exists for the development, production, and sale of Uinta Basin yellow waxy crude to Salt Lake City area refiners.

Uinta Basin waxy crude possesses distinct characteristics that make it a desirable crude oil from which to refine petroleum products. Uinta Basin waxy crude contains high amounts of paraffin and low levels of sulfur and other undesirable impurities that would otherwise require greater processing to remove from petroleum wax and transportation fuels. It is also a relatively ''light'' crude oil, requiring less processing than other crude oils to make valuable transportation fuels and other petroleum-based products. Uinta Basin waxy crude's high wax content also makes it desirable for production of wax products, while its low percentage of aromatic hydrocarbons renders it useful for making lubricants. Unlike many other crudes, Uinta Basin waxy crude's paraffin content makes it almost solid at ambient temperatures, requiring heat to liquify the resource for transport into or out of truck, rail, or storage.

Salt Lake City area refiners have made significant investments in plant and equipment to optimize their refineries to run Uinta Basin yellow and black waxy crudes. Although other crudes are available to Salt Lake City area refiners, those crudes would not, in the event of a small but significant price increase in waxy crude, sufficiently constrain the price increase to the relevant customers.

The relevant geographic market in which to analyze the Transaction is no broader than the Uinta Basin. Almost all sales of Uinta Basin waxy crude to the Salt Lake City area refineries occur in the Uinta Basin, with customers providing transportation to their locations. Alternatively, the relevant geographic market is the Salt Lake City area. Producers currently can, and do, charge higher net prices for Uinta Basin waxy crude sold to Salt Lake City area refineries than for sales to other customers. The Salt Lake City area refineries cannot evade price discrimination because producers sell Uinta Basin waxy crude to other customers on a delivered basis. High transportation costs would make it cost prohibitive for a Salt Lake City refiner to purchase Uinta Basin waxy crude delivered to refineries located outside the Salt Lake City area.

The Transaction would substantially lessen competition in this market. Four producers—EP Energy, XCL, Ovintiv, and Uinta Wax/Finley Resources (Uinta Wax is a joint venture between Finley Resources and CH4 Energy Six)—account for over 80 percent of all Uinta Basin production. No other producer accounts for a significant amount of Uinta Basin development and production.

The Transaction, if consummated, would eliminate substantial head-to-head competition between EnCap and EP Energy for the development, production, and sale of Uinta Basin waxy crude to targeted Salt Lake City area refiners. By dramatically increasing the size of EnCap's Uinta Basin waxy crude business and taking the market from four significant players to three, the Transaction would increase the incentive and ability of EnCap to reduce supply to these refiners and increase prices.

Producers recognize that consolidation with in-basin peers materially enhances their leverage with refiners in the Salt Lake City area. Historically, Uinta Basin producers have received higher realized prices when Uinta Basin waxy crude production falls short of demand from Salt Lake refiners. Post-closing, EnCap could increase prices for Salt Lake City area refiners by slowing development and production, and by reducing the quantity of waxy crude available to the Salt Lake City area refineries through strategic exports of waxy crude to Gulf Coast area refineries.

The Transaction would also eliminate EP Energy's head-to-head competition with EnCap and other large waxy crude producers and increase the risk of coordination. Today, EP Energy

competes aggressively with other Uinta Basin waxy crude producers. Post-Transaction, the smaller number of Uinta Basin waxy crude producers could more easily coordinate rail exports, production plans, and contract terms to increase waxy crude prices for Salt Lake City area refiners.

XCL's internal, high-level analysis and strategy documents acknowledged the likely competitive effects from the Transaction from the beginning of the process up to and including during the Commission's investigation. During a January 15, 2021 meeting, an XCL Board member noted that a combination with EPE would create $35–75 million in marketing synergies and that it was a ''[d]efensive move with EP currently communicating 20+ wells per year to SLC refiners. Go from 14% of wax supply to 30–40%.'' [1] A May 18, 2021 XCL Technical Meeting presentation, attended by most of the XCL Board members, stated that the Transaction would result in ''Increasing Scale in our Basin—taking out 1 of 4 major producers, 40%+ of Wax Market, Driver's seat.'' [2] An August 25, 2021 memorandum to the Advisory Board of EnCap XI similarly emphasized the small number of significant players, stating that the ''. . . the Uinta is . . . largely controlled by three operators.'' [3]

V. The Proposed Order and the Order To Maintain Assets

The proposed Order and the Order to Maintain Assets would remedy the Transaction's likely anticompetitive effects by requiring EnCap to divest the entirety of EP Energy business and assets in or relating to the state of Utah, including the business of oil and gas exploration, production, research, development, gathering, transportation, distribution, marketing, and sales in or from the Uinta Basin, to Crescent. Respondents must also divest additional assets if the Commission determines that additional assets are necessary to achieve the purpose of the proposed Order within the first year after the Order is issued. Crescent is an experienced operator in the development, production and sale of crude oil and natural gas, and will be a new entrant in the Uinta Basin. The Commission retains the right to appoint a Trustee to find another buyer of the divestiture assets if it determines Crescent is not an acceptable buyer.

The proposed Order requires that the divestiture be completed no later than 10 days after EnCap consummates the Transaction. The proposed Order and the Order to Maintain Assets further require EnCap to operate and maintain the divestiture assets in the ordinary course of business, including maintaining the economic viability, marketability, and competitiveness of the divestiture assets until Crescent completes its acquisition of the divestiture assets.

The proposed Order contains additional provisions designed to ensure the effectiveness of the relief. For example, the proposed Order also requires the Respondents to grant Crescent a perpetual license to use any retained intellectual property, and to obtain all other consents or authorizations to consummate the sale of the divestiture assets from all necessary third parties or governmental entities. Respondents are required to provide Crescent with transitional assistance for up to 180 days following the divestiture of the assets and must cooperate with and assist Crescent to evaluate and offer employment to employees involved in the business and assets subject to divestiture. Respondents have also agreed not to enforce any employee noncompete or non-solicitation agreements against Crescent. Finally, the proposed Order also provides for the appointment of an independent Monitor to oversee the Respondents' compliance with the requirements of the Order.

In addition to requiring the asset divestitures, the proposed Order requires EnCap to obtain prior approval from the Commission before making certain future acquisitions in the Utah counties that encompass the Uinta Basin (Duchesne, Uintah, Utah, Grand, Emery, Carbon, and Wasatch) over the next ten years.

The proposed Order also requires Crescent to obtain prior approval from the Commission before transferring all or substantially all of the divested assets to any buyer for the first three years after Crescent acquires the divestiture assets. For the seven years following the initial three-year period, the proposed Order requires Crescent to obtain prior approval from the Commission before transferring all or substantially all of the divested assets to a buyer engaged in the development, production, or sale of waxy crude in the Uinta Basin.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–06945 Filed 3–31–22; 8:45 am]

BILLING CODE 6750–01–P

[1] ENC–FTC–200034640 (Jan. 17, 2021); *see also* EnCap 4(c)–4 (Jan. 15, 2021).

[2] EnCap 4(c)–8 at 63 (May 18, 2021); EnCap Resp. to VRL Req. 12 (Feb. 21, 2022).

[3] ENC–FTC–201680452, at ENC–FTC–201680453 (Aug. 25, 2021).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–22DI; Docket No. CDC–2022–0035]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Noise Exposures and Hearing Loss in the Oil and Gas Extraction Industry. This information collection is designed to evaluate oil and gas extraction workers' noise and chemical exposures and hearing.

DATES: CDC must receive written comments on or before May 31, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0035, by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Noise Exposures and Hearing Loss in the Oil and Gas Extraction Industry—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Oil and gas extraction (OGE) workers play an important role in supporting the United States economy and help fulfill the energy needs of Americans and American businesses. OGE workers have significant risks for a variety of exposures at oil and gas well sites, and there has been no significant occupational noise exposure research in the United States onshore upstream OGE sector. This proposed project will characterize relationships between noise exposure, chemical exposures, hearing loss, and hearing loss prevention practices within the onshore OGE industry.

Primary data will be collected using three approaches. First, researchers will collect direct measurements of noise and ototoxic chemicals on job sites, including personal exposure assessments of OGE workers. Second, researchers will use a questionnaire to collect information on noise and chemical exposures, hearing loss, and associated factors among OGE workers. Third, audiometry tests performed by NIOSH will be offered to industry partners to further understand extent of hearing loss amongst OGE workers.

Data will be used to understand noise exposures, ototoxic chemical exposures, self-reported hearing loss, and hearing loss prevention practices in the OGE industry. Subsequently, the data and analysis will be used to create evidence-based interventions and recommendations, which will be communicated to the spectrum of OGE industry stakeholders.

CDC requests OMB approval for an estimated 65 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Oil and Gas Workers	Noise and Hearing Questionnaire	167	1	17/60	47
	Audiometry Testing	33	1	30/60	17
	Exposure Monitoring Results Notification Form	40	1	2/60	1
Total					65

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–06914 Filed 3–31–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–22–0488; Docket No. CDC–2022–0043]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Interstate Travel of Persons: Report of Illness or Death (42 CFR part 70). This collection gathers information on the required reporting of ill persons

or deaths occurring during interstate travel, primarily air travel.

DATES: CDC must receive written comments on or before May 31, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0043 by either of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses;
5. Assess information collection costs.

Proposed Project

Interstate Travel of Persons: Report of Illness or Death (42 CFR part 70) (OMB Control No. 0920–0488, Exp. 6/30/2022)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 361 of the Public Health Service Act (42 U.S.C. 264) authorizes the Secretary of the Department of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States, or from one State or possession into any other State or possession. CDC administers regulations pertaining to interstate control of communicable diseases (42 CFR part 70), and sections 42 CFR parts 70.4 and 70.11 include requirements reports of ill persons or death if occurring during interstate travel.

The intended use of the information is to ensure that CDC can assess and respond to reports of ill persons or death that occur on conveyances engaged in interstate travel and assist state and local health authorities if an illness or death occurs that poses a risk to public health. Generally, the primary source of this information is aircraft traveling within the United States.

There are no standard forms associated with this information collection. Reporting requirements imposed by the regulations have been reduced and streamlined by reliance upon State and local health departments to manage most situations occurring within their jurisdictions. If submission of information under these regulations becomes necessary, all information may be submitted in the most expeditious manner practical. At this time, all reporting of a communicable disease or death is accomplished electronically, *e.g.,* via Air Traffic Control or via the airlines' points of contact (*e.g.,* Operations Center, Flight Control, Airline Station Manager.)

For reports of ill persons or death on a conveyance engaged in interstate traffic, the total burden is estimated from 1,600 respondents submitting domestic reports of death or communicable disease in 2021. This is a significant increase due to reports of illness from the COVID–19 pandemic, with an average burden of seven minutes per report. CDC requests approval for an estimated 186 annual burden hours. There is no cost to respondents other than the time required to make the report of illness or death.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Pilot in command	42 CFR 70.11 Report of death or illness onboard aircraft operated by airline.	1,400	1	7/60	163
Master of vessel or person in charge of conveyance.	42 CFR 70.4 Report by the master of a vessel or person in charge of conveyance of the incidence of a communicable disease occurring while in interstate travel.	200	1	7/60	23
Total		1,600			186

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–06916 Filed 3–31–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–1304]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Outbreak Reporting System (NORS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 13, 2021, to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Outbreak Reporting System (OMB Control No. 0920–1304, Exp. 09/30/2023)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Outbreak Reporting System (NORS) is a web-based platform that is used by local, state, and territorial health departments in the United States to report all waterborne and foodborne disease outbreaks and enteric disease outbreaks transmitted by contact with environmental sources, infected persons or animals, or unknown modes of transmission to the Centers for Disease Control and Prevention. CDC analyzes outbreak data to determine trends and develop and refine recommendations for prevention and control of foodborne, waterborne, and enteric disease outbreaks.

CDC requests OMB approval to combine the two previously approved forms (Form 52.12 Waterborne Disease Transmission and Form 52.13 Foodborne, Person to Person Disease Transmission, Animal Contact, Environmental Contamination, Unknown Transmission mode) previously approved under OMB Control No. 0920–1304 into one form (Form 52.14). This change will streamline the data elements that are collected, by resulting in the utilization of one form for all reportable modes of transmission and eliminating overlapping data collection fields.

The total annualized burden is estimated to be 1160 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Epidemiologist	National Outbreak Reporting System	59	59	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–06912 Filed 3–31–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–1260]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Maritime Illness Database and Reporting System (MIDRS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 25, 2021 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget

is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Maritime Illness Database and Reporting System (MIDRS)(OMB Control No. 0920–1260, Exp. 04/30/2022)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Under Foreign Quarantine Regulations (45 CFR 71), § 71.21(c) for ''report of illness'' and § 71.41 ''general provisions'' for sanitary inspections, the Vessel Sanitation Program (VSP) in the National Center for Environmental Health (NCEH) takes the CDC lead on overseeing acute gastroenteritis (AGE) illness surveillance, AGE outbreak investigations, and sanitary inspections. The VSP's jurisdiction includes passenger vessels carrying 13 or more people sailing from foreign ports and within 15 days of arriving at a U.S. port. Data collected allows VSP to quickly detect AGE outbreaks, provide epidemiologic and sanitation guidance to stop the outbreak, craft public health recommendations to prevent future outbreaks, and monitor AGE illness trends to identify important changes over time.

To continue this AGE surveillance, NCEH is requesting a revision of a three-year Paperwork Reduction Act (PRA) clearance for the Maritime Illness Database and Reporting System (MIDRS) (OMB Control No. 0920–1260; expiration date 04/30/2022). This information collection request (ICR) is revised to refine and update respondent types, frequencies of responses, information collection forms, recordkeeping requirements, and time burden requested for AGE surveillance. CDC is also updating this ICR to include recordkeeping requirements related to VSP sanitation inspections.

The MIDRS data collection system consists of an electronic surveillance system that receives information through a web-based reporting portal 24 hours and four hours prior to arrival at a U.S. port. This data can also be submitted by phone, email, or fax and entered into MIDRS by VSP. AGE cases reported to MIDRS are totals for the entire voyage and do not represent the number of active AGE cases at any given port of call or at disembarkation.

In the past three years, the VSP has received 13,352 AGE reports to MIDRS. Since the first quarter of 2020, the COVID–19 pandemic disrupted the number of cruise ship voyages operating to U.S. ports of call. Between March 2020 and October 2021, cruise industry operations were suspended under a federally issued No Sail Order, and then subsequently under a Conditional Sailing Order to prevent the risk of introducing, transmitting, and spreading COVID–19 by cruise ship travelers. As a result, the number of AGE reports submitted to MIDRS in 2020 and 2021 were substantially lower (n=2,667 and n=1,717, respectively), compared to 2019 (n=8,968).

Thus, VSP revises its annual estimates to 9,000 MIDRS reports from approximately 300 ships arriving at U.S. ports 30 times per year. This number of arrivals reflects the number of times each cruise ship must submit a report to MIDRS in a given year (n=300*30=9,000). All arriving ships send 24-hour MIDRS reports (44% electronically [n=132]; 56% by phone, email, or fax [n=168]) to the VSP. A subset of approximately 80% of these ships may need to send four-hour MIDRS reports either electronically (n=106) or by phone, email, or fax (n=201) if the number of cases changes after submission of the initial report.

When AGE cases exceed the 2% alert threshold and the 3% outbreak threshold, special reports are sent to VSP. VSP estimates that 2% of ships reporting to MIDRS (n=180) per year are required to send up to four special report updates until they are four hours from port. VSP also requires these ships to begin sending at least one and up to 12 daily reports in the form of AGE logs to monitor and assess whether a cruise ship outbreak investigation (CSOI) may be warranted. If so, VSP conducts CSOIs under OMB Control Number 0020–1255 (expiration date 03/30/2022).

The daily report in the form of AGE logs and the 72-hour food/activity history template are used to document AGE cases among crew (n=575 per year) and passengers (n=2,795 per year). The ship's crew undergo additional worker assessments. For example, all crew members undergo a three-day pre-embarkation AGE illness assessment (n=197,640 per year based on an average of 1,080 crew per ship in 2019). Assuming five contacts and cabin mates per crew AGE cases, approximately 2,875 crew per year undergo additional screening and assessments such as initial, 24-hour, and 48-hour verbal interviews to assess AGE status. Crew AGE cases must also undergo a last symptom check to obtain a return-to-work clearance. Documentation of these assessments and reports are maintained on the ship for at least 12 months (8,760 hours per year).

There are three types of respondents involved in AGE surveillance: Cruise ship medical staff or other designated personnel who treat and report AGE cases to VSP, and the cruise ship crew and the cruise ship passengers who may become AGE cases. Of note, VSP does not request any identifiable information from or about the AGE cases; this information is collected and owned by the cruise line and maintained on the ship as part of the AGE case's medical record.

A fourth type of respondent is the cruise ship engineering staff who perform shipboard engineering and sanitation system maintenance. Such records must be maintained for at least 12 months (8,760 hours). VSP reviews these records during operational inspections to confirm they are available if needed, and if there is an AGE outbreak or report of unusual AGE illness for a particular voyage.

After careful consideration of the VSP and cruise industry experience in 2019 and the standard practices outlined in the VSP Operations Manual, CDC has revised its burden estimates for an

increase of 6,312,230 annual responses (n=6,325,980) compared to that approved in 2019 (n=13,750). CDC also estimates the total annualized time burden is 5,592,688 hours, which is an increase of 5,591,150 hours compared to the previously approved 1,538 hours. This increase in annual time burden is based largely on more accurate estimation of the number of respondents, the number of responses, and adding the 12-month recordkeeping burden for both AGE surveillance records and for maintenance and sanitation records; this recordkeeping burden was not accurately accounted for in the prior ICR. There are no other costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Cruise ship medical staff or other designated personnel.	AGE Illness Report 24 hours before arrival (web).	132	30	3/60
	AGE Illness Report 24 hours before arrival (phone/email/fax).	168	30	3/60
	AGE Illness Report 4 hours before arrival (web).	106	30	3/60
	AGE Illness Report 4 hours before arrival (phone/email/fax).	134	30	3/60
	Special Reports exceeding 2%–3% AGE Threshold (web/phone/email/fax).	180	4	3/60
	Daily Reports of AGE Logs	180	12	3/60
	Recordkeeping of AGE Surveillance Records	300	1	8,760
Cruise ship crew	72-hour Food/Activity History Template (AGE cases).	575	30	10/60
	Three-day Pre-embarkation AGE Illness Assessment (all crew members).	197,640	30	3/60
	Interviews to Determine AGE Status (initial, 24-hr, 48-hr)(asymptomatic cabin mates and immediate contacts of symptomatic crew).	2,875	90	5/60
	Last Symptom Check and Return to Work Clearance (food and nonfood employees).	575	30	3/60
Cruise ship passengers	72-hour Food/Activity History Template (AGE cases).	2,795	30	10/60
Cruise ship engineering staff or other designated personnel.	Recordkeeping of Engineering and Sanitation Records.	300	1	8,760

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–06911 Filed 3–31–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–22–0573; Docket No. CDC–2022–0041]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on an information collection project titled National HIV Surveillance System (NHSS). The NHSS is designed to collect information on cases of human immunodeficiency virus (HIV) and indicators of HIV disease and HIV disease progression including AIDS. Data is used to monitor the extent and characteristics of the HIV burden in the United States.

DATES: CDC must receive written comments on or before May 31, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0041 by either of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS

H21–8, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

National HIV Surveillance System (NHSS) (OMB Control No. 0920–0573, Exp. 11/30/2022)—Revision—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is authorized under Sections 304 and 306 of the Public Health Service Act (42 U.S.C. 242b and 242k) to collect information on cases of human immunodeficiency virus (HIV) and indicators of HIV disease and HIV disease progression, including AIDS. Data collected as part of the National HIV Surveillance System (NHSS) are the primary data used to monitor the extent and characteristics of the HIV burden in the United States. HIV surveillance data are used to describe trends in HIV incidence, prevalence and characteristics of persons diagnosed with HIV infection and used widely at the federal, state, and local levels for planning and evaluating prevention programs and health-care services, allocating funding for prevention and care, and monitoring progress toward achieving national prevention goals of the Ending the HIV Epidemic in the U.S. initiative.

NHSS data collection activities are currently supported through cooperative agreements with health departments under CDC funding Opportunity Announcements PS18–1802: Integrated HIV Surveillance and Prevention Programs for Health Departments and PS20–2010 Integrated HIV Programs for Health Departments to Support Ending the HIV Epidemic in the United States. The activities funded under these announcements promote and support improving health outcomes for persons living with HIV through achieving and sustaining viral suppression, and reducing health-related disparities by using quality, timely, and complete surveillance, and program data to guide HIV prevention efforts toward reducing new HIV infections and ending the HIV epidemic in the United States.

The Division of HIV Prevention (DHP), National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), CDC in collaboration with health departments in the states, the District of Columbia, and U.S. dependent areas, conducts national surveillance for cases of HIV infection that includes critical data reported across the spectrum of HIV disease stages from HIV diagnosis to death. The systematic data collection provides the essential data used to calculate population-based HIV incidence estimates, describe the geographic distribution of disease, monitor HIV transmission and drug resistance patterns and genetic diversity of HIV among infected persons, detect and respond to HIV clusters of recent and rapid transmission, and monitor perinatal exposures. NHSS data are also used locally to identify persons with HIV who are not in medical care and linking them to care and needed services. NHSS data continue to be collected, maintained, and reported using standard case definitions, report forms and software. The system is periodically updated as needed to keep pace with changes in testing technology and advances in HIV care and treatment, as well as changing prevention program monitoring and evaluation needs.

The revisions requested in this package include program-initiated modifications to currently collected data elements and forms including changes to the Adult Case Report Form (ACRF), the Pediatric Case Report Form (PCRF)and the Perinatal HIV Exposure Reporting (PHER) form. We request approval to continue data collection using our currently approved data collection instruments through December 2022 and implement the proposed form changes starting in January 2023. Changes made to both the ACRF and PCRF include addition of two variables to collect sexual orientation information, updated gender identity response options, addition of two new HIV test types to accommodate changes in testing technology, addition of two new response options related to self-testing, addition of three new HIV testing history variables to summarize self-testing activities (ACRF only) and formatting changes to improve usability of both forms. The main changes to the PCRF include those related to critical perinatal exposure information that was consolidated across the PHER and PCRF to reduce redundancy across forms and include some new and revised data elements needed to assess progress with perinatal elimination efforts and support HIV prevention activities. Combining the PCRF and PHER forms reduced the total number of pages of information collected from two forms with eight total pages to one form with six pages which will reduce burden of data collection and increase usability of the forms. In all, 10 variables in the PHER form will no longer be collected; seven variables from the PHER form were combined with existing variables on the PCRF; 13 variables were moved from the PHER form to the new PCRF; five new variables were added to the PCRF including four related to breastfeeding/chestfeeding and premastication risk behaviors and one variable related to documentation of laboratory results in a person's labor and delivery record; response options for the existing delivery method variable was revised on the PCRF to align with current medical practices. Health departments will now use the one revised PCRF form to report perinatal exposures and pediatric case reports and the revised burden for both perinatal exposure reporting and pediatric case reporting is now combined and included under the PCRF form line. The number of respondents reporting pediatric case reports is 59 and a subset of those jurisdictions that have perinatal exposure reporting will also report some perinatal exposure

information using the revised PCRF form and the PCRF burden estimate has been revised to account for this reporting. The time per response for the PCRF has been revised from 20 minutes to 35 minutes on average per response to reflect these changes and increased reporting of perinatal exposure data elements. HIV Incidence data collection as anticipated in the previous revision was not implemented and is being discontinued as a separate activity. HIV incidence continues to be estimated by CDC via statistical methods. No other revisions to the other data collection forms for this ICR are proposed. Burden estimates have been updated to reflect the discontinuation of incidence data collection, discontinued use of the PHER form for perinatal exposure reporting, and revised PCRF which will be used for both perinatal exposure reporting and pediatric case reporting. In addition, the revised burden estimate includes small increases in burden for case and laboratory updates, deduplication activities and case investigations due to the increasing number of persons living with HIV for which additional laboratory and case information is reported and linkage to care activities are conducted. The burden estimates for case reports decreased slightly since the last OMB approval due to decreases in adult and pediatric HIV diagnoses reported.

CDC provides funding for 59 jurisdictions to provide adult and pediatric HIV case reports. Additional information on perinatal exposures is also reported in a subset of jurisdictions when reportable using the same pediatric case report form and used to monitor progress toward perinatal HIV elimination goals. Health department staff compile information from laboratories, physicians, hospitals, clinics, and other health care providers to complete the HIV adult and pediatric case reports. CDC estimates that approximately 789 adult HIV case reports and 57 perinatal exposure and pediatric case reports are processed by each health department annually.

These data are recorded using standard case report forms either on paper or electronically and entered into the electronic reporting system. Updates to case reports are also entered into the reporting system by health departments as additional information may be received from laboratories, vital statistics, or additional providers. Evaluations are also conducted by health departments on a subset of case reports (*e.g.* re-abstraction, validation). CDC estimates that on average approximately 85 evaluations of case reports, 2,519 updates to case reports and 10,130 updates of electronic laboratory test data will be processed by each of the 59 health departments annually. In addition, all 59 health departments will conduct routine deduplication activities for new diagnoses and cumulative case reports. CDC estimates that health departments on average will follow-up on 3,032 reports as part of deduplication activities annually. Case report information compiled over time by health departments is then de-identified and forwarded to CDC on a monthly basis to become part of the national HIV surveillance database.

Additional information will be reported by health departments for monitoring and evaluation of health department investigations including activities identifying persons who are not in HIV medical care and linking them to HIV medical care (*e.g.,* Data-to-Care activities) and other services and identifying and responding to clusters. CDC estimates health departments will on average process 929 responses related to investigation reporting and monitoring annually.

Clusters of HIV are groups of persons related by recent, rapid transmission, for which rapid response is needed in order to intervene to interrupt ongoing transmission and prevent future HIV infections. Health departments may detect clusters through multiple means, including through routine analyses of Surveillance data and other data reported to the NHSS. Data on clusters of recent and rapid HIV transmission in the United States will be collected to monitor situations necessitating public health intervention, assess health department response, and evaluate outcomes of intervention activities. These summary data will be collected through quarterly cluster report forms that will be completed by health departments for clusters that they have identified and for which they are actively conducting response activities. Health departments with detected clusters will complete an initial cluster report form when a cluster is first identified, a cluster follow-up form for each quarter in which the cluster response remains active and a cluster close-out form when cluster response activities are closed or at annual intervals while a cluster response remains active. CDC estimates on average health departments will provide information for 2.5 cluster initial cluster reports, five Cluster Follow-up Form reports, and 2.5 Cluster Close-out Form reports annually.

The Standards Evaluation Report (SER) is used by CDC and Health Departments to improve data quality, interpretation, usefulness, and surveillance system efficiency, as well as to monitor progress toward meeting surveillance program objectives. The information collected for the SER includes a brief set of questions about evaluation outcomes and the collection of laboratory data that will be reported one time a year by each 59 health departments.

CDC requests OMB approval for an estimated 60,731 annual burden hours in this Revision. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Health Departments	Adult HIV Case Report (ACRF)	59	789	20/60	15,517
Health Departments	Perinatal Exposure and Pediatric HIV Case Report (PCRF).	59	57	35/60	1,962
Health Departments	Case Report Evaluations	59	85	20/60	1,672
Health Departments	Case Report Updates	59	2,519	2/60	4,954
Health Departments	Laboratory Updates	59	10,130	0.5/60	4,981
Health Departments	Deduplication Activities	59	3,032	10/60	29,815
Health Departments	Investigation Reporting and Evaluation.	59	929	1/60	914
Health Departments	Initial Cluster Report Form	59	2.5	1	148
Health Departments	Cluster Follow-up Form	59	5	0.5	148

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Health Departments	Cluster Close-out Form	59	2.5	1	148
Health Departments	Annual Reporting: Standards Evaluation Report (SER).	59	1	8	472
Total					60,731

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–06917 Filed 3–31–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–22DT; Docket No. CDC–2022–0040]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Baseline Survey of National Education and Awareness Social Marketing Campaign: Employer Efforts to Support the Mental Health of Health Workers. This project is designed to conduct an electronic survey with healthcare workers and healthcare employers to establish a baseline to measure intended campaign outcomes.

DATES: CDC must receive written comments on or before May 31, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0040, by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Baseline Survey of National Education and Awareness Social Marketing Campaign: Employer Efforts to Support the Mental Health of Health Workers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH is requesting approval of a new data collection for a period of one year under the project titled Baseline Survey of National Education and Awareness Social Marketing Campaign: Employer Efforts to Support the Mental Health of Health Workers. As part of the COVID–19 American Rescue Plan of 2021 and in response to a Congressional mandate, NIOSH is taking an active stance to address mental health concerns, to include substance use disorders, among the more than 20 million workers in the nation's healthcare sector. NIOSH, the federal agency tasked with conducting research to contribute to reductions in occupational illnesses, injuries, and hazards, plans to conduct a national social marketing campaign to promote awareness and education of employers and health workers about mental health. By conducting a national social marketing campaign, NIOSH intends to reach both health employers and health workers with information about organizational programs, services, policies, and practices to support worker mental health and the

importance of taking action to support one's mental health. The immediate anticipated outcomes of the campaign include:

1. Increased awareness and knowledge of mental health risks among healthcare workers, by both workers themselves and by their employers, and

2. Increased awareness of evidence-based interventions, policies, practices, services, and other resources among healthcare workers, by both workers themselves and by their employers.

Additionally, NIOSH aims for the campaign to not only increase healthcare employers' intent to implement workplace mental health support, but to increase workers ability to identify and intent to utilize those support services. To begin to understand whether these outcomes have been achieved, at the conclusion of the campaign NIOSH must first establish baseline metrics for these outcomes prior to the campaign's launch. Hence the need for this requested data collection. Secondarily, this information may also be used in further campaign development.

NIOSH anticipates seeking 500 healthcare worker respondents and 500 healthcare employer respondents for a total of 1,000 total survey respondents. We estimate that the survey will take approximately 15 minutes to complete per for a total of 250 annual burden hours. Participation is voluntary, and there is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Healthcare Employers	Survey	500	1	15/60	125
Healthcare Employees	Survey	500	1	15/60	125
Total					250

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–06915 Filed 3–31–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Federal Tax Refund Offset, Administrative Offset, and Passport Denial

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) is requesting the federal Office of Management and Budget (OMB) to approve the Federal Tax Refund Offset, Administrative Offset, and Passport Denial with minor edits to the ''Comments'' section of the record specifications to clarify the corresponding fields for an additional three years. The current OMB approval expires on June 30, 2022.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect 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 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Federal Tax Refund Offset and Administrative Offset programs collect past-due child and spousal support by intercepting certain federal payments, including federal tax refunds, of parents who have been ordered to pay support and are delinquent. The Federal Offset Program is a cooperative effort among the U.S. Department of the Treasury's Bureau of the Fiscal Service, OCSE, and state child support enforcement agencies. The Passport Denial Program reports noncustodial parents who owe child and spousal support above a specified threshold to the U.S. Department of State, which will then deny passports to these individuals. State child support enforcement agencies routinely submit the names, Social Security numbers, and the amount(s) of past-due child and spousal support of noncustodial parents who are delinquent in making payments to OCSE.

Respondents: Child Support Enforcement Agencies.

ANNUAL BURDEN ESTIMATES

Information collection instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Input Record Specifications	54	52	.3	842.4
Output Record Specifications	54	52	.46	1,291.68
Payment File	54	52	.14	393.12
Annual Certification Letter	54	1	.4	21.6
Child Support Portal Processing Screens	173	281	.01	486.13

Estimated Total Annual Burden Hours: 3,034.93.

Authority: 42 U.S.C. 652(b); 42 U.S.C. 664; 26 U.S.C. 6402(c); 31 CFR 285.3; 45 CFR 302.60; 45 CFR 303.72; 31 U.S.C. 3701 *et seq.;* 31 U.S.C. 3716(h); 31 CFR 285.1; 42 U.S.C. 652(k); 42 U.S.C. 654(31); 22 CFR 51.60; 42 U.S.C. 654(31); 42 U.S.C. 664; 31 CFR 285.1; and 31 CFR 285.3.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–06905 Filed 3–31–22; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Information Collection: Indian Health Service Purchased/Referred Care Proof of Residency; OMB No. 0917–0040

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments; request for extension of approval.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to take this opportunity to comment on the information collection Office of Management and Budget (OMB) Control Number 0917–0040, titled, Purchased/Referred Care Proof of Residency. The IHS is requesting OMB to approve an extension for this collection. Notice regarding the information collection was last published in the **Federal Register** on January 24, 2022, and allowed 60 days for public comment. The purpose of this notice is to announce the IHS' intent to submit this collection to OMB and to allow 30 days for public comment to be submitted directly to OMB. A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID: IHS_FRDOC_0001).

DATES: Consideration will be given to all comments received by May 2, 2022.

ADDRESSES: *Direct Your Comments to OMB:* Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Evonne Bennett, Information Collection Clearance Officer at: *Evonne.Bennett@ihs.gov* or 301–443–4750.

SUPPLEMENTARY INFORMATION: This previously approved information collection project was last published in the **Federal Register** on January 24, 2022, and allowed 60 days for public comment (87 FR 3562). No public comment was received in response to the notice. This notice announces our intent to submit this collection, which expires March 31, 2022, to OMB for approval of an extension, and to solicit comments on specific aspects for the proposed information collection.

Title: Purchased/Referred Care Proof of Residency.

OMB Control Number: 0917–0040.

Need and Use of Information Collection: The IHS Purchased/Referred Care Program needs the information requested on the PRC Proof of Residency form to verify that individuals seeking medical services through a PRC program meet the residency requirements specific to PRC under 42 CFR 136.23.

Agency Form Number: IHS 976.

Members of Affected Public: Individuals/Households.

Status of the Proposed Information Collection: Renewal request.

Type of Respondents: Individuals.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response *	Total annual burden hours
Individual Patient Count	77,185	1	77,185	3/60	3,859.25
Total	77,185	1	77,185	3/60	3,859.25

* For ease of understanding, the average burden per response is 3 minutes.

There are no direct costs to respondents to report.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) Whether the information collection activity is necessary to carry out an agency function;

(b) whether the agency processes the information collected in a useful and timely fashion;

(c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) whether the methodology and assumptions used to determine the estimates are logical;

(e) ways to enhance the quality, utility, and clarity of the information being collected; and

(f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Elizabeth A. Fowler,

Acting Deputy Director, Indian Health Service.

[FR Doc. 2022–06767 Filed 3–31–22; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: April 28, 2022.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 28, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–06859 Filed 3–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: April 25–26, 2022.

Closed: 8:30 a.m. to 9:00 a.m.

Agenda: Discussion of BSC Reviews.

Place: National Institute of Environmental Health Science, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Open: April 25, 2022, 9:00 a.m. to 12:15 p.m.

Agenda: Meeting Overview and Q & A Session.

Place: National Institute of Environmental Health Science, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Closed: April 25, 2022, 12:15 p.m. to 2:15 p.m.

Agenda: Sessions with Investigators.

Place: National Institute of Environmental Health Science, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Open: April 25, 2022, 2:15 p.m. to 4:45 p.m.

Agenda: Meeting Overview and Q & A Session.

Place: National Institute of Environmental Health Science, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Closed: April 25, 2022, 4:45 p.m. to 5:30 p.m.

Agenda: Sessions with Investigators.

Place: National Institute of Environmental Health Science, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Open: April 26, 2022, 9:00 a.m. to 10:45 a.m.

Agenda: Meeting Overview and Q & A Session.

Place: National Institute of Environmental Health Science, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Closed: April 26, 2022, 10:45 a.m. to 12:15 p.m.

Agenda: Sessions with Investigators.

Place: National Institute of Environmental Health Science, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Open: April 26, 2022, 12:15 p.m. to 1:40 p.m.

Agenda: Poster Session.

Place: National Institute of Environmental Health Science, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Closed: April 26, 2022, 1:40 p.m. to 5:50 p.m.

Agenda: Core Leadership Review and BSC Discussion.

Place: National Institute of Environmental Health Science, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Contact Person: Darryl C. Zeldin, Scientific Director & Principal Investigator, Division of Intramural Research, National Institute of Environmental Sciences, NIH, 111 T.W. Alexander Drive, Mail drop MSC A2–09, Research Triangle Park, NC 27709, 919–541–1169, *zeldin@niehs.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March, 28, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–06883 Filed 3–31–22; 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; Transition Career Development Award (K22).

Date: May 19, 2022.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850 (Virtual Meeting).

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.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–3: NCI Clinical and Translational Cancer Research.

Date: May 27, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Shuli Xia, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850, 240–276–5256, *shuli.xia@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) SEP–1.

Date: May 31–June 1, 2022.

Time: 9:00 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 7W116, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W116, Rockville, Maryland 20850, 240–276–5413, *klaus.piontek@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) SEP–2.

Date: June 1–2, 2022.

Time: 9:00 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 7W248, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–276–5085, *tandlea@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) Review I.

Date: June 8–9, 2022.

Time: 9:00 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 7W618, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850, 240–276–6611, *mukesh.kumar3@nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Transition to Independence Study Section (I).

Date: June 8–9, 2022.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W602, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Delia Tang, M.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Rockville, Maryland 20850, 240–276–6456, *tangd@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) Review II.

Date: June 9–10, 2022.

Time: 9:00 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 7W634, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850, *mike.lindquist@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) SEP–5.

Date: June 9–10, 2022.

Time: 9:00 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 7W244, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: John Paul Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850, 240–276–5415, *paul.cairns@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–10: NCI Clinical and Translational Cancer Research.

Date: June 9, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850, 240–276–5460, *jfang@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) SEP–3.

Date: June 16–17, 2022.

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 7W120, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850, 240–276–6457, *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Integrating Biospecimen Science Approaches into Clinical Assay Development.

Date: June 29, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850, 240–276–5460, *jfang@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Pathway to Independence Award for Outstanding Early-Stage Postdoctoral Researchers.

Date: June 29–30, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850 (Virtual Meeting).

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; Assays for Clinical Biomarker Evaluation.

Date: June 30, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W114, Rockville, Maryland 20850 (Virtual Meeting).

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; SEP–11: NCI Clinical and Translational Cancer Research.

Date: July 15, 2022.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W114, Rockville, Maryland 20850 (Virtual Meeting).

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.*

(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: March 28, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–06864 Filed 3–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–

0438 (Formerly: STERLING Reference Laboratories)
Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ, 85254, 602–457–5411/623–748–5045
DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890
Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)
ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609
Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., a Member of the Roche Group)
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)
LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)
Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088; Testing for Veterans Affairs (VA) Employees Only
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085; Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2022–06909 Filed 3–31–22; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of June 1, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone

areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Humboldt County, Iowa and Incorporated Areas Docket No.: FEMA–B–2112	
City of Humboldt	Municipal Building, 29 5th Street South, Humboldt, IA 50548.
Unincorporated Areas of Humboldt County	Humboldt County Courthouse, 203 Main Street, Dakota City, IA 50529.
Ida County, Iowa and Incorporated Areas Docket No.: FEMA–B–2105	
City of Arthur	City Hall, 217 South Main Street, Arthur, IA 51431.
City of Battle Creek	City Hall, 115 Main Street, Battle Creek, IA 51006.
City of Galva	City Hall, 116 South Main Street, Galva, IA 51020.
City of Holstein	City Hall, 119 South Main Street, Holstein, IA 51025.
City of Ida Grove	City Hall, 403 3rd Street, Ida Grove, IA 51445.
Unincorporated Areas of Ida County	Ida County Courthouse, 401 Moorehead Street, Ida Grove, IA 51445.
Sac County, Iowa and Incorporated Areas Docket No.: FEMA–B–2025	
City of Auburn	City Hall, 209 Pine Street, Auburn, IA 51433.
City of Early	City Hall, 107 Main Street, Early, IA 50535.
City of Lake View	City Hall, 305 Main Street, Lake View, IA 51450.
City of Odebolt	City Hall, 205 West 2nd Street, Odebolt, IA 51458.
City of Sac City	City Hall, 302 East Main Street, Sac City, IA 50583.
City of Schaller	City Hall, 101 South Main Street, Schaller, IA 51053.
City of Wall Lake	City Hall, 108 Boyer Street, Wall Lake, IA 51466.
Unincorporated Areas of Sac County	Sac County Courthouse, 100 Northwest State Street, Sac City, IA 50583.
Union County, Iowa and Incorporated Areas Docket No.: FEMA–B–2105	
City of Creston	City Offices, 116 West Adams Street, Creston, IA 50801.
Unincorporated Areas of Union County	Union County Emergency Management Office, 705 East Taylor Street, Creston, IA 50801.
Brown County, Kansas and Incorporated Areas Docket No.: FEMA–B–2122	
City of Fairview	Fairview Community Center, 511 West Front Street, Fairview, KS 66425.
City of Hamlin	Brown County Courthouse, 601 Oregon Street, Hiawatha, KS 66434.
City of Hiawatha	City Hall, 701 Oregon Street, Hiawatha, KS 66434.
City of Horton	City Hall, 205 East 8th Street, Horton, KS 66439.
City of Morrill	City Hall, 612 Roxanna Street, Morrill, KS 66515.
City of Reserve	Reserve City Hall, 109 North Main Street, Hiawatha, KS 66434.
City of Robinson	City Hall, 118 Parsons Street, Robinson, KS 66532.
Iowa Tribe of Kansas and Nebraska	Iowa Tribe of Kansas and Nebraska, 3345 B Thrasher Road, White Cloud, KS 66094.
Kickapoo Tribe in Kansas	Kickapoo Tribe Government Offices, 824 111th Drive, Horton, KS 66439.
Sac & Fox Nation of Missouri in Kansas and Nebraska	Sac & Fox Nation Environmental Department, 401 North Arch Street, Reserve, KS 66434.
Unincorporated Areas of Brown County	Brown County Courthouse, 601 Oregon Street, Hiawatha, KS 66434.
Douglas County, Kansas and Incorporated Areas Docket No.: FEMA–B–2061	
City of Baldwin City	City Hall, 803 8th Street, Baldwin City, KS 66006.
Unincorporated Areas of Douglas County	Douglas County Courthouse, 1100 Massachusetts Street, Lawrence, Kansas 66044.
Alcona County, Michigan (All Jurisdictions) Docket No.: FEMA–B–2107	
City of Harrisville	City Hall, 200 North 5th Street, Harrisville, MI 48740.

Community	Community map repository address
Township of Alcona	Alcona Township Hall, 5576 North U.S. Highway 23, Black River, MI 48721.
Township of Greenbush	Township Hall, 5039 Campbell Street, Greenbush, MI 48738.
Township of Harrisville	Township Hall, 114 South Poor Farm Road, Harrisville, MI 48740.
Township of Haynes	Haynes Township Hall, 3930 East McNeil Road, Lincoln, MI 48742.
Alpena County, Michigan (All Jurisdictions) Docket No.: FEMA–B–2107	
City of Alpena	City Hall, 208 North First Avenue, Alpena, MI 49707.
Charter Township of Alpena	Charter Township Hall, 4385 U.S. Highway 23 North, Alpena, MI 49707.
Township of Sanborn	Sanborn Township Hall, 12025 U.S. Highway 23 South, Ossineke, MI 49766.
Emmet County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1975	
City of Harbor Springs	City Hall, 160 Zoll Street, Harbor Springs, MI 49740.
City of Petoskey	City Hall, 101 East Lake Street, Petoskey, MI 49770.
Little Traverse Bay Bands of Odawa Indians	Little Traverse Bay Bands of Odawa Indians, 7500 Odawa Circle, Harbor Springs, MI 49740.
Township of Bear Creek	Bear Creek Township Hall, 373 North Division Road, Petoskey, MI 49770.
Township of Bliss	Bliss Township Hall, 265 West Sturgeon Bay Trail, Levering, MI 49755.
Township of Cross Village	Cross Village Township Hall, 5954 Wadsworth Street, Harbor Springs, MI 49740.
Township of Friendship	Friendship Township Hall, 8774 Kawegoma Road, Harbor Springs, MI 49740.
Township of Little Traverse	Little Traverse Township Hall, 8288 Pleasantview Road, Harbor Springs, MI 49740.
Township of Readmond	Readmond Township Hall, 6034 Wormwood Lane, Harbor Springs, MI 49740.
Township of Resort	Resort Township Hall, 2232 Resort Pike Road, Petoskey, MI 49770.
Township of Wawatam	Wawatam Township Hall, 119 West Etherington Street, Mackinaw City, MI 49701.
Township of West Traverse	West Traverse Township Hall, 8001 M–119, Harbor Springs, MI 49740.
Village of Mackinaw City	Village Hall, 102 South Huron Avenue, Mackinaw City, MI 49701.
Butte-Silver Bow County, Montana (All Jurisdictions) Docket No.: FEMA–B–2110	
Butte-Silver Bow County	Butte-Silver Bow Courthouse, 155 West Granite Street, Room 108, Butte, MT 59701.
Dinwiddie County, Virginia and Incorporated Areas Docket No.: FEMA–B–2110	
Unincorporated Areas of Dinwiddie County	Dinwiddie County Government Center, 14010 Boydton Plank Road, Dinwiddie, VA 23841.
Goshen County, Wyoming and Incorporated Areas Docket No.: FEMA–B–2101	
City of Torrington	Lincoln Community Complex, 436 East 22nd Avenue, Torrington, WY 82240.
Town of Fort Laramie	Town Hall, 102 West Otis Street, Fort Laramie, WY 82212.
Town of LaGrange	Town Hall, 200 C Street, LaGrange, WY 82221.
Town of Lingle	Town Hall, 220 Main Street, Lingle, WY 82223.
Town of Yoder	Town Hall, 321 Main Street, Yoder, WY 82244.
Unincorporated Areas of Goshen County	Goshen County Courthouse, 2125 East A Street, Room 120, Torrington, WY 82240.

[FR Doc. 2022–06846 Filed 3–31–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2227]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before June 30, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2227, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Marquette County, Michigan (All Jurisdictions) **Project: 15–05–1490S Preliminary Date: October 19, 2021**	
Charter Township of Chocolay	Chocolay Charter Township Hall, 5010 US Highway 41 South, Marquette, MI 49855.
Charter Township of Marquette	Township Hall, 1000 Commerce Drive, Marquette, MI 49855.
City of Ishpeming	City Hall, 100 East Division Street, Ishpeming, MI 49849.
City of Marquette	City Hall, 300 West Baraga Avenue, Marquette, MI 49855.
City of Negaunee	City Hall, 319 West Case Street, Negaunee, MI 49866.
Township of Champion	Township Hall, 5317 US Highway 41 West, Champion, MI 49814.
Township of Ely	Ely Township Hall, 1555 County Road 496, Ishpeming, MI 49849.
Township of Ishpeming	Township Hall, 1575 US Highway 41 West, Ishpeming, MI 49849.
Township of Negaunee	Township Hall, 42 State Highway M35, Negaunee, MI 49866.
Township of Powell	Powell Township Hall, 101 Bensinger Street, Big Bay, MI 49808.

Community	Community map repository address
Township of Sands	Sands Township Office Complex, 987 State Highway M–553, Gwinn, MI 49841.
Township of Skandia	Township Hall, 224 Kreiger Drive, Skandia, MI 49885.
Township of Tilden	Tilden Township Hall, 3145 County Road PG, Ishpeming, MI 49849.
Kanawha County, West Virginia and Incorporated Areas Project: 19–03–0002S Preliminary Date: October 25, 2021	
Town of Clendenin	Town Hall, 103 First Street, Clendenin, WV 25045.
Unincorporated Areas of Kanawha County	Office of the Floodplain Administrator, 407 Virginia Street East, Second Floor, Charleston, WV 23501.

[FR Doc. 2022–06844 Filed 3–31–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2225]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before June 30, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2225, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Larimer County, Colorado and Incorporated Areas Project: 19–08–0002S Preliminary Date: January 26, 2021 and December 20, 2021	
City of Fort Collins	Stormwater Utilities Department, 700 Wood Street, Fort Collins, CO 80521.
City of Loveland	Public Works Department, 2525 West 1st Street, Loveland, CO 80537.
Town of Estes Park	Town Hall, 170 MacGregor Avenue, Estes Park, CO 80517.
Town of Johnstown	Town Hall, 450 South Parish Avenue, Johnstown, CO 80534.
Town of Timnath	Town of Timnath Map Repository, TST Inc., 748 Whalers Way, Fort Collins, CO 80525.
Town of Wellington	Town Hall, 3735 Cleveland Avenue, Wellington, CO 80549.
Town of Windsor	Town Hall, 301 Walnut Street, Windsor, CO 80550.
Unincorporated Areas of Larimer County	Larimer County Courthouse Offices Building, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.
Thurston County, Washington and Incorporated Areas Project: 20–10–0027S Preliminary Date: June 25, 2021	
City of Yelm	City Hall, 106 2nd Street Southeast, Yelm, WA 98597.
Nisqually Indian Tribe	Nisqually Indian Tribe Planning and Economic Development, 4820 She-Nah-Num Drive Southeast, Olympia, WA 98513.
Thurston County Unincorporated Areas	Thurston County Courthouse, 2000 Lakeridge Drive Southwest, Building One, Olympia, WA 98502.

[FR Doc. 2022–06845 Filed 3–31–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2022–0011]

Privacy Act of 1974; System of Records

AGENCY: U.S. Department of Homeland Security.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Department of Homeland Security (DHS) proposes to modify and reissue an existing DHS system of records titled, ''DHS/ALL–033 Reasonable Accommodations Records System of Records.'' This system of records allows the Department to collect and maintain records on employees and applicants for employment who requested or received reasonable accommodations by the Department as required by the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act Amendments of 2008; Title VII of the Civil Rights Act, as amended, and/or pursuant to public health authorities and associated guidance. DHS is updating this System of Records Notice (SORN) to provide more transparency as to the purpose; add additional authorities for the collection of information; update the categories of records; modify and add routine uses; and update retention policies. This notice also clarifies DHS's collection, use, maintenance, and dissemination of records needed to process, manage, maintain, and resolve reasonable accommodation requests based on a medical condition/disability or a sincerely held religious belief, practice or observance. This modified system will be included in DHS's inventory of record systems.

DATES: Submit comments on or before May 2, 2022. This modified system will be effective upon publication. New or modified routine uses will be effective May 2, 2022.

ADDRESSES: You may submit comments, identified by docket number DHS–2022–0011 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2022–0011. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: DHS Disability Employment Program Manager, (202) 357–1264, Office for Civil Rights and Civil Liberties, or *Accessibility@hq.dhs.gov,* Office of Accessible Systems and Technology, U.S. Department of Homeland Security, Washington, DC 20528. For privacy questions, please contact: Lynn Parker Dupree, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to modify an existing system of records titled, ''DHS/ALL–033 Reasonable Accommodations Records System of Records,'' and last published at 76 FR 41274 (July 13, 2011). This system allows the Department to collect and maintain records on applicants for employment and employees with a medical condition/disability and/or a sincerely held religious belief, practice, or observance who requested or received reasonable accommodations by the Department as required by the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) Amendments of 2008, Title VII of the Civil Rights Act of 1964, and/or pursuant to public health authorities and associated guidance.[1]

Sections 501, 503, and 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) Amendments of 2008, prohibit

[1] Even in cases where an individual's medical condition does not meet the legal definition of ''disability'' to be entitled to an accommodation under the Rehabilitation Act, in some limited circumstances an agency may grant and provide accommodations based upon other medical considerations.

discrimination on the basis of disability and require federal agencies, employers who are federal contractors, and programs that receive federal financial assistance to provide reasonable accommodation to qualified individuals with disabilities, including those who are employees or applicants for employment, unless providing the accommodation would pose an undue hardship. Section 508 of the Rehabilitation Act also requires federal agencies to make their electronic and information technology accessible to people with disabilities. The purpose of reasonable accommodations is to provide modifications or adjustments to: (1) The job application process that enables a qualified applicant or individual with a medical condition/disability to enjoy equal employment opportunities available to persons without a medical condition/disability; (2) the work environment; and/or (3) the manner in which a position is customarily performed. Reasonable accommodations may include, but are not limited to: (1) Making existing facilities readily accessible to and usable by individuals with disabilities; (2) job restructuring, modification of workplace policies, work schedules or place of work, extended leave, telecommuting, or reassignment to a vacant position; and/or (3) acquisition or modification of equipment or devices, including computer software and hardware, appropriate adjustments or modifications of examinations, training materials or policies, the provision of qualified readers and/or interpreters, personal assistants, service animals, and other similar accommodations.

This system also allows the Department to collect and maintain records on applicants for employment and employees who requested or received a religious accommodation by the Department as required by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e (Title VII); 29 CFR 1605.2. Section 701(j) of Title VII requires federal agencies to reasonably accommodate an employee or prospective employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless the accommodation would result in undue hardship. A reasonable religious accommodation is an adjustment to the work environment that will allow the employee to comply with his or her religious beliefs. The duty to accommodate may result in an exception from, or adjustment to, an existing work requirement to allow an employee or applicant to observe or practice his or her religion. Religious accommodation requests often relate to work schedules, dress and grooming, or religious expression or practice while at work. Religious accommodations may include, but are not limited to, flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

DHS is updating this System of Records Notice (SORN) for several reasons, to include (1) providing additional transparency as to the purpose; (2) adding additional authorities for the maintenance of the collection; (3) updating categories of records; (4) modifying and adding routine uses; and (5) updating retention policies.

The purpose of this System of Records Notice is being updated to make it clear that this system covers the collection of information related to both medical/disability and religious accommodation requests. These accommodation requests include, but are not limited to, requests for modifications to workplace safety protocols and related to public health mitigation measures, such as use of Personal Protective Equipment (PPE), physical distancing, immunization requirements, testing, travel, and quarantine requirements. DHS determines accommodation requests in accordance with applicable laws, regulations, and Department policies and guidance. By requesting an accommodation, employees or applicants for federal employment are authorizing DHS to collect and maintain a record of the information submitted to support the medical condition/disability or religious accommodation request.

The authorities covering the maintenance of this system and the collection of this data are being expanded to include all applicable authorities. In addition to the authorities listed in the previous notice (Sections 501 and 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act (ADA) Amendments of 2008; Executive Order 13164 (July 28, 2000); and Executive Order 13548 (July 10, 2010)), the following authorities also apply: Sections 503 and 508 of the Rehabilitation Act of 1973; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e; Section 202(d) of the E-Government Act of 2002, Accessibility to Persons with Disabilities; 36 CFR part 1194, Electronic and Information Technology Accessibility Standards; 6 CFR part 15, Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Homeland Security; 29 CFR part 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act; 29 CFR 1605.2, Reasonable accommodation without undue hardship as required by section 701(j) of Title VII of the Civil Rights Act of 1964; 5 U.S.C. chapters 11 and 79, and in discharging the functions directed under Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021); and 5 U.S.C. chapters 33 and 63 and Executive Order 12196, Occupational Safety and Health Program for Federal Employees (Feb. 26, 1980).

The categories of records are being updated to provide more transparency on the information that is collected for medical condition/disability and religious accommodations requests, including requests specifically relating to public health mitigation measures such as PPE, physical distancing, immunization requirements, testing, travel, and quarantine requirements. The last published routine use (E) is being modified and a new routine use (F) is being added to conform to Office of Management and Budget Memorandum M–17–12. The last published routine uses (I) and (J) have been removed, and a new routine use (L) has been added to more clearly articulate how information sharing may be conducted with a federal agency or entity when needed to evaluate, process, adjudicate, and/or arbitrate a claim or appeal filed by a DHS employee or applicant arising out of or relating to the individual's request for reasonable accommodation. In addition, minor edits have been made to existing routine use (K), now routine use (J) to account for information sharing with appropriate third parties contracted by the Department to investigate a complaint or appeal filed by an employee or applicant, in addition to existing permissible sharing for purposes for facilitating and conducting mediation or other alternative dispute resolution (ADR) procedures or programs. Other routine uses have been re-lettered to account for these changes. The retention and disposition policy for these records is also being updated. Records will be held in accordance with National Archives and Records Administration General Records Schedule 2.3, item 20.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL–033 Reasonable Accommodations Records System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other

homeland security functions. In addition, DHS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act codifies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the Judicial Redress Act, along with judicial review for denials of such requests. In addition, the Judicial Redress Act prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ALL–033 Reasonable Accommodations Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

U.S. Department of Homeland Security (DHS)/ALL–033 Reasonable Accommodations Records System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the DHS Headquarters in Washington, DC, Component Headquarters offices, and field offices.

SYSTEM MANAGER(S):

DHS Disability Employment Program Manager, (202) 357–1264, Office for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, Washington, DC 20528.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 501, 503, 504, and 508 of the Rehabilitation Act of 1973 and Americans with Disabilities Act (ADA) Amendments Act of 2008; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e; 29 U.S.C. 791, as amended, Employment of Individuals with Disabilities; Section 202(d) of the E-Government Act of 2002, Accessibility to Persons with Disabilities; 29 CFR part 1605.2, Reasonable accommodation without undue hardship as required by section 701(j) of Title VII of the Civil Rights Act of 1964; 29 CFR part 1614.203, Rehabilitation Act; 29 CFR part 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act; 36 CFR part 1194, Electronic and Information Technology Accessibility Standards; 6 CFR part 15, Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Homeland Security; Executive Order 13164, Establishing Procedures To Facilitate The Provision Of Reasonable Accommodation; 5 U.S.C. chapters 11 and 79, and in discharging the functions directed under Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021), and 5 U.S.C. chapters 33 and 63; and Executive Order 12196, Occupational Safety and Health Program for Federal Employees (Feb. 26, 1980).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to allow the Department to collect and maintain records on applicants for employment as well as employees who request or receive a reasonable accommodation by the Department as required by the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, and/or Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e. This includes reasonable accommodations requested on both medical condition/disability and religious grounds. This system of records also allows DHS to track and report the processing of requests for reasonable accommodation Department-wide to comply with applicable law and regulations, to inform and determine appropriate workplace accommodations for particular employees, and to preserve and maintain the confidentiality of medical and religious information while promoting the safety of federal workplaces and the health of the federal workforce consistent with the above-referenced authorities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include applicants for employment and employees, and under certain circumstances federal contractors, who request or receive reasonable accommodations under the Rehabilitation Act of 1973, as amended, and/or Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e. This also includes authorized individuals or representatives (*e.g.,* family member, attorney) who file requests for reasonable accommodation on behalf of an applicant for employment or employee, as well as former employees who requested or received reasonable accommodation during their employment with the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include the name of the individual seeking accommodations; the requester's reasonable accommodation request and supporting documentation; the requestor's status (*i.e.,* applicant, contractor, or current employee); the date the accommodation request was initiated; the requestor's job position (*i.e.,* occupational series, grade level, and agency component), work/duty location, and job duties; the nature/type of accommodation(s) sought; the amount of time taken to process the request; whether the request was granted or denied and, if denied, the reason for the denial; and the sources of technical, physical, or other assistance consulted in trying to identify possible reasonable accommodations.

Also, for accommodations based on religion, the records will include information on how complying with a particular work requirement would substantially burden the requestor's exercise of a sincerely held religious belief, practice or observance, how long the belief has been held, the reason for seeking a religious accommodation, and other information specific to the requested accommodation to determine whether DHS is legally required to grant the request. For reasonable accommodations requests specifically related to public health mitigation measures such as PPE, physical distancing, immunization requirements, testing, travel, and quarantine requirements, this system will also include information that individuals are requested to submit regarding how complying with such mitigation measures would substantially burden an individual's religious exercise or conflict with their sincerely held religious beliefs, practices, or observances.

For accommodations based on a medical condition/disability, the records will include information such as the nature of the disability/medical condition, the functional limitations caused by the disability/medical condition, how the requested accommodation would address the functional limitations, medical documentation of the disability/medical condition, and other information specific to the requested accommodation to determine whether DHS is legally required to grant the request. For reasonable accommodations requests specifically related to public health mitigation measures such as PPE, physical distancing, immunization requirements, testing, travel, and quarantine requirements, this system will also include information that individuals are requested to submit regarding how the medical condition/disability prevents the individual from complying with such public health and safety mitigation measures.

Additional information collected to process reasonable accommodation requests includes the name, title, email address, and phone number of the requestor (or their representative); the requestor's operating administration, pay grade, or band; supervisor information; and other information collected from requestors to make a determination regarding a specific medical and/or religious accommodation request.

RECORD SOURCE CATEGORIES:

Information is obtained from DHS employees and applicants and/or their medical practitioners, and in certain circumstances federal contractors, or authorized individuals acting on behalf of employees, applicants, and federal contractors who are requesting or have received medical/disability and/or religious accommodations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agency conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation or proceeding and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings, when it is relevant and necessary to the litigation or proceeding.

J. To appropriate third parties contracted by the Department to investigate a complaint or appeal filed by an employee or applicant, or to facilitate and conduct mediation or other alternative dispute resolution (ADR) procedures or programs.

K. To the Department of Defense (DOD) for purposes of procuring assistive technologies and services through the Computer/Electronic Accommodation Program in response to a request for reasonable accommodation.

L. To the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority (FLRA), Equal Employment Opportunity Commission (EEOC), Office of Special Counsel (OSC), Office of Personnel Management (OPM), or another appropriate federal agency or entity when needed by that agency or entity to evaluate, process, adjudicate, and/or arbitrate a claim or appeal filed by a DHS employee or applicant arising out of or relating to the employee's or applicant's request for reasonable accommodation.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS may retrieve records by name of requester, employing component or

directorate, or any unique identifying number assigned to the request, if applicable.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be held in accordance with National Archives and Records Administration, General Records Schedule 2.3, Employee Relations Records, item 20, Reasonable accommodation case files. These records include individual employee files created, received, and maintained by reasonable accommodation, diversity/disability programs, employee relations coordinators, supervisors, administrators, or Human Resource specialists containing records of requests for reasonable accommodation and/or assistive technology devices and services that have been requested for or by an employee. This includes requests, approvals and denials, notice of procedures for informal dispute resolution or appeal processes, forms, correspondence, records of oral conversations, policy guidance documents, medical records, supporting notes, and documentation. These records are temporary and will be destroyed three (3) years after employee separation from the agency or all appeals are concluded, whichever is later. However, longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Component Privacy Officer and Component Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655, or electronically at *https://www.dhs.gov/dhs-foia-privacy-act-request-submission-form*. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about the individual be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. An individual may obtain more information about this process at *http://www.dhs.gov/foia*. In addition, the individual should, whenever possible:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, DHS may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered Judicial Redress Act records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

76 FR 41274 (July 13, 2011).

* * * * *

Lynn P. Dupree,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2022–06894 Filed 3–31–22; 8:45 am]

BILLING CODE 9110–FP–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20DJ73GY14000; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Local and Indigenous Knowledge of Permafrost Dynamics in the Yukon River Basin

AGENCY: Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before May 2, 2022.

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. Comments may be submitted by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley

Drive MS 159, Reston, VA 20192; and by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR,) contact Nicole Herman-Mercer by email at *nhmercer@usgs.gov,* or by telephone at 303–236–5031. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA 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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 2, 2021, 86 FR, 12202. No comments were received.

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 under this request; and

(4) How the agency might minimize the burden of the collection of this information on those being asked to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

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 personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: We will collect narrative information regarding knowledge and observations of permafrost dynamics in communities in the Yukon River Basin in Alaska. Narrative information will be collected via semi-structured interviews with active land users in specific communities as well as relevant city, tribal council, and village corporation staff. Questions will focus on observations of landscape change and infrastructure damage indicative of permafrost thaw. This information will allow for a greater understanding of permafrost dynamics in the region as well as the impacts that thaw has on communities. This information will be used to inform future permafrost monitoring efforts in the region, and it will be provided to communities for adaptation planning.

Title of Collection: Local and Indigenous Knowledge of Permafrost Dynamics across the Yukon River Basin.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 180.

Total Estimated Number of Annual Responses: 180.

Estimated Completion Time per Response: 45 minutes.

Total Estimated Number of Annual Burden Hours: 135.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Non Hour Burden Cost: None.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jennifer Rapp,

Chief, Decision Support Branch.

[FR Doc. 2022–06943 Filed 3–31–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We request your comments on the proposed rate adjustments.

DATES: Interested parties may submit comments on the proposed rate adjustments on or before May 31, 2022.

ADDRESSES: All comments on the proposed rate adjustments must be in writing. You may send comments via email to *comments@bia.gov.* Please reference ''Rate Adjustments for Indian Irrigation Projects'' in the subject line. Or you may submit comments to the Chief, Division of Water and Power, Office of Trust Services, 13922 Denver West Parkway, Suite 300, Lakewood, Colorado 80401.

FOR FURTHER INFORMATION CONTACT: David Fisher, Chief, Division of Water & Power, Office of Trust Services, (406) 657–5985. For details about a particular irrigation project, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the BIA regional or local office where the irrigation project is located.

SUPPLEMENTARY INFORMATION: The first table in this notice provides contact information for individuals who can give further information about the irrigation projects covered by this notice. The second table provides the proposed rates for calendar year (CY) 2023 for all irrigation projects.

What is the meaning of the key terms used in this notice?

In this notice:

Administrative costs mean all costs we incur to administer our irrigation projects at the local project level and are a cost factor included in calculating your operation and maintenance assessment. Costs incurred at the local project level do not normally include agency, region, or central office costs unless we state otherwise in writing.

Assessable acre means lands designated by us to be served by one of our irrigation projects, for which we collect assessments in order to recover costs for the provision of irrigation service. (*See total assessable acres.*)

BIA means the Bureau of Indian Affairs.

Bill means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, and/or rehabilitation. The date we mail or hand-deliver your bill will be stated on it.

Costs means the costs we incur for administration, operation, maintenance, and rehabilitation to provide direct support or benefit to an irrigation facility. (*See* administrative costs, operation costs, maintenance costs, and rehabilitation costs).

Customer means any person or entity to whom or to which we provide irrigation service.

Due date is the date on which your bill is due and payable. This date will be stated on your bill.

I, me, my, you and *your* mean all persons or entities that are affected by this notice.

Irrigation project means a facility or portion thereof for the delivery, diversion, and storage of irrigation water that we own or have an interest in, including all appurtenant works. The term ''irrigation project'' is used interchangeably with irrigation facility, irrigation system, and irrigation area.

Irrigation service means the full range of services we provide customers of our irrigation projects. This includes our activities to administer, operate, maintain, and rehabilitate our projects in order to deliver water.

Maintenance costs means costs we incur to maintain and repair our irrigation projects and associated equipment and is a cost factor included in calculating your operation and maintenance assessment.

Operation and maintenance (O&M) assessment means the periodic charge you must pay us to reimburse costs of administering, operating, maintaining, and rehabilitating irrigation projects consistent with this notice and our supporting policies, manuals, and handbooks.

Operation or operating costs means costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

Past due bill means a bill that has not been paid by the close of business on the 30th day after the due date as stated on the bill. Beginning on the 31st day after the due date, we begin assessing additional charges accruing from the due date.

Rehabilitation costs means costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and is a cost factor included in calculating your O&M assessment.

Responsible party means an individual or entity that owns or leases land within the assessable acreage of one of our irrigation projects and is responsible for providing accurate information to our billing office and paying a bill for an annual irrigation rate assessment.

Total assessable acres mean the total acres served by one of our irrigation projects.

Water delivery is an activity that is part of the irrigation service we provide our customers when water is available.

We, us, and *our* mean the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this notice.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the internet site for the Government Publishing Office at *www.gpo.gov.*

Why are you publishing this notice?

We are publishing this notice to inform you that we propose to adjust our irrigation assessment rates. This notice is published in accordance with the BIA's regulations governing its operation and maintenance of irrigation projects, found at 25 CFR part 171. This regulation provides for the establishment and publication of the proposed rates for annual irrigation assessments as well as related information about our irrigation projects.

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

When will you put the rate adjustments into effect?

We will put the rate adjustments into effect for CY 2023.

How do you calculate irrigation rates?

We calculate annual irrigation assessment rates in accordance with 25 CFR part 171.500 by estimating the annual costs of operation and maintenance at each of our irrigation projects and then dividing by the total assessable acres for that particular irrigation project. The result of this calculation for each project is stated in the rate table in this notice.

What kinds of expenses do you consider in determining the estimated annual costs of operation and maintenance?

Consistent with 25 CFR part 171.500, these expenses include the following:

(a) Personnel salary and benefits for the project engineer/manager and project employees under the project engineer/manager's management or control;

(b) Materials and supplies;

(c) Vehicle and equipment repairs;

(d) Equipment costs, including lease fees;

(e) Depreciation;

(f) Acquisition costs;

(g) Maintenance of a reserve fund available for contingencies or emergency costs needed for the reliable operation of the irrigation facility infrastructure;

(h) Maintenance of a vehicle and heavy equipment replacement fund;

(i) Systematic rehabilitation and replacement of project facilities;

(j) Contingencies for unknown costs and omitted budget items; and

(k) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

When should I pay my irrigation assessment?

We will mail or hand deliver your bill notifying you (a) the amount you owe to

the United States and (b) when such amount is due. If we mail your bill, we will consider it as being delivered no later than five business days after the day we mail it. You should pay your bill by the due date stated on the bill.

What information must I provide for billing purposes?

All responsible parties are required to provide the following information to the billing office associated with the irrigation project where you own or lease land within the project's assessable acreage or to the billing office associated with the irrigation project with which you have a carriage agreement:

(1) The full legal name of the person or entity responsible for paying the bill;

(2) An adequate and correct address for mailing or hand delivering our bill; and

(3) The taxpayer identification number or social security number of the person or entity responsible for paying the bill.

Why are you collecting my taxpayer identification number or Social Security number?

Public Law 104–134, the Debt Collection Improvement Act of 1996, requires that we collect the taxpayer identification number or Social Security number before billing a responsible party and as a condition to servicing the account.

What happens if I am a responsible party but I fail to furnish the information required to the billing office responsible for the irrigation project within which I own or lease assessable land or for which I have a carriage agreement?

If you are late paying your bill because of your failure to furnish the required information listed above, you will be assessed interest and penalties as provided below, and your failure to provide the required information will not provide grounds for you to appeal your bill or any penalties assessed.

What can happen if I do not provide the information required for billing purposes?

We can refuse to provide you irrigation service.

If I allow my bill to become past due, could this affect my water delivery?

Yes. 25 CFR 171.545(a) states: ''We will not provide you irrigation service until: (1) Your bill is paid; or (2) You make arrangement for payment pursuant to § 171.550 of this part.'' If we do not receive your payment before the close of business on the 30th day after the due date stated on your bill, we will send you a past due notice. This past due notice will have additional information concerning your rights. We will consider your past due notice as delivered no later than five business days after the day we mail it. We follow the procedures provided in 31 CFR 901.2, ''Demand for Payment,'' when demanding payment of your past due bill.

Are there any additional charges if I am late paying my bill?

Yes. We are required to assess interest, penalties, and administrative costs on past due bills in accordance with 31 U.S.C. 3717 and 31 CFR 901.9. The rate of interest is established annually by the Secretary of the United States Treasury (Treasury) and accrues from the date your bill is past due. If your bill becomes more than 90 days past due, you will be assessed a penalty charge of no more than six percent per year, which accrues from the date your bill became past due. Each time we try to collect your past due bill, you will be charged an administrative fee of $12.50 for processing and handling.

What else will happen to my past due bill?

If you do not pay your bill or make payment arrangements to which we agree, we are required to transfer your past due bill to Treasury for further action. Pursuant to 31 CFR 285.12, bills that are 120 days past due will be transferred to Treasury.

Who can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project name	Project/agency contacts
Northwest Region Contacts	
Bryan Mercier, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4169, Telephone: (503) 231–6702.	
Flathead Indian Irrigation Project	Larry Nelson, Acting Irrigation Project Manager, 220 Project Drive, St. Ignatius, MT 59865, Telephone: (406) 745–2661.
Fort Hall Irrigation Project	David Bollinger, Irrigation Project Manager, 36 Bannock Avenue, Fort Hall, ID 83203–0220, Telephone: (208) 238–1992.
Wapato Irrigation Project	Pete Plant, Project Administrator, 413 South Camas Avenue, Wapato, WA 98951–0220, Telephone: (509) 877–3155.
Rocky Mountain Region Contacts	
Susan Messerly, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 2021 4th Avenue North, Billings, MT 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Thedis Crowe, Superintendent, Greg Tatsey, Irrigation Project Manager, P.O. Box 880, Browning, MT 59417, Telephone: (406) 338–7544 Superintendent, (406) 338–7519 Irrigation Project Manager.
Crow Irrigation Project	Clifford Serawop, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project operation & maintenance performed by Water Users Association), P.O. Box 69, Crow Agency, MT 59022, Telephone: (406) 638–2672 Superintendent, (406) 247–7998 Acting Irrigation Project Manager.
Fort Belknap Irrigation Project	Mark Azure, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA) (Project operation & maintenance contracted to Tribes under Pub. L. 93–638), R.R.1, Box 980, Harlem, MT 59526, Telephone: (406) 353–2901 Superintendent, (406) 353–8454 Irrigation Project Manager (Tribal Office).
Fort Peck Irrigation Project	Anna Eder, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA) (Project operation & maintenance performed by Fort Peck Water Users Association), P.O. Box 637, Poplar, MT 59255, Telephone: (406) 768–5312 Superintendent, (406) 653–1752 Huber Wright—Lead ISO.

Project name	Project/agency contacts
Wind River Irrigation Project	Leslie Shakespeare, Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA) (Project operation & maintenance for Little Wind, Johnstown, and Lefthand Units contracted to Tribes under Pub. L. 93–638; Little Wind-Ray and Upper Wind Units operation & maintenance performed by Ray Canal, A Canal, and Crowheart Water Users Associations), P.O. Box 158, Fort Washakie, WY 82514, Telephone: (307) 332–7810 Superintendent, (406) 247–7998 Acting Irrigation Project Manager.
Southwest Region Contacts	
Patricia L. Mattingly, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road NW, Albuquerque, NM 87104, Telephone: (505) 563–3100.	
Pine River Irrigation Project	Priscilla Bancroft, Superintendent, Vickie Begay, Irrigation Project Manager, P.O. Box 315, Ignacio, CO 81137–0315, Telephone: (970) 563–4511, Superintendent, (970) 563–9484, Irrigation Project Manager.
Western Region Contacts	
Jessie Durham, Acting Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 North Central Avenue, 4th Floor Mailroom, Phoenix, AZ 85004, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Davetta Ameelyenah, Superintendent, Gary Colvin, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111 Superintendent, (928) 662–4392 Irrigation Project Manager.
Duck Valley Irrigation Project	Joseph McDade, Superintendent, (Project operation & maintenance compacted to Shoshone-Paiute Tribes under Pub. L. 93–638), 2719 Argent Avenue, Suite 4, Gateway Plaza, Elko, NV 89801, Telephone: (775) 738–5165 Superintendent, (208) 759–3100 (Tribal Office).
Yuma Project, Indian Unit	Denni Shields, Superintendent, 256 South Second Avenue, Suite D, Yuma, AZ 85364, Telephone: (928) 782–1202 Superintendent, (928) 343–8100 Area Manager, Yuma Area Office, Bureau of Reclamation.
San Carlos Irrigation Project (Indian Works and Joint Works).	Ferris Begay, Project Manager (BIA), Kyle Varvel, Acting Supervisory Civil Engineer, (Portions of Indian Works operation & maintenance compacted to Gila River Indian Community under Pub. L. 93–638), 13805 North Arizona Boulevard, Coolidge, AZ 85128, Telephone: (520) 723–6225 Project Manager, (520) 562–3372 Acting Supervisory Civil Engineer, (520) 562–6720 Gila River Indian Irrigation & Drainage District.
Uintah Irrigation Project	Antonio Pingree, Superintendent, Ken Asay, Irrigation System Manager, (Project operation & maintenance performed by Uintah Indian Irrigation Project Operation and Maintenance Company), P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300 Superintendent, (435) 722–4344 Irrigation System Manager, (435) 724–5200 Uintah Indian Irrigation Operation and Maintenance Company.
Walker River Irrigation Project	Rachael Larson, Superintendent, 311 East Washington Street, Carson City, NV 89701, Telephone: (775) 887–3501.

What irrigation assessments or charges are proposed for adjustment by this notice?

The rate table below contains final CY 2022 rates for irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. The table also contains proposed CY 2023 rates for all irrigation projects. An asterisk immediately following the rate category notes irrigation projects where rates are proposed for adjustment.

Project name	Rate category	Final 2022 rate	Proposed 2023 rate
Northwest Region Rate Table			
Flathead Irrigation Project	Basic per acre—A *	$33.50	$35.50
	Basic per acre—B *	16.75	17.75
	Minimum Charge per tract	75.00	75.00
Fort Hall Irrigation Project	Basic per acre *	62.50	64.50
	Minimum Charge per tract *	40.00	41.00
Fort Hall Irrigation Project—Minor Units	Basic per acre *	41.00	45.00
	Minimum Charge per tract *	40.00	41.00
Fort Hall Irrigation Project—Michaud Unit	Basic per acre *	68.50	73.50
	Pressure per acre *	106.50	114.00
	Minimum Charge per tract *	40.00	41.00
Wapato Irrigation Project—Toppenish/Simcoe Units	Minimum Charge per bill	25.00	25.00
	Basic per acre	25.00	25.00
Wapato Irrigation Project—Ahtanum Units	Minimum Charge per bill	30.00	30.00
	Basic per acre	30.00	30.00
Wapato Irrigation Project—Satus Unit	Minimum Charge per bill	79.00	79.00
	"A" Basic per acre	79.00	79.00
	"B" Basic per acre	85.00	85.00
Wapato Irrigation Project—Additional Works	Minimum Charge per bill	80.00	80.00
	Basic per acre	80.00	80.00
Wapato Irrigation Project—Water Rental	Minimum Charge per bill *	86.00	90.00
	Basic per acre *	86.00	90.00

Project name	Rate category	Final 2022 rate	Proposed 2023 rate
Rocky Mountain Region Rate Table			
Blackfeet Irrigation Project	Basic-per acre	20.50	20.50
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units).	Basic-per acre *	28.50	29.00
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units).	Basic-per acre *	28.50	29.00
Crow Irrigation Project—Two Leggins Unit	Basic-per acre	14.00	14.00
Crow Irrigation Two Leggins Drainage District	Basic-per acre	2.00	2.00
Fort Belknap Irrigation Project	Basic-per acre *	18.00	19.00
Fort Peck Irrigation Project	Basic-per acre *	27.00	28.00
Wind River Irrigation Project—Units 2, 3 and 4	Basic-per acre	25.00	25.00
Wind River Irrigation Project—Unit 6	Basic-per acre	22.00	22.00
Wind River Irrigation Project—LeClair District (See Note #1)	Basic-per acre	47.00	47.00
Wind River Irrigation Project—Crow Heart Unit	Basic-per acre	16.50	16.50
Wind River Irrigation Project—A Canal Unit	Basic-per acre	16.50	16.50
Wind River Irrigation Project—Riverton Valley Irrigation District (See Note #1).	Basic-per acre	30.65	30.65
Southwest Region Rate Table			
Pine River Irrigation Project	Minimum Charge per tract *	50.00	75.00
	Basic-per acre *	22.50	23.00
Western Region Rate Table			
Colorado River Irrigation Project	Basic per acre up to 5.75 acre-feet	64.00	64.00
	Excess Water per acre-foot over 5.75 acre-feet.	18.00	18.00
Duck Valley Irrigation Project	Basic per acre	5.30	5.30
Yuma Project, Indian Unit (See Note #2)	Basic per acre up to 5.0 acre-feet	157.00	(+)
	Excess Water per acre-foot over 5.0 acre-feet.	30.00	(+)
	Basic per acre up to 5.0 acre-feet (Ranch 5).	157.00	(+)
San Carlos Irrigation Project (Joint Works) (See Note #3)	Basic per acre	26.00	26.00

Proposed 2023 Construction Water Rate Schedule:

	Off project construction	On project construction—gravity water	On project construction—pump water
Administrative Fee.	$300.00	$300.00	$300.00.
Usage Fee	$250.00 per month.	No Fee	$100.00 per acre foot.
Excess Water Rate †.	$5.00 per 1,000 gal.	No Charge	No Charge.

Project name	Rate category	Final 2022 rate	Proposed 2023 rate
San Carlos Irrigation Project (Indian Works) (See Note #4)	Basic per acre *	$90.50	$99.44
Uintah Irrigation Project	Basic per acre	23.00	23.00
	Minimum Bill	25.00	25.00
Walker River Irrigation Project	Basic per acre	31.00	31.00

* Notes irrigation projects where rates are adjusted.

+ These rates have not yet been determined.

† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.

Note #1: O&M rates for LeClair and Riverton Valley Irrigation Districts apply to Trust lands that are serviced by each irrigation district. The annual O&M rates are based on budgets submitted by LeClair and Riverton Valley Irrigation Districts, respectively.

Note #2: The O&M rate for the Yuma Project, Indian Unit has two components. The first component of the O&M rate is established by the Bureau of Reclamation (BOR), the owner and operator of the Project. BOR's rate, which is based upon the annual budget submitted by BOR is $153.00 for 2022 but has not been established for 2023. The second component of the O&M rate is established by BIA to cover administrative costs, which includes billing and collections for the Project. The final 2022 BIA rate component is $4.00/acre. The proposed 2023 BIA rate component is $4.00/acre.

Note #3: The Construction Water Rate Schedule identifies fees assessed for use of irrigation water for non-irrigation purposes.

Note #4: The O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is established by BIA San Carlos Irrigation Project—Indian Works, the owner and operator of the Project; the final 2022 rate is $56.50 per acre, and proposed 2023 rate is $56.50 per acre. The second component is established by BIA San Carlos Irrigation Project—Joint Works; the final 2022 rate is $26.00 per acre, and proposed 2023 rate is $26.00 per acre. The third component is established by the San Carlos Irrigation Project Joint Control Board (comprised of representatives from the Gila River Indian Community and the San Carlos Irrigation and Drainage District); the 2022 rate is $8.00 per acre, and 2023 rate is $16.94 per acre.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this notice under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined there to be substantial direct effects on federally recognized Tribes because the irrigation projects are located on or associated with Indian reservations. To fulfill its consultation responsibility to Tribes and Tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by project, agency, and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The proposed rate adjustments are not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Regulatory Planning and Review (Executive Order 12866)

These proposed rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These proposed rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These proposed rate adjustments do not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or on the private sector, of more than $130 million per year. They do not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Takings (Executive Order 12630)

These proposed rate adjustments do not effect a taking of private property or otherwise have ''takings'' implications under Executive Order 12630. The proposed rate adjustments do not deprive the public, State, or local governments of rights or property.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, these proposed rate adjustments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This notice complies with the requirements of Executive Order 12988. Specifically, in issuing this notice, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These proposed rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires January 31, 2023.

National Environmental Policy Act

The Department has determined that these proposed rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370(d)), pursuant to 43 CFR 46.210(i). In addition, the proposed rate adjustments do not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–06748 Filed 3–31–22; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–560–561 and 731–TA–1317–1328 (Review)]

Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, South Africa, South Korea, Taiwan, and Turkey; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the countervailing duty orders on carbon and alloy steel cut-to-length plate (''CTL plate'') from China and South Korea and revocation of the antidumping duty orders on CTL plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, South Africa, South Korea, Taiwan, and Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: March 7, 2022.

FOR FURTHER INFORMATION CONTACT: Nayana Kollanthara (202–205–2043), Office of Investigations, U.S.

International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On March 7, 2022, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that the domestic interested party group responses and the respondent interested party group responses with respect to Austria, Brazil, France, Germany, Italy, Japan, and South Korea to its notice of institution (86 FR 68269, December 1, 2021) were adequate, and determined to conduct full reviews of the orders on imports from Austria, Brazil, France, Germany, Italy, Japan, and South Korea. The Commission also found that the respondent interested party group responses from Belgium, China, South Africa, Taiwan, and Turkey were inadequate but determined to conduct full reviews of the orders on CTL plate from those countries in order to promote administrative efficiency in light of its determinations to conduct full reviews of the orders with respect to Austria, Brazil, France, Germany, Italy, Japan, and South Korea. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 29, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06896 Filed 3–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1244]

Certain Batteries and Products Containing Same; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on March 25, 2022, the presiding administrative law judge has issued an Initial Determination on Section 337 Violation and a Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting public interest comments from the public only.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3115. 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: Section 337 of the Tariff Act of 1930 (''Section 337'') provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless the public interest factors listed in 19 U.S.C. 1337(d)(1) prevent such action.

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation, specifically, a general exclusion order (''GEO'') covering all of the infringing articles imported, sold for importation, or sold after importation by respondents Darui Development Limited; Dongguan Xinjitong Electronic Technology Co., Ltd.; Shenzhen Rich Hao Yuan Energy Technology Co., Ltd.; and Shenzhen Saen Trading Co., Ltd., and should apply to these respondents' affiliated companies, parents, subsidiaries or other related business entities, or their successors or assigns. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on March 25, 2022. Comments should address whether issuance of the recommended GEO in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended GEO are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended GEO;

(iii) Identify like or directly competitive articles that complainants, their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainants, complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended GEO within a commercially reasonable time; and

(v) Explain how the recommended GEO would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on April 15, 2022.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1227'') in a prominent

place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 28, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–06855 Filed 3–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1241]

Certain Electrical Connectors and Cages, Components Thereof, and Products Containing the Same; Notice of Request for Submissions on the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on March 11, 2022, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. On March 28, 2022, the ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. 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: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A limited exclusion order directed to certain electrical connectors and cages, components thereof, and products containing the same imported, sold for importation, and/or sold after importation by respondents Luxshare Precision Industry Co., Ltd., Dongguan Luxshare Precision Industry Co. Ltd., Luxshare Precision Limited (HK), and Luxshare-ICT Inc. (collectively, ''Luxshare''); and cease and desist orders directed to Luxshare. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on March 28, 2022. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

> (i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;
>
> (ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;
>
> (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
>
> (iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and
>
> (v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on April 27, 2022.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No.

337–TA–1241'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of 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: March 29, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06941 Filed 3–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1308]

Certain Power Semiconductors, and Mobile Devices and Computers Containing Same; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 14, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Arigna Technology Limited of Ireland. A supplement was filed on February 23, 2022, and an amendment was filed on March 17, 2022. The complaint, as amended and supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain power semiconductors, and mobile devices and computers containing same by reason of infringement of certain claims of U.S. Patent No. 7,183,835 (''the '835 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, the Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION: The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 28, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1 and 2 of the '835 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''power semiconductors with envelope tracking modules, and products such as mobile devices, tablets, and laptop computers containing the same'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. l337(d)(l), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Arigna Technology Limited, The Hyde Building, Suite 23, Carrickmines, Dublin 18, Ireland.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co., Ltd., 129 Samsung-Ro, Maetan-3dong, Yeongtong-gu, Suwon, 443–742, Republic of Korea.

Samsung Electronics America, Inc., 85 Challenger Rd., Ridgefield Park, NJ 07660.

Apple Inc., One Apple Park Way, Cupertino, CA 95014.

Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043.

TCL Electronics Holdings Limited, 7/F, TCL Building, 22 Science Park East Avenue, 22E, Hong Kong Science Park, Hong Kong.

TTE Technology Inc., 1860 Compton Avenue, Corona, CA 92881.

TCT Mobile (US) Inc., 25 Edelman, Suite 200, Irvine, CA 92618.

TCL Communication Limited, 5/F, Building 22E Science Park East Avenue, Hong Kong Science Park, Sha Tin, New Territories, Hong Kong.

Lenovo Group Ltd., 6 Chuang ye Road, Haidian District, Beijing 100085, China.

Lenovo (United States) Inc., 1009 Think Place, Building One, Morrisville, NC 27560.

Motorola Mobility LLC, 222 W Merchandise Mart Plaza, Suite 1800, Chicago, IL 60654.

Microsoft Corporation, One Microsoft Way, Redmond, WA 98052.

OnePlus Technology (Shenzhen) Co., Ltd., 18F, Tairan Building, Block C, Tairan 8th Road, Chegongmiao, Futian District Shenzhen, Guangdong, 518040, China.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 28, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–06870 Filed 3–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–558 and 731–TA–1316 (Review)]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (''HEDP'') from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted April 1, 2022. To be assured of consideration, the deadline for responses is May 2, 2022. Comments on the adequacy of responses may be filed with the Commission by June 10, 2022.

FOR FURTHER INFORMATION CONTACT: Andre Andrade (202–205–2078), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 18, 2017, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of HEDP from China (82 FR 22807–22810). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* encompassing all HEDP, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* consisting of the sole U.S. producer of HEDP, Compass Chemical International, LLC.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is May 18, 2017.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in

importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 2, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 10, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–522, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business

association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 24, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06562 Filed 3–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1210]

Certain Wrapping Material and Methods for Use in Agricultural Applications Notice of Commission Determination To Grant a Joint Motion To Terminate the Investigation on the Basis of a Settlement Agreement and Motion To Stay the Deadlines; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to grant a joint motion to terminate this investigation based on a settlement agreement and a motion to stay the deadlines in this investigation.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. 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: On August 11, 2020, the Commission instituted this investigation based on a complaint filed on behalf of Tama Group of Israel and Tama USA Inc. of Dubuque, Iowa (together, ''Tama''). 85 FR 48561–62 (Aug. 11, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wrapping material and methods for use in agricultural applications by reason of infringement of one or more of claims 1, 2, 4–16, 18, 28, 32, 33, and 35–45 of U.S. Patent No. 6,787,209 (''the '209 patent''). *Id.* The Commission's notice of investigation named as respondents Zhejiang Yajia Cotton Picker Parts Co., Ltd. of Zhuji City, China (''Yajia Cotton''); Southern Marketing Affiliates, Inc. of Jonesboro, Arkansas (''SMA''); Hai'an Xin Fu Yuan of Agricultural, Science, and Technology Co., Ltd. of Nantong, China (''XFY''); and Gosun Business Development Co. Ltd. of Grande Prairie, Canada (''Gosun''). *Id.* at 48561. The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

The Commission previously terminated this investigation with respect to Gosun. Order No. 6, *unreviewed by* Notice (Oct. 5, 2020).

Based on Tama's motion, the Commission later amended the complaint and notice of investigation to add Zhejiang Yajia Packaging Materials Co., Ltd. (''Yajia Packaging'') as a respondent. Order No. 8, *unreviewed by* Notice (Oct. 27, 2020); 85 FR 68,916 (Oct. 30, 2020). Yajia Cotton and Yajia Packaging are collectively referred to herein as ''Yajia.'' Yajia, SMA, and XFY are collectively referred to herein as ''Respondents.''

On November 16, 2020, XFY was found in default pursuant to Commission Rule 210.16 (19 CFR 210.16). Order No. 11, *unreviewed by* Notice (Nov. 30, 2020).

On December 10, 2021, the ALJ issued the final ID, which found that Respondents did not violate section 337.

On December 27, 2021, Yajia and SMA filed a joint petition for review, and Tama also filed a petition for review. On January 4, 2022, Yajia and SMA filed a joint response to Tama's petition for review, and Tama filed a response to Yajia and SMA's joint petition for review.

The Commission received no public interest comments from the public in response to the Commission's **Federal Register** notice seeking comment on the public interest. 86 FR 71664–65 (Dec. 17, 2021). Tama, Yajia, and SMA did not submit any public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

On, March 9, 2022, the Commission determined to review the following findings and conclusions of the final ID:

(1) The final ID's findings that Yajia and SMA do not infringe claims 32, 33, 35–38, and 41–44 directly or indirectly; and

(2) the final ID's finding that the economic prong of the domestic industry requirement has not been satisfied.

On March 17, 2022, Tama and Respondents filed a joint motion to terminate the investigation based on a settlement agreement and a motion to stay the deadlines (the ''Motion''). The Motion includes the settlement agreement.

The Commission has determined that the Motion complies with the requirements of section 210.21(b)(1) of the Commission's Rules of Practice and Procedure (19 CFR 210.21(b)(1)), and that there are no extraordinary circumstances that would prevent the requested termination. The Commission also finds that granting the Motion would not be contrary to the public interest pursuant to section 210.50(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.50(b)(2)). Accordingly, the Commission hereby grants the Motion. The Commission takes no position as to the issues that remain under review.

This investigation is terminated.

The Commission vote for this determination took place on March 28, 2022.

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).

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).]

By order of the Commission.

Issued: March 28, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–06868 Filed 3–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1315 (Review)]

Ferrovanadium From South Korea; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on ferrovanadium from South Korea would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted April 1, 2022. To be assured of consideration, the deadline for responses is May 2, 2022. Comments on the adequacy of responses may be filed with the Commission by June 10, 2022.

FOR FURTHER INFORMATION CONTACT: Angela Newell (202–205–2060), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 15, 2017, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of ferrovanadium from South Korea (82 FR 22309). The Commission is conducting a review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is South Korea.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined a single *Domestic Like Product* corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as consisting of all domestic producers of ferrovanadium.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is May 15, 2017.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S.

government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 2, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 10, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–524, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be provided in response to this notice of institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in pounds contained vanadium and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently

completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds contained vanadium and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds contained vanadium and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 24, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06561 Filed 3–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–318 and 731–TA–538 and 561 (Fifth Review)]

Sulfanilic Acid From China and India; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order on sulfanilic acid from India and antidumping duty orders on sulfanilic acid from China and India would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted April 1, 2022. To be assured of consideration, the deadline for responses is May 2, 2022. Comments on the adequacy of responses may be filed with the Commission by June 14, 2022.

FOR FURTHER INFORMATION CONTACT: Nayana Kollanthara (202–205–2043), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 19, 1992, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of sulfanilic acid from China (57 FR 37524). On March 2, 1993, Commerce issued antidumping and countervailing duty orders on imports of sulfanilic acid from India (58 FR 12025 and 12026). Commerce issued a continuation of the countervailing duty order on sulfanilic acid from India and antidumping duty orders on sulfanilic acid from China and India following Commerce's and the Commission's first five-year reviews, effective June 8, 2000 (65 FR 36404), second five-year reviews, effective May 11, 2006 (71 FR 27449), third five-year reviews, effective October 25, 2011 (76 FR 66039), and fourth five-year reviews, effective May 9, 2017 (82 FR 21520). The Commission is now conducting fifth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and India.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, expedited first five-year review determinations, full second five-year review determinations, and expedited third and fourth five-year review determinations, the Commission defined the *Domestic Like Product* as all sulfanilic acid, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, expedited first five-year review determinations, full second five-year review determinations, and expedited third and fourth five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of sulfanilic acid.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 2, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 14, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–525, expiration date June 30, 2023. Public reporting burden for the

request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be provided in response to this notice of institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2015.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2015, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 25, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06730 Filed 3–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–624–625 (Fifth Review)]

Helical Spring Lock Washers From China and Taiwan; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on helical spring lock washers from China and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted April 1, 2022. To be assured of consideration, the deadline for responses is May 2, 2022. Comments on the adequacy of responses may be filed with the Commission by June 14, 2022.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 28, 1993, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of helical spring lock washers from Taiwan (58 FR 34567). On October 19, 1993, Commerce issued an antidumping duty order on imports of helical spring lock washers from China (58 FR 53914). Commerce issued a continuation of the antidumping duty orders on helical spring lock washers from China and Taiwan following Commerce's and the Commission first five-year reviews, effective February 23, 2001 (66 FR 11255), second five-year reviews, effective July 3, 2006 (71 FR 37904), third five-year reviews, effective December 5, 2011 (76 FR 75873), and fourth five-year reviews, effective May 26, 2017 (82 FR 24301). The Commission is now conducting fifth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, and its expedited second, third, and fourth five-year review determinations, the Commission defined the *Domestic Like Product* as helical spring lock washers of all sizes and metals.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second, third, and fourth five-year review determinations, the Commission defined the *Domestic Industry* as all

domestic producers of helical spring lock washers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 2, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 14, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–523, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be provided in response to this notice of institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2015.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2015, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product*

produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 24, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06563 Filed 3–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–567 (Advisory Opinion Proceeding 3)]

Certain Foam Footwear; Notice of the Issuance of an Advisory Opinion; Termination of the Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue an advisory opinion in the above-captioned investigation. The Commission also terminates the advisory opinion proceeding.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. 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, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on May 11, 2006, based on a complaint, as amended, filed by Crocs, Inc. of Niwot, Colorado. 71 FR 27514–15 (May 11, 2006). The complaint alleged, *inter alia,* 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, and the sale within the United States after importation of certain foam footwear, by reason of infringement of claims 1–2 of U.S. Patent No. 6,993,858 (''the '858 patent'') and U.S. Patent No. D517,789 (''the '789 patent''). The notice of investigation named several respondents.

On July 25, 2008, the Commission issued a final determination finding no violation of section 337 based on non-infringement and failure to satisfy the technical prong of the domestic industry requirement with respect to the '789 patent and based on invalidity of the '858 patent as obvious under 35 U.S.C. 103. 73 FR 45073–74 (Aug. 1, 2008). On July 15, 2011, after an appeal to the U.S. Court of Appeals for the Federal Circuit and subsequent remand vacating the Commission's previous finding of no violation, the Commission found a violation of section 337 based on infringement of the asserted claims of the patents and issued, *inter alia,* a general exclusion order (''GEO''). 76 FR 43723–24 (July 21, 2011). On March 28, 2020, the '789 patent expired, so the GEO is now only directed to articles that infringe one or more of claims 1 and 2 of the '858 patent.

On November 17, 2021, non-respondent, Triple T Trading Ltd. (''Triple T'') of Marysville, Washington, petitioned for institution of an expedited advisory opinion proceeding to determine whether its fleece-lined shoes and shoes with plastic washers are covered by the GEO. On November 29, 2021, Crocs opposed Triple T's petition for an expedited advisory opinion proceeding. On December 9, 2021, Triple T filed a motion for leave to respond to Crocs' opposition. The Commission granted that motion.

On December 17, 2021, the Commission instituted an advisory opinion proceeding to determine whether Triple T's fleece-lined shoes or shoes with plastic washers fall within the scope of the GEO. 86 FR 72992 (Dec. 23, 2021). Concurrent with the notice, the Commission ordered supplemental information and product samples from Triple T. Comm'n Order (Dec. 17, 2021). On January 4, 2022, Triple T submitted its response to the Commission Order. Crocs did not reply to Triple T's submission.

Having considered the record evidence including the parties' filings, the Commission has determined that Triple T's fleece-lined shoes and shoes with permanent plastic washers that prevent all direct contact between the strap and the base of the shoe do not fall within the scope of the GEO and therefore should not be excluded. The reasons for the Commission's determination are set forth in the accompanying Advisory Opinion, and the advisory opinion proceeding is hereby terminated.

The Commission vote for this determination took place on March 28, 2022.

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: March 28, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–06872 Filed 3–31–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0346]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2022 Census of State and Local Law Enforcement Agencies (CSLLEA)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 31, 2022.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Elizabeth Davis (email: *Elizabeth.Davis@usdoj.gov;* telephone: 202–305–2667), Bureau of Justice

Statistics, 810 Seventh Street NW, Washington, DC 20531.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

2. *Title of the Form/Collection:* 2022 Census of State and Local Law Enforcement Agencies (CSLLEA).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CJ–38. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will include all publicly-funded state, county, and local law enforcement agencies in the United States that employ the equivalent of at least one full-time sworn officer with general arrest powers. Both general purpose agencies (*i.e.,* any public agency with sworn officers whose patrol and enforcement responsibilities are primarily delimited by the boundaries of a municipal, county, or state government) and special purpose agencies (*e.g.,* campus law enforcement, transportation, natural resources, etc.) meeting the above description will be asked to respond.

Abstract: BJS has conducted the CSLLEA regularly since 1992. The 2022 CSLLEA will be the eighth administration. Historically, the CSLLEA generates an enumeration of all publicly funded state, county, and local law enforcement agencies operating in the United States. The CSLLEA provides complete personnel counts and an overview of the functions performed for approximately 20,000 law enforcement agencies operating nationally. The survey asks about the level of government that operates the agency; oversight of any agency sub-components; total operating budget; full-time and part-time personnel counts for sworn, limited sworn, and non-sworn employees; sex of full-time sworn, limited sworn, and non-sworn personnel; race and Hispanic origin of full-time sworn officers; and the functions the agency performs on a regular or primary basis. Upon completion, the 2022 CSLLEA will serve as the sampling frame for future law enforcement surveys administered by BJS.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS estimates a maximum of 20,000 state, county, and local law enforcement agencies with a respondent burden of about 32 minutes per agency to complete the survey form and about 15 minutes per agency of follow-up time. A random sample of 1,000 agencies will be selected to receive a pre-notification letter to inform the agency head of the upcoming survey and provide an opportunity to update the agency's contact information, which is estimated to add 2 minutes per sampled agency.

6. An estimate of the total public burden (in hours) associated with the collection: There are an estimated 15,700 total burden hours associated with this information collection.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 29, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–06920 Filed 3–31–22; 8:45 am]

BILLING CODE 4410–18–P

OFFICE OF MANAGEMENT AND BUDGET

Delegation of Apportionment Authority

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: Pursuant to The Executive Office of the President Appropriations Act, 2022, the Office of Management and Budget is publishing the current delegation of apportionment authority.

DATES: This delegation became effective on March 24, 2022.

FOR FURTHER INFORMATION CONTACT: Heather V. Walsh at 202–395–3642 or *MBX.OMB.OGC@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Delegation of Apportionment Authority

I hereby delegate to each Deputy Associate Director (DAD) the authorities delegated by the President to the Director of the Office of Management and Budget for apportioning funds pursuant to 31 U.S.C. 1513.

In the event that a DAD is on leave and therefore unable to apportion funds, the authority for apportioning funds is hereby delegated to the individual serving as the Acting DAD.

This delegation supersedes any previous delegation of such authority, and shall remain in effect until revoked. This delegation does not limit the authority of the Director to exercise the delegated authority.

Shalanda D. Young,

Director, Office of Management and Budget.

[FR Doc. 2022–06873 Filed 3–31–22; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (22–023)]

NASA Advisory Council; Aeronautics Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Aeronautics Committee of the NASA Advisory Council (NAC). This meeting will be held for soliciting, from the aeronautics community and other persons, research, and technical information relevant to program planning.

DATES: Wednesday, April 27, 2022, 11:30 a.m.–5:30 p.m., Eastern Time.

ADDRESSES: Meeting will be virtual only. See dial-in and WebEx information below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Ms. Irma Rodriguez, Designated Federal Officer, Aeronautics Research Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 527–4826, or *irma.c.rodriguez@nasa.gov.*

SUPPLEMENTARY INFORMATION: As noted above, this meeting is virtual and will take place telephonically and via WebEx. Any interested person must use a touch-tone phone to participate in this meeting. The WebEx link is *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=md18a1c8a22cc62b76b2387700e68f40b,* the meeting number is 2764 831 0780, and the password is M4MxhZBi@95 (case sensitive). You can also dial in by phone, U.S. Toll: 1–415–527–5035 passcode: 2764 831 0780. The agenda for the meeting includes the following topics:

—Aeronautics Research Mission Directorate (ARMD) FY 2023 Budget Overview
—Sustainable Flight National Partnership
— Future Airspace Vision

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–06921 Filed 3–31–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Fund Access for Credit Unions

ACTION: Notice of funding opportunity.

SUMMARY: The National Credit Union Administration (NCUA) is issuing this Notice of Funding Opportunity (NOFO) to announce the availability of technical assistance grants (awards) for low-income designated credit unions (LICUs) through the CDRLF. The CDRLF provides financial support in the form of loans and technical assistance grants that help LICUs support the communities in which they operate. All grant awards made under this NOFO are subject to funds availability and are at the NCUA's discretion.

Funding Opportunity Title: Community Development Revolving Loan Fund (CDRLF) Grants.

Catalog of Federal Domestic Assistance (CFDA) Number: 44.002.

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B. Award Information
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D. Application and Submission Information
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A. Program Description

The purpose of the Community Development Revolving Loan Fund (CDRLF) is to assist low-income-designated credit unions in providing basic financial services to their members and to stimulate economic activities in their communities. Through the CDRLF, the NCUA provides financial support in the form of technical assistance grants to eligible credit unions to modernize, build capacity, and extend outreach into underserved communities.

The NCUA will consider requests for various funding initiatives. More detailed information about the purpose of each initiative, amount of funds available, funding priorities, permissible uses of funds, funding limits, deadlines, and other pertinent details will be defined in the grant round guidelines. In addition, the NCUA may periodically publish information regarding the CDRLF in Letters to Credit Unions, press releases, and/or on the agency website, *NCUA.gov.*

1. Funding Initiatives

The funding initiatives available during 2022 include:

i. Training;
ii. Digital Services and Cybersecurity;
iii. Small, Low-Income Credit Union (LICU) Mentoring; and
iv. Underserved Outreach.

2. Authority and Regulations

i. *Authority:* 12 U.S.C. 1772c–1, 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786;

ii. *Regulations:* The regulation governing the CDRLF is found at 12 CFR part 705. In general, this regulation governs the CDRLF, and sets forth the program requirements. Additional regulations related to the low-income designation are found at 12 CFR 701.34 and 741.204. For the purposes of this NOFO, an ''Applicant'' is a Participating Credit Union that submits a complete application to the NCUA under the CDRLF. The NCUA encourages Applicants to review the regulations, this NOFO, the grant round guidelines, and other program materials for a complete understanding of the program.

B. Award Information

Approximately $1.545 million in awards will be available through this NOFO. The NCUA reserves the right to: (i) Award more or less than the amounts cited above; (ii) fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFO; and (iii) reallocate funds available under this NOFO to other programs, particularly if the NCUA finds that the number of awards made under this NOFO is fewer than projected. General information about the purpose of each funding initiative and the maximum award amount is provided below.

1. Purpose of Funding Initiatives

i. *Training:* The Training initiative focuses on helping credit unions develop the skills and talents of employees through specialized management programs and advanced training courses. The goal of this initiative is to enhance the operational knowledge of credit union employees and support staff professional development. Applicants can select up to three of the eligible projects below:

a. Continuity and Succession Planning;
b. Leadership Training; and/or
c. Staff Development.

ii. *Digital Services and Cybersecurity:* The Digital Services and Cybersecurity initiative provides financial assistance to better protect the credit union and its members against cyberattacks, increase the access of low-income and underserved communities to safe and secure digital financial products and services, and acquire software and equipment that supports a remote work posture or delivers products and services to members without physical access to a credit union facility. Applicants can select up to three of the eligible projects below:

a. Implementation of Mobile/Online Banking Features;
b. Remote Workforce Management and Solutions; and/or
c. Strengthening Cybersecurity.

iii. *Small LICU Mentoring:* The purpose of the Small LICU Mentoring initiative is to encourage strong and experienced credit unions to provide guidance to small low-income-designated credit unions to increase their ability to thrive and serve low-income and underserved populations. This grant may be used for eligible expenses associated with facilitating a new mentorship relationship. Funding approval will be based on the applicant's ability to demonstrate a

well-developed plan for the mentoring assistance it would receive from a mentor credit union. The award is structured as a relationship between two credit unions, the mentee and mentor. The mentee credit union is responsible for submitting the grant application. Applicants can select up to two of the eligible projects below:

a. Credit union growth and expansion; and/or

b. Improved management and operations.

iv. *Underserved Outreach:* The Underserved Outreach initiative is designed to help credit unions implement innovative outreach strategies to increase access to financial products and services in underserved communities. The goal of this initiative is for credit unions to improve the financial health of individuals in underserved communities by closing the wealth gap, increasing equity, and expanding economic inclusion. Applicants can select up to three of the eligible projects below:

a. New or expanded outreach efforts;

b. New or expanded financial education programs; and/or

c. New or expanded financial products or services.

2. Maximum Award Amount

The maximum amount for a CDRLF award is determined by the type of funding initiative. There is no minimum amount for CDRLF awards. The maximum award amount for each funding initiative is provided below.

i. Training—$5,000
ii. Digital Services and Cybersecurity—$10,000
iii. Small LICU Mentoring—$25,000
iv. Underserved Outreach—$50,000

C. Eligibility Information

1. Eligible Applicants

This NOFO is open to credit unions that meet the eligibility requirements defined in 12 CFR part 705. A credit union must have a low-income designation obtained in accordance with 12 CFR 701.34 or 741.204 to participate in the CDRLF.

i. *Non-Federally Insured Applicants:* Each Applicant that is a non-federally insured, state-chartered credit union must submit additional application materials. These additional materials are more fully described in 12 CFR 705.7(b)(3) and in the application.

a. Non-federally insured, state-chartered credit unions must agree to be examined by the NCUA. The specific terms and covenants pertaining to this condition will be provided in the award agreement of the Participating Credit Union.

2. Employer Identification Number

Each application must include a valid and current Employer Identification Number (EIN) issued by the U.S. Internal Revenue Service (IRS). The NCUA will not consider an application that does not include a valid and current EIN. Such an application will be deemed incomplete and will be declined. Information on how to obtain an EIN may be found on the IRS's website.

3. System for Award Management

All Applicants are required by federal law to have an active registration with the federal government's System for Award Management (SAM) prior to applying for funding. SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract awards, grants, and electronic payment processes. *An active SAM account status and unique entity identifier (UEI) number are required to apply for a CDRLF grant. Credit unions receive a UEI upon registration in the System for Award Management.* Once registered, credit unions must recertify and maintain an active status annually. There is no charge for the SAM registration and recertification process. SAM users can register or recertify their account by following the instructions for registration. The NCUA will not consider an applicant that does not have an active SAM status.

4. Other Eligibility Requirements

i. *Financial Viability:* Applicants must meet the underwriting standards established by the NCUA, including those pertaining to financial viability, as set forth in the application and defined in 12 CFR 705.7(c).

ii. *Compliance with Past Agreements:* In evaluating funding requests under this NOFO, the NCUA will consider an Applicant's record of compliance with past agreements. The NCUA, in its sole discretion, will determine whether to consider an application from an Applicant with a past record of noncompliance, including any de-obligation of funds (removal of unused awards).

a. If an Applicant is in default of a previously executed agreement with the NCUA, the NCUA will not consider an application for funding under this NOFO.

b. If an Applicant is a prior Participating Credit Union under the CDRLF and has unused awards as of the date of application, the NCUA may request a narrative from the Applicant that addresses the reason for its record of noncompliance. The NCUA, in its sole discretion, will determine whether the reason is sufficient to proceed with the review of the application.

D. Application and Submission Information

1. Application

Under this NOFO, all applications must be submitted online in the NCUA's web-based application system, CyberGrants, to be considered. Applications must be submitted online at *https://www.cybergrants.com/ncua/applications.* The application and related documents are also located on the NCUA's website at *https://www.ncua.gov/services/Pages/resources-expansion/grants-loans.aspx.*

2. Minimum Application Content

A complete application will consist of similar components for each funding initiative. At a minimum, each initiative requires a narrative that describes the Applicant's proposed use of the CDRLF award. The NCUA may waive this requirement for funding initiatives with a defined list of allowable project activities. The NCUA will identify the funding initiatives that do not require a narrative response in the grant round guidelines. Other application contents that are specific to a particular funding initiative will be defined in the grant round guidelines found on the NCUA's website.

3. Submission Dates and Times

i. The NCUA will accept applications beginning May 2, 2022, at 9:00 a.m. eastern time (ET). Applications must be submitted by June 24, 2022, at 11:59 p.m. ET. Late applications will not be considered.

E. Application Review Information

1. Eligibility and Completeness Review

The NCUA will review each application to determine it is complete and that the Applicant meets the eligibility requirements described in the regulations, the grant round guidelines, and in this NOFO. An incomplete application or one that does not meet the eligibility requirements will be declined without further consideration.

2. Evaluation Criteria

Each funding initiative, due to its structure and impact, may have different evaluation criteria assigned. The evaluation criteria for each funding initiative are fully described in the grant round guidelines.

3. Application Review

The purpose of the application review is to determine whether an application satisfies the criteria for the applicable funding initiative. The NCUA will evaluate each application for adherence to the grant round guidelines. The NCUA may contact the Applicant during its review to clarify or confirm information in the application. The Applicant must respond within the time specified by the NCUA or the NCUA, in its sole discretion, may decline the application without further consideration.

4. Scoring and Funding Decision

The NCUA uses a scoring system that establishes a ranking position for each application. The applications will be ranked according to the scoring criteria set forth for each funding initiative in the grant round guidelines.

F. Federal Award Administration

1. NCUA Award Notice

The NCUA will notify each Applicant of its funding decision by email. In addition, the NCUA will announce the successful applications through a press release that includes a list of the Awardees. Applicants that are approved for funding will also receive instructions on how to proceed with the post-award activities.

2. Administrative and National Policy Requirements

i. *Award Agreement:* The specific terms and conditions will be established in the award agreement each Participating Credit Union must sign prior to formally accepting an award. Each Participating Credit Union under this NOFO must enter into an agreement with the NCUA before the NCUA will disburse the award funds. The agreement includes the terms and conditions of funding, including but not limited to the (i) award amount, (ii) grant award details, (iii) accounting treatment, (iv) signature pages, and (v) reporting requirements.

ii. *Failure to Sign Agreement:* The NCUA, in its sole discretion, may rescind an award if the Applicant fails to sign and return the agreement or any other requested documentation, within the time specified by the NCUA.

3. Reimbursement Process

Awardees will be responsible for the timely completion of all post-award activities. This includes, but it is not limited to, signing the award agreement and completing a reimbursement request for the awarded funds. The reimbursement requirements vary by funding initiative and are detailed in the post-award guidelines.

The reimbursement request may require, all or a combination of, the following items: (i) Certification of expenses; (ii) project related documentation; (iii) a summary of project accomplishments and outcomes; or (iv) a certification form signed by a credit union official (such as CEO, manager, or Board Chairperson) authorized to request the reimbursement and make the certifications. The NCUA, in its sole discretion, may modify these requirements. Additional reimbursement request requirements will be described in the post-award guidelines.

G. Federal Awarding Agency

1. Methods of Contact

Further information can be found at *https://www.ncua.gov/services/Pages/resources-expansion/grants-loans.aspx.* For questions related to the CDRLF, email the NCUA's Office of Credit Union Resources and Expansion at *CUREAPPS@ncua.gov.*

2. Information Technology Support

People who have visual or mobility impairments that prevent them from using the NCUA's website should call (703) 518–6610 for guidance (this is not a toll-free number).

H. Grant Terms and Conditions

1. Every Applicant Must Certify It Meets and Agrees to the Following Terms and Conditions, Prior To Submitting an Application

i. Applicant is a low-income-designated credit union, as defined in Section 701.34 of the NCUA's Rules and Regulations.

ii. Applicant shall comply with United States Office of Management and Budget, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

iii. Applicants are required to have an audit conducted if they hold $750,000 or more in Federal awards during a fiscal year. Applicants that hold less than $750,000 in Federal awards are exempt from this requirement.

a. For example, if a credit union uses a $250,000 loan from the NCUA's CDRLF and a $500,000 grant from the Community Development Financial Institutions (CDFI) Fund, totaling $750,000 in Federal awards during the same fiscal year, then the credit union must have an audit conducted.

iv. Applicant is responsible for the efficient and effective administration of the Federal Award through application of sound management practices. Applicant assumes the responsibility for administering Federal Funds in a manner consistent with underlying agreements, program objectives, and the term and conditions of the Federal Award.

v. No employee, contractor, consultant, or vendor has participated substantially for this grant-funded activity, nor otherwise benefited directly or indirectly from the grant, who, to its knowledge (assuming reasonable diligence), has a ''covered relationship'' with an NCUA employee who presently holds a position that would enable him or her to influence a pending or future grant award, or a reimbursement of permitted expenses thereunder.

vi. An employee, contractor, consultant, or vendor of the Applicant would have such a ''covered relationship'' if he or she were either: (1) A member of the household of an NCUA employee who presently holds a position that would enable him or her to influence a pending or future grant award, or a reimbursement thereunder; or (2) a relative of such an NCUA employee with whom he or she has a close personal relationship. 5 CFR 2635.502(b)(1)(ii).

vii. Applicant must disclose in writing to the NCUA any potential conflict of interest in accordance with applicable Federal awarding agency policy.

viii. Per 2 CFR 200.113, Applicant must disclose all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award.

ix. The Applicant conducts its activities such that no person is excluded from participation in, is denied the benefits of, or is subject to discrimination on the basis of race, color, national origin, sex, age, or disability in the distribution of services and/or benefits provided under this grant program. The credit union agrees to provide evidence of its compliance as required by the NCUA. Furthermore, credit unions should ensure compliance with title VI of the Civil Rights Act of 1964.

x. If a credit union enters into commitments for a project before the grant decision is made, the credit union will be obligated to pay project expenses from its own funds should the grant not be approved; if the grant is approved, the credit union is responsible for the expenses incurred prior to the grant approval date.

xi. Requests to reallocate or change approved project(s) and/or request an extension to the deadline must be submitted in writing prior to the

original deadline and approved by the NCUA prior to Applicant incurring expenses.

xii. The Applicant is aware that the NCUA will correspond with the credit union regarding this application by email, utilizing the email address provided in this application.

xiii. Applicant hereby acknowledges that the NCUA reserves full discretion to deny reimbursement under this grant in the event the NCUA determines the Applicant is, or previously was, either in breach of any condition or limitation in the grant guidelines or in breach of the 'covered relationship' restriction set forth above.

xiv. Information included in Outcome Summary or Success Stories is considered by the NCUA to be Research Data and is governed by 2 CFR 200.315 and may be made publicly available.

xv. Applicant is aware that any false, fictitious, or fraudulent information or the omission of any material fact may subject Applicant to criminal, civil or administrative penalties for fraud, false statements, false claims, or otherwise. (U.S. Code title 18, section 1001 and title 31, sections 3729–3730, and 3801–3812).

xvi. Applicant is aware recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system in accordance with Public Law 115–232, section 889 and 2 CFR 200.216.

By the National Credit Union Administration Board on March 29, 2022.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2022–06953 Filed 3–31–22; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Presidential Awards for Excellence in Mathematics and Science Teaching (PAEMST), State Coordinator (SC) Survey

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew 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 May 31, 2022 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to 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: Presidential Awards for Excellence in Mathematics and Science Teaching (PAEMST), State Coordinator (SC) Survey.

OMB Number: 3145–0241.

Expiration Date of Approval: August 31, 2022.

Type of Request: Renewal.

Abstract: The PAEMST is a White House program established by Congress in 1983 authorizing the President to bestow up to 108 awards each year to teachers of mathematics and science at the elementary and secondary levels. The NSF is the designated federal agency for administration of this Presidential program. Awards are given in the Mathematics Category (includes mathematics and Computer Science/Technology) and the Science Category (includes science and engineering) to teachers from each of the 50 states and four U.S. jurisdictions. The jurisdictions are Washington, DC; Puerto Rico; Department of Defense Education Activity schools; and the U.S. territories as a group (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands). The award recognizes those teachers who develop and implement a high-quality instructional program that is informed by content knowledge and enhances student learning. Since the program's inception, more than 5,200 teachers have been recognized for their contributions in the classroom and to their profession. Awardees serve as models for their colleagues, inspiration to their communities, and leaders in the improvement of STEM education.

The State or Jurisdiction Coordinator (SC) manages the PAEMST program within his or her state or jurisdiction. SCs recruit eligible nominees, select and assign mentors to nominees, coordinate the selection committee, and plan local recognition events within their State or Jurisdiction. They also carry out the responsibilities as noted in the ''Operational Handbook for State and Jurisdiction STEM Coordinators.''

The purpose of this survey is to seek feedback from the approximately 120 SCs regarding PAEMST management within their state or jurisdiction. The NSF PAEMST support team will ask directed questions using the survey to gather information that may specifically address the methods and recruitment efforts that SCs use to support the attracting of prospective award nominees. Additional survey areas may also include:

- Applicant Mentoring
- Mentor Training
- State or Jurisdiction selection Committee
- State or Jurisdiction selection Process
- Applicant and State or Jurisdiction Finalist Notification and Recognition
- In-kind contributions

The survey will evaluate the impact SCs have on attracting prospective award nominees to PAEMST. This will be conducted as a web-based survey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30–40 minutes for State/Jurisdiction Coordinators.

Respondents: Individuals.

Estimated Number of Responses per Form: 120 Coordinators.

Estimated Total Annual Burden on Respondents: 80 hours (120 Coordinators at 40 minutes per survey = 80 hours).

Frequency of Response: One per application cycle.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the PAEMST functions, including whether the information shall have practical utility; (b) the accuracy of the NSF'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: March 29, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–06902 Filed 3–31–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 4, 11, 18, 25, May 2, 9, 2022. All listed meeting times (see Matters To Be Considered) are local to the meeting location. 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.*

PLACE: Multiple locations (see Matters To Be Considered). 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.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of April 4, 2022

There are no meetings scheduled for the week of April 4, 2022.

Week of April 11, 2022—Tentative

There are no meetings scheduled for the week of April 11, 2022.

Week of April 18, 2022—Tentative

Friday, April 22, 2022

2:30 p.m. Meeting with the Navajo Tribal Community Members of the Red Water Pond Road (Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held at the Red Water Pond Road Cha'a'oh (''Shade House''), New Mexico. The GPS coordinates for the meeting location are 35.68485338436599, −108.5433161361636. From Church Rock on State Route 566, head northeast for eleven miles. After driving past mile marker eleven and Pipeline Road, the road bends to the left. Shortly after, you will soon see the Red Water Pond Road sign. Take a right hand turn off State Route 566 onto Red Water Pond Road, which is an all-dirt road. The meeting location is about a quarter mile on the right.

6:00 p.m. Discussion of the Ten-Year Plan to Address Impacts of Uranium Contamination on the Navajo Nation and Lessons Learned from the Remediation of Former Uranium Mill Sites (Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held at the Hilton Garden Inn, 1530 W Maloney Ave., Gallup, New Mexico. The public is invited to attend the Commission's meeting live by webcast at the web address—*https://video.nrc.gov/.*

Week of April 25, 2022—Tentative

There are no meetings scheduled for the week of April 25, 2022.

Week of May 2, 2022—Tentative

There are no meetings scheduled for the week of May 2, 2022.

Week of May 9, 2022—Tentative

Tuesday, May 10, 2022

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Contact: Jenny Weil: 301–415–1024)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting live by webcast at the web address—*https://video.nrc.gov/.*

Thursday, May 12, 2022

10:00 a.m. Briefing on Advanced Reactors Activities with Federal Partners (Contact: Caty Nolan: 301–287–1535)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting live by webcast at the web address—*https://video.nrc.gov/.*

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 NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: March 30, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–07075 Filed 3–30–22; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act, notice is hereby given that a virtual meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, April 21, 2022. There will be no in-person gathering for this meeting. The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates and from time to time advise the Office of Personnel Management.

DATES: The virtual meeting will be held on April 21, 2022, beginning at 10:00 a.m. (EST).

ADDRESSES: The meeting will convene virtually.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public. Reports for calendar years 2008 to 2019 are posted at *http://www.opm.gov/fprac.* Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at Office of Personnel Management, Federal Prevailing Rate Advisory Committee,

Room 7H31, 1900 E Street NW, Washington, DC 20415, (202) 606–2858.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, 202–606–2858, or email *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public, with an audio option for listening. This notice sets forth the agenda for the meeting and the participation guidelines.

Meeting Agenda. The tentative agenda for this meeting includes the following Federal Wage System items:

- The definition of Monroe County, PA
- The definition of San Joaquin County, CA
- The definition of the Salinas-Monterey, CA, wage area
- The definition of the Puerto Rico wage area
- Prevailing Rate Advisory Committee Annual Summary for 2020

Public Participation: The April 21, 2022, meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the meeting. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *pay-leave-policy@opm.gov* with the subject line ''April 21 FPRAC Meeting'' no later than Tuesday, April 19, 2022.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

Members of the press, in addition to registering for this event, must also RSVP to *media@opm.gov* by April 19, 2022.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2022–06869 Filed 3–31–22; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–48 and CP2022–53]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 5, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–48 and CP2022–53; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 216 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 28, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* April 5, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–06918 Filed 3–31–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94533; File No. SR–Phlx–2022–13]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Implementation Date Related to the Launch of Options on the Nasdaq-100 Volatility Index

March 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the implementation date related to the launch of options on the Nasdaq-100® Volatility Index.

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 the implementation date related to the launch of options on the Nasdaq-100® Volatility Index (''VOLQ''). In 2021, Phlx received approval [3] to list and trade options on VOLQ. Phlx subsequently received approval [4] in 2021 to amend the calculation of its final settlement price for options on VOLQ. When Phlx amended the calculation of its final settlement price for options on VOLQ, it also amended its implementation date to ''on or before March 31, 2022.'' At this time the Exchange proposes to delay the launch of VOLQ to ''on or before June 30, 2022.'' The Exchange proposes the additional time to ensure market readiness and to allow a third-party vendor additional time to test before launch. The Exchange will issue an Options Trader Alert announcing the day it will list options on VOLQ on Phlx at least thirty days prior to the launch date.

Background

VOLQ is a new options index product that would enable retail and institutional investors to manage volatility versus price risk. This index will measure ''at-the-money'' volatility, a precise measure of volatility used by investors. Unlike other indexes, this proposed novel product isolates at-the-money volatility for precise trading and hedging strategies. This product will provide investors information on volatility index returns by allowing them to observe increases and decreases of the Volatility Index. Specifically, VOLQ options will measure changes in 30-day implied volatility of the Nasdaq-100 Index (commonly known as and referred to by its ticker symbol, NDX). Options on the Volatility Index will be cash-settled and will have European-style exercise provisions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by delaying the launch of options on VOLQ from ''on or before March 31, 2022'' to ''on or before June 30, 2022.'' This delay will provide additional time to ensure market readiness and to allow a third-party vendor additional time to test before launch, thereby ensuring a successful launch of this new product.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to delay the launch of options on VOLQ does not impose an undue burden on competition. Delaying the launch from ''on or before March 31, 2022'' to ''on or before June 30, 2022'' will provide Phlx additional time to ensure market readiness as well as allow a third-party vendor additional time to test before launch. The Exchange will issue an Options Trader Alert announcing the day it will list options on VOLQ on Phlx at least thirty days prior to the launch date.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to immediately delay the launch of options on VOLQ, which would provide additional time to ensure market readiness and allow a third-party vendor additional time to test before launch. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[3] *See* Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR–Phlx–2020–41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index).

[4] *See* Securities Exchange Act Release No. 93628 (November 19, 2021), 86 FR 67555 (November 26, 2021) (SR–Phlx–2021–56) (Order Approving a Proposed Rule Change To Amend Options 4A, Section 12 Regarding the Calculation of the Closing Volume Weighted Average Price for Options on the Nasdaq-100 Volatility Index in Certain Circumstances).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–13. 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–Phlx–2022–13 and should be submitted on or before April 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06853 Filed 3–31–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94528; File No. SR–CboeBZX–2022–022]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Relating to the Continuing Education for Registered Persons and Move Those Rules From Interpretation and Policy .02 of Rule 2.5 to Proposed Rule 2.16 and To Amend Related Registration Requirements Provided Under Various Interpretations and Policies of Rule 2.5

March 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Continuing Education for Registered Persons and move those rules from Interpretation and Policy .02 of Rule 2.5 to proposed Rule 2.16 and to amend related registration requirements provided under various Interpretations and Policies of Rule 2.5. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(i) Existing CE Program Background

The continuing education program for registered persons of broker-dealers (''CE Program'') generally requires registered persons to complete continuing education consisting of a Regulatory Element. The Regulatory Element is delivered through a web-based delivery method called ''CE Online,'' which is administered through the Financial Industry Regulatory Authority, Inc. (''FINRA'') online continuing education system, and focuses on regulatory requirements and industry standards. The CE Program for registered persons is currently codified under Interpretation and Policy .02 of Exchange Rule 2.5. The Exchange now proposes to expand the CE Program to adopt rules pertaining to a Firm Element component of continuing education. The Firm Element would be provided by each firm and focus on securities products, services and strategies the firm offers, firm policies and industry trends. In addition, the Exchange proposes other changes to amend, move, reorganize and enhance its rules regarding its CE Program, as described below.

The Commission recently approved a proposal submitted by FINRA relating to its CE Program.[5] The Exchange

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities and Exchange Act No. 93097 (September 21, 2021) 86 FR 53358 (September 27,

understands that other exchanges have or will propose similar amendments based on FINRA's rule changes. Therefore, the Exchange proposes to amend and enhance its own CE Program as provided under proposed Rule 2.16 and its related registration requirements as provided under various Interpretations and Policies of Rule 2.5 in response to FINRA's amended CE Program and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges. The Exchange proposes to implement the proposed rule changes to align with FINRA's CE Program implementation dates.[6] Specifically, the proposed implementation dates are as follows: Changes relating to proposed Rule 2.16(c) (Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category) will become effective March 15, 2022; changes to recognize waiver of examination programs for individuals working for a financial services industry affiliate of a member that are administered by the Exchange's affiliates, Cboe Exchange, Inc. (''Cboe'') and Cboe C2 Exchange, Inc. (''C2''), and by FINRA (referred to as the ''FSA waiver programs'' or ''FSAWPs'') will become effective March 15, 2022; and all other changes, including changes reflected in proposed Rules 2.16(a) (Regulatory Element)[7] and 2.16(b) (Firm Element) will become effective January 1, 2023.

a. Regulatory Element

Interpretation and Policy .02(a) of Rule 2.5 currently requires a registered person to complete the applicable Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.[8] The Exchange may extend these time frames for good cause shown.[9] Unless otherwise determined, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration(s) deemed inactive and will be designated as ''CE inactive'' in the CRD system until the requirements of the Regulatory Element have been satisfied.[10] A CE inactive person is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. Moreover, if registered persons remain CE inactive for two consecutive years, they must requalify by retaking required examinations (or obtain a waiver of the applicable qualification examinations).[11]

The Regulatory Element currently consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.[12] While some of the current Regulatory Element content is unique to particular registration categories, most of the content has broad application to both representatives and principals.[13] The Regulatory Element was originally designed at a time when most individuals had to complete the Regulatory Element at a test center, and its design was shaped by the limitations of the test center-based delivery model. In 2015, the delivery of the Regulatory Element was transitioned to an online platform, referred to above as CE Online, which allows individuals to complete the content online at a location of their choosing, including their private residence. This online delivery provides for much greater flexibility in updating content in a timelier fashion, developing content tailored to each registration category and presenting the material in an optimal learning format.

b. Firm Element

As noted above, Exchange Rules do not currently provide for a Firm Element of the CE Program. However, as discussed in more detail further below, the Exchange is now proposing to introduce a Firm Element, which would be modeled after FINRA Rule 1240 and Cboe Rule 3.33(c).

c. Termination of a Registration

Currently, individuals whose registrations as representatives or principals have been terminated for two or more years may reregister as representatives or principals only if they requalify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s) (the ''two-year qualification period'').[14] The two-year qualification period was intended to ensure that individuals who

2021) (SR–FINRA–2021–015) (Order Approving a Proposed Rule Change To Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)).

[6] *See* FINRA Regulatory Notice 21–41 (November 17, 2021).

[7] An individual's initial annual Regulatory Element due date will be December 31, 2023.

[8] *See* Rule 2.5.02(a). An individual's registration anniversary date is generally the date they initially registered in the Central Registration Depository (''CRD®'') system. However, an individual's registration anniversary date would be reset if the individual has been out of the industry for two or more years and is required to requalify by examination, or obtain an examination waiver, in order to reregister. An individual's registration anniversary date would also be reset if the individual obtains a conditional examination waiver that requires them to complete the Regulatory Element by a specified date. Non-registered individuals who are participating in the waiver program under proposed Rule 2.5.07 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) (''FSAWP participants'') are also subject to the Regulatory Element. *See also* proposed Rule 2.16(a)(5) (Definition of Covered Person). The Regulatory Element for FSAWP participants correlates to their most recent registration(s), and it must be completed based on the same cycle had they remained registered. FSAWP participants are eligible for a single, fixed seven-year waiver period from the date of their initial designation, subject to specified conditions. Registered persons who become subject to a significant disciplinary action, as specified in proposed Rule 2.16(a)(2) (Disciplinary Actions), may be required to retake the Regulatory Element within 120 days of the effective date of the disciplinary action, if they remain registered. Further, their cycle for participation in the Regulatory Element may be adjusted to reflect the effective date of the disciplinary action rather than their registration anniversary date.

[9] *See* Rule 2.5.02(b).

[10] *Supra* note 8. Individuals must complete the entire Regulatory Element session to be considered to have ''completed'' the Regulatory Element; partial completion is the same as non-completion.

[11] *See* Rule 2.5.02(b). This CE inactive two-year period is calculated from the date such persons become CE inactive, and it continues to run regardless of whether they terminate their registrations before the end of the two-year period. Therefore, if registered persons terminate their registrations while in a CE inactive status, they must satisfy all outstanding Regulatory Element prior to the end of the CE inactive two-year period in order to reregister with a Member without having to requalify by examination or having to obtain an examination waiver.

[12] The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).

[13] The current content is presented in a single format leading individuals through a case that provides a story depicting situations that they may encounter in the course of their work.

[14] *See* Rule 2.5.02(d). The two-year qualification period is calculated from the date individuals terminate their registration and the date the Exchange receives a new application for registration. The two-year qualification period does not apply to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. Such individuals have the option of reregistering in the more limited registration category without having to requalify by examination or obtain an examination waiver so long as they continue to remain qualified for the broader registration category. Further, the two-year qualification period only applies to the representative- and principal-level examinations; it does not extend to the Securities Industry Essentials (''SIE'') examination. The SIE examination is valid for four years, but having a valid SIE examination alone does not qualify an individual for registration as a representative or principal. Individuals whose registrations as representatives or principals have been revoked pursuant to Exchange Rule 8.11 (Judgment and Sanction) may only requalify by retaking the applicable representative- or principal-level examination in order to reregister as representatives or principals, in addition to satisfying the eligibility conditions for association with a firm. Waivers are granted on a case-by-case basis under Rule 2.5.01(b).

reregister are relatively current on their regulatory and securities knowledge.

(ii) Proposed Rule Change

After extensive work with the Securities Industry/Regulatory Council on Continuing Education (''CE Council''), FINRA, other Self-Regulatory Organizations and industry participants, the Exchange proposes the following changes to the Exchange's CE Program under Rule 2.5 and proposed Rule 2.16 to align with FINRA Rule 1240 and Cboe Rule 3.33.

a. Transition to Annual Regulatory Element for Each Registration Category

As noted above, currently, the Regulatory Element generally must be completed every three years, and the content is broad in nature. Based on changes in technology and learning theory, the Regulatory Element content can be updated and delivered in a timelier fashion and tailored to each registration category, which would further the goals of the Regulatory Element.[15] Therefore, to provide registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes adopting Rule 2.16(a) to require registered persons to complete the Regulatory Element annually by December 31.[16] The proposed amendment would also require registered persons to complete Regulatory Element content for each representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.[17]

Under the proposed rule change, Members would have the flexibility to require their registered persons to complete the Regulatory Element sooner than December 31, which would allow Members to coordinate the timing of the Regulatory Element with other training requirements, including the Firm Element.[18] For example, a Member could require its registered persons to complete both their Regulatory Element and Firm Element by October 1 of each year.

Individuals who would be registering as a representative or principal for the first time on or after the implementation date of the proposed rule change would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration.[19] In addition, subject to specified conditions, individuals who would be reregistering as a representative or principal on or after the implementation date of the proposed rule change would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their reregistration.[20]

Consistent with current requirements, individuals who fail to complete their Regulatory Element within the prescribed period would be automatically designated as CE inactive.[21] However, the proposed rule change preserves the Exchange's ability to extend the time by which a registered person must complete the Regulatory Element for good cause shown.[22]

The Exchange also proposes adopting Rule 2.16(a) to provide that: (1) Individuals who are designated as CE inactive would be required to complete all of their pending and upcoming annual Regulatory Element, including any annual Regulatory Element that becomes due during their CE inactive period, to return to active status;[23] (2) the two-year CE inactive period is calculated from the date individuals become CE inactive, and it continues to run regardless of whether individuals terminate their registrations;[24] (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by the Exchange;[25] (4) individuals who have not completed any Regulatory Element content for a registration category in the calendar year(s) prior to reregistering would not be approved for registration for that category until they complete that Regulatory Element content, pass an examination for that registration category or obtain an unconditional examination waiver for that registration category, whichever is applicable;[26] and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.[27]

Under the proposed rule change, the amount of content that registered persons would be required to complete in a three-year, annual cycle for a particular registration category is expected to be comparable to what most registered persons are currently completing every three years. In some years, there may be more required content for some registration categories depending on the volume of rule changes and regulatory issues. In addition, an individual who holds multiple registrations may be required to complete additional content compared to an individual who holds a single registration because, as noted above, individuals would be required to complete content specific to each registration category that they hold. However, individuals with multiple registrations would not be subject to duplicative regulatory content in any given year. The more common registration combinations would likely share much of their relevant regulatory content each year. For example, individuals registered as General Securities Representatives and General Securities Principals would receive the same content as individuals solely registered as General Securities Representatives, supplemented with a likely smaller amount of supervisory-specific content on the same topics. The less common registration combinations may result in less topic overlap and more content overall.

b. Adoption of Firm Element, Recognition of Other Training Requirements for Firm Element, and Application of Firm Element to Covered Registered Persons

The Exchange proposes to adopt proposed Rule 2.16(b) to include a Firm Element component for its CE Program that aligns with Cboe Rule 3.33(b) and FINRA Rule 1240(b). The proposed rule would require Members to maintain a continuing and current education program for its registered persons to enhance their securities knowledge, skills and professionalism. At a minimum, each Member would be required to at least annually evaluate and prioritize its training needs and develop a written training plan. The

[15] When other self-regulatory organizations' CE Programs were originally adopted in 1995, registered persons were required to complete the Regulatory Element on their second, fifth and 10th registration anniversary dates. *See* Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (Order Approving File Nos. SR–AMEX–94–59; SR–CBOE–94–49; SR–CHX–94–27; SR–MSRB–94–17; SR–NASD–94–72; SR–NYSE–94–43; SR–PSE–94–35; and SR–PHLX–94–52). The change to the current three-year cycle in the other self-regulatory organizations' CE Programs was made in 1998 to provide registered persons more timely and effective training, consistent with the overall purpose of the Regulatory Element. *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (Order Approving File Nos. SR–CBOE–97–68; SR–MSRB–98–02; SR–NASD–98–03; and SR–NYSE–97–33).

[16] *See* proposed Rules 2.16(a)(1) and (a)(4).

[17] *See* proposed Rules 2.5.04 and 2.16(a)(1).

[18] *See* proposed Rules 2.16(a)(1) and (a)(4).

[19] *See* proposed Rule 2.16(a)(1).

[20] *See* proposed Rule 2.16(a)(4).

[21] *See* proposed Rule 2.16(a)(2).

[22] *Id.* The proposed rule change provides that the request for an extension of time must be in writing and include supporting documentation, which is consistent with current practice.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *See* proposed Rule 3.33(a)(4).

[27] *See* proposed Rule 3.33(a)(5).

plan must take into consideration the Member's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of registered persons in the Regulatory Element. If a Member's analysis determines a need for supervisory training for persons with supervisory responsibilities such training must be included in the Member's training plan. The proposed rule would also require that programs used to implement a Member's training plan must be appropriate for the business of the Member and, at a minimum, must cover training topics related to the role, activities or responsibilities of the registered person and to professional responsibility. In addition, the proposed rule would provide that each Member must administer its continuing education Firm Element program in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by registered persons.

To align the Firm Element requirement with other required training, proposed Rule 2.16(b) would also expressly allow Members to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual's annual Firm Element requirement.[28] The Exchange also proposes to apply the Firm Element requirement to ''covered registered persons,'' which would include any person registered with a Member, including person who is permissively registered as a representative or principle pursuant to proposed Rule 2.5.08, as discussed below, thereby aligning the description of ''covered registered persons'' in the Firm Element requirement with the description of ''covered persons'' in the Regulatory Element requirement.[29]

c. Maintenance of Qualification After Termination of Registration

The Exchange proposes to adopt Rules 2.16(c), 2.16.01, and 2.16.02 to provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education. The proposed rule change would not eliminate the two-year qualification period. Rather, it would provide such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program would continue to be subject to the current two-year qualification period. The proposed rule change is generally aligned with other professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credential.

The proposed rule change would impose the following conditions and limitations:

- Individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category;[30]
- individuals could elect to participate when they terminate a registration or within two years from the termination of a registration;[31]
- individuals would be required to complete annually all prescribed continuing education;[32]
- individuals would have a maximum of five years in which to reregister;[33]
- individuals who have been CE inactive for two consecutive years, or who become CE inactive for two consecutive years during their participation, would not be eligible to participate or continue;[34] and
- individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.[35]

The proposed rule change also includes a look-back provision that would, subject to specified conditions, extend the proposed option for maintaining qualifications following a registration category termination to (i) individuals who have been registered as a representative or principal within two years immediately prior to the March 15, 2022 implementation date of the proposed rule change; and (ii) individuals who have been FSWAP participants immediately prior to the March 15, 2022 implementation date of the proposed rule change.[36] With respect to the FSAWP, the Exchange itself does not have an FSW waiver program. However, the Exchange proposes to recognize waivers granted to individuals who are designated as participants in, and satisfying the conditions of, the FSW waiver program(s) of Cboe, C2 and/or FINRA, and also to make the look-back provision for the new maintaining qualifications requirements available to individuals who are participants in the FSA waiver programs of Cboe, C2 and/or FINRA immediately preceding March 15, 2022. The Exchange understands that, effective March 15, 2022, Cboe, C2 and FINRA do not plan to accept any new initial designations for individuals under their respective FSA waiver programs. Thus, what will remain of those programs will only be applicable to pre-existing participants. The Exchange also understands that,

[28] *See* proposed Rule 2.16(b)(2)(D).

[29] The group of persons who may be considered a ''covered registered person'' under the Firm Element provisions in proposed Rule 2.16(b)(1) is a subset of the group of persons who may be considered a ''covered person'' under the Regulatory Element provisions in proposed Rule 2.15(a)(5).

[30] *See* proposed Rule 2.16(c)(1).

[31] *See* proposed Rule 2.16(c)(2).

[32] *See* proposed Rule 2.16(c)(3). However, upon a participant's request and for good cause shown, the Exchange would have the ability to grant an extension of time for the participant to complete the prescribed continuing education. A participant who is also a registered person must directly request an extension of the prescribed continuing education from the Exchange.

[33] *See* proposed Rule 2.16(c).

[34] *See* proposed Rule 2.16(c)(4) and (c)(5).

[35] *See* proposed Rules 2.16(c)(1) and (c)(6). Individuals who are subject to a statutory disqualification would not be eligible to enter the proposed continuing education program. Individuals who become subject to a statutory disqualification while participating in the proposed continuing education program would not be eligible to continue in the program. Further, any content completed by such participants would be retroactively nullified upon disclosure of the statutory disqualification. The following example illustrates the application of the proposed rule change to individuals who become subject to a statutory disqualification while participating in the proposed continuing education program. Individual A participates in the proposed continuing education program for four years and completes the prescribed content for each of those years. During year five of his participation, he becomes subject to a statutory disqualification resulting from a foreign regulatory action. In that same year, the Exchange receives a Form U4 submitted by a member on behalf of Individual A requesting registration with the Exchange. The Form U4 discloses the statutory disqualification event. The Exchange would then retroactively nullify any content that Individual A completed while participating in the proposed continuing education program. Therefore, in this example, in order to become registered with the Exchange, he would be required to requalify by examination. This would be in addition to satisfying the eligibility conditions for association with a Member. *See also* Exchange Act Sections 3(a)(39) and 15(b)(4).

[36] *See* proposed Rule 2.16.01. Such individuals would be required to elect whether to participate by the March 15, 2022 implementation date of the proposed rule change. If such individuals elect to participate, they would be required to complete their initial annual content by the end of 2022 (*i.e.,* the end of the calendar year in which the proposed rule change is implemented). In addition, if such individuals elect to participate, their initial participation period would be adjusted based on the date that their registration was terminated.

ultimately, the FSA waiver programs will expire in favor of the maintenance of qualification requirements under the Cboe, C2 and FINRA Rules, for which the Exchange's maintenance of qualification requirements under proposed are modeled.[37]

In addition, the proposed rule change includes a re-eligibility provision that would allow individuals to regain eligibility to participate each time they reregister with a Member for a period of at least one year and subsequently terminate their registration, provided that they satisfy the other participation conditions and limitations.[38] The proposed rule change will have several important benefits. It will provide individuals with flexibility to address life and career events and necessary absences from registered functions without having to requalify each time. It will also incentivize them to stay current on their respective securities industry knowledge following the termination of any of their registrations. The continuing education under the proposed option will be as rigorous as the continuing education of registered persons, which promotes investor protection. Further, the proposed rule change will enhance diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals.

Significantly, the proposed rule change will be of particular value to women, who continue to be the primary caregivers for children and aging family members and, as a result, are likely to be absent from the industry for longer periods.[39] In addition, the proposed rule change will provide longer-term relief for women, individuals with low incomes and other populations, including older workers, who are at a higher risk of a job loss during certain economic downturns and who are likely to remain unemployed for longer periods.[40]

d. Other Changes to Exchange Rule 2.5

The Exchange proposes to adopt Rules 2.5.05 through 2.5.07 to conform to Cboe Rules 3.30.07 through 3.30.09, respectively, and to adopt Rule 2.5.08 to conform to Cboe Rule 3.30.02. Further, based on the Exchange's proposal to move the subject matter of current Rule 2.5.02 to proposed Rule 2.16, the Exchange also proposes to renumber various Interpretations and Policies under Rule 2.5 accordingly. The Exchange proposes to adopt Rule 2.5.05 to provide that all registered representatives and principals must satisfy the regulatory element of continuing education. Specifically, proposed Rule 2.5.05 provides that all registered representatives and principals, including those individuals who solely maintain permissive registrations pursuant to proposed Rule 2.5.08 shall satisfy the Regulatory Element of continuing education for each representative or principal registration category that they hold as specified in Rule 2.5.01(i). If a person registered with a Member has a continuing education deficiency with respect to that registration as provided under proposed Rule 2.16, such person shall not be permitted to be registered in another registration category under Rule 2.5.01(i) with that Member or to be registered in any registration category under Rule 2.5.01(i), with another Member, until the person has satisfied the deficiency.

The Exchange also proposes to adopt Rule 2.5.06 to address lapses of registrations and expirations of the SIE. Specifically, proposed Rule 2.5.06 would provide that any person who was last registered in a representative registration category two or more years immediately preceding the date of receipt by the Exchange of a new application for registration in that registration category shall be required to pass a representative qualification examination appropriate to that registration category as specified in Rule 2.5.01(i), unless the person has maintained his or her qualification status for that registration category in accordance with proposed Rule 2.16(c) or as otherwise permitted by the Exchange. In addition, any person who last passed the SIE or who was last registered as a representative, whichever occurred last, four or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a representative shall be required to pass the SIE in addition to a representative qualification examination appropriate to his or her category of registration as specified in Rule 2.5.01(i). Any person who was last registered in a principal registration category two or more years immediately preceding the date of receipt by the Exchange of a new application for registration in that registration category shall be required to pass a principal qualification examination appropriate to that registration category as specified in Rule 2.5.01(i), unless the person has maintained his or her qualification status for the registration category in accordance with proposed Rule 2.16(c) or as otherwise permitted by the Exchange. Any person whose registration has been revoked and any person who has a continuing education deficiency for a period of two years as provided under Rule 2.5.01(i) shall be required to pass a representative or principal qualification examination appropriate to his or her category of registration as specified in Rule 2.5.01(i), to be eligible for registration with the Exchange. Finally, for purposes of Rule 2.5.06, an application shall not be considered to have been received by the Exchange if that application does not result in a registration.

The Exchange proposes to adopt Rule 2.5.07 which, as discussed above, would recognize a waiver for participants in the financial services industry affiliate waiver program(s) of Cboe, C2 and/or FINRA. Specifically, Rule 2.5.07 would provide that upon request by a Member, the Exchange shall waive the applicable qualification examination(s) for an individual designated as a participant in, and satisfying the conditions of, the FSA waiver program(s) of Cboe under its Rule 3.30.09, C2 under its Chapter 3, Section B, and/or FINRA under its Rule 2110.09.

By way of background, very generally, these FSA waiver programs provide that a member of Cboe, C2 or FINRA, respectively, may request that the exchange/FINRA waive the applicable qualification examination(s) for an individual designated with it as working for a financial services industry affiliate of a member if the following conditions are met:

- Prior to the individual's initial designation, the individual was registered as a representative or principal with Cboe, C2 or FINRA, as applicable, for a total of five years within the most recent 10 year period, including for the most recent year with the member that initially designated the individual;
- The waiver request is made within seven years of the individual's initial designation;
- The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;
- The individual continuously worked for the financial services

[37] *See* proposed Rules 2.5.07 and 2.16.01.

[38] *See* proposed Rule 2.16.02.

[39] *See* The Female Face of Family Caregiving (November 2018), available at *https://www.nationalpartnership.org/our-work/resources/economic-justice/femaleface-family-caregiving.pdf*.

[40] *See* The COVID–19 Recession is the Most Unequal in Modern U.S. History (September 30, 2020), available at *https://www.washingtonpost.com/graphics/2020/business/coronavirus-recessionequality/* and Unemployment's Toll on Older Workers Is Worst in Half a Century (October 21, 2020), available at *https://www.aarp.org/work/working-at-50-plus/info-2020/pandemic-unemployment-older-workers/*.

industry affiliate(s) of a member since the individual's last Form U5 filing;

- The individual has complied with the Regulatory Element of continuing education as specified in the Cboe, C2 or FINRA Rules, as applicable; and
- The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while the individual was designated as eligible for a waiver.

As used in Rule 2.5.07, a ''financial services industry affiliate'' is a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

Last, the Exchange proposes to adopt Rule 2.5.08, which would provide for permissive registrations. Specifically, proposed Rule 2.5.08 would provide that a Member may make application for or maintain the registration as a representative or principal of any associated person of a Member and any individual engaged in the securities business of a foreign securities affiliate or subsidiary of the Member. Individuals maintaining such permissive registrations shall be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. Consistent with the requirements of the Exchange's supervision rules, Members shall have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions. With respect to an individual who solely maintains a permissive registration(s), the individual's direct supervisor shall not be required to be a registered person. However, for purposes of compliance with the Exchange's supervision rules, a Member shall assign a registered supervisor who shall be responsible for periodically contacting such individual's direct supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor shall be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor shall be registered as a principal. Moreover, the registered supervisor of an individual who solely maintains a permissive registration(s) shall not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[41] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[42] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[43] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to move to an annual Regulatory Element training with content tailored to an individual's representative or principal registration categories is designed to protect investors and is in the public interest. As noted in the order approving the similar changes to the FINRA CE Program,[44] the Commission found that ''the rule is reasonably designed to minimize the potential adverse impact on firms and their registered persons. Furthermore, increasing the timeliness of registered persons' training, as well as the relevance of the training's content by tailoring it to each registration category that they hold, would enhance their education and compliance with their regulatory obligations.''

The Exchange believes that the proposed changes to the Regulatory Element and the proposal to adopt the Firm Element portions of its CE Program will ensure that all registered persons receive timely and relevant training, which will, in turn, enhance compliance and investor protection. Further, the Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

The Exchange also believes that the proposed rule change will bring consistency and uniformity with Cboe's and FINRA's recently amended CE Program rules, which will, in turn, assist Members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes conform certain of the Exchange's continuing education and registration rules to align them with rules of Cboe, which will, in turn, prevent unnecessary regulatory burdens and to promote efficient administration of the rules. Finally, the proposed amendment also makes minor updates and corrections to the Exchange's rules which improve readability.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule changes which are, in all material respects, based upon and substantially similar to, recent rule changes adopted by FINRA and Cboe, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE Program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on

[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(5).

[43] *Id.*

[44] *Supra* note 5.

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [45] and Rule 19b–4(f)(6) thereunder.[46]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. In addition, Rule 19b–4(f)(6)(iii) [47] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay would allow the Exchange to implement proposed changes to its Continuing Education Rules by March 15, 2022 to coincide with one of FINRA's announced implementation dates, thereby eliminating the possibility of a significant regulatory gap between the FINRA and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Members of the Exchange that are also FINRA members. For this reason, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[48]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–022 and should be submitted on or before April 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06851 Filed 3–31–22; 8:45 am]

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[45] 15 U.S.C. 78s(b)(3)(A)(iii).

[46] 17 CFR 240.19b–4(f)(6).

[47] 17 CFR 240.19b–4(f)(6)(iii).

[48] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, April 6, 2022 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: 1. The Commission will consider whether to propose rules under the Securities Exchange Act of 1934 for the registration and regulation of security-based swap execution facilities (''SBSEFs'') and related matters. The proposed rules would also address the cross-border application of registration and execution requirements for security-based swaps. Additionally, the Commission will consider whether to propose rules designed to mitigate conflicts of interest at SBSEFs and national securities exchanges that trade security-based swaps.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 30, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–07068 Filed 3–30–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94526; File No. SR–CboeEDGA–2022–005]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Relating to the Continuing Education for Registered Persons and Move Those Rules From Interpretation and Policy .02 of Rule 2.5 to Proposed Rule 2.16 and To Amend Related Registration Requirements Provided Under Various Interpretations and Policies of Rule 2.5

March 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2022, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Continuing Education for Registered Persons and move those rules from Interpretation and Policy .02 of Rule 2.5 to proposed Rule 2.16 and to amend related registration requirements provided under various Interpretations and Policies of Rule 2.5. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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

(i) Existing CE Program Background

The continuing education program for registered persons of broker-dealers (''CE Program'') generally requires registered persons to complete continuing education consisting of a Regulatory Element. The Regulatory Element is delivered through a web-based delivery method called ''CE Online,'' which is administered through the Financial Industry Regulatory Authority, Inc. (''FINRA'') online continuing education system, and focuses on regulatory requirements and industry standards. The CE Program for registered persons is currently codified under Interpretation and Policy .02 of Exchange Rule 2.5. The Exchange now proposes to expand the CE Program to adopt rules pertaining to a Firm Element component of continuing education. The Firm Element would be provided by each firm and focus on securities products, services and strategies the firm offers, firm policies and industry trends. In addition, the Exchange proposes other changes to amend, move, reorganize and enhance its rules regarding its CE Program, as described below.

The Commission recently approved a proposal submitted by FINRA relating to its CE Program.[5] The Exchange understands that other exchanges have or will propose similar amendments based on FINRA's rule changes. Therefore, the Exchange proposes to amend and enhance its own CE Program as provided under proposed Rule 2.16 and its related registration requirements as provided under various Interpretations and Policies of Rule 2.5 in response to FINRA's amended CE Program and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges. The Exchange proposes to implement the proposed rule changes to align with FINRA's CE Program implementation dates.[6] Specifically, the proposed implementation dates are as follows: Changes relating to proposed Rule 2.16(c) (Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category) will become effective March 15, 2022; changes to recognize waiver of examination programs for individuals working for a financial services industry affiliate of a member that are administered by the Exchange's affiliates, Cboe Exchange, Inc. (''Cboe'') and Cboe C2 Exchange, Inc. (''C2''), and by FINRA (referred to as the ''FSA waiver programs'' or ''FSAWPs'') will become effective March 15, 2022; and all other changes, including changes reflected in proposed Rules 2.16(a) (Regulatory Element)[7] and 2.16(b) (Firm Element) will become effective January 1, 2023.

a. Regulatory Element

Interpretation and Policy .02(a) of Rule 2.5 currently requires a registered person to complete the applicable Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.[8] The

[5] *See* Securities and Exchange Act No. 93097 (September 21, 2021) 86 FR 53358 (September 27, 2021) (SR–FINRA–2021–015) (Order Approving a Proposed Rule Change To Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)).

[6] *See* FINRA Regulatory Notice 21–41 (November 17, 2021).

[7] An individual's initial annual Regulatory Element due date will be December 31, 2023.

[8] *See* Rule 2.5.02(a). An individual's registration anniversary date is generally the date they initially registered in the Central Registration Depository (''CRD®'') system. However, an individual's registration anniversary date would be reset if the individual has been out of the industry for two or more years and is required to requalify by examination, or obtain an examination waiver, in order to reregister. An individual's registration anniversary date would also be reset if the individual obtains a conditional examination waiver that requires them to complete the Regulatory Element by a specified date. Non-registered individuals who are participating in the waiver program under proposed Rule 2.5.07 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) (''FSAWP participants'') are also subject to the Regulatory Element. *See also* proposed Rule 2.16(a)(5) (Definition of Covered Person). The Regulatory Element for FSAWP participants correlates to their most recent registration(s), and it must be completed based on the same cycle had they remained registered. FSAWP participants are eligible for a single, fixed seven-year waiver period from the date of their initial designation, subject to specified conditions. Registered persons who

Continued

Exchange may extend these time frames for good cause shown.[9] Unless otherwise determined, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration(s) deemed inactive and will be designated as ''CE inactive'' in the CRD system until the requirements of the Regulatory Element have been satisfied.[10] A CE inactive person is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. Moreover, if registered persons remain CE inactive for two consecutive years, they must requalify by retaking required examinations (or obtain a waiver of the applicable qualification examinations).[11]

The Regulatory Element currently consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.[12] While some of the current Regulatory Element content is unique to particular registration categories, most of the content has broad application to both representatives and principals.[13] The Regulatory Element was originally designed at a time when most individuals had to complete the Regulatory Element at a test center, and its design was shaped by the limitations of the test center-based delivery model. In 2015, the delivery of the Regulatory Element was transitioned to an online platform, referred to above as CE Online, which allows individuals to complete the content online at a location of their choosing, including their private residence. This online delivery provides for much greater flexibility in updating content in a timelier fashion, developing content tailored to each registration category and presenting the material in an optimal learning format.

b. Firm Element

As noted above, Exchange Rules do not currently provide for a Firm Element of the CE Program. However, as discussed in more detail further below, the Exchange is now proposing to introduce a Firm Element, which would be modeled after FINRA Rule 1240 and Cboe Rule 3.33(c).

c. Termination of a Registration

Currently, individuals whose registrations as representatives or principals have been terminated for two or more years may reregister as representatives or principals only if they requalify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s) (the ''two-year qualification period'').[14] The two-year qualification period was intended to ensure that individuals who reregister are relatively current on their regulatory and securities knowledge.

(ii) Proposed Rule Change

After extensive work with the Securities Industry/Regulatory Council on Continuing Education (''CE Council''), FINRA, other Self-Regulatory Organizations and industry participants, the Exchange proposes the following changes to the Exchange's CE Program under Rule 2.5 and proposed Rule 2.16 to align with FINRA Rule 1240 and Cboe Rule 3.33.

a. Transition to Annual Regulatory Element for Each Registration Category

As noted above, currently, the Regulatory Element generally must be completed every three years, and the content is broad in nature. Based on changes in technology and learning theory, the Regulatory Element content can be updated and delivered in a timelier fashion and tailored to each registration category, which would further the goals of the Regulatory Element.[15] Therefore, to provide registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes adopting Rule 2.16(a) to require registered persons to complete the Regulatory Element annually by December 31.[16] The proposed amendment would also require registered persons to complete Regulatory Element content for each representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.[17]

Under the proposed rule change, Members would have the flexibility to require their registered persons to complete the Regulatory Element sooner than December 31, which would allow Members to coordinate the timing of the Regulatory Element with other training requirements, including the Firm Element.[18] For example, a Member could require its registered persons to complete both their Regulatory Element and Firm Element by October 1 of each year.

Individuals who would be registering as a representative or principal for the first time on or after the implementation date of the proposed rule change would be required to complete their initial Regulatory Element for that registration

become subject to a significant disciplinary action, as specified in proposed Rule 2.16(a)(2) (Disciplinary Actions), may be required to retake the Regulatory Element within 120 days of the effective date of the disciplinary action, if they remain registered. Further, their cycle for participation in the Regulatory Element may be adjusted to reflect the effective date of the disciplinary action rather than their registration anniversary date.

[9] *See* Rule 2.5.02(b).

[10] *Supra* note 8. Individuals must complete the entire Regulatory Element session to be considered to have ''completed'' the Regulatory Element; partial completion is the same as non-completion.

[11] *See* Rule 2.5.02(b). This CE inactive two-year period is calculated from the date such persons become CE inactive, and it continues to run regardless of whether they terminate their registrations before the end of the two-year period. Therefore, if registered persons terminate their registrations while in a CE inactive status, they must satisfy all outstanding Regulatory Element prior to the end of the CE inactive two-year period in order to reregister with a Member without having to requalify by examination or having to obtain an examination waiver.

[12] The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).

[13] The current content is presented in a single format leading individuals through a case that provides a story depicting situations that they may encounter in the course of their work.

[14] *See* Rule 2.5.02(d). The two-year qualification period is calculated from the date individuals terminate their registration and the date the Exchange receives a new application for registration. The two-year qualification period does not apply to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. Such individuals have the option of reregistering in the more limited registration category without having to requalify by examination or obtain an examination waiver so long as they continue to remain qualified for the broader registration category. Further, the two-year qualification period only applies to the representative- and principal-level examinations; it does not extend to the Securities Industry Essentials (''SIE'') examination. The SIE examination is valid for four years, but having a valid SIE examination alone does not qualify an individual for registration as a representative or principal. Individuals whose registrations as representatives or principals have been revoked pursuant to Exchange Rule 8.11 (Judgment and Sanction) may only requalify by retaking the applicable representative- or principal-level examination in order to reregister as representatives or principals, in addition to satisfying the eligibility conditions for association with a firm. Waivers are granted on a case-by-case basis under Rule 2.5.01(b).

[15] When other self-regulatory organizations' CE Programs were originally adopted in 1995, registered persons were required to complete the Regulatory Element on their second, fifth and 10th registration anniversary dates. *See* Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (Order Approving File Nos. SR–AMEX–94–59; SR–CBOE–94–49; SR–CHX–94–27; SR–MSRB–94–17; SR–NASD–94–72; SR–NYSE–94–43; SR–PSE–94–35; and SR–PHLX–94–52). The change to the current three-year cycle in the other self-regulatory organizations' CE Programs was made in 1998 to provide registered persons more timely and effective training, consistent with the overall purpose of the Regulatory Element. *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (Order Approving File Nos. SR–CBOE–97–68; SR–MSRB–98–02; SR–NASD–98–03; and SR–NYSE–97–33).

[16] *See* proposed Rules 2.16(a)(1) and (a)(4).

[17] *See* proposed Rules 2.5.04 and 2.16(a)(1).

[18] *See* proposed Rules 2.16(a)(1) and (a)(4).

category in the next calendar year following their registration.[19] In addition, subject to specified conditions, individuals who would be reregistering as a representative or principal on or after the implementation date of the proposed rule change would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their reregistration.[20]

Consistent with current requirements, individuals who fail to complete their Regulatory Element within the prescribed period would be automatically designated as CE inactive.[21] However, the proposed rule change preserves the Exchange's ability to extend the time by which a registered person must complete the Regulatory Element for good cause shown.[22]

The Exchange also proposes adopting Rule 2.16(a) to provide that: (1) Individuals who are designated as CE inactive would be required to complete all of their pending and upcoming annual Regulatory Element, including any annual Regulatory Element that becomes due during their CE inactive period, to return to active status;[23] (2) the two-year CE inactive period is calculated from the date individuals become CE inactive, and it continues to run regardless of whether individuals terminate their registrations;[24] (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by the Exchange;[25] (4) individuals who have not completed any Regulatory Element content for a registration category in the calendar year(s) prior to reregistering would not be approved for registration for that category until they complete that Regulatory Element content, pass an examination for that registration category or obtain an unconditional examination waiver for that registration category, whichever is applicable;[26] and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.[27]

Under the proposed rule change, the amount of content that registered persons would be required to complete in a three-year, annual cycle for a particular registration category is expected to be comparable to what most registered persons are currently completing every three years. In some years, there may be more required content for some registration categories depending on the volume of rule changes and regulatory issues. In addition, an individual who holds multiple registrations may be required to complete additional content compared to an individual who holds a single registration because, as noted above, individuals would be required to complete content specific to each registration category that they hold. However, individuals with multiple registrations would not be subject to duplicative regulatory content in any given year. The more common registration combinations would likely share much of their relevant regulatory content each year. For example, individuals registered as General Securities Representatives and General Securities Principals would receive the same content as individuals solely registered as General Securities Representatives, supplemented with a likely smaller amount of supervisory-specific content on the same topics. The less common registration combinations may result in less topic overlap and more content overall.

b. Adoption of Firm Element, Recognition of Other Training Requirements for Firm Element, and Application of Firm Element to Covered Registered Persons

The Exchange proposes to adopt proposed Rule 2.16(b) to include a Firm Element component for its CE Program that aligns with Cboe Rule 3.33(b) and FINRA Rule 1240(b). The proposed rule would require Members to maintain a continuing and current education program for its registered persons to enhance their securities knowledge, skills and professionalism. At a minimum, each Member would be required to at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the Member's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of registered persons in the Regulatory Element. If a Member's analysis determines a need for supervisory training for persons with supervisory responsibilities such training must be included in the Member's training plan. The proposed rule would also require that programs used to implement a Member's training plan must be appropriate for the business of the Member and, at a minimum, must cover training topics related to the role, activities or responsibilities of the registered person and to professional responsibility. In addition, the proposed rule would provide that each Member must administer its continuing education Firm Element program in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by registered persons.

To align the Firm Element requirement with other required training, proposed Rule 2.16(b) would also expressly allow Members to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual's annual Firm Element requirement.[28] The Exchange also proposes to apply the Firm Element requirement to ''covered registered persons,'' which would include any person registered with a Member, including person who is permissively registered as a representative or principle pursuant to proposed Rule 2.5.08, as discussed below, thereby aligning the description of ''covered registered persons'' in the Firm Element requirement with the description of ''covered persons'' in the Regulatory Element requirement.[29]

c. Maintenance of Qualification After Termination of Registration

The Exchange proposes to adopt Rules 2.16(c), 2.16.01, and 2.16.02 to provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education. The proposed rule change would not eliminate the two-year qualification period. Rather, it would provide such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program would continue to be subject to the current two-year qualification period. The proposed rule change is generally aligned with other

[19] *See* proposed Rule 2.16(a)(1).

[20] *See* proposed Rule 2.16(a)(4).

[21] *See* proposed Rule 2.16(a)(2).

[22] *Id.* The proposed rule change provides that the request for an extension of time must be in writing and include supporting documentation, which is consistent with current practice.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *See* proposed Rule 3.33(a)(4).

[27] *See* proposed Rule 3.33(a)(5).

[28] *See* proposed Rule 2.16(b)(2)(D).

[29] The group of persons who may be considered a ''covered registered person'' under the Firm Element provisions in proposed Rule 2.16(b)(1) is a subset of the group of persons who may be considered a ''covered person'' under the Regulatory Element provisions in proposed Rule 2.15(a)(5).

professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credential.

The proposed rule change would impose the following conditions and limitations:

- Individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category; [30]
- individuals could elect to participate when they terminate a registration or within two years from the termination of a registration; [31]
- individuals would be required to complete annually all prescribed continuing education; [32]
- individuals would have a maximum of five years in which to reregister; [33]
- individuals who have been CE inactive for two consecutive years, or who become CE inactive for two consecutive years during their participation, would not be eligible to participate or continue; [34] and
- individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.[35]

The proposed rule change also includes a look-back provision that would, subject to specified conditions, extend the proposed option for maintaining qualifications following a registration category termination to (i) individuals who have been registered as a representative or principal within two years immediately prior to the March 15, 2022 implementation date of the proposed rule change; and (ii) individuals who have been FSWAP participants immediately prior to the March 15, 2022 implementation date of the proposed rule change.[36] With respect to the FSAWP, the Exchange itself does not have an FSW waiver program. However, the Exchange proposes to recognize waivers granted to individuals who are designated as participants in, and satisfying the conditions of, the FSW waiver program(s) of Cboe, C2 and/or FINRA, and also to make the look-back provision for the new maintaining qualifications requirements available to individuals who are participants in the FSA waiver programs of Cboe, C2 and/or FINRA immediately preceding March 15, 2022. The Exchange understands that, effective March 15, 2022, Cboe, C2 and FINRA do not plan to accept any new initial designations for individuals under their respective FSA waiver programs. Thus, what will remain of those programs will only be applicable to pre-existing participants. The Exchange also understands that, ultimately, the FSA waiver programs will expire in favor of the maintenance of qualification requirements under the Cboe, C2 and FINRA Rules, for which the Exchange's maintenance of qualification requirements under proposed are modeled.[37]

In addition, the proposed rule change includes a re-eligibility provision that would allow individuals to regain eligibility to participate each time they reregister with a Member for a period of at least one year and subsequently terminate their registration, provided that they satisfy the other participation conditions and limitations.[38] The proposed rule change will have several important benefits. It will provide individuals with flexibility to address life and career events and necessary absences from registered functions without having to requalify each time. It will also incentivize them to stay current on their respective securities industry knowledge following the termination of any of their registrations. The continuing education under the proposed option will be as rigorous as the continuing education of registered persons, which promotes investor protection. Further, the proposed rule change will enhance diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals.

Significantly, the proposed rule change will be of particular value to women, who continue to be the primary caregivers for children and aging family members and, as a result, are likely to be absent from the industry for longer periods.[39] In addition, the proposed rule change will provide longer-term relief for women, individuals with low incomes and other populations, including older workers, who are at a higher risk of a job loss during certain economic downturns and who are likely to remain unemployed for longer periods.[40]

d. Other Changes to Exchange Rule 2.5

The Exchange proposes to adopt Rules 2.5.05 through 2.5.07 to conform to Cboe Rules 3.30.07 through 3.30.09, respectively, and to adopt Rule 2.5.08 to conform to Cboe Rule 3.30.02. Further, based on the Exchange's proposal to move the subject matter of current Rule 2.5.02 to proposed Rule 2.16, the Exchange also proposes to renumber various Interpretations and Policies under Rule 2.5 accordingly. The Exchange proposes to adopt Rule 2.5.05 to provide that all registered representatives and principals must satisfy the regulatory element of continuing education. Specifically,

[30] *See* proposed Rule 2.16(c)(1).

[31] *See* proposed Rule 2.16(c)(2).

[32] *See* proposed Rule 2.16(c)(3). However, upon a participant's request and for good cause shown, the Exchange would have the ability to grant an extension of time for the participant to complete the prescribed continuing education. A participant who is also a registered person must directly request an extension of the prescribed continuing education from the Exchange.

[33] *See* proposed Rule 2.16(c).

[34] *See* proposed Rule 2.16(c)(4) and (c)(5).

[35] *See* proposed Rules 2.16(c)(1) and (c)(6). Individuals who are subject to a statutory disqualification would not be eligible to enter the proposed continuing education program. Individuals who become subject to a statutory disqualification while participating in the proposed continuing education program would not be eligible to continue in the program. Further, any content completed by such participants would be retroactively nullified upon disclosure of the statutory disqualification. The following example illustrates the application of the proposed rule change to individuals who become subject to a statutory disqualification while participating in the proposed continuing education program. Individual A participates in the proposed continuing education program for four years and completes the prescribed content for each of those years. During year five of his participation, he becomes subject to a statutory disqualification resulting from a foreign regulatory action. In that same year, the Exchange receives a Form U4 submitted by a member on behalf of Individual A requesting registration with the Exchange. The Form U4 discloses the statutory disqualification event. The Exchange would then retroactively nullify any content that Individual A completed while participating in the proposed continuing education program. Therefore, in this example, in order to become registered with the Exchange, he would be required to requalify by examination. This would be in addition to satisfying the eligibility conditions for association with a Member. *See also* Exchange Act Sections 3(a)(39) and 15(b)(4).

[36] *See* proposed Rule 2.16.01. Such individuals would be required to elect whether to participate by the March 15, 2022 implementation date of the proposed rule change. If such individuals elect to participate, they would be required to complete their initial annual content by the end of 2022 (*i.e.,* the end of the calendar year in which the proposed rule change is implemented). In addition, if such individuals elect to participate, their initial participation period would be adjusted based on the date that their registration was terminated.

[37] *See* proposed Rules 2.5.07 and 2.16.01.

[38] *See* proposed Rule 2.16.02.

[39] *See* The Female Face of Family Caregiving (November 2018), available at *https://www.nationalpartnership.org/our-work/resources/economic-justice/femaleface-family-caregiving.pdf.*

[40] *See* The COVID–19 Recession is the Most Unequal in Modern U.S. History (September 30, 2020), available at *https://www.washingtonpost.com/graphics/2020/business/coronavirus-recessionequality/* and Unemployment's Toll on Older Workers Is Worst in Half a Century (October 21, 2020), available at *https://www.aarp.org/work/working-at-50-plus/info-2020/pandemic-unemployment-older-workers/.*

proposed Rule 2.5.05 provides that all registered representatives and principals, including those individuals who solely maintain permissive registrations pursuant to proposed Rule 2.5.08 shall satisfy the Regulatory Element of continuing education for each representative or principal registration category that they hold as specified in Rule 2.5.01(i). If a person registered with a Member has a continuing education deficiency with respect to that registration as provided under proposed Rule 2.16, such person shall not be permitted to be registered in another registration category under Rule 2.5.01(i) with that Member or to be registered in any registration category under Rule 2.5.01(i), with another Member, until the person has satisfied the deficiency.

The Exchange also proposes to adopt Rule 2.5.06 to address lapses of registrations and expirations of the SIE. Specifically, proposed Rule 2.5.06 would provide that any person who was last registered in a representative registration category two or more years immediately preceding the date of receipt by the Exchange of a new application for registration in that registration category shall be required to pass a representative qualification examination appropriate to that registration category as specified in Rule 2.5.01(i), unless the person has maintained his or her qualification status for that registration category in accordance with proposed Rule 2.16(c) or as otherwise permitted by the Exchange. In addition, any person who last passed the SIE or who was last registered as a representative, whichever occurred last, four or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a representative shall be required to pass the SIE in addition to a representative qualification examination appropriate to his or her category of registration as specified in Rule 2.5.01(i). Any person who was last registered in a principal registration category two or more years immediately preceding the date of receipt by the Exchange of a new application for registration in that registration category shall be required to pass a principal qualification examination appropriate to that registration category as specified in Rule 2.5.01(i), unless the person has maintained his or her qualification status for the registration category in accordance with proposed Rule 2.16(c) or as otherwise permitted by the Exchange. Any person whose registration has been revoked and any person who has a continuing education deficiency for a period of two years as provided under Rule 2.5.01(i) shall be required to pass a representative or principal qualification examination appropriate to his or her category of registration as specified in Rule 2.5.01(i), to be eligible for registration with the Exchange. Finally, for purposes of Rule 2.5.06, an application shall not be considered to have been received by the Exchange if that application does not result in a registration.

The Exchange proposes to adopt Rule 2.5.07 which, as discussed above, would recognize a waiver for participants in the financial services industry affiliate waiver program(s) of Cboe, C2 and/or FINRA. Specifically, Rule 2.5.07 would provide that upon request by a Member, the Exchange shall waive the applicable qualification examination(s) for an individual designated as a participant in, and satisfying the conditions of, the FSA waiver program(s) of Cboe under its Rule 3.30.09, C2 under its Chapter 3, Section B, and/or FINRA under its Rule 2110.09.

By way of background, very generally, these FSA waiver programs provide that a member of Cboe, C2 or FINRA, respectively, may request that the exchange/FINRA waive the applicable qualification examination(s) for an individual designated with it as working for a financial services industry affiliate of a member if the following conditions are met:

- Prior to the individual's initial designation, the individual was registered as a representative or principal with Cboe, C2 or FINRA, as applicable, for a total of five years within the most recent 10 year period, including for the most recent year with the member that initially designated the individual;
- The waiver request is made within seven years of the individual's initial designation;
- The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;
- The individual continuously worked for the financial services industry affiliate(s) of a member since the individual's last Form U5 filing;
- The individual has complied with the Regulatory Element of continuing education as specified in the Cboe, C2 or FINRA Rules, as applicable; and
- The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while the individual was designated as eligible for a waiver.

As used in Rule 2.5.07, a ''financial services industry affiliate'' is a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

Last, the Exchange proposes to adopt Rule 2.5.08, which would provide for permissive registrations. Specifically, proposed Rule 2.5.08 would provide that a Member may make application for or maintain the registration as a representative or principal of any associated person of a Member and any individual engaged in the securities business of a foreign securities affiliate or subsidiary of the Member. Individuals maintaining such permissive registrations shall be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. Consistent with the requirements of the Exchange's supervision rules, Members shall have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions. With respect to an individual who solely maintains a permissive registration(s), the individual's direct supervisor shall not be required to be a registered person. However, for purposes of compliance with the Exchange's supervision rules, a Member shall assign a registered supervisor who shall be responsible for periodically contacting such individual's direct supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor shall be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor shall be registered as a principal. Moreover, the registered supervisor of an individual who solely maintains a permissive registration(s) shall not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

Section 6(b) of the Act.[41] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[42] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[43] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to move to an annual Regulatory Element training with content tailored to an individual's representative or principal registration categories is designed to protect investors and is in the public interest. As noted in the order approving the similar changes to the FINRA CE Program,[44] the Commission found that ''the rule is reasonably designed to minimize the potential adverse impact on firms and their registered persons. Furthermore, increasing the timeliness of registered persons' training, as well as the relevance of the training's content by tailoring it to each registration category that they hold, would enhance their education and compliance with their regulatory obligations.''

The Exchange believes that the proposed changes to the Regulatory Element and the proposal to adopt the Firm Element portions of its CE Program will ensure that all registered persons receive timely and relevant training, which will, in turn, enhance compliance and investor protection. Further, the Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

The Exchange also believes that the proposed rule change will bring consistency and uniformity with Cboe's and FINRA's recently amended CE Program rules, which will, in turn, assist Members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes conform certain of the Exchange's continuing education and registration rules to align them with rules of Cboe, which will, in turn, prevent unnecessary regulatory burdens and to promote efficient administration of the rules. Finally, the proposed amendment also makes minor updates and corrections to the Exchange's rules which improve readability.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule changes which are, in all material respects, based upon and substantially similar to, recent rule changes adopted by FINRA and Cboe, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE Program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[45] and Rule 19b–4(f)(6) thereunder.[46]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. In addition, Rule 19b–4(f)(6)(iii)[47] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay would allow the Exchange to implement proposed changes to its Continuing Education Rules by March 15, 2022 to coincide with one of FINRA's announced implementation dates, thereby eliminating the possibility of a significant regulatory gap between the FINRA and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Members of the Exchange that are also FINRA members. For this reason, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[48]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(5).

[43] *Id.*

[44] *Supra* note 5.

[45] 15 U.S.C. 78s(b)(3)(A)(iii).

[46] 17 CFR 240.19b–4(f)(6).

[47] 17 CFR 240.19b–4(f)(6)(iii).

[48] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeEDGA–2022–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2022–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the 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–CboeEDGA–2022–005 and should be submitted on or before April 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06849 Filed 3–31–22; 8:45 am]

BILLING CODE 8011–01–P

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94532; File No. SR–CboeBYX–2022–006]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules Relating to the Continuing Education for Registered Persons and Move Those Rules From Interpretation and Policy .02 of Rule 2.5 to Proposed Rule 2.16 and To Amend Related Registration Requirements Provided Under Various Interpretations and Policies of Rule 2.5

March 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2022, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Continuing Education for Registered Persons and move those rules from Interpretation and Policy .02 of Rule 2.5 to proposed Rule 2.16 and to amend related registration requirements provided under various Interpretations and Policies of Rule 2.5. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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

(i) Existing CE Program Background

The continuing education program for registered persons of broker-dealers (''CE Program'') generally requires registered persons to complete continuing education consisting of a Regulatory Element. The Regulatory Element is delivered through a web-based delivery method called ''CE Online,'' which is administered through the Financial Industry Regulatory Authority, Inc. (''FINRA'') online continuing education system, and focuses on regulatory requirements and industry standards. The CE Program for registered persons is currently codified under Interpretation and Policy .02 of Exchange Rule 2.5. The Exchange now proposes to expand the CE Program to adopt rules pertaining to a Firm Element component of continuing education. The Firm Element would be provided by each firm and focus on securities products, services and strategies the firm offers, firm policies and industry trends. In addition, the Exchange proposes other changes to amend, move, reorganize and enhance its rules regarding its CE Program, as described below.

The Commission recently approved a proposal submitted by FINRA relating to its CE Program.[5] The Exchange understands that other exchanges have or will propose similar amendments based on FINRA's rule changes. Therefore, the Exchange proposes to amend and enhance its own CE Program as provided under proposed Rule 2.16 and its related registration requirements

[5] *See* Securities and Exchange Act No. 93097 (September 21, 2021) 86 FR 53358 (September 27, 2021) (SR–FINRA–2021–015) (Order Approving a Proposed Rule Change To Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)).

as provided under various Interpretations and Policies of Rule 2.5 in response to FINRA's amended CE Program and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges. The Exchange proposes to implement the proposed rule changes to align with FINRA's CE Program implementation dates.[6] Specifically, the proposed implementation dates are as follows: Changes relating to proposed Rule 2.16(c) (Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category) will become effective March 15, 2022; changes to recognize waiver of examination programs for individuals working for a financial services industry affiliate of a member that are administered by the Exchange's affiliates, Cboe Exchange, Inc. (''Cboe'') and Cboe C2 Exchange, Inc. (''C2''), and by FINRA (referred to as the ''FSA waiver programs'' or ''FSAWPs'') will become effective March 15, 2022; and all other changes, including changes reflected in proposed Rules 2.16(a) (Regulatory Element)[7] and 2.16(b) (Firm Element) will become effective January 1, 2023.

a. Regulatory Element

Interpretation and Policy .02(a) of Rule 2.5 currently requires a registered person to complete the applicable Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.[8] The Exchange may extend these time frames for good cause shown.[9] Unless otherwise determined, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration(s) deemed inactive and will be designated as ''CE inactive'' in the CRD system until the requirements of the Regulatory Element have been satisfied.[10] A CE inactive person is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. Moreover, if registered persons remain CE inactive for two consecutive years, they must requalify by retaking required examinations (or obtain a waiver of the applicable qualification examinations).[11]

The Regulatory Element currently consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.[12] While some of the current Regulatory Element content is unique to particular registration categories, most of the content has broad application to both representatives and principals.[13] The Regulatory Element was originally designed at a time when most individuals had to complete the Regulatory Element at a test center, and its design was shaped by the limitations of the test center-based delivery model. In 2015, the delivery of the Regulatory Element was transitioned to an online platform, referred to above as CE Online, which allows individuals to complete the content online at a location of their choosing, including their private residence. This online delivery provides for much greater flexibility in updating content in a timelier fashion, developing content tailored to each registration category and presenting the material in an optimal learning format.

b. Firm Element

As noted above, Exchange Rules do not currently provide for a Firm Element of the CE Program. However, as discussed in more detail further below, the Exchange is now proposing to introduce a Firm Element, which would be modeled after FINRA Rule 1240 and Cboe Rule 3.33(c).

c. Termination of a Registration

Currently, individuals whose registrations as representatives or principals have been terminated for two or more years may reregister as representatives or principals only if they requalify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s) (the ''two-year qualification period'').[14] The two-year qualification period was intended to ensure that individuals who reregister are relatively current on their regulatory and securities knowledge.

(ii) Proposed Rule Change

After extensive work with the Securities Industry/Regulatory Council on Continuing Education (''CE Council''), FINRA, other Self-Regulatory Organizations and industry participants, the Exchange proposes the following changes to the Exchange's CE Program under Rule 2.5 and proposed Rule 2.16

[6] *See* FINRA Regulatory Notice 21–41 (November 17, 2021).

[7] An individual's initial annual Regulatory Element due date will be December 31, 2023.

[8] *See* Rule 2.5.02(a). An individual's registration anniversary date is generally the date they initially registered in the Central Registration Depository (''CRD®'') system. However, an individual's registration anniversary date would be reset if the individual has been out of the industry for two or more years and is required to requalify by examination, or obtain an examination waiver, in order to reregister. An individual's registration anniversary date would also be reset if the individual obtains a conditional examination waiver that requires them to complete the Regulatory Element by a specified date. Non-registered individuals who are participating in the waiver program under proposed Rule 2.5.07 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) (''FSAWP participants'') are also subject to the Regulatory Element. *See also* proposed Rule 2.16(a)(5) (Definition of Covered Person). The Regulatory Element for FSAWP participants correlates to their most recent registration(s), and it must be completed based on the same cycle had they remained registered. FSAWP participants are eligible for a single, fixed seven-year waiver period from the date of their initial designation, subject to specified conditions. Registered persons who become subject to a significant disciplinary action, as specified in proposed Rule 2.16(a)(2) (Disciplinary Actions), may be required to retake the Regulatory Element within 120 days of the effective date of the disciplinary action, if they remain registered. Further, their cycle for participation in the Regulatory Element may be adjusted to reflect the effective date of the disciplinary action rather than their registration anniversary date.

[9] *See* Rule 2.5.02(b).

[10] *Supra* note 8. Individuals must complete the entire Regulatory Element session to be considered to have ''completed'' the Regulatory Element; partial completion is the same as non-completion.

[11] *See* Rule 2.5.02(b). This CE inactive two-year period is calculated from the date such persons become CE inactive, and it continues to run regardless of whether they terminate their registrations before the end of the two-year period. Therefore, if registered persons terminate their registrations while in a CE inactive status, they must satisfy all outstanding Regulatory Element prior to the end of the CE inactive two-year period in order to reregister with a Member without having to requalify by examination or having to obtain an examination waiver.

[12] The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).

[13] The current content is presented in a single format leading individuals through a case that provides a story depicting situations that they may encounter in the course of their work.

[14] *See* Rule 2.5.02(d). The two-year qualification period is calculated from the date individuals terminate their registration and the date the Exchange receives a new application for registration. The two-year qualification period does not apply to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. Such individuals have the option of reregistering in the more limited registration category without having to requalify by examination or obtain an examination waiver so long as they continue to remain qualified for the broader registration category. Further, the two-year qualification period only applies to the representative- and principal-level examinations; it does not extend to the Securities Industry Essentials (''SIE'') examination. The SIE examination is valid for four years, but having a valid SIE examination alone does not qualify an individual for registration as a representative or principal. Individuals whose registrations as representatives or principals have been revoked pursuant to Exchange Rule 8.11 (Judgment and Sanction) may only requalify by retaking the applicable representative- or principal-level examination in order to reregister as representatives or principals, in addition to satisfying the eligibility conditions for association with a firm. Waivers are granted on a case-by-case basis under Rule 2.5.01(b).

to align with FINRA Rule 1240 and Cboe Rule 3.33.

a. Transition to Annual Regulatory Element for Each Registration Category

As noted above, currently, the Regulatory Element generally must be completed every three years, and the content is broad in nature. Based on changes in technology and learning theory, the Regulatory Element content can be updated and delivered in a timelier fashion and tailored to each registration category, which would further the goals of the Regulatory Element.[15] Therefore, to provide registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes adopting Rule 2.16(a) to require registered persons to complete the Regulatory Element annually by December 31.[16] The proposed amendment would also require registered persons to complete Regulatory Element content for each representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.[17]

Under the proposed rule change, Members would have the flexibility to require their registered persons to complete the Regulatory Element sooner than December 31, which would allow Members to coordinate the timing of the Regulatory Element with other training requirements, including the Firm Element.[18] For example, a Member could require its registered persons to complete both their Regulatory Element and Firm Element by October 1 of each year.

Individuals who would be registering as a representative or principal for the first time on or after the implementation date of the proposed rule change would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration.[19] In addition, subject to specified conditions, individuals who would be reregistering as a representative or principal on or after the implementation date of the proposed rule change would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their reregistration.[20]

Consistent with current requirements, individuals who fail to complete their Regulatory Element within the prescribed period would be automatically designated as CE inactive.[21] However, the proposed rule change preserves the Exchange's ability to extend the time by which a registered person must complete the Regulatory Element for good cause shown.[22]

The Exchange also proposes adopting Rule 2.16(a) to provide that: (1) Individuals who are designated as CE inactive would be required to complete all of their pending and upcoming annual Regulatory Element, including any annual Regulatory Element that becomes due during their CE inactive period, to return to active status;[23] (2) the two-year CE inactive period is calculated from the date individuals become CE inactive, and it continues to run regardless of whether individuals terminate their registrations;[24] (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by the Exchange;[25] (4) individuals who have not completed any Regulatory Element content for a registration category in the calendar year(s) prior to reregistering would not be approved for registration for that category until they complete that Regulatory Element content, pass an examination for that registration category or obtain an unconditional examination waiver for that registration category, whichever is applicable;[26] and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.[27]

Under the proposed rule change, the amount of content that registered persons would be required to complete in a three-year, annual cycle for a particular registration category is expected to be comparable to what most registered persons are currently completing every three years. In some years, there may be more required content for some registration categories depending on the volume of rule changes and regulatory issues. In addition, an individual who holds multiple registrations may be required to complete additional content compared to an individual who holds a single registration because, as noted above, individuals would be required to complete content specific to each registration category that they hold. However, individuals with multiple registrations would not be subject to duplicative regulatory content in any given year. The more common registration combinations would likely share much of their relevant regulatory content each year. For example, individuals registered as General Securities Representatives and General Securities Principals would receive the same content as individuals solely registered as General Securities Representatives, supplemented with a likely smaller amount of supervisory-specific content on the same topics. The less common registration combinations may result in less topic overlap and more content overall.

b. Adoption of Firm Element, Recognition of Other Training Requirements for Firm Element, and Application of Firm Element to Covered Registered Persons

The Exchange proposes to adopt proposed Rule 2.16(b) to include a Firm Element component for its CE Program that aligns with Cboe Rule 3.33(b) and FINRA Rule 1240(b). The proposed rule would require Members to maintain a continuing and current education program for its registered persons to enhance their securities knowledge, skills and professionalism. At a minimum, each Member would be required to at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the Member's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of registered persons in the Regulatory Element. If a Member's analysis determines a need for supervisory training for persons with supervisory responsibilities such training must be included in the Member's training plan. The proposed rule would also require that programs used to implement a Member's training

[15] When other self-regulatory organizations' CE Programs were originally adopted in 1995, registered persons were required to complete the Regulatory Element on their second, fifth and 10th registration anniversary dates. *See* Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (Order Approving File Nos. SR–AMEX–94–59; SR–CBOE–94–49; SR–CHX–94–27; SR–MSRB–94–17; SR–NASD–94–72; SR–NYSE–94–43; SR–PSE–94–35; and SR–PHLX–94–52). The change to the current three-year cycle in the other self-regulatory organizations' CE Programs was made in 1998 to provide registered persons more timely and effective training, consistent with the overall purpose of the Regulatory Element. *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (Order Approving File Nos. SR–CBOE–97–68; SR–MSRB–98–02; SR–NASD–98–03; and SR–NYSE–97–33).

[16] *See* proposed Rules 2.16(a)(1) and (a)(4).

[17] *See* proposed Rules 2.5.04 and 2.16(a)(1).

[18] *See* proposed Rules 2.16(a)(1) and (a)(4).

[19] *See* proposed Rule 2.16(a)(1).

[20] *See* proposed Rule 2.16(a)(4).

[21] *See* proposed Rule 2.16(a)(2).

[22] *Id.* The proposed rule change provides that the request for an extension of time must be in writing and include supporting documentation, which is consistent with current practice.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *See* proposed Rule 3.33(a)(4).

[27] *See* proposed Rule 3.33(a)(5).

plan must be appropriate for the business of the Member and, at a minimum, must cover training topics related to the role, activities or responsibilities of the registered person and to professional responsibility. In addition, the proposed rule would provide that each Member must administer its continuing education Firm Element program in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by registered persons.

To align the Firm Element requirement with other required training, proposed Rule 2.16(b) would also expressly allow Members to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual's annual Firm Element requirement.[28] The Exchange also proposes to apply the Firm Element requirement to ''covered registered persons,'' which would include any person registered with a Member, including person who is permissively registered as a representative or principle pursuant to proposed Rule 2.5.08, as discussed below, thereby aligning the description of ''covered registered persons'' in the Firm Element requirement with the description of ''covered persons'' in the Regulatory Element requirement.[29]

c. Maintenance of Qualification After Termination of Registration

The Exchange proposes to adopt Rules 2.16(c), 2.16.01, and 2.16.02 to provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education. The proposed rule change would not eliminate the two-year qualification period. Rather, it would provide such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program would continue to be subject to the current two-year qualification period. The proposed rule change is generally aligned with other professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credential.

The proposed rule change would impose the following conditions and limitations:

- Individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category;[30]
- individuals could elect to participate when they terminate a registration or within two years from the termination of a registration;[31]
- individuals would be required to complete annually all prescribed continuing education;[32]
- individuals would have a maximum of five years in which to reregister;[33]
- individuals who have been CE inactive for two consecutive years, or who become CE inactive for two consecutive years during their participation, would not be eligible to participate or continue;[34] and
- individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.[35]

The proposed rule change also includes a look-back provision that would, subject to specified conditions, extend the proposed option for maintaining qualifications following a registration category termination to (i) individuals who have been registered as a representative or principal within two years immediately prior to the March 15, 2022 implementation date of the proposed rule change; and (ii) individuals who have been FSWAP participants immediately prior to the March 15, 2022 implementation date of the proposed rule change.[36] With respect to the FSAWP, the Exchange itself does not have an FSW waiver program. However, the Exchange proposes to recognize waivers granted to individuals who are designated as participants in, and satisfying the conditions of, the FSW waiver program(s) of Cboe, C2 and/or FINRA, and also to make the look-back provision for the new maintaining qualifications requirements available to individuals who are participants in the FSA waiver programs of Cboe, C2 and/or FINRA immediately preceding March 15, 2022. The Exchange understands that, effective March 15, 2022, Cboe, C2 and FINRA do not plan to accept any new initial designations for individuals under their respective FSA waiver programs. Thus, what will remain of those programs will only be applicable to pre-existing participants. The Exchange also understands that, ultimately, the FSA waiver programs will expire in favor of the maintenance of qualification requirements under the Cboe, C2 and FINRA Rules, for which the Exchange's maintenance of qualification requirements under proposed are modeled.[37]

In addition, the proposed rule change includes a re-eligibility provision that would allow individuals to regain eligibility to participate each time they reregister with a Member for a period of

[28] *See* proposed Rule 2.16(b)(2)(D).

[29] The group of persons who may be considered a ''covered registered person'' under the Firm Element provisions in proposed Rule 2.16(b)(1) is a subset of the group of persons who may be considered a ''covered person'' under the Regulatory Element provisions in proposed Rule 2.15(a)(5).

[30] *See* proposed Rule 2.16(c)(1).

[31] *See* proposed Rule 2.16(c)(2).

[32] *See* proposed Rule 2.16(c)(3). However, upon a participant's request and for good cause shown, the Exchange would have the ability to grant an extension of time for the participant to complete the prescribed continuing education. A participant who is also a registered person must directly request an extension of the prescribed continuing education from the Exchange.

[33] *See* proposed Rule 2.16(c).

[34] *See* proposed Rule 2.16(c)(4) and (c)(5).

[35] *See* proposed Rules 2.16(c)(1) and (c)(6). Individuals who are subject to a statutory disqualification would not be eligible to enter the proposed continuing education program. Individuals who become subject to a statutory disqualification while participating in the proposed continuing education program would not be eligible to continue in the program. Further, any content completed by such participants would be retroactively nullified upon disclosure of the statutory disqualification. The following example illustrates the application of the proposed rule change to individuals who become subject to a statutory disqualification while participating in the proposed continuing education program. Individual A participates in the proposed continuing education program for four years and completes the prescribed content for each of those years. During year five of his participation, he becomes subject to a statutory disqualification resulting from a foreign regulatory action. In that same year, the Exchange receives a Form U4 submitted by a member on behalf of Individual A requesting registration with the Exchange. The Form U4 discloses the statutory disqualification event. The Exchange would then retroactively nullify any content that Individual A completed while participating in the proposed continuing education program. Therefore, in this example, in order to become registered with the Exchange, he would be required to requalify by examination. This would be in addition to satisfying the eligibility conditions for association with a Member. *See also* Exchange Act Sections 3(a)(39) and 15(b)(4).

[36] *See* proposed Rule 2.16.01. Such individuals would be required to elect whether to participate by the March 15, 2022 implementation date of the proposed rule change. If such individuals elect to participate, they would be required to complete their initial annual content by the end of 2022 (*i.e.,* the end of the calendar year in which the proposed rule change is implemented). In addition, if such individuals elect to participate, their initial participation period would be adjusted based on the date that their registration was terminated.

[37] *See* proposed Rules 2.5.07 and 2.16.01.

at least one year and subsequently terminate their registration, provided that they satisfy the other participation conditions and limitations.[38] The proposed rule change will have several important benefits. It will provide individuals with flexibility to address life and career events and necessary absences from registered functions without having to requalify each time. It will also incentivize them to stay current on their respective securities industry knowledge following the termination of any of their registrations. The continuing education under the proposed option will be as rigorous as the continuing education of registered persons, which promotes investor protection. Further, the proposed rule change will enhance diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals.

Significantly, the proposed rule change will be of particular value to women, who continue to be the primary caregivers for children and aging family members and, as a result, are likely to be absent from the industry for longer periods.[39] In addition, the proposed rule change will provide longer-term relief for women, individuals with low incomes and other populations, including older workers, who are at a higher risk of a job loss during certain economic downturns and who are likely to remain unemployed for longer periods.[40]

d. Other Changes to Exchange Rule 2.5

First, the Exchange proposes to correct a ministerial error by adding Rule 2.5.02 and the title ''Registration Procedures'' prior to the existing applicable rule text. The Exchange also proposes to adopt Rules 2.5.05 through 2.5.07 to conform to Cboe Rules 3.30.07 through 3.30.09, respectively, and to adopt Rule 2.5.08 to conform to Cboe Rule 3.30.02. Further, based on the Exchange's proposal to move the subject matter of current Rule 2.5.02 to proposed Rule 2.16, the Exchange also proposes to renumber various Interpretations and Policies under Rule 2.5 accordingly. The Exchange proposes to adopt Rule 2.5.05 to provide that all registered representatives and principals must satisfy the regulatory element of continuing education. Specifically, proposed Rule 2.5.05 provides that all registered representatives and principals, including those individuals who solely maintain permissive registrations pursuant to proposed Rule 2.5.08 shall satisfy the Regulatory Element of continuing education for each representative or principal registration category that they hold as specified in Rule 2.5.01(i). If a person registered with a Member has a continuing education deficiency with respect to that registration as provided under proposed Rule 2.16, such person shall not be permitted to be registered in another registration category under Rule 2.5.01(i) with that Member or to be registered in any registration category under Rule 2.5.01(i), with another Member, until the person has satisfied the deficiency.

The Exchange also proposes to adopt Rule 2.5.06 to address lapses of registrations and expirations of the SIE. Specifically, proposed Rule 2.5.06 would provide that any person who was last registered in a representative registration category two or more years immediately preceding the date of receipt by the Exchange of a new application for registration in that registration category shall be required to pass a representative qualification examination appropriate to that registration category as specified in Rule 2.5.01(i), unless the person has maintained his or her qualification status for that registration category in accordance with proposed Rule 2.16(c) or as otherwise permitted by the Exchange. In addition, any person who last passed the SIE or who was last registered as a representative, whichever occurred last, four or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a representative shall be required to pass the SIE in addition to a representative qualification examination appropriate to his or her category of registration as specified in Rule 2.5.01(i). Any person who was last registered in a principal registration category two or more years immediately preceding the date of receipt by the Exchange of a new application for registration in that registration category shall be required to pass a principal qualification examination appropriate to that registration category as specified in Rule 2.5.01(i), unless the person has maintained his or her qualification status for the registration category in accordance with proposed Rule 2.16(c) or as otherwise permitted by the Exchange. Any person whose registration has been revoked and any person who has a continuing education deficiency for a period of two years as provided under Rule 2.5.01(i) shall be required to pass a representative or principal qualification examination appropriate to his or her category of registration as specified in Rule 2.5.01(i), to be eligible for registration with the Exchange. Finally, for purposes of Rule 2.5.06, an application shall not be considered to have been received by the Exchange if that application does not result in a registration.

The Exchange proposes to adopt Rule 2.5.07 which, as discussed above, would recognize a waiver for participants in the financial services industry affiliate waiver program(s) of Cboe, C2 and/or FINRA. Specifically, Rule 2.5.07 would provide that upon request by a Member, the Exchange shall waive the applicable qualification examination(s) for an individual designated as a participant in, and satisfying the conditions of, the FSA waiver program(s) of Cboe under its Rule 3.30.09, C2 under its Chapter 3, Section B, and/or FINRA under its Rule 2110.09.

By way of background, very generally, these FSA waiver programs provide that a member of Cboe, C2 or FINRA, respectively, may request that the exchange/FINRA waive the applicable qualification examination(s) for an individual designated with it as working for a financial services industry affiliate of a member if the following conditions are met:

- Prior to the individual's initial designation, the individual was registered as a representative or principal with Cboe, C2 or FINRA, as applicable, for a total of five years within the most recent 10 year period, including for the most recent year with the member that initially designated the individual;
- The waiver request is made within seven years of the individual's initial designation;
- The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;
- The individual continuously worked for the financial services industry affiliate(s) of a member since the individual's last Form U5 filing;
- The individual has complied with the Regulatory Element of continuing education as specified in the Cboe, C2 or FINRA Rules, as applicable; and
- The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on

[38] *See* proposed Rule 2.16.02.

[39] *See* The Female Face of Family Caregiving (November 2018), available at *https://www.nationalpartnership.org/our-work/resources/economic-justice/femaleface-family-caregiving.pdf*.

[40] *See* The COVID–19 Recession is the Most Unequal in Modern U.S. History (September 30, 2020), available at *https://www.washingtonpost.com/graphics/2020/business/coronavirus-recessionequality/* and Unemployment's Toll on Older Workers Is Worst in Half a Century (October 21, 2020), available at *https://www.aarp.org/work/working-at-50-plus/info-2020/pandemic-unemployment-older-workers/*.

the Form U4, and has not otherwise been subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while the individual was designated as eligible for a waiver.

As used in Rule 2.5.07, a ''financial services industry affiliate'' is a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

Last, the Exchange proposes to adopt Rule 2.5.08, which would provide for permissive registrations. Specifically, proposed Rule 2.5.08 would provide that a Member may make application for or maintain the registration as a representative or principal of any associated person of a Member and any individual engaged in the securities business of a foreign securities affiliate or subsidiary of the Member. Individuals maintaining such permissive registrations shall be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. Consistent with the requirements of the Exchange's supervision rules, Members shall have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions. With respect to an individual who solely maintains a permissive registration(s), the individual's direct supervisor shall not be required to be a registered person. However, for purposes of compliance with the Exchange's supervision rules, a Member shall assign a registered supervisor who shall be responsible for periodically contacting such individual's direct supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor shall be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor shall be registered as a principal. Moreover, the registered supervisor of an individual who solely maintains a permissive registration(s) shall not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[41] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[42] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[43] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to move to an annual Regulatory Element training with content tailored to an individual's representative or principal registration categories is designed to protect investors and is in the public interest. As noted in the order approving the similar changes to the FINRA CE Program,[44] the Commission found that ''the rule is reasonably designed to minimize the potential adverse impact on firms and their registered persons. Furthermore, increasing the timeliness of registered persons' training, as well as the relevance of the training's content by tailoring it to each registration category that they hold, would enhance their education and compliance with their regulatory obligations.''

The Exchange believes that the proposed changes to the Regulatory Element and the proposal to adopt the Firm Element portions of its CE Program will ensure that all registered persons receive timely and relevant training, which will, in turn, enhance compliance and investor protection. Further, the Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

The Exchange also believes that the proposed rule change will bring consistency and uniformity with Cboe's and FINRA's recently amended CE Program rules, which will, in turn, assist Members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes conform certain of the Exchange's continuing education and registration rules to align them with rules of Cboe, which will, in turn, prevent unnecessary regulatory burdens and to promote efficient administration of the rules. Finally, the proposed amendment also makes minor updates and corrections to the Exchange's rules which improve readability.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule changes which are, in all material respects, based upon and substantially similar to, recent rule changes adopted by FINRA and Cboe, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE Program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[45] and Rule 19b–4(f)(6) thereunder.[46]

[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(5).

[43] *Id.*

[44] *Supra* note 5.

[45] 15 U.S.C. 78s(b)(3)(A)(iii).

[46] 17 CFR 240.19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. In addition, Rule 19b–4(f)(6)(iii)[47] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay would allow the Exchange to implement proposed changes to its Continuing Education Rules by March 15, 2022 to coincide with one of FINRA's announced implementation dates, thereby eliminating the possibility of a significant regulatory gap between the FINRA and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Members of the Exchange that are also FINRA members. For this reason, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[48]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2022–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2022–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–CboeBYX–2022–006 and should be submitted on or before April 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06852 Filed 3–31–22; 8:45 am]

BILLING CODE 8011–01–P

[47] 17 CFR 240.19b–4(f)(6)(iii).

[48] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[49] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Docket No. SBA–2022–0002]

Community Advantage Pilot Program

AGENCY: Small Business Administration.

ACTION: Notice; request for comments.

SUMMARY: To support the Small Business Administration's (''SBA'' or ''Agency'') commitment to expanding access to capital for eligible small businesses in underserved markets and to refine and improve the Community Advantage (''CA'') Pilot Program, the purpose of which is increasing 7(a) loans to small business in underserved markets, SBA is issuing this notice to extend the term of the CA Pilot Program through September 30, 2024, and to remove the temporary moratorium on the SBA's acceptance of new Community Advantage Lender Participation Applications (''CA Lender Applications'').

DATES: The changes identified in this notice take effect April 1, 2022. SBA will begin accepting new CA Lender Participation Applications May 2, 2022. The CA Pilot Program will remain in effect until September 30, 2024.

Comment Date: Comments must be received on or before May 2, 2022.

ADDRESSES: You may submit comments, identified by SBA docket number SBA–2022–0002, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments.
- *Mail:* Darrel Eddingfield, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.
- *Hand Delivery/Courier:* Darrel Eddingfield, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *https://www.regulations.gov.*

If you wish to submit confidential business information (''CBI'') as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Darrel Eddingfield, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; or send an email to *communityadvantage@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination as to whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Darrel Eddingfield, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; telephone: (202) 516–6676; email: *darrel.eddingfield@sba.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

As part of its efforts to increase the number of SBA-guaranteed 7(a) loans made to small businesses in underserved markets, on February 18, 2011, SBA issued a notice and request for comments introducing the CA Pilot Program (76 FR 9626). That notice provided an overview of the CA Pilot Program requirements and, pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend, modify or waive certain regulations in establishing and testing pilot loan initiatives, SBA modified or waived as appropriate certain regulations which otherwise apply to 7(a) loans for the CA Pilot Program.

Subsequent notices made changes to the CA Pilot Program to improve the program experience for participants, improve their ability to deliver capital to underserved markets, and appropriately manage risk to the Agency. These notices were issued on the following dates: September 12, 2011 (76 FR 56262), February 8, 2012 (77 FR 6619), November 9, 2012 (77 FR 67433), December 28, 2015 (80 FR 80872), September 12, 2018 (83 FR 46237), March 2, 2020 (85 FR 12369), and July 15, 2020 (85 FR 42964). In the notice published September 12, 2018 (the ''September 2018 Notice''), SBA extended the pilot program to September 30, 2022, and implemented a temporary moratorium on the acceptance of new Community Advantage Lender Participation Applications (''CA Lender Applications'') effective October 1, 2018, among other changes to the CA Pilot Program. This Notice announces SBA's intention to extend the CA Pilot Program through September 30, 2024, and to remove the temporary moratorium on the acceptance of new CA Lender Applications. This extension and the acceptance of new CA Lenders will enable SBA to better evaluate the impact of the CA Pilot Program. As indicated in prior **Federal Register** Notices, SBA will evaluate the CA Pilot Program to refine the program and to determine whether it should be made permanent, with evaluation criteria including, but not limited to, whether the pilot is achieving its objective(s), impact on job creation and retention, impact on business creation and/or business expansion, whether the costs (including losses) of the pilot are within an acceptable range, and portfolio performance as it relates to other 7(a) programs. SBA will consider additional program enhancements to streamline the process for mission-based Lenders to make loans in underserved markets. Further, SBA will examine data to evaluate the effectiveness of adding new CA Lenders towards the outcome of increasing loan approval volume to small businesses in underserved markets. Effective 30 days from the date of this Notice, SBA will accept new CA Lender Applications using SBA Form 2301, Community Advantage Lender Participation Application (*https://www.sba.gov/document/sba-form-2301-community-advantage-lender-participation-application*). Additional guidance may be found in the Community Advantage Participant Guide (*https://www.sba.gov/document/support-community-advantage-participant-guide*).

2. Comments

Although the changes take effect April 1, 2022, comments are solicited from interested members of the public on all aspects of the CA Pilot Program. Comments must be submitted on or before the deadline for comments listed in the **DATES** section. SBA will consider these comments and the need for making any revisions as a result of these comments.

3. Changes to the Community Advantage Pilot Program—Lifting the Moratorium on Acceptance of New CA Lender Applications

SBA stated in the September 2018 Notice that it limited the number of lenders participating in the CA Pilot Program to allow the Agency to test new methods for expanding access to capital for small businesses in underserved markets. Each year since FY 2018, the number and dollar amount of CA loans approved and number of CA Lenders making a loan during the fiscal year has decreased.[1] In FY 2018, 1,118 CA loans totaling $157,529,500 were approved by 75 CA Lenders. In FY 2021, 565 CA loans totaling $82,834,100 were approved by 64 CA Lenders. As of March 9, 2022, which is nearly halfway through FY 2022, 260 CA loans totaling $38,104,200 were approved by 46 CA Lenders. Additionally, of the 108 total CA Lenders approved to participate in the program, only 96 CA Lenders have any outstanding CA loans in their portfolio. Based on this analysis, the Agency has determined that the CA Pilot Program is not reaching its goal of providing capital to small businesses in underserved markets due to the small number of CA loans being made. Therefore, the Agency is lifting its moratorium on accepting new CA Lender Applications in order to increase the number of active CA Lenders making CA loans.

The extension of the CA Pilot Program through September 30, 2024, and the acceptance of new CA Lenders will enable SBA to better evaluate the impact of the CA Pilot Program. SBA will evaluate the CA Pilot Program to refine the program and to determine whether it should be made permanent, with evaluation criteria including, but not limited to, whether the pilot is achieving its objective(s), impact on job creation and retention, impact on business creation and/or business expansion, whether the costs (including losses) of the pilot are within an acceptable range, and portfolio performance as it relates to other 7(a) programs.

4. General Information

The changes in this notice are limited to the CA Pilot Program only. All other SBA Loan Program Requirements and regulatory waivers or modifications related to the CA Pilot Program remain unchanged.

SBA has provided more detailed guidance in the form of a Participant Guide, which will be updated to reflect these changes and will be available on SBA's website at *http://www.sba.gov.* SBA may provide additional guidance, through SBA notices, which may also be published on SBA's website at *http://www.sba.gov/category/lender-navigation/forms-notices-sops/notices.* Questions regarding the CA Pilot Program may be directed to the local SBA district office. The local SBA district office may be found at *http://www.sba.gov/about-offices-list/2.*

Authority: 15 U.S.C. 636(a)(25) and 13 CFR 120.3.

Isabella Guzman,

Administrator.

[FR Doc. 2022–06919 Filed 3–31–22; 8:45 am]

BILLING CODE 8026–03–P

[1] The exception is FY 2019, where the number of CA Lenders making a CA loan remained constant at 75.

DEPARTMENT OF STATE

[Public Notice: 11697]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Bernd & Hilla Becher'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Bernd & Hilla Becher'' at The Metropolitan Museum of Art, New York, New York; at the San Francisco Museum of Modern Art, San Francisco, California; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–06856 Filed 3–31–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11699]

Notice of Shipping Coordinating Committee Meeting in Preparation for International Maritime Organization MEPC 78 Meeting

The Department of State will conduct a public meeting of the Shipping Coordinating Committee at 10:00 a.m. on Wednesday, May 25, 2022, by way of teleconference. The primary purpose of the meeting is to prepare for the seventy-eighth session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC 78) to be held virtually from Monday, June 6, 2022 to Friday June 10, 2022.

Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants. To RSVP, participants should contact the meeting coordinator, LCDR Jessica Anderson, by email at *jessica.p.anderson@uscg.mil.* To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 877 239 87#.

The agenda items to be considered by the advisory committee at this meeting mirror those to be considered at MEPC 78, and include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Consideration and adoption of amendments to mandatory instruments
—Harmful aquatic organisms in ballast water
—Air pollution prevention
—Energy efficiency of ships
—Reduction of GHG emissions from ships
—Follow-up work emanating from the Action Plan to address marine plastic litter from ships
—Pollution prevention and response
—Reports of other sub-committees
—Identification and protection of Special Areas, ECAs and PSSAs
—Technical cooperation activities for the protection of the marine environment
—Application of the Committee's method of work
—Work programme of the Committee and subsidiary bodies
—Any other business
—Consideration of the report of the Committee

Please note: the IMO may, on short notice, adjust the MEPC 78 agenda to accommodate the constraints associated with the virtual meeting format. Any changes to the agenda will be reported to those who RSVP.

Those who plan to participate may contact the meeting coordinator, LCDR Jessica Anderson, by email at *Jessica.P.Anderson@uscg.mil,* or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509. Members of the public needing reasonable accommodation should advise LCDR Jessica Anderson not later than May 18, 2022. Requests made after that date will be considered, but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Emily A. Rose,

Executive Secretary, Shipping Coordinating Committee, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2022–06928 Filed 3–31–22; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 11696]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Once Upon a Roof: Vanished Korean Architecture'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Once Upon a Roof: Vanished Korean Architecture'' at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, District of Columbia, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28,

2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–06858 Filed 3–31–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2022–21]

Petition for Exemption; Summary of Petition Received; Wiggins Airways, 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, the 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 April 21, 2022.

ADDRESSES: Send comments identified by docket number FAA–2021–0707 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: Sean O'Tormey at 202–267–4044, 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.

Timothy R. Adams,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–0707.

Petitioner: Wiggins Airways, Inc.

Section of 14 CFR Affected: § 135.243(c)(2).

Description of Relief Sought: Petitioner Wiggins Airways, Inc. seeks relief from the pilot experience requirements of 14 CFR 135.243(c)(2). For all-cargo operations in its fleet of Cessna 208 Caravans (C–208) operations with a maximum certificated takeoff weight less than 12,500 lbs. and fixed tricycle landing gear, Wiggins Airways seeks relief from § 135.243(c)(2) to allow a pilot to serve as pilot in command who has a minimum of 800 hours of flight time as a pilot to include at least 500 hours in airplanes and cross country flight time of 400 hours. For all-cargo operations in other fleet types, consisting of twin-engine land turboprop airplanes, limited to types with a maximum certificated takeoff weight not to exceed 12,500 pounds, and not requiring the pilot in command to possess a type rating, Wiggins Airways seeks relief from § 135.243(c)(2) to allow a pilot to serve as pilot in command who has a minimum of 1000 hours of flight time as a pilot to include at least 500 hours in airplanes.

[FR Doc. 2022–06839 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2021–1044; Summary Notice No. 2022–19]

Petition for Exemption; Summary of Petition Received; Central Plains Agronomy

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, the 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 April 21, 2022.

ADDRESSES: Send comments identified by docket number [FAA–2021–1044] 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: Tiffany Jackson 202–267–3796, 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.

Timothy R. Adams,

Executive Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–1044.

Petitioner: Central Plains Agronomy.

Section(s) of 14 CFR Affected: §§ 61.3 (a)(1)(i), 91.7(a), 91.119(c), 91.121, 91.151(b), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1) and (2), 91.417(a) and (b), 137.19(c), (d), (e)(2)(ii)(iii), and (v), 137.31, 137.33, 137.41(c), and 137.42.

Description of Relief Sought: Central Plains Agronomy, LLC requests an exemption for the purpose of simultaneously operating no more than two DJI Agras T–20 Unmanned Aircraft Systems (UAS), weighing over 55 pounds but no more than 100.75 pounds, closer than 500 feet from vehicles, vessels, and structures to provide agricultural-related services in the United States.

[FR Doc. 2022–06838 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0042]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from eight individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 2, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2022–0042 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2022–0042, 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, 20590–0001 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 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–2022–0042), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2022-0042.* 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–2022–0042, 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 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. 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.*

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 eight individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Michael Curtis

Mr. Curtis is a 41-year-old a class D license holder in Delaware. He has a history of idiopathic generalized epilepsy and has been seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since September 2019. His physician states that he is supportive of Mr. Curtis receiving an exemption.

Denise Denton

Ms. Denton is a 50-year-old a class C license holder in Michigan. She has a history of epilepsy and has been seizure free since 2006. She takes anti-seizure medication with the dosage and frequency remaining the same since for more than 10 years. Her physician states that he is supportive of Ms. Denton receiving an exemption.

Paul Drewer

Mr. Drewer is a 50-year-old a CDL holder in Pennsylvania. He has a history of epilepsy and has been seizure free since 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since April 2001. His physician states that he is supportive of Mr. Drewer receiving an exemption.

Peter Guzman

Mr. Guzman is a 74-year-old a class D license holder in Virginia. He has a history of a single unprovoked seizure and has been seizure free since 2008. He has remained off anti-seizure medication since November 2018. His physician states that he is supportive of Mr. Guzman receiving an exemption.

Zachary Henson

Mr. Henson is a 22-year-old a CDL holder in Illinois. He has a history of focal epilepsy disorder and has been seizure free since 2013. He takes anti-seizure medication with the dosage and frequency remaining the same since October 2018. His physician states that he is supportive of Mr. Henson receiving an exemption.

Scott Hughes

Mr. Hughes is a 59-year-old a CDL holder in Illinois. He has a history of generalized convulsive epilepsy and has been seizure free since 2001. He takes anti-seizure medication with the dosage and frequency remaining the same since September 2003. His physician states that he is supportive of Mr. Hughes receiving an exemption.

Scott Hunter

Mr. Hunter is a 49-year-old class D license holder in Massachusetts. He has a history of epilepsy and has been seizure free since 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since October 2019. His physician states that he is supportive of Mr. Hunter receiving an exemption.

Robert Lombardo

Mr. Lombardo is a 31-year-old class C license holder in California. He has a history of epilepsy and has been seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since November 2018. His physician states

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

that he is supportive of Mr. Lombardo receiving an exemption.

Devi Thapa

Mr. Thapa is a 45-year-old class C license holder in Georgia. He has a history of epilepsy and has been seizure free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since 2010. His physician states that he is supportive of Mr. Thapa receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–06861 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0332; FMCSA–2013–0121; FMCSA–2013–0122; FMCSA–2013–0123; FMCSA–2013–0124; FMCSA–2013–0125; FMCSA–2013–0126; FMCSA–2015–0325; FMCSA–2015–0327; FMCSA–2016–0003; FMCSA–2017–0057; FMCSA–2017–0059; FMCSA–2019–0111]

Qualification of Drivers; Exemption Applications; Hearing

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 31 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below. Comments must be received on or before May 2, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0332, Docket No. FMCSA–2013–0121, Docket No. FMCSA–2013–0122, Docket No. FMCSA–2013–0123, Docket No. FMCSA–2013–0124, Docket No. FMCSA–2013–0125, Docket No. FMCSA–2013–0126, Docket No. FMCSA–2015–0325, Docket No. FMCSA–2015–0327, Docket No. FMCSA–2016–0003, Docket No. FMCSA–2017–0057, Docket No. FMCSA–2017–0059, or Docket No. FMCSA–2019–0111 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2012–0332, FMCSA–2013–0121, FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2013–0126, FMCSA–2015–0325, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, FMCSA–2017–0059, or FMCSA–2019–0111 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 20590–0001, 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–2012–0332, Docket No. FMCSA–2013–0121, Docket No. FMCSA–2013–0122, Docket No. FMCSA–2013–0123, Docket No. FMCSA–2013–0124, Docket No. FMCSA–2013–0125, Docket No. FMCSA–2013–0126, Docket No. FMCSA–2015–0325, Docket No. FMCSA–2015–0327, Docket No. FMCSA–2016–0003, Docket No. FMCSA–2017–0057, Docket No. FMCSA–2017–0059, or Docket No. FMCSA–2019–0111), 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–2012–0332, FMCSA–2013–0121, FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2013–0126, FMCSA–2015–0325, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, FMCSA–2017–0059, or FMCSA–2019–0111 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–2012–0332, FMCSA–2013–0121, FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2013–0126, FMCSA–2015–0325, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, FMCSA–2017–0059, or FMCSA–2019–0111 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 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. 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.*

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 hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

The 31 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), 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 31 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 31 drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers 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 April and are discussed below.

As of April 2, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 23 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Kathleen Abenchuchan (IA)
Marion Bennett (MD)
Roger Boge (IA)
Johnny Brewer (OH)
Arthur Brown (FL)
Michael Bunjer (MD)
Stephen Daniels (KS)
Keith Drown (ID)
Jerry Ferguson (TX)
Edison Garcia (MD)
James Gooch (MO)
Daniel Harnish (OR)
Jada Hart (IA)
Paul Klug (IA)
Dayton Lawson, Jr. (MI)
Calvin Payne (MD)
Kiley Peterson (IA)
Joseph Piros (CA)
Ronald Rumsey (IA)
Khon Saysanam (TX)
James Schubin (CA)
Samuel Sherman (MN)
Johnny Wu (DE)

The drivers were included in docket number FMCSA–2013–0122, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2013–0126, FMCSA–2015–0325, FMCSA–2015–0327, FMCSA–2016–0003, FMCSA–2017–0057, FMCSA–2017–0059, or FMCSA–2019–0111. Their exemptions were applicable as of April 2, 2022 and will expire on April 2, 2024.

As of April 21, 2022, 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 hearing requirement in the FMCSRs for interstate CMV drivers:

Andrew Alcozer (IL)
Jacob Paullin (WI)
Ryan Pope (CA)
Russell Smith, (OH)

The drivers were included in docket number FMCSA–2013–0121, FMCSA–2013–0122, or FMCSA–2013–0123. Their exemptions are applicable as of April 21, 2022 and will expire on April 21, 2024.

As of April 23, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Donald Lynch (AR)
Zachary Rietz (TX)

The drivers were included in docket number FMCSA–2012–0332. Their exemptions are applicable as of April 23, 2022 and will expire on April 23, 2024.

As of April 24, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Kwinton Carpenter (OH)
Andrey Shevchenko (MN)

The drivers were included in docket number FMCSA–2013–0124. Their exemptions are applicable as of April 24, 2022 and will expire on April 24, 2024.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 31 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). 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. 2022–06862 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0033]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 14 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 2, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2022–0033 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2022–0033, 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 20590–0001, 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 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–2022–0033), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2022-0033.* 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–2022–0033, 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 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. 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.*

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 14 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Ryheem Brown

Mr. Brown, 31, holds a class C license in Texas.

Kevin Cooley

Mr. Cooley, 47, holds a class D license in Montana.

Adrian Cortez

Mr. Cortez, 40, holds a class D license in New Mexico.

Michael Cover

Mr. Cover, 40, holds a regular operator's license in Michigan.

Gregory Crane

Mr. Crane, 53, holds a class D license in Arizona.

Stephen Daniels

Mr. Daniels, 61, holds a class A license in Kansas.

Daniel Darnall

Mr. Darnall, 50, holds a class O license in Nebraska.

Adam Day

Mr. Day, 40, holds a class E license in Florida.

Michael Derenick

Mr. Derenick, 33, holds a class C license in Pennsylvania.

Gabriel Garza

Mr. Garza, 28, holds a class C license in Texas.

Scott Gentry

Mr. Gentry, 49, holds a class E license in Florida.

Rod Lagasse

Mr. Lagasse, 54, holds a class D license in New York.

Robert Rollins

Mr. Rollins, 51, holds a class A CDL in North Carolina.

John Statler

Mr. Statler, 44, holds a class R license in Colorado.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–06860 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0085]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillator (ICD)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny the applications from three individuals treated with an ICD who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting operation of a commercial motor vehicle (CMV) in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure.

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 materials in the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0085, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. 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.*

II. Background

On July 28, 2021, FMCSA published a **Federal Register** notice (86 FR 40677) announcing receipt of applications from three individuals treated with ICDs and requested comments from the public. The individuals requested an exemption from 49 CFR 391.41(b)(4) which prohibits operation of a CMV in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. The public comment period closed on August 27, 2021, and eight comments were received.

FMCSA has evaluated the eligibility of the applicants and concluded that granting an exemption would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(4). A summary of each applicant's medical history related to their ICD exemption request was discussed in the July 28, 2021, **Federal Register** notice and will not be repeated here.

The Agency's decision regarding this exemption application is based on information from the Cardiovascular Medical Advisory Criteria, an April 2007 evidence report titled ''Cardiovascular Disease and Commercial Motor Vehicle Driver Safety,'' [1] and a December 2014 focused research report titled ''Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed.'' Copies of these reports are included in the docket.

FMCSA has published advisory criteria to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.[2] The advisory criteria for § 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. ICDs are disqualifying due to risk of syncope.

III. Discussion of Comments

FMCSA received eight comments in this proceeding. Each of the eight comments supported Mr. Willard Drysdale's request for an ICD exemption. Mr. Drysdale's cardiologist stated that the chance of Mr. Drysdale experiencing an appropriate ICD discharge in the next 5 years is approximately 2 to 3 percent. Mr. Drysdale's cardiac rehabilitation program attested to his excellent progress with his rehabilitation and maintenance program and noted that he was asymptomatic during his rehabilitation. The Minnesota Department of Public Safety commented that it has no objection to Mr. Drysdale's exemption request. Four private citizens familiar with Mr. Drysdale, attested to his years of successful CMV driving experience, his good physical condition, and that his ICD has not discharged since it was implanted. One of the four private citizens also commented on each key question in the April 2007 and December 2014 ICD Evidence Reports regarding how they relate to Mr. Drysdale's circumstances and his ICD exemption request. Regarding the April 2007 report, the commenter's opinion was that for two of the most relevant studies, one was done in Canada where ICDs are not addressed, and that the other study did not find evidence supporting the contention that CMV drivers are at an increased risk for a crash in a motor vehicle. The commenter further opined that the study was very limited and therefore the commenter believed a more comprehensive and current study should be implemented. The commenter noted with respect to the key questions in the December 2014 report, that Mr. Drysdale's ICD had never discharged and offered that Mr. Drysdale would be willing to participate in a group study involving ICDs if granted an exemption. The applicant, Mr. Drysdale also commented and questioned why he is not permitted to cross state lines and go more than 150 miles with a CMV yet is permitted to drive across the State of Minnesota to deliver exempt agricultural commodities.

FMCSA evaluates each ICD exemption application received to determine whether an equivalent or greater level of safety can be achieved by the applicant. FMCSA acknowledges that the existing evidence is not conclusive concerning the impact of ICD treatment on the safe operation of CMVs and that more studies are needed prior to permitting individuals with ICDs to operate CMVs in interstate commerce. Regarding Mr. Drysdale's comments, the provisions referenced are handled under two separate sections in the FMCSRs. Specifically, transportation of agricultural commodities is handled under § 390.39 and does not require the driver to have a physical qualification examination, meet the physical qualification standards in § 391.41(b)(1) through (13), and receive a Medical Examiner's Certificate, Form MCSA–5876.

IV. Basis for Exemption Determination

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 Agency's decision regarding these exemption applications is based on an individualized assessment of the applicants' medical information, available medical and scientific data concerning ICDs, and any relevant public comments received.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. The December 2014 focused research report referenced previously upholds the findings of the April 2007 report and indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety.

V. Conclusion

The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following three applicants have been denied an exemption from the physical qualification standards in § 391.41(b)(4):

[1] The report is available on the internet at *https://rosap.ntl.bts.gov/view/dot/16462.*

[2] These criteria may be found in 49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section D. Cardiovascular: § 391.41(b)(4), paragraph 4, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

Willard Drysdale (MN)
William Edwards (NY)
Francisco Garcia (NJ)

The applicants have, prior to this notice, received a letter of final disposition regarding their exemption request. The decision letter fully outlined the basis for the denial and constitute final action by the Agency. The names of these individuals published in this notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–06863 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0002–N–4]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. 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, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before May 31, 2022.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2022–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

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 provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities 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 for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Inquiry into Blocked Highway-Rail Grade Crossings throughout the United States.

OMB Control Number: 2130–0630.

Abstract: In 2020, FRA created a dedicated website allowing the public and law enforcement personnel to use web-based forms to voluntarily submit information about blocked crossings to FRA.[1] Under the currently approved information collection request, users provide information regarding the location, date, time, duration, and immediate impacts of highway-rail grade crossings blocked by slow-moving or stationary trains. FRA uses the data collected to gain a more complete picture of where, when, for how long, and what impacts result from reported blocked crossing incidents.[2] Additionally, FRA uses the information to respond to congressional inquiries so that congressional staff can respond to their constituents. Furthermore, FRA uses the information gathered to facilitate meetings, outreach, and other solutions for stakeholders to reduce or eliminate blocked crossing concerns.

Upon accessing these web-based forms, users are notified there are no Federal laws or regulations that specifically address the length of time a train may occupy a highway-rail grade crossing. Users are also notified that information submitted will not be forwarded to a railroad, State, or local agency, and will only being used for data collection purposes to determine the locations, times, and impacts of blocked crossings.

On November 15, 2021, the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117–58) ''Bipartisan Infrastructure Law (BIL)'' was enacted. In addition to mandating that FRA establish an online portal and corresponding database to receive information regarding blocked highway-rail grade crossings, section 22404 of BIL ''encourages each complainant to report the blocked crossing to the relevant railroad.'' Therefore, in preparation for this new statutory mandate, FRA proposes to modify the existing web-based forms by adding one question, ''have you contacted the railroad?'' Otherwise, the rest of the questions on the web-based forms will remain the same.[3]

Currently, there are no Federal laws or regulations that specifically address how long a train may occupy a crossing, whether stationary or operating at slow speeds. Some States and local municipalities have laws that vary in how long trains are permitted to occupy crossings.

There are potential safety concerns with crossings that are blocked by trains. For instance, pedestrians may crawl under or through stationary trains. Also, emergency response vehicles and first responders may be delayed when responding to an incident or transporting persons to a hospital. In addition, drivers may take more risks, such as driving around lowered gates at

[1] Access to the web-based form used by the public is unrestricted. Access to the web-based form used by law enforcement personnel is restricted to law enforcement personnel with usernames and passwords managed by FRA.

[2] The data collection is not designed to provide a representative sample or create generalizable statistics. Additionally, the data gathered from this collection is not suitable for use in budgetary requests or regulatory proposals.

[3] The average time per response will be remain at 3 minutes per response since the modification made under BIL requirement is *de minimis.*

a crossing or attempting to beat a train through a crossing without gates, in order to avoid a lengthy delay if they are aware that trains routinely block a crossing for extended periods of time. There are also potential economic impacts that affect businesses, such as stores or restaurants not being accessible to a customer base for an extended period of time. Finally, highway-rail grade crossings that are blocked for extended periods of time may create societal nuisances, such as roadway congestion, delayed mail service and deliveries, disrupted school and work arrival and dismissal, or missed appointments.

Type of Request: Revision of a currently approved collection.

Affected Public: Public individuals and law enforcement personnel.

Form(s): FRA F 6180.175.

Respondent Universe: Public individuals and law enforcement personnel.

Frequency of Submission: On occasion.

Reporting Burden:

Form [4]	Total annual responses (A)	Average time per response (minutes) (B)	Total annual burden hours (C) = A * B	Total cost equivalent (D) = C * wage rate [5]
General Public via the unrestricted form on the FRA website	15,500	3	775	$20,925
Law Enforcement Personnel via the limited access form on the FRA website	350	3	18	486
Total	15,850	N/A	793	21,411

Total Estimated Annual Responses: 15,850.

Total Estimated Annual Burden: 793 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $21,411.

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,

Deputy Chief Counsel.

[FR Doc. 2022–06944 Filed 3–31–22; 8:45 am]

BILLING CODE 4910–06–P

[4] The current inventory exhibits a total burden of 250 hours while the total burden of this notice is 793 hours. The increase in burden hours is due to an anticipated increase in the number of responses.

[5] FRA used an hourly rate of $27 per hour for the value of the public's time. FRA obtained this data from the Department of Labor, Bureau of Labor Statistics.

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Matching Program

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a re-established matching program.

SUMMARY: In accordance with subsection (e)(12) of the Privacy Act of 1974, as amended, VA is providing notice of a re-established matching program between VA and the Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS) entitled ''Disclosure of Information to Support the Veterans Affairs' Seek to Prevent Fraud, Waste, and Abuse Initiative.''

DATES: Comments on this matching program must be received no later than May 2, 2022. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new agreement will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary. This matching program will be valid for 18 months from the effective date of this notice.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Disclosure of Information to Support the Veteran Affairs' Seek to Prevent Fraud, Waste, and Abuse Initiative.'' Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Maggie Drye, Director, VA Office of Business Oversight Program Integrity Office, 1615 Woodward Street, Austin, TX 78772, (512) 386–2218.

SUPPLEMENTARY INFORMATION: This Agreement establishes the terms, conditions, and procedures under which CMS will provide certain data to VA that supports the VA's Seek to Prevent Fraud, Waste, and Abuse initiative. The data will be provided from CMS' database of enrolled Medicare providers and suppliers (System of Records Notice [SORN] No. 09–70–0532, *Provider Enrollment, Chain, and Ownership System [PECOS]*). Using PECOS data in a matching program for this purpose will provide VA prompt access to extant information, using an efficient process that both eliminates the need to manually compare substantial numbers of data-intensive files and enables VA to leverage, instead of duplicating, the costly Advance Provider Screening process that CMS uses to check suitability of Medicare providers and generate the data in PECOS.

Participating Agencies: VA and CMS.

Authority for Conducting the Matching Program: This Agreement is executed pursuant to the Privacy Act (5 United States Code [U.S.C.] § 552a) and the regulations and guidance promulgated thereunder; Office of Management and Budget (OMB) Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,* published at 81 FR 94424 (December 23, 2016); and OMB guidelines pertaining to computer matching published at 54 FR 25818 (June 19, 1989). Title 38 U.S.C. 7301(b) states that the primary function of VA is to provide a complete medical and hospital service for the care of eligible Veterans. In carrying out this function, including through contracts with external entities and providers, VA has an obligation to (1) ensure providers furnish care that is appropriate and safe and meets or exceeds professional standards for quality and (2), in the case of external providers, maintain billing integrity and compliance with contractual terms. The VA

Accountability First Act of 2017 provides the VA Secretary the authority to expeditiously remove, demote, or suspend any VA employee, including Senior Executive Service employees, for performance or misconduct.

Purpose(s): Under this matching program, VA internal and external providers will be matched against the database of Medicare providers and suppliers who have been revoked by CMS pursuant to 42 Code of Federal Regulations (CFR) 424.535. VA intends to review the information provided, perform additional validation, and if deemed appropriate, conduct further investigation or refer the matter to the VA Office of the Inspector General (OIG) for further investigation. Based on additional validation or investigation, should VA determine VA program requirements have been violated, VA intends to take action (or refer to the OIG for action) against the VA internal and external providers. Such action may be based on activities that endanger VA patients and/or reflect improper or erroneous billing practices related to claims for health care provided to VA beneficiaries. Actions VA may take include (1) terminating or modifying existing contractual or provider agreements; (2) stopping referral of VA patients to the VA external providers; (3) referring the VA internal and external providers to the OIG; (4) performing pre- or post-payment reviews of claims paid or submitted; or (5) taking disciplinary actions or removing, demoting, or suspending VA internal providers.

Categories of Individuals: VA internal and external health care providers will be matched against the database of Medicare providers who have been revoked by CMS under 42 CFR 424.535. ''Provider'' is defined by 42 CFR 400.202 as a ''hospital, a Critical Access Hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has in effect a similar agreement but only to furnish outpatient physical therapy or speech pathology services, or a community mental health center that has in effect a similar agreement but only to furnish partial hospitalization services.''

Categories of Records: VA will provide CMS electronic files, in a format defined by CMS, containing identifying information required to match VA records with CMS records. Data fields will include one or more of the following elements: (1) Name of Provider/Business; (2) Tax Identification Number (TIN) (EIN, ITIN or SSN); (3) National Provider Identifier (NPI); (4) State(s) in which the provider is providing services; and (5) Specialty Code or Taxonomy Code. Upon matching the TIN or NPI, CMS will provide VA the matched data elements above and the following additional fields: (1) NPI (for individuals) where VA provided a TIN; (2) Current Enrollment Status; (3) Current Enrollment Status Effective Date; (4) Status Reason (PECOS codes used to denote the specific reason(s) on which the final revocation was based); and (5) All NPIs associated with a revoked TIN to include all above fields (1–4) and Enrollment State, Specialty, Role, Enrollment Bar status, and Enrollment Bar Expiration Date (if applicable).

System(s) of Records: VA will provide information covered by SORN 77VA10A4, *Health Care Provider Credentialing and Privileging Records-VA,* last published in full at 85 FR 7395 (February 7, 2020), routine uses 1 and 2; SORN 23VA10NB3, *Non-VA Care (Fee) Records-VA,* last published in full at 80 FR 45590 (July 30, 2015), routine use 2 and 30; and SORN 02VA135, *Applicants for Employment under Title 38, U.S.C.-VA,* last published in full at 42 FR 49728 (September 27, 1977), and updated at 51 FR 25969 (July 17, 1986), 55 FR 42534 (October 19, 1990), and 58 FR 40852 (July 30, 1993). See routine uses 1 and 2 published at 42 FR 49728. CMS will provide information covered by SORN 09–70–0532, *Provider Enrollment, Chain, and Ownership System (PECOS),* last published in full at 71 FR 60536 (October 13, 2006) and updated at 78 FR 32257 (May 29, 2013) and 83 FR 6591 (February 14, 2018). See routine use 6 published at 71 FR 60536 and the unnumbered routine use published at 78 FR 32257); and SORN 09–70–0555, *National Plan and Provider Enumeration System,* last published in full at 75 FR 30411 (June 1, 2010), and updated at 78 FR 32257 (May 29, 2013) and 83 FR 6591 (February 14, 2018). See routine use 5 published at 75 FR 30411 and the unnumbered routine use published at 78 FR 32257.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Joseph S. Stenaka, Executive Director for Information Security Operations, Chief Privacy Officer and Chair of the VA Data Integrity Board approved this document on February 17, 2022 for publication.

Dated: March 29, 2022.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

[FR Doc. 2022–06908 Filed 3–31–22; 8:45 am]

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Endangered and Threatened Species; Designation of Critical Habitat for the Beringia Distinct Population Segment of the Bearded Seal; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 226

[Docket No. 220318–0073]

RIN 0648–BJ65

Endangered and Threatened Species; Designation of Critical Habitat for the Beringia Distinct Population Segment of the Bearded Seal

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), issue this final rule to designate critical habitat for the Beringia distinct population segment (DPS) of the Pacific bearded seal subspecies *Erignathus barbatus nauticus* under the Endangered Species Act (ESA). The critical habitat designation comprises an area of marine habitat in the Bering, Chukchi, and Beaufort seas.

DATES: This rule is effective May 2, 2022.

ADDRESSES: The final rule, critical habitat map, and associated Final Impact Analysis Report (*i.e.,* report titled ''Final RIR/ESA Section 4(b)(2) Preparatory Assessment/FRFA of Critical Habitat Designation for the Beringia Distinct Population Segment (DPS) of the Bearded Seal'') can be found on the NMFS website at *www.fisheries.noaa.gov/species/bearded-seal#conservation-management.*

FOR FURTHER INFORMATION CONTACT: Tammy Olson, NMFS Alaska Region, (907) 271–5006; Jon Kurland, NMFS Alaska Region, (907) 586–7638; or Heather Austin, NMFS Office of Protected Resources, (301) 427–8422.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2012, we published a final rule to list the Beringia DPS of the Pacific bearded seal subspecies as threatened under the ESA (77 FR 76740). Section 4(b)(6)(C) of the ESA requires the Secretary to designate critical habitat concurrently with listing a species as threatened or endangered unless it is not determinable at that time, in which case the Secretary may extend the deadline for this designation by one year. At the time of listing, we announced our intention to designate critical habitat for the Beringia DPS in a separate rulemaking, as it was not then determinable. Concurrently, we solicited information to assist us in (1) identifying the physical or biological features essential to the conservation of the Beringia DPS, and (2) assessing the economic impacts of designating critical habitat for this species.

On July 25, 2014, the listing of the Beringia DPS as a threatened species was vacated by the U.S. District Court for the District of Alaska (*Alaska Oil & Gas Ass'n* v. *Pritzker,* Case No. 4:13–cv–18–RRB, 2014 WL 3726121 (D. Alaska July 25, 2014)). This decision was reversed by the U.S. Court of Appeals for the Ninth Circuit on October 24, 2016 (*Alaska Oil & Gas Ass'n* v. *Ross,* 840 F.3d 671 (9th Cir. 2016)), and the listing was reinstated on February 22, 2017.

On June 13, 2019, the Center for Biological Diversity filed a complaint in the U.S. District Court for the District of Alaska alleging that NMFS had failed to timely designate critical habitat for the Beringia DPS of bearded seals. Under a court-approved stipulated settlement agreement between the parties, NMFS published a proposed rule to designate critical habitat for the Beringia DPS of bearded seals on January 8, 2021 (86 FR 1433). Specifically, we proposed to designate as critical habitat for the Beringia DPS an area of marine habitat in the northern Bering, Chukchi, and Beaufort seas containing physical and biological features essential to the conservation of the species and that may require special management considerations or protection. On January 27, 2021, a correction to the comment period closing date identified in this proposal from ''March 9, 2020'' to ''March 9, 2021'' was published in the **Federal Register** (86 FR 7242).

We requested public comments on the proposed designation and associated Draft Impact Analysis Report (NMFS 2020) through March 9, 2021, and held three public hearings (86 FR 7686, February 1, 2021). In response to requests, we extended the public comment period through April 8, 2021 (86 FR 13518, March 9, 2021). For a complete description of our proposed action, we refer the reader to the proposed rule (86 FR 1433, January 8, 2021).

This final rule describes the critical habitat designation for Beringia DPS bearded seals and the basis for the designation, including a summary of, and responses to, comments received. A detailed discussion and analysis of probable economic impacts associated with this critical habitat designation is provided in the Final Impact Analysis Report (NMFS 2021), which is referenced throughout this final rule.

Critical Habitat Definition and Process

Section 3(5)(A) of the ESA defines critical habitat as (1) 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 essential to the conservation of the species and 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 by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). Section 3(5)(C) of the ESA provides that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. Also, by regulation, critical habitat shall not be designated within foreign countries or in other areas outside U.S. jurisdiction (50 CFR 424.12(g)).

Conservation is defined in section 3(3) of the ESA as 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 this Act are no longer necessary (16 U.S.C. 1532(3)). Therefore, a critical habitat designation is not limited to the areas necessary for the survival of the species, but rather includes areas necessary for supporting the species' recovery. (*See Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059, 1070 (9th Cir. 2004) (''Clearly, then, the purpose of establishing 'critical habitat' is for the government to carve out territory that is not only necessary for the species' survival but also essential for the species' recovery.''), *amended on other grounds,* 387 F.3d 968 (9th Cir. 2004); *Alaska Oil and Gas Ass'n* v. *Jewell,* 815 F.3d 544, 555–56 (9th Cir. 2016).)

Section 4(b)(2) of the ESA requires the Secretary to designate critical habitat for threatened and endangered species 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 impact of specifying any particular area as critical habitat. This section also grants the Secretary discretion to exclude any area from critical habitat if he or she determines the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. However, the

Secretary may not exclude areas if such exclusion will result in the extinction of the species (16 U.S.C. 1533(b)(2)).

Critical habitat designations must be based on the best scientific data available, rather than the best scientific data *possible. Bldg. Indus. Ass'n. of Superior Cal.* v. *Norton,* 247 F.3d 1241, 1246–47 (D.C. Cir. 2001). *See also Alaska Oil & Gas Ass'n* v. *Jewell,* 815 F.3d 544, 555 (9th Cir. 2016) (The ESA ''requires use of the best available technology, not perfection.''). Provided that the best available information is sufficient to enable us to make a determination as required under the ESA, we must rely on it even though there is some degree of imperfection or uncertainty. *See Alaska* v. *Lubchenco,* 825 F. Supp. 2d 209, 223 (D.D.C. 2011) (''[E]ven if plaintiffs can poke some holes in the agency's models, that does not necessarily preclude a conclusion that these models are the best available science. Some degree of predictive error is inherent in the nature of mathematical modeling.''); *Oceana, Inc.* v. *Ross,* 321 F. Supp. 3d 128, 142 (D.D.C. 2018) (''[E]ven where data may be inconclusive, an agency must rely on the best available scientific information.''). There is no obligation to conduct independent studies and tests to acquire the best possible data. *Ross,* 321 F. Supp. 2d at 142 (citations omitted). *See also San Luis & Delta-Mendota Water Auth.* v. *Locke,* 776 F.3d 971, 995 (9th Cir. 2014) (holding that the best available science standard ''does not require an agency to conduct new tests or make decisions on data that does not yet exist.''); *Am. Wildlands* v. *Kempthorne,* 530 F.3d 991, 999 (D.C. Cir. 2008); *Southwest Ctr. for Biological Diversity* v. *Babbitt,* 215 F.3d 58, 60 (D.C. Cir. 2000) (''The 'best available data' requirement makes it clear that the Secretary has no obligation to conduct independent studies.'')

Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). This requirement is additional to the section 7(a)(2) requirement that Federal agencies ensure that their actions are not likely to jeopardize the continued existence of ESA-listed species (sometimes referred to as the ''jeopardy'' standard). Specifying the geographic location of critical habitat also facilitates implementation of section 7(a)(1) of the ESA by identifying areas where Federal agencies can focus their conservation programs and use their authorities to further the purposes of the ESA (16 U.S.C. 1536(a)(1)). Critical habitat requirements do not apply to citizens engaged in actions on private land that do not involve a Federal agency.

Description and Natural History

The bearded seal is the largest of the northern ice-associated seals. Adults average 2.1 to 2.4 meters (m) in length and weigh up to 360 kilograms (Chapskii 1938, McLaren 1958, Johnson *et al.* 1966, Burns 1967, Benjaminsen 1973, Burns 1981). In general, bearded seals reach sexual maturity at 5 to 6 years of age for females and 6 to 7 years of age for males (McLaren 1958, Tikhomirov 1966, Burns 1967, Burns and Frost 1979, Smith 1981, Andersen *et al.* 1999). The life span of bearded seals is reported to be about 20 to 25 years (Kovacs 2002), although some can reach 40 years, and females surviving into their late 20s or early 30s can remain reproductively active (Quakenbush 2020a). The average life span is likely to be much lower, due to high first-year mortality rates (Fedoseev 2000, Cameron *et al.* 2010, Trukhanova *et al.* 2018).

General Seasonal Distribution and Habitat Use

Bearded seals of the Beringia DPS inhabit seasonally ice-covered waters of the Bering, Chukchi, Beaufort, and East Siberian seas. They primarily feed on organisms on or near the seafloor (benthic organisms) that are more numerous in shallow water where light can reach the sea bottom. Thus, their effective habitat is generally restricted to areas where seasonal ice occurs over relatively shallow waters, typically less than 200 m, where they can reach the ocean floor to forage (Burns and Frost 1979, Burns 1981, Nelson *et al.* 1984, Fedoseev 2000). Still, bearded seal dive depths have been recorded to greater than 488 m (Gjertz *et al.* 2000). Cameron *et al.* (2010) defined the core distribution of bearded seals as those areas of known extent that are in water less than 500 m deep.

Sea ice provides bearded seals isolation from terrestrial predators, as well as some protection from aquatic predators such as killer whales (*Orcinus orca*), although the extent of such predation is unknown. The ice serves as a platform out of the water for whelping and nursing of pups, pup maturation, and molting (shedding and regrowing hair and outer skin layers), as well as for resting (Cameron *et al.* 2010). Bearded seals can be found in a broad range of different ice types (Fay 1974, Burns and Frost 1979, Burns 1981, Nelson *et al.* 1984), but they favor drifting pack ice with natural openings and areas of open water, such as leads, fractures, and polynyas, for breathing, hauling out on the ice, and accessing the water for foraging (Heptner *et al.* 1976, Burns and Frost 1979, Nelson *et al.* 1984, Kingsley *et al.* 1985, Cleator and Stirling 1990). Although bearded seals prefer sea ice with natural access to the water, observations indicate the seals are able to make breathing holes in thinner ice (Burns 1967, Burns and Frost 1979, Burns 1981, Nelson *et al.* 1984). They tend to avoid areas of continuous, thick, landfast (shorefast) ice—which is attached to the shoreline and forms seasonally to varying extent along the Alaskan Arctic coast—and are rarely seen in the vicinity of unbroken, heavy, drifting ice or large areas of multi-year ice (Heptner *et al.* 1976, Burns and Frost 1979, Nelson *et al.* 1984, Kingsley *et al.* 1985, Cleator and Stirling 1990). Still, some bearded seals may occur in areas of landfast ice, as documented by aerial surveys conducted during late May to early June in the Beaufort Sea in 1999 to 2002 (Moulton *et al.* 2000, Moulton *et al.* 2001, Moulton *et al.* 2002, Moulton *et al.* 2003).

Although adult bearded seals have rarely been seen hauled out on land in Alaska (Burns 1981, Nelson 1981), two adults were captured for tagging in September 2019 while they were hauled out on land near Utqiaġvik (Alaska Department of Fish and Game (ADF&G), 2019, unpublished data). Juvenile bearded seals have been observed hauled out on land along lagoons and rivers in some areas of Alaska, including in the Bering Strait region in summer to early fall (Huntington 2000, Oceana and Kawerak 2014, Gadamus *et al.* 2015, Huntington *et al.* 2015b), on the Chukchi Sea coast near Wainwright (Nelson 1981), and on sandy islands near Utqiaġvik (Cameron *et al.* 2010). In addition, satellite tracking data obtained from juvenile bearded seals tagged in Alaska during 2014 to 2018 indicate that during the period of minimum ice extent (July to October), about half of the seals that hauled out (7 of 13 individuals) used terrestrial sites located south of the ice edge in Kotzebue Sound and Norton Sound (and for one individual, in a bay on the Chukotka Peninsula) whereas the other seals remained near the ice edge and hauled out on ice, and two individuals showed both patterns in separate years (Olnes *et al.* 2020). There is some evidence that, other than during the critical life history periods related to reproduction and molting, bearded seals can remain at sea for extended periods without requiring the presence of sea ice for hauling out. Some bearded seals tagged in Alaska have remained in the

water for weeks or months at a time during the open-water period and into early winter (Frost *et al.* 2008, Boveng and Cameron 2013, Quakenbush *et al.* 2019).

The region that includes the Bering and Chukchi seas is the largest area of continuous habitat for bearded seals (Burns 1981, Nelson *et al.* 1984). The Bering-Chukchi Platform is a shallow intercontinental shelf that encompasses about half of the Bering Sea, spans the Bering Strait, and covers nearly all of the Chukchi Sea. Bearded seals can reach the bottom everywhere along the shallow shelf, so it provides them favorable foraging habitat (Burns 1967). The Bering and Chukchi seas are generally covered by sea ice in late winter and spring and are then mostly ice-free in late summer and fall, a process that helps to drive a seasonal pattern in the movements and distribution of bearded seals in this region (Johnson *et al.* 1966, Burns 1967, Heptner *et al.* 1976, Burns and Frost 1979, Burns 1981, Nelson *et al.* 1984). In spring, as the sea ice begins to melt, many of the bearded seals that overwintered in the Bering Sea migrate northward with the receding ice through the Bering Strait and into the Chukchi and Beaufort seas and spend the summer and early fall foraging in these waters, while an unknown proportion of these seals, in particular juveniles, may remain in the Bering Sea.

Studies that have inferred locations of foraging activity for bearded seals tagged in Alaska based on movement and dive data (Boveng and Cameron 2013, Gryba *et al.* 2019, Quakenbush *et al.* 2019, Olnes *et al.* 2020) show some overlap in the areas used extensively by individual seals, including for some seals near the 100-m isobath in the Bering Sea in July to November. However, the spatial patterns of habitat use and locations of intensive use can vary substantially among individuals (*e.g.,* Quakenbush *et al.* 2019, Olnes *et al.* 2020). The results of these studies represent use by primarily juvenile tagged bearded seals, and it is unknown how representative they are for older animals. Bearded seal sightings recorded during aerial surveys of the northeastern Chukchi and Beaufort seas off Alaska conducted in summer and/or fall from 1982 to 2019 (formerly to monitor the fall migration of bowhead whales and more recently to document the distribution and relative abundance of whales and other marine mammals) were distributed over the continental shelf in both coastal and offshore areas (Alaska Fisheries Science Center 2020).

Some bearded seals (largely juveniles), have been observed or tracked via satellite telemetry in small coastal bays, lagoons, and estuaries, near river mouths, and up some rivers, in particular during late summer and fall (*e.g.,* Burns 1981, Nelson 1981, Oceana and Kawerak 2014, Huntington *et al.* 2016, Northwest Arctic Borough 2016, Huntington *et al.* 2017a, 2017b, Huntington *et al.* 2017d, Gryba *et al.* 2019, Quakenbush *et al.* 2019, Quakenbush 2020b), although the majority of Alaska Native hunters interviewed at Utqiaġvik indicated that all ages of bearded seals use rivers and creeks (Gryba *et al.* 2021). Indigenous Knowledge (IK) documented for several communities in northern and western Alaska indicates that in these areas, bearded seals feed on fishes such as whitefish species, cods, smelts, herring, and salmon, as well as shrimps and clams (Oceana and Kawerak 2014, Huntington *et al.* 2016, 2017c).

As the ice forms in the fall and winter, many bearded seals move south with the advancing ice edge through the Bering Strait into the Bering Sea where they spend the winter (Burns 1967, Heptner *et al.* 1976, Burns and Frost 1979, Burns 1981). Bearded seal vocalizations were recorded throughout winter and spring in the northeastern Chukchi Sea and western Beaufort Sea, indicating that some bearded seals overwinter in these seas (Hannay *et al.* 2013, MacIntyre *et al.* 2013, Jones *et al.* 2014, MacIntyre *et al.* 2015, Frouin-Mouy *et al.* 2016, Berchok *et al.* 2019, Vate Brattström *et al.* 2019). Intermittent coastal leads deep in the ice pack of these seas provide at least marginal habitat for low densities of females to whelp in the spring (Burns and Frost 1979, Cameron *et al.* 2010).

Of the bearded seals tagged in Alaska to date, few have been adults, and the majority were tagged in Norton Sound and Kotzebue Sound. Tracking data for most tagged seals have shown an overall pattern of broad latitudinal movement northward in summer with receding sea ice and southward in fall as sea ice advances (Frost *et al.* 2008, Boveng and Cameron 2013, Breed *et al.* 2018, Cameron *et al.* 2018, Quakenbush *et al.* 2019). However, Quakenbush *et al.* (2019) and Olnes *et al.* (2020) found that the extent of these movements for seals tracked during their study depended on where the seals were tagged. Two juveniles tagged in the western Beaufort Sea did not travel south of about 70° N (in the Chukchi Sea) and one juvenile tagged in Kotzebue Sound remained there during winter, whereas juveniles tagged in Norton Sound made more extensive latitudinal movements (Quakenbush *et al.* 2019). Similarly, an adult male tagged in the western Beaufort Sea near Utqiaġvik in the fall of 2019 remained in nearshore areas southeast of Utqiaġvik and in the vicinity of Barrow Canyon and overwintered near Barrow Canyon in two consecutive years, a habitat use pattern also shown by one of the two subadults that remained north of about 70° N (Quakenbush *et al.* 2019, Quakenbush 2020b; ADF&G, 2021, unpublished data).

Breed *et al.* (2018) and Cameron *et al.* (2018) found that from late fall to early spring, juvenile bearded seals tagged in Kotzebue Sound from 2004 to 2009 selected habitat at the southern ice edge, which depending on ice conditions may extend to near the shelf break during late winter and early spring. In contrast, using data from juvenile bearded seals tagged mainly in Norton Sound during the more recent 2014 to 2018 period, Olnes *et al.* (2021) reported differences in habitat selection in both winter and spring that appear to be the result of recent changes to the distribution of sea ice concentrations and habitats. Although ice concentrations were similar in both periods, in the more recent period, those ice concentrations were located well north of the ice edge, and some individuals overwintered in the Chukchi and Beaufort seas (Quakenbush *et al.* 2019, Olnes *et al.* 2021).

Reproduction

During the winter and spring, pregnant female bearded seals find broken pack ice over shallow areas on which to whelp, nurse pups, and molt (Fay 1974, Heptner *et al.* 1976, Burns 1981, Andersen *et al.* 1999, Kovacs 2002). Females with pups are generally solitary, tending not to aggregate (Heptner *et al.* 1976, Kovacs *et al.* 1996). After giving birth on the ice, female bearded seals feed throughout the lactation period of about 24 days, continuously replenishing fat reserves lost while nursing pups (Holsvik 1998, Andersen *et al.* 1999, Krafft *et al.* 2000). Pups nurse on the ice (Lydersen *et al.* 1994, Andersen *et al.* 1999, Kovacs *et al.* 2019), and by the time they are a few days old, they spend half their time in the water (Lydersen *et al.* 1994, Gjertz *et al.* 2000, Watanabe *et al.* 2009). Pups develop diving, swimming, and foraging skills over the nursing period and beyond (Lydersen *et al.* 1994, Gjertz *et al.* 2000, Watanabe *et al.* 2009, Hamilton *et al.* 2019). In the Bering Sea, newborn pups have been observed from mid-March to early May (Cameron *et al.* 2010). A peak in births in the Bering Strait and central Chukchi Sea is estimated to occur in late April (Johnson *et al.* 1966, Tikhomirov 1966, Heptner *et*

al. 1976, Burns 1981, Cameron *et al.* 2010).

Bearded seals vocalize intensively during the breeding season, which Cameron *et al.* (2010) estimated extends from April into June. Passive acoustic monitoring studies in the northern Bering, Chukchi, and Beaufort seas off Alaska have recorded a variable progressive increase in bearded seal call activity over winter, with peak rates occurring from about mid-March or April to late June in the Chukchi and Beaufort seas (Hannay *et al.* 2013, MacIntyre *et al.* 2013, Jones *et al.* 2014, MacIntyre *et al.* 2015, Frouin-Mouy *et al.* 2016, Berchok *et al.* 2019, Vate Brattström *et al.* 2019), and from about mid-March to the middle or end of May in the northern Bering Sea (MacIntyre *et al.* 2015, Chou *et al.* 2019). Some male bearded seals maintain a single small aquatic territory during the breeding season, while others roam across larger areas (Van Parijs *et al.* 2003, 2004, Van Parijs and Clark 2006). Male vocalizations during the breeding season are considered to function to maintain aquatic territories and/or advertise breeding condition (Ray *et al.* 1969, Cleator *et al.* 1989, Van Parijs *et al.* 2003, Van Parijs and Clark 2006, Risch *et al.* 2007).

Surveys indicate that in the Bering Sea during spring, bearded seals use nearly the entire extent of pack ice over the continental shelf. The highest densities of bearded seals in early spring have typically been observed between St. Lawrence and St. Matthew Islands, with lower densities reported southeast of St. Matthew Island and in the southern Gulf of Anadyr (Krylov *et al.* 1964, Kosygin 1966b, Braham *et al.* 1981, Cameron and Boveng 2007, Cameron *et al.* 2008). In early spring of some years, high densities of bearded seals have also been observed north and west of St. Lawrence Island (Braham *et al.* 1977, Fedoseev *et al.* 1988, Cameron *et al.* 2008). The age-sex composition of these aggregations was not documented, so it is not known if these are whelping areas. However, spring aerial surveys of the Bering Sea conducted in 2012 and 2013 documented numerous bearded seals, including pups, in Norton Sound and the Chirikov Basin north of St. Lawrence Island, extending to well south of St. Matthew and Nunivak Islands (NMFS Marine Mammal Laboratory, unpublished data). The subsistence harvest of bearded seal pups by hunters in Quinhagak also suggests that some bearded seals may whelp south of Nunivak Island (Coffing *et al.* 1999). Existing information on the spring distribution of bearded seals is otherwise limited. Aerial surveys conducted in parts of the Chukchi Sea during April and May of 2016 documented numerous bearded seals, including some pups, in the Hope Basin south of Point Hope, and less frequent sightings of bearded seals (which included a few pups) north of Point Hope (NMFS Marine Mammal Laboratory, unpublished data). Bearded seals were also more commonly observed south of Point Hope during aerial surveys flown primarily along the coast of the northeastern Chukchi Sea in late May to early June of 1999 and 2000 (Bengtson *et al.* 2005). However, the age-sex composition of bearded seals observed was not reported and this survey was timed toward the molting period.

Molting

Adult and juvenile bearded seals molt annually, a process that for adults typically begins shortly after mating, as it does with other mature phocid or ''true'' seals (Chapskii 1938, Ling 1970, Ling 1972, King 1983, Yochem and Stewart 2002). Juvenile bearded seals have been reported to molt earlier than adults (Krylov *et al.* 1964, Heptner *et al.* 1976, Fedoseev 2000). Bearded seals haul out of the water onto the ice more frequently during molting (Burns 1981, Fedoseev 2000, Olnes *et al.* 2020), a behavior that facilitates higher skin temperatures and may accelerate shedding and regrowth of hair and epidermis (Héroux 1960, Feltz and Fay 1966, Fay 1982). A captive bearded seal showed only a slight elevation in metabolic rate during molt (Thometz *et al.* 2021), but also a prolonged molt, consistent with natural history descriptions. In this way, the species may avoid the pulse of energy demand experienced by ringed seals (*Pusa hispida*) and spotted seals (*Phoca largha*), which complete their molt in about one quarter of the time. The molting period of bearded seals in the Bering, Chukchi, and Beaufort seas off Alaska has not been specifically investigated, but has been described as protracted, occurring between April and August with a peak in May and June (Tikhomirov 1964, Kosygin 1966a, Burns 1981). This observed timing of molting coincides with the period in which bearded seals that overwintered in the Bering Sea migrate long distances to summering grounds in the Chukchi and Beaufort seas. Measures of body condition and blubber thickness are at their annual minimums following the molt (Burns and Frost 1979, Smith 1981, Andersen *et al.* 1999).

Diet

Bearded seals feed primarily on benthic organisms, including a variety of invertebrates dwelling on the surface of the seabed (epifauna) and in the seabed substrate (infauna), and some fishes found on or near the sea bottom (demersal). They are also able to switch their diet to include schooling pelagic (non-demersal) fishes when advantageous (Antonelis *et al.* 1994). A wide variety of prey species have been reported for bearded seals of the Beringia DPS, though the bulk of their diet appears to consist of relatively few major prey types. Bearded seals of the Beringia DPS primarily feed on bivalve mollusks and crustaceans like crabs and shrimps, while fishes such as sculpins, cods, and flatfishes can also be a significant component of their diet (Kenyon 1962, Johnson *et al.* 1966, Burns 1967, Kosygin 1971, Burns and Frost 1979, Lowry *et al.* 1979, 1980, Antonelis *et al.* 1994, Hjelset *et al.* 1999, Fedoseev 2000, Dehn *et al.* 2007, Quakenbush *et al.* 2011, Crawford *et al.* 2015, Bryan 2017, Quakenbush 2020a). Quakenbush *et al.* (2011) reported that in the Bering and/or Chukchi seas, the diet of bearded seals shifted toward an increased proportion and diversity of fish between the periods 1961 to 1979 and 1998 to 2009.

Specific bearded seal prey species differ somewhat between geographic locations. This variability is likely a result of differences in prey assemblages in each region (Burns and Frost 1979, Lowry *et al.* 1980, Dehn *et al.* 2007). Diet composition of bearded seals has been observed to change seasonally (Johnson *et al.* 1966, Burns and Frost 1979, Quakenbush *et al.* 2011, Quakenbush 2020a), and has also been reported to vary interannually as well as longer-term (Lowry *et al.* 1980, Quakenbush *et al.* 2011, Carroll *et al.* 2013, Crawford *et al.* 2015, Quakenbush 2020a). Further, bearded seal diet composition may be influenced by interannual variations in sea ice conditions (Hindell *et al.* 2012). No differences have been shown in the feeding habitats of male and female bearded seals (Kelly 1988); however, prey composition of the bearded seal's diet has shown some variation with age (Burns and Frost 1979, Lowry *et al.* 1980, Quakenbush *et al.* 2011, Crawford *et al.* 2015, Quakenbush 2020a). Although major prey types documented in the diets of all bearded seal age classes in the Bering and Chukchi seas included crabs, shrimps, clams, and fishes, differences among age classes were reported in the relative importance of certain prey types and prey species

consumed (based on frequency of occurrence and/or volume) (Burns and Frost 1979, Lowry *et al.* 1980, Quakenbush *et al.* 2011, Crawford *et al.* 2015, Quakenbush 2020a).

Critical Habitat Identification

In the following sections, we describe the relevant definitions and requirements in the ESA and implementing regulations at 50 CFR part 424, and the key information and criteria used to prepare this final critical habitat designation. In accordance with section 4(b)(2) of the ESA, this critical habitat designation is based on the best scientific data available. Our primary sources of information include the status review report for the bearded seal (Cameron *et al.* 2010), our proposed and final rules to list the Beringia and Okhotsk DPSs of the bearded seal as threatened under the ESA (75 FR 77496, December 10, 2010; 77 FR 76740, December 28, 2012), articles in peer-reviewed journals, other scientific reports, peer reviewer and public comments on the proposed rule, and relevant Geographic Information System (GIS) and satellite data (*e.g.,* shoreline data, U.S. maritime limits and boundaries data, sea ice extent) for geographic area calculations and mapping. We also rely upon IK of Alaska Native subsistence users.

To identify specific areas that may qualify as critical habitat for bearded seals of the Beringia DPS, in accordance with 50 CFR 424.12(b), we followed a five-step process: (1) Identify the geographical area occupied by the species at the time of listing; (2) identify physical or biological habitat features essential to the conservation of the species; (3) determine the specific areas within the geographical area occupied by the species that contain one or more of the physical and biological features essential to the conservation of the species; (4) determine which of these essential features may require special management considerations or protection; and (5) determine whether a critical habitat designation limited to geographical areas occupied by the species at the time of listing would be inadequate to ensure the conservation of the species. Our evaluation and conclusions are described in detail in the following sections, and incorporate changes in response to peer reviewer and public comments (see Summary of Comments and Responses and Summary of Changes From the Proposed Designation sections).

Geographical Area Occupied by the Species

The phrase ''geographical area occupied by the species at the time it is listed,'' which appears in the statutory definition of critical habitat, is defined by regulation as an area that may generally be delineated around species' occurrences as determined by the Secretary (*i.e.,* range) (50 CFR 424.02). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis, such as migratory corridors, seasonal habitats, and habitats used periodically, but not solely, by vagrant individuals (*Id.*).

Based on existing literature, including available information on sightings and movements of bearded seals of the Beringia DPS, we identified the range of the Beringia DPS in the final ESA listing rule (77 FR 76740; December 28, 2012) as the Arctic Ocean and adjacent seas in the Pacific Ocean between 145° E longitude and 130° W longitude, except west of 157° E longitude, or west of the Kamchatka Peninsula, where the Okhotsk DPS of the bearded seal is found. As noted previously, we cannot designate areas outside U.S. jurisdiction as critical habitat. Thus, the geographical area under consideration for this designation is limited to areas under U.S. jurisdiction that the Beringia DPS occupied at the time of listing. This area extends to the outer boundary of the U.S. Exclusive Economic Zone (EEZ) in the Chukchi and Beaufort seas and south over the continental shelf in the Bering Sea (Cameron *et al.* 2010).

Physical and Biological Features Essential to the Conservation of the Species

The statutory definition of critical habitat refers to ''physical or biological features essential to the conservation of the species,'' but the ESA does not specifically define or further describe these features. Implementing regulations at 50 CFR 424.02 define such features as those that occur in specific areas and that are essential to support the life-history needs of the species. The regulations provide additional details and examples of such features.

Based on the best scientific information available regarding the natural history of bearded seals and the habitat features that are essential to support the species' life-history needs, we have identified the following physical and biological features that are essential to the conservation of the Beringia DPS of bearded seals within U.S. waters occupied by the species.

(1) *Sea ice habitat suitable for whelping and nursing, which is defined as areas with waters 200 m or less in depth containing pack ice of at least 25 percent concentration and providing bearded seals access to those waters from the ice.*

Sea ice habitat suitable for bearded seal whelping and nursing is essential to the conservation of the Beringia DPS because the seals rely on sea ice as a dry platform for whelping, nursing, and rearing pups in proximity to benthic foraging habitats. Further, hauling out on the ice reduces thermoregulatory demands, and is thus especially important for growing pups, which have a disproportionately large skin surface and rate of heat loss in the water (Harding *et al.* 2005, Cameron *et al.* 2010). If suitable ice cover is absent from shallow-water feeding areas during whelping and nursing, maternal females would be forced to seek sea ice over deeper waters, with less access to benthic food, or may haul out on shore, with potential increased risk of disturbance, predation, intra- and interspecific competition, and disease transmission. However, we are not aware of any occurrence of bearded seals whelping or nursing pups on land. Rearing pups in poorer foraging grounds would also require mothers to forage for longer periods to replenish energy reserves lost while nursing and/or compromise their own body condition, both of which could impact the transfer of energy to offspring and the survival of pups, mothers, or both. In addition, learning to forage in sub-optimal habitat could impair a pup's ability to learn effective foraging skills, and hence, impact its long-term survival.

To identify ice concentrations (percentage of ocean surface covered by sea ice) that we consider essential for bearded seal whelping and nursing, we relied upon three studies in the Bering Sea that estimated ice concentrations selected by bearded seals in the spring, based on aerial survey observations of bearded seals hauled out on ice. Simpkins *et al.* (2003) found that between St. Lawrence and St. Mathew Islands in March, bearded seals selected areas with ice concentrations of 70 to 90 percent. Another study conducted in a broader area of the Bering Sea south of St. Lawrence Island in April and May found the highest probability of bearded seal occurrence was in ice concentrations of 75 to 100 percent, but only the 0 to 25 percent ice class had substantially lower probability of occurrence (Ver Hoef *et al.* 2014). Informed by these two studies (specifically, Simpkins *et al.* (2003) and Ver Hoef *et al.* (*In review*), later

published as Ver Hoef *et al.* (2014)), Cameron *et al.* (2010) defined the minimum ice concentration sufficient for bearded seal whelping and nursing as 25 percent. Subsequently, a third paper by Conn *et al.* (2014), which established analytical methods to estimate the abundance of ice-associated seals from survey data collected across the U.S. Bering Sea in April and May, showed that in April bearded seals occupied ice concentrations exceeding 95 percent. Bearded seal abundance peaked in ice concentrations between about 50 and 75 percent, and abundance was lowest in ice concentrations largely below 25 percent. Based on the information from these studies, we concluded that sea ice habitat suitable for bearded seal whelping and nursing is of at least 25 percent ice concentration.

Cameron *et al.* (2010) defined the core distribution of bearded seals as those areas of the known extent of the species' distribution that are in waters less than 500 m deep. However, as discussed above, the bearded seal's effective habitat is generally restricted to areas where seasonal sea ice occurs over relatively shallow waters, typically less than 200 m. Moreover, in the U.S. portion of its range, the Beringia DPS occurs largely in waters less than 200 m deep. Also, bearded seals favor ice with access to the water, and tend to avoid continuous areas of landfast ice and unbroken drifting ice. Therefore, we conclude that sea ice habitat essential for bearded seal whelping and nursing occurs in areas with waters 200 m or less in depth containing pack ice (*i.e.,* sea ice other than landfast ice; pack ice is also termed drift ice) of at least 25 percent concentration and providing bearded seals access to those waters from the ice.

(2) *Sea ice habitat suitable as a platform for molting, which is defined as areas with waters 200 m or less in depth containing pack ice of at least 15 percent concentration and providing bearded seals access to those waters from the ice.*

Sea ice habitat suitable for molting is essential to the conservation of the Beringia DPS because molting is a biologically important, energy-intensive process that could incur increased energetic costs if it occurs in water or could involve increased risk of predation (due to the absence of readily accessible escape routes to avoid predators, *i.e.,* natural opening in the sea ice), intra- and inter-specific competition, and the potential for disease transmission if it occurs on land. In light of the studies referenced above by Simpkins *et al.* (2003) and Ver Hoef *et al.* (*In review*) (later published as Ver Hoef *et al.* (2014)) documenting spring ice concentrations selected by bearded seals, and based on the assumption that sea ice requirements for molting in May and June are less stringent than those for whelping and nursing pups, Cameron *et al.* (2010) concluded that 15 percent ice concentration would be minimally sufficient for molting. As discussed above, the U.S. range of the Beringia DPS is largely in waters 200 m or less in depth, and the preferred depth range of bearded seals is less than 200 m. Further, bearded seals favor ice with access to the water, and tend to avoid continuous areas of landfast ice and unbroken drifting ice. Therefore, we conclude that sea ice essential for molting occurs in areas with waters 200 m or less in depth containing pack ice of at least 15 percent concentration and providing bearded seals access to those waters from the ice.

(3) *Primary prey resources to support bearded seals: Waters 200 m or less in depth containing benthic organisms, including epifaunal and infaunal invertebrates, and demersal fishes.*

Primary prey resources to support bearded seals in waters 200 m or less in depth are essential to the conservation of the Beringia DPS because bearded seals rely on those prey resources to meet their annual energy budgets. As discussed above, bearded seals have a diverse diet with a large variety of prey items throughout their range, and are considered benthic generalists. The proportion of benthic dives made by tagged juvenile bearded seals (n=14) ranged from 0.66 to 0.93, indicating that most but not all foraging was done near the bottom (Olnes *et al.* 2020).

Quakenbush *et al.* (2011) found that a diverse assemblage of invertebrates (63 taxa) and fish (20 taxa), associated with both benthic and pelagic habitats, was consumed by bearded seals sampled in the Bering and Chukchi seas between 1961 and 2009. Major prey types reported for bearded seals in the Bering, Chukchi, and western Beaufort seas include epifaunal crustaceans like crabs and shrimps as well as infaunal invertebrates like clams and marine worms, but fishes such as sculpins, Arctic cod (*Boreogadus saida*), and saffron cod (*Eleginus gracilis*) can also be a significant component (Johnson *et al.* 1966, Burns 1967, Kosygin 1971, Burns and Frost 1979, Lowry *et al.* 1979, 1980, Antonelis *et al.* 1994, Dehn *et al.* 2007, Quakenbush *et al.* 2011, Crawford *et al.* 2015).

Stomach content analysis of bearded seals from the Alaska Native subsistence harvest in the northern Bering and Chukchi seas during 2000 to 2019 (n=834) forms the most comprehensive source for description of recent and current diets of these seals in U.S. waters (Quakenbush 2020a). The results reported by age class (non-pup versus pup), season (open-water vs. ice-covered), and sampling period (2000 to 2015 versus 2016 to 2020) for common prey types (prey items identified in 20 percent or more of stomachs) show that bearded seals eat many species of fish and invertebrates. Sample-weighted averages across age class, season, and sampling periods indicate invertebrate remains were found in most (96 percent) of the bearded seal stomachs. The most prevalent invertebrate groups were shrimps (71 percent of stomachs; mostly family Crangonidae), crabs (infraorder Brachyura, 52 percent of stomachs), and bivalve mollusks (45 percent of stomachs). The most prevalent fish groups were sculpins (family Cottidae, 63 percent of stomachs), and righteye flounders (family Pleuronectidae, 48 percent of stomachs). Small cods were also important (family Gadidae, 46 percent of stomachs). All of these prevalent fish are demersal, spending much of their lives on or near the bottom. Arctic cod was the most prevalent small cod (saffron cod was also identified as a common prey species). It is more pelagic than the other most prevalent fishes identified in the seals' diet and is often associated with the under surface of the sea ice; whether bearded seals catch Arctic cod near the bottom, consistent with their main foraging habits, has not been determined.

As described below in the section, Summary of Changes From the Proposed Designation, peer reviewer and public comments led us to re-evaluate and refine the proposed primary prey resources essential feature, which we identified in the proposed rule as benthic organisms, including epifaunal and infaunal invertebrates, and demersal and schooling pelagic fishes. The U.S. range of the Beringia DPS is largely in waters 200 m or less in depth and the preferred depth range of bearded seals is less than 200 m (see *General Seasonal Distribution and Habitat Use* section). We therefore continue to find that it is appropriate to identify the maximum water depth of this feature as 200 m. As we stated in the proposed rule, the broad number of prey species consumed by bearded seals makes specification of particular essential prey species impracticable. However, in considering the best scientific data available on the diets of bearded seals in Alaska, we recognized

that the high prevalence of benthic invertebrates and demersal fishes reported reflects the seals' reliance on seafloor prey communities in particular to meet their annual energy budgets. We therefore conclude that the primary prey resources essential to the conservation of the Beringia DPS are benthic organisms, including epifaunal and infaunal invertebrates, and demersal fishes found in water depths of 200 m or less. We find that this level of specificity, identifying prey types known to be part of the diet of Beringia DPS bearded seals but not limiting the definition to specific prey species or a limited subset of prey types, is most appropriate for defining this essential feature based on the best scientific data available. Because bearded seals feed on a variety of benthic prey items and temporal differences in diet composition have been reported (Cameron *et al.* 2010, Quakenbush *et al.* 2011, Crawford *et al.* 2015, Quakenbush 2020a), we conclude that areas in which the primary prey resources essential feature occurs are those that contain one or more of these prey resources.

Specific Areas Containing the Essential Features

To determine which areas qualify as critical habitat within the geographical area occupied by the species, we are required to identify ''specific areas'' that contain one or more of the physical or biological features essential to the conservation of the species (and that may require special management considerations or protection, as described below) (50 CFR 424.12(b)(1)(iii)). Delineation of the specific areas is done at a scale determined by the Secretary to be appropriate (50 CFR 424.12(b)(1)). Regulations at 50 CFR 424.12(c) also require that each critical habitat area be shown on a map.

In determining the scale and boundaries for the specific areas, we considered, among other things, the scales at which biological data are available and the availability of standardized geographical data necessary to map boundaries. Because the ESA implementing regulations allow for discretion in determining the appropriate scale at which specific areas are drawn (50 CFR 424.12(b)(1)), we are not required, nor was it possible, to determine whether each square inch, acre, or even square mile independently meets the definition of ''critical habitat.'' A main goal in determining and mapping the boundaries of the specific areas is to provide a clear description and documentation of the areas containing the identified essential features. This is ultimately fundamental to ensuring that Federal action agencies are able to determine whether their particular actions may affect the critical habitat.

As described below in the section, Summary of Changes From the Proposed Designation, after refining the proposed definition of the primary prey resources essential feature, and in response to public comments and concerns regarding our proposed delineation of the boundaries of critical habitat with respect to the primary prey resources essential feature, we re-evaluated the best scientific data available and the approach we used to identify those boundaries to ensure that they were drawn appropriately. As a result of this evaluation, we now identify one specific area that contains this feature in addition to the sea ice essential features as described in this section.

As we explain below, the essential features of bearded seal critical habitat, in particular the sea ice essential features, are dynamic and their locations are variable on both spatial and temporal scales. Bearded seal movements and habitat use are strongly influenced by the seasonality of sea ice, and the seals can range widely in response to the specific locations of the most suitable habitat conditions. Based on the best scientific data available, we have therefore identified one specific area that comprises parts of the Bering, Chukchi, and Beaufort seas as critical habitat, within which all of the identified essential features can be found in any given year.

We first focused on identifying where the essential features that support the species' life history functions of whelping, nursing, and molting occur (*i.e.,* specific areas that contain the sea ice essential features). As discussed above, bearded seals generally maintain an association with drifting sea ice, and many seals migrate seasonally to maintain access to this ice. Bearded seal whelping and nursing take place in the Bering Sea while ice cover is at or near its peak extent. Bearded seal molting overlaps with the periods of whelping, nursing, pup maturation, and breeding, and continues into early summer as the pack ice edge recedes north through the Bering Strait and into the Chukchi and Beaufort seas. Therefore, we considered where the sea ice essential features occur in all three seas.

The dynamic nature of sea ice and the spatial and temporal variations in sea ice cover constrain our ability to map precisely the specific geographic locations where the sea ice essential features occur. Sea ice characteristics such as ice extent and ice concentration vary spatiotemporally ((*e.g.,* Frey *et al.* 2015). Thus, the specific geographic locations of essential sea ice habitat used by bearded seals vary from year to year, or even day to day, depending on many factors, including time of year, local weather (*e.g.,* wind speed/direction), and oceanographic conditions (*e.g.,* Burns and Frost 1979, Frey *et al.* 2015, Gadamus *et al.* 2015). In addition, the duration that sea ice habitat essential for whelping and nursing, or for molting, is present in any given location can vary annually depending on the rate of ice melt and other factors. The temporal overlap of bearded seal molting with whelping and nursing, combined with the dynamic nature of sea ice, also makes it impracticable to separately identify specific areas where each of these essential features occur. However, it is unnecessary to distinguish between specific areas containing each sea ice essential feature because the ESA permits the designation of critical habitat where one or more essential features occur.

Bearded seals of the Beringia DPS can range widely, which, combined with the dynamic variations in sea ice conditions, results in individuals distributing broadly and using sea ice habitats within a range of suitable conditions. We integrated these physical and biological factors into our identification of specific areas where one or both sea ice essential features occur based on the information currently available on the seasonal distribution and movements of bearded seals during the annual period of reproduction and molting, the maximum depth where the sea ice essential features occur, and satellite-derived estimates of the position of the sea ice edge and extent and seasonality of landfast ice over time. Although this approach allowed us to identify specific areas that contain one or both of the sea ice essential features at certain times, the available data supported delineation of specific areas only at a coarse scale. Consequently, we delineated a single specific area that contains the sea ice features essential to the conservation of the Beringia DPS, as follows.

We first identified the southern boundary of this specific area. The information discussed above regarding the seasonal distribution and movements of bearded seals in the Bering Sea suggests that sea ice essential for whelping and nursing (and potentially for molting) extends south of St. Matthew and Nunivak Islands. But a more precise southern boundary for this habitat is unavailable because existing

information is limited on the spatial distribution and whelping locations of bearded seals in the Bering Sea during spring, and the temporal and spatial distribution of sea ice cover, which influences bearded seal distributions, is variable between years.

We therefore turned to Sea Ice Index data maintained by the National Snow and Ice Data Center (NSIDC) for information on the estimated median position of the ice edge in the Bering Sea during April (Fetterer *et al.* 2017, Version 3.0, accessed November 2019), which is the peak month for bearded seal whelping activity (peak molting for adults occurs later in the spring). This estimated median ice edge is derived by the NSIDC from a time series of satellite records for the 30-year reference period from 1981 to 2010. To further inform our evaluation, we also examined the position of the median ice edge in April for the more recent 30-year period from 1990 to 2019, which was estimated using methods and data types similar to those used for the Sea Ice Index. We note that the two most recent years included in this 30-year period had record low ice extent in the Bering Sea (Stabeno and Bell 2019).

The April median ice edge for the 1981 to 2010 reference period from the Sea Ice Index is located approximately 170 kilometers (km) southwest of St. Matthew Island and 175 km south of Nunivak Island, and it extends eastward across lower Kuskokwim Bay to near Cape Newenham, a headland between Kuskokwim Bay and Bristol Bay. Because bearded seals use nearly the entire extent of pack ice over the Bering Sea shelf in spring, depending upon ice conditions in a given year, some bearded seals may use sea ice for whelping south of this median ice edge. But we concluded that the variability in the annual extent and timing of sea ice in this southernmost portion of the bearded seal's range in the Bering Sea (*e.g.,* Boveng *et al.* 2009, Stabeno *et al.* 2012, Frey *et al.* 2015) renders these waters unlikely to contain the sea ice essential features on a consistent basis in more than limited areas. The position of the April median ice edge for the more recent 1990 to 2019 period is generally similar to that of the Sea Ice Index, except that the ice edge has a wide inverted U-shape in Kuskokwim Bay, and as a result, there is roughly half as much area with sea ice there. Given the reduction in sea ice in Kuskokwim Bay between the reference period used for the Sea Ice Index and the more recent period, we also concluded that these waters appear unlikely to contain the sea ice essential features on a consistent basis in more than limited areas.

As such, we delineated the southern boundary to reflect the estimated position of the April median ice edge west of Kuskokwim Bay. To simplify the southern boundary for purposes of delineation on maps, we modified the ice edge contour line for the 1990 to 2019 period as follows: (1) Intermediate points along the contour line between its intersection point with the seaward limit of the U.S. EEZ (60°32′26″ N/179°9′53″ W) and the point where the contour line turns eastward (57°58′ N/170°25′ W) were removed to form the segment of the southern boundary that extends from the seaward limit of the U.S. EEZ southeastward approximately 575 km; (2) intermediate points along the contour line between the point where the contour line turns eastward and the approximate point on the west side of Kuskokwim Bay where the contour line turns northeastward (58°29′ N/164°46′ W) were removed to form a second segment of the southern boundary that extends eastward approximately 335 km; and (3) these two line segments were connected to the mainland by an approximately 200-km line segment that follows 164°46′ W longitude to near the west side of the mouth of the Kolovinerak River, about 50 km east of Nunivak Island. This editing produced a simplified southern boundary that retains the general shape of the original ice edge contour line west of Kuskokwim Bay.

We then identified the northern boundary of the specific area that contains one or both of the sea ice essential features. As discussed above (see Description and Natural History section), limited spring aerial survey information, satellite tracking data for tagged bearded seals, and year-round passive acoustic recordings of bearded seal vocalizations suggest that some portion of the Beringia DPS overwinters in the Chukchi and Beaufort seas. In addition, many of the bearded seals that overwinter in the Bering Sea migrate northward with the receding ice edge in the spring and early summer into the Chukchi and Beaufort seas, coincident with the timing of molting. Therefore, consistent with the maximum depth identified for the sea ice essential features, we defined the northern boundary as the 200-m isobath over the continental shelf break in the Chukchi and Beaufort seas (*i.e.,* the northern extent of waters 200 m or less in these seas), and the boundaries to the east and west as the limit of the U.S. EEZ. Sea ice concentrations suitable for whelping, nursing, and molting occur over waters extending up to and beyond these boundaries (see, *e.g.,* Fetterer *et al.* 2017, Sea Ice Index Version 3.0, accessed November 2019). We note that Canada contests the limits of the U.S. EEZ in the eastern Beaufort Sea, asserting that the line delimiting the two countries' EEZs should follow the 141st meridian out to a distance of 200 nautical miles as opposed to an equidistant line that extends seaward perpendicular to the coast at the U.S.-Canada land border.

Sea ice habitat identified as essential for bearded seal whelping, nursing, and molting is found in waters 200 m or less in depth containing pack ice, *i.e.,* sea ice other than landfast ice, of suitable concentrations. We therefore considered the best scientific data available regarding the spatial extent of landfast ice and its annual cycle in the Beaufort, Chukchi, and Bering seas to inform our delineation of the appropriate shoreward boundary for the specific area containing one or both sea ice essential features. In the following discussion of landfast ice, we refer to the northeastern Chukchi Sea (from Wainwright to Point Barrow) and Beaufort Sea as the Beaufort region, the Chukchi Sea extending south of Wainwright to the tip of the northern Seward Peninsula as the Chukchi region, and the Bering Sea from there south to Kuskokwim Bay as the Bering region. Analysis of data derived using satellite imagery for each of twelve annual cycles between 1996 and 2008 indicates that landfast ice in the Beaufort region extended farther from shore and occurred in deeper water than in the Chukchi and Bering regions (Mahoney *et al.* 2012, Mahoney *et al.* 2014, Jensen *et al.* 2020).

Mahoney *et al.* (2014) found that the water depth at the seaward landfast ice edge in the Beaufort region developed over the course of winter to a single well-defined mode around 20 m, in agreement with earlier findings by Mahoney *et al.* (2007), although there was significant variability in water depths at the seaward landfast ice edge and multiple modes at a local scale (some of which is related to differences in local configuration of the coastline and bathymetry, as is the case more broadly across the Beaufort, Chukchi, and Bering seas). Thus, overall there is similarity between the average seaward landfast ice edge location and isobaths near 20 m in the Beaufort region (Mahoney *et al.* 2007, Mahoney *et al.* 2012, Mahoney *et al.* 2014). In contrast, the distribution of water depths at the seaward landfast ice edge in the Chukchi region was found to be broader and less symmetric than in the Beaufort region (modal water depth at the

seaward landfast ice edge was approximately 12 to 13 m), and showed substantial variation in modal water depth at the seaward landfast ice edge in each subregion (Mahoney *et al.* 2012, Mahoney *et al.* 2014). Hence, the modal depth at the seaward landfast ice edge in the Chukchi region is highly locally specific and, therefore, the position of the seaward landfast ice edge is not well represented by a particular isobath (Mahoney *et al.* 2012, Mahoney *et al.* 2014). Finally, Jensen *et al.* (2020) reported that in the Bering region, the modal water depths at the seaward landfast ice edge varied by subregion (for the northern, central, and southern subregions, respective values were 13 m, 7 m, and 8.5 m). They attributed this variation to differing conditions in nearshore bathymetry and physical geography (*e.g.,* presence of coastal features such as lagoons and sheltered embayments).

To assess changes in landfast ice in the Chukchi and Beaufort regions, Mahoney *et al.* (2014) compared data from their study with late winter maximum seaward landfast ice edges mapped by Stringer (1978) for the period 1973 to 1976. They found that in the Beaufort region, the late winter maximum seaward landfast ice edges delineated for the period 1973 to 1976 were within the same range as those delineated for the period 1996 to 2008. However, in the Chukchi region, there was evidence of a significant reduction in the late winter maximum extent of landfast ice (Mahoney *et al.* 2014). In addition, trends were identified that in general indicate an earlier end (and later start) to the landfast ice season in the both regions (Mahoney *et al.* 2012, Mahoney *et al.* 2014). A similar comparison is not available for the Bering region; however, Jensen *et al.* (2020) reported a trend in earlier landfast ice breakup (and later formation) from 1996 to 2008 in two of the three Bering subregions (breakup of landfast occurred between March and May, but persistence of this ice varied with local physical geography). They also noted that the results of their analysis for the Bering region do not account for trends in recent periods of sea ice decline in this region (*e.g.,* Perovich *et al.* 2019a, Perovich *et al.* 2019b, Stabeno and Bell 2019). IK of landfast ice conditions documented for several coastal communities in the Bering Strait region indicates that landfast ice can be particularly dynamic in some locations in the Bering Sea, and those communities have noted changes in landfast ice in recent years, *e.g.,* a reduction in the winter/early spring average extent of landfast ice in Norton Bay (Oceana and Kawerak 2014, Huntington *et al.* 2017d).

As shown in the preceding discussion, the best information available indicates that relationships between landfast ice and bathymetry in the Beaufort region, Chukchi region, and Bering region differ regionally and locally. Significant inter-annual variability in the maximum extent of landfast ice was also observed, in particular in the Beaufort region (Mahoney *et al.* 2007, Mahoney *et al.* 2012, Mahoney *et al.* 2014). In addition, there is evidence of decreases in the extent of landfast ice trends in earlier breakup of landfast ice in the Chukchi and Bering regions. It is therefore impracticable to delineate a single isobath as the shoreward boundary for the specific area containing one or both of the sea ice essential features that accounts precisely for where landfast may occur during the period of whelping, nursing, and molting in a given year. Nonetheless, we concluded that defining the nearshore boundary by a depth contour at a coarse level for each region is appropriate given that landfast ice forms in areas of shallow bathymetry and such ice is not identified as essential to the conservation of the Beringia DPS. Because the available information indicates that in the Beaufort region, the 20-m isobath provides a reasonable approximation of the average stable extent of landfast ice, and landfast ice extent has apparently not changed significantly in the past several decades, we selected the 20-m isobath (relative to MLLW) as the shoreward boundary in the Beaufort region. The available information indicates that in the Chukchi and Bering regions landfast ice occupies shallower water overall, though water depths at the seaward landfast ice edge are more variable and locally specific. In addition, there is evidence of decreases in the extent of landfast ice and trends in earlier breakup of this ice in the Chukchi region, as well as of changes in landfast ice conditions in the Bering region in recent years. In determining the shoreward boundary in the Chukchi and Bering regions, we considered the above information on landfast ice in these areas in addition to examining existing information on the spring distribution of bearded seals from aerial surveys of the Bering Sea (in 2012 and 2013) and parts of the Chukchi Sea (in 2016) (NMFS Marine Mammal Laboratory, unpublished data) to inform our selection of appropriate shoreward boundaries. After considering the available information, we selected the 10-m isobath (relative to MLLW) as the shoreward boundary in the Chukchi region, and the 5-m isobath (relative to MLLW) as the shoreward boundary in the Bering region. For both of these regions, we conclude that shallower waters are likely to contain landfast ice and are therefore less likely to contain the sea ice essential features. We adjusted the shoreward boundary to form a continuous line crossing the entrance to Port Clarence Bay because available information does not indicate this area contains the sea ice essential features. For the purpose of delineating the shoreward boundary, we defined the division between the Beaufort and Chukchi regions as the line of latitude south of Wainwright at 70°36′ N, and the division between the Chukchi and Bering regions as the line of latitude south of Cape Prince of Wales (tip of the Seward Peninsula) at 65°35′ N. Although we recognize that landfast ice can occur to a varying extent within the specific area delineated for the sea ice essential features, given the dynamic nature of sea ice, we conclude that the shoreward boundary is drawn at an appropriate scale based on the best scientific data available.

The seasonally ice-covered shelf waters of the Alaskan Bering, Chukchi, and Beaufort seas support an abundance of bearded seal benthic prey resources (review of abundance and distribution of Beringia DPS prey in Cameron *et al.* 2010, also, *e.g.,* Logerwell *et al.* 2011, McCormick-Ray *et al.* 2011, Rand and Logerwell 2011, Stevenson and Lauth 2012, Blanchard *et al.* 2013, Konar and Ravelo 2013, Ravelo *et al.* 2014, Grebmeier *et al.* 2015, Norcross *et al.* 2017a, Norcross *et al.* 2017b, Sigler *et al.* 2017, Grebmeier *et al.* 2018, Lauth *et al.* 2019). Primary prey species important in the diet of bearded seals in the Beringia DPS include decapod crustaceans, such as the multitude of crangonid shrimp species known to inhabit the Bering and Chukchi seas (Cameron *et al.* 2010). Most crangonid shrimp species are broadly distributed throughout this region (*e.g., Sclerocrangon boreas* and *Argis lar*) (Butler 1980), and in the Beaufort Sea the crangonid shrimp *Sabinea septemcarinata* is widespread (Frost and Lowry 1983, Konar and Ravelo 2013, Ravelo *et al.* 2015, Norcross *et al.* 2017b). Crabs commonly consumed by bearded seals that inhabit the Bering and Chukchi seas include the Arctic lyre crab (*Hyas coarctatus)* and snow crab (*Chionoecetes opilio*) (Ravelo *et al.* 2014, Gross *et al.* 2017, Divine *et al.* 2019), which trawl surveys indicate are

also found in the western Beaufort Sea (Logerwell *et al.* 2011, Ravelo *et al.* 2015). Demersal fishes common in bearded seal diets in Alaska include sculpins, Arctic cod, saffron cod, and flatfishes. One of the most common flatfish in the eastern Bering Sea, yellowfin sole (*Limanda aspera*) (Spies *et al.* 2020b), has been documented in the diet of bearded seals in Alaska, and is also common in the Chukchi Sea (Love *et al.* 2016). In the far northern Bering Sea and the Chukchi and Beaufort seas, the fish fauna transitions from a community dominated by flatfishes to one dominated by smaller cods and sculpins (Cameron *et al.* 2010). Sculpins, which are commonplace in the Bering, Chukchi, and Beaufort seas, include Arctic staghorn sculpin (*Gymnocanthus tricuspis*) (Love *et al.* 2016, Mecklenburg *et al.* 2016), a species prevalent in the diet of bearded seals in Alaska. Arctic cod and saffron cod, which are also commonly consumed by bearded seals, make up a substantial portion of the fish biomass in the U.S. Chukchi Sea, and Arctic cod dominates the fish biomass in the U.S. Beaufort Sea (North Pacific Fishery Management Council 2009, Logerwell *et al.* 2015). The distribution of saffron cod overlaps to some extent with that of Arctic cod in the Chukchi and Beaufort seas, but this species is typically found in warmer waters and has a more coastal distribution that extends further south in the Bering Sea (Love *et al.* 2016, Mecklenburg *et al.* 2016).

In summary, the available data on the distributions of bearded seal primary prey species indicate that they occur throughout the geographical area occupied by the species. However, except in limited circumstances that do not apply here, the Secretary cannot designate as critical habitat the entire geographical area occupied by a species. We have no information that suggests any portions of the species' occupied habitat contains prey species that are of greater importance or otherwise differ from those found within the specific area defined by the sea ice essential features. The best information available indicates that the movements of bearded seals and their use of habitat for foraging are influenced by a variety of factors and the seals' spatial patterns of habitat use and locations of intensive use can vary substantially among individuals. Most importantly, the movements and habitat use of bearded seals are strongly influenced by the seasonality of ice cover and they forage throughout the year. Given this and our consideration of the best scientific data available, we concluded that the best approach to determine the appropriate boundaries for critical habitat is to base the delineation on the same boundaries identified above for the sea ice essential features. We conclude this specific area contains sufficient primary prey resources to support the conservation of the Beringia DPS. Thus, we are designating as critical habitat a single specific area that contains all three of the identified essential features.

Special Management Considerations or Protection

A specific area within the geographic area occupied by a species may only be designated as critical habitat if the area contains one or more essential physical or biological feature that may require special management considerations or protection (16 U.S.C. 1532(5)(A)(i); 50 CFR 424.12(b)(1)(iv)). ''Special management considerations or protection'' is defined as methods or procedures useful in protecting the physical or biological features essential to the conservation of listed species (50 CFR 424.02). In determining whether the essential physical or biological features ''may require'' special management considerations or protection, it is necessary to find only that there is a possibility that the features may require special management considerations or protection in the future; it is not necessary to find that such management is presently or immediately required. *Home Builders Ass'n of N. California* v. *U.S. Fish and Wildlife Serv.,* 268 F. Supp. 2d 1197, 1218 (E.D. Cal. 2003). The relevant management need may be ''in the future based on possibility.'' *Bear Valley Mut. Water Co.* v. *Salazar,* No. SACV 11–01263–JVS, 2012 WL 5353353, at *25 (C.D. Cal. Oct. 17, 2012). *See also Cape Hatteras Access Pres. Alliance* v. *U.S. Dept. of Interior,* 731 F. Supp. 2d 15, 24 (D.D.C. 2010) (''The Court explained in CHAPA I that 'the word ''may'' indicates that the requirement for special considerations or protections need not be immediate' but must require special consideration or protection 'in the future.'''') (citing *Cape Hatteras Access Pres. Alliance* v. *U.S. Dept. of Interior,* 344 F. Supp. 2d 108, 123–24 (D.D.C. 2004)).

We have identified four primary sources of potential threats to one or more of the habitat features identified above as essential to the conservation of the Beringia DPS of bearded seals: climate change; oil and gas exploration, development, and production; marine shipping and transportation; and commercial fisheries. As further detailed below, both sea ice essential features and the primary prey resources essential feature may require special management considerations or protection as a result of impacts (either independently or in combination) from these sources. Our evaluation does not consider an exhaustive list of threats that could have impacts on the essential features, but rather considers the primary potential threats that we are aware of at this time that support our conclusion that special management considerations or protection of each of the essential features may be required. Further, we highlight particular threats associated with each source of impacts while recognizing that certain threats are associated with more than one source (*e.g.,* marine pollution and noise).

Climate Change

The principal threat to the persistence of the Beringia DPS of bearded seals is the ongoing and anticipated decreases in the extent and timing of sea ice stemming from climate change. Climate-change-related threats to the Beringia DPS's habitat are discussed in detail in the bearded seal status review report (Cameron *et al.* 2010), as well as in our proposed and final rules to list the Beringia DPS of bearded seals as threatened. Total Arctic sea ice extent has been showing a decline through all months of the satellite record since 1979 (Meier *et al.* 2014). Although there will continue to be considerable annual variability in the rate and timing of the breakup and retreat of sea ice, trends in climate change are moving toward ice that is more susceptible to melt (Markus *et al.* 2009), and areas of earlier spring ice retreat (Stammerjohn *et al.* 2012, Frey *et al.* 2015). Notably, February and March ice extent in the Bering Sea in 2018 and 2019 were the lowest on record (Stabeno and Bell 2019), and in the spring of 2019, melt onset in the Chukchi Sea occurred 20 to 35 days earlier than the 1981 to 2010 average (Perovich *et al.* 2019b).

Activities that release carbon dioxide and other heat-trapping greenhouse gases (GHGs) into the atmosphere, most notably those that involve fossil fuel combustion, are the major contributing factor to climate change and loss of sea ice (Intergovernmental Panel on Climate Change (IPCC) 2013, U.S. Global Climate Change Research Program (USGCRP) 2017, Stroeve and Notz 2018, IPCC 2021). Such activities may adversely affect the essential features of the habitat of the Beringia DPS by diminishing sea ice suitable for whelping, nursing, and molting, and by causing changes in the distribution, abundance, and/or species composition of primary prey resources to support

bearded seals in association with changes in ocean conditions, such as warming and acidification (caused primarily by uptake of atmospheric CO_2) (as reviewed by Cameron *et al.* 2010, also, *e.g.,* Kędra *et al.* 2015, Kortsch *et al.* 2015, Renaud *et al.* 2015, Alabia *et al.* 2018, Arctic Monitoring and Assessment Programme (AMAP) 2018, Thorson *et al.* 2019, Baker *et al.* 2020, Huntington *et al.* 2020). Declines in the extent and timing of sea ice cover may also lead to increased shipping activity (discussed below) and other changes in anthropogenic activities, with the potential for increased risks to the habitat features essential to the Beringia DPS (Cameron *et al.* 2010). Given that the quality and quantity of these essential features, in particular sea ice, may be diminished by the effects of climate change, we conclude that special management considerations or protection may be necessary, either now or in the future.

Oil and Gas Activity

Oil and gas exploration, development, and production activities in the U.S. Arctic may include: seismic surveys; exploratory, delineation, and production drilling operations; construction of artificial islands, causeways, shore-based facilities, and pipelines; and vessel and aircraft operations. These activities have the potential to affect the essential features of Beringia DPS critical habitat, primarily through pollution (particularly in the event of a large oil spill), noise, and physical alteration of the species' habitat.

Large oil spills (considered in this section to be spills of relatively great size, consistent with common usage of the term) are generally considered to be the greatest threat associated with oil and gas activities in the Arctic marine environment (AMAP 2007). Experiences with spills in subarctic regions, such as in Prince William Sound, Alaska, have shown that large oil spills can have lasting ecological effects (AMAP 2007, Barron *et al.* 2020). In contrast to spills on land, large spills at sea, especially when ice is present, are difficult to contain or clean up, and may spread over hundreds or thousands of square kilometers (National Research Council 2014, Wilkinson *et al.* 2017). Responding to a sizeable spill in the Arctic environment would be particularly challenging. Reaching a spill site and responding effectively would be especially difficult, if not impossible, in winter when weather can be severe and daylight extremely limited. Oil spills under ice or in ice-covered waters are the most challenging to deal with due to, among other factors, limitations on the effectiveness of current containment and recovery technologies when sea ice is present (Wilkinson *et al.* 2017). The extreme depth and the pressure that oil was under during the 2010 blowout at the Deepwater Horizon well in the Gulf of Mexico may not exist in the shallow continental shelf waters of the Beaufort and Chukchi seas. Nevertheless, the difficulties experienced in stopping and containing the Deepwater Horizon blowout, where environmental conditions, available infrastructure, and response preparedness were comparatively good, point toward even greater challenges in containing and cleaning a large spill in a much more environmentally severe and geographically remote Arctic location.

Although planning, management, and use of best practices can help reduce risks and impacts, the history of oil and gas activities indicates that accidents cannot be eliminated (AMAP 2007). Data on large spills (*e.g.,* operational discharges, spills from pipelines, blowouts) in Arctic waters are limited because oil exploration and production there has been limited, and to date, no large spills have occurred in U.S. Arctic marine waters. The Bureau of Ocean Energy Management (BOEM) (2011) estimated the chance of one or more oil spills greater than or equal to 1,000 barrels occurring if development were to take place in the Beaufort Sea or Chukchi Sea Planning Areas as 26 percent for the Beaufort Sea over the estimated 20 years of production and development, and 40 percent for the Chukchi Sea over the estimated 25 years of production and development.

Icebreaking vessels, which may be used for in-ice seismic surveys or to manage ice near exploratory drilling ships, also have the potential to affect the sea ice essential features of bearded seal habitat through physical alteration of the sea ice (see also *Marine Shipping and Transportation* section). Other activities associated with oil and gas exploration and development that may physically alter the essential sea ice features include offshore through-ice activities such as trenching and installation of pipelines. In addition, there is evidence that noise associated with activities such as seismic surveys can result in behavioral and other effects on fishes and invertebrate species (Carroll *et al.* 2017, Slabbekoorn *et al.* 2019), although the available data on such effects are currently limited, in particular for invertebrates (Hawkins *et al.* 2015, Hawkins and Popper 2017), and the nature of potential effects specifically on the primary prey resources essential feature are unclear.

In summary, a large oil spill could render areas containing the identified essential features unsuitable for use by bearded seals of the Beringia DPS. In such an event, sea ice habitat suitable for whelping, nursing, and/or for molting could be oiled. Primary prey resources essential to support bearded seals could also become contaminated, experience mortality, or be otherwise adversely affected by spilled oil. In addition, disturbance effects (both physical disturbance and acoustic effects) could alter the quality of the essential features of bearded seal critical habitat, or render habitat unsuitable. We conclude that the essential features of the habitat of the Beringia DPS may require special management considerations or protection in the future to minimize the risks posed to these features by oil and gas exploration, development, and production.

Marine Shipping and Transportation

The reduction in Arctic sea ice that has occurred in recent years has renewed interest in using the Arctic Ocean as a potential waterway for coastal, regional, and trans-Arctic marine operations and in extension of the navigation season in surrounding seas (Brigham and Ellis 2004, Arctic Council 2009). Marine traffic along the western and northern coasts of Alaska includes tug, towing, and cargo vessels, tankers, research and government vessels, vessels associated with oil and gas exploration and development, fishing vessels, and cruise ships (Adams and Silber 2017, U.S. Committee on the Marine Transportation System 2019). Automatic Identification System data indicate that the number of unique vessels operating annually in U.S. waters north of the Bering Sea in 2015 to 2017 increased 128 percent over the number recorded in 2008 (U.S. Committee on the Marine Transportation System 2019). Climate models predict that the warming trend in the Arctic will accelerate, causing the ice to begin melting earlier in the spring and resume freezing later in the fall, resulting in an expansion of potential transit routes and a lengthening of the potential navigation season, and a continuing increase in vessel traffic (Khon *et al.* 2010, Smith and Stephenson 2013, Stephenson *et al.* 2013, Huntington *et al.* 2015a, Melia *et al.* 2016, Aksenov *et al.* 2017, Khon *et al.* 2017). For instance, analysis of four potential growth scenarios (ranging from reduced activity to accelerated growth) suggests from 2008 to 2030, the number

of unique vessels operating in U.S. waters north of 60° N (*i.e.,* northern Bering Sea and northward) may increase by 136 to 346 percent (U.S. Committee on the Marine Transportation System 2019).

The fact that nearly all vessel traffic in the Arctic, with the exception of icebreakers, purposefully avoids areas of ice, and primarily occurs during the ice-free or low-ice seasons, helps to mitigate the risks of shipping to the essential habitat features identified for bearded seals of the Beringia DPS. However, icebreakers pose greater risks to these features since they are capable of operating year-round in all but the heaviest ice conditions and are often used to escort other types of vessels (*e.g.,* tankers and bulk carriers) through ice-covered areas. Furthermore, new classes of ships are being designed that serve the dual roles of both tanker/carrier and icebreaker (Arctic Council 2009). Therefore, if icebreaking activities increase in the Arctic in the future, as expected, the likelihood of negative impacts (*e.g.,* habitat alteration and risk of oil spills) occurring in ice-covered areas where bearded seals reside will likely also increase. We are not aware of any data currently available on the effects of icebreaking on the habitat of bearded seals during the reproductive and molting periods. Although impacts of icebreaking are likely to vary between species depending on a variety of factors, Wilson *et al.* (2017) demonstrated the potential for impacts of icebreaking, which for Caspian seal (*Pusa caspica*) mothers and pups and their sea-ice-breeding habitat included displacement, breakup of whelping and nursing habitat, and vessel collisions with mothers or pups. The authors noted that while pre-existing shipping channels were used by seals as artificial leads, which expanded access to whelping habitat, seals that whelp on the edge of such leads are vulnerable to vessel collision and repeated disturbance.

In addition to the potential effects of icebreaking on the essential features, the maritime shipping industry transports various types of petroleum products, both as fuel and cargo. In particular, if increased shipping involves the tanker transport of crude oil or oil products, there would be an increased risk of spills (Arctic Climate Impact Assessment 2005, U.S. Arctic Research Commission 2012). Similar to oil and gas activities, the most significant threat posed by shipping activities is considered to be the accidental or illegal discharge of oil or other toxic substances carried by ships (Arctic Council 2009).

Vessel discharges associated with normal operations, including sewage, grey water, and oily wastes are expected to increase as a result of increasing marine shipping and transportation in Arctic waters (Arctic Council 2009, Parks *et al.* 2019), which could affect the primary prey resources essential feature. Increases in marine shipping and transportation and other vessel traffic is also introducing greater levels of underwater noise (Arctic Council 2009, Moore *et al.* 2012), with the potential for behavioral and other effects in fishes and invertebrates (Slabbekoorn *et al.* 2010, Hawkins and Popper 2017, Popper and Hawkins 2019), although there are substantial gaps in the understanding of such effects, in particular for invertebrates (Hawkins *et al.* 2015, Hawkins and Popper 2017), and the nature of potential effects specifically on the primary prey resources of the Beringia DPS are unclear.

We conclude that the essential features of the habitat of the Beringia DPS may require special management considerations or protection in the future to minimize the risks posed by potential shipping and transportation activities because: (1) Physical alteration of sea ice by icebreaking activities could reduce the quantity and/or quality of the sea ice essential features; (2) in the event of an oil spill, sea ice essential for whelping, nursing, and molting could become oiled; and (3) the quantity and/or quality of primary prey resources essential to the conservation of the Beringia DPS could be diminished as a result of spills, vessel discharges, and noise associated with shipping, transportation, and ice-breaking activities.

Commercial Fisheries

The specific area identified in this final rule as meeting the definition of critical habitat for the Beringia DPS overlaps with the Arctic Management Area and the Bering Sea and Aleutian Islands Management Area identified by the North Pacific Fishery Management Council. No commercial fishing is permitted within the Arctic Management Area due to insufficient data to support the sustainable management of a commercial fishery there. However, as additional information becomes available, commercial fishing may be allowed in this management area. For example, two bearded seal prey species—Arctic cod and saffron cod—have been identified as likely initial target species for commercial fishing in the Arctic Management Area in the future (North Pacific Fishery Management Council 2009).

In the northern portion of the Bering Sea and Aleutian Islands Management Area, commercial fisheries overlap with the southernmost portion of the critical habitat. Portions of the critical habitat also overlap with certain state commercial fisheries management areas. Commercial catches from waters in the critical habitat area primarily include: Pacific halibut (*Hippoglossus stenolepis*), several other flatfish species (from the family Pleuronectidae), Pacific cod (*Gadus macrocephalus*), several crab species, walleye pollock (*Theragra chalcogramma*), and several salmon species.

Commercial fisheries may affect primary prey resources identified as essential to the conservation of the Beringia DPS, through removal of prey biomass and potentially through modification of benthic habitat by fishing gear that contacts the seafloor. Given the potential changes in commercial fishing that may occur with the expected increase in the length of the open-water season and range expansion of some economically valuable species responding to climate change (*e.g.,* Stevenson and Lauth 2019, Thorson *et al.* 2019, Spies *et al.* 2020a), we conclude that the primary prey resources essential feature may require special management considerations or protection in the future to address potential adverse effects of commercial fishing on this feature.

Unoccupied Areas

Section 3(5)(A)(ii) of the ESA authorizes the designation of specific areas outside the geographical area occupied by the species, if those areas are determined to be essential for the conservation of the species. Our regulations at 50 CFR 424.12(b)(2) require that we first evaluate areas occupied by the species, and only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species. Because bearded seals of the Beringia DPS are considered to occupy their entire historical range that falls within U.S. jurisdiction, we find that there are no unoccupied areas within U.S. jurisdiction that are essential to their conservation.

Application of ESA Section 4(a)(3)(B)(i)

Section 4(a)(3)(B)(i) of the ESA precludes designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), 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. *See* 16 U.S.C. 1533(a)(3)(B)(i); 50 CFR 424.12(h). Where these standards are met, the relevant area is ineligible for consideration as potential critical habitat. The regulations implementing the ESA set forth a number of factors to guide consideration of whether this standard is met, including the degree to which the plan will protect the habitat of the species (50 CFR 424.12(h)(4)). This process is separate and distinct from the analysis governed by section 4(b)(2) of the ESA, which directs us to consider the economic impact, the impact on national security, and any other relevant impact of designation, and affords the Secretary discretion to exclude particular areas if the benefits of exclusion outweigh the benefits of inclusion of such areas. *See* 16 U.S.C. 1533(b)(2).

Before publication of the proposed rule, we contacted DOD (Air Force and Navy) and requested information on any facilities or managed areas that are subject to an INRMP and are located within areas that could potentially be designated as critical habitat for the Beringia DPS. In response to our request, the Air Force provided information regarding an INRMP addressing twelve radar sites, 10 of which (7 active and 3 inactive) are located adjacent to the area that was under consideration for designation as critical habitat: Barter Island Long Range Radar Site (LRRS), Cape Lisburne LRRS, Cape Romanzof LRRS, Kotzebue LRRS, Oliktok LRRS, Point Barrow LRRS, Tin City LRRS, Bullen Point Short Range Radar Site (SRRS), Point Lay LRRS, and Point Lonely LRRS. The Air Force requested exemption of these 10 radar sites pursuant to section 4(a)(3)(B)(i) of the ESA. Based on our review of the INRMP (draft 2020 update), the area we are designating as critical habitat, all of which occurs seaward of the 5-m isobath, does not overlap with DOD lands subject to this INRMP. Therefore, we conclude that there are no properties owned, controlled, or designated for use by DOD that are subject to ESA section 4(a)(3)(B)(i) for this critical habitat designation, and thus the exemptions requested by the Air Force are not necessary because no critical habitat would be designated in those radar sites.

Analysis of Impacts Under Section 4(b)(2) of the ESA

Section 4(b)(2) of the ESA requires the Secretary to designate critical habitat for threatened and endangered species on the basis of the best scientific data available after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. Regulations at 50 CFR 424.19(b) also specify that the Secretary will consider the probable impacts of the designation at a scale that the Secretary determines to be appropriate, and that such impacts may be described qualitatively or quantitatively. The Secretary is also required to compare impacts with and without the designation (50 CFR 424.19(b)). In other words, we are required to assess the incremental impacts attributable to the critical habitat designation relative to a baseline that reflects existing regulatory impacts in the absence of the critical habitat.

Section 4(b)(2) also describes an optional process by which the Secretary may go beyond the mandatory consideration of impacts and weigh the benefits of excluding any particular area (that is, avoiding the economic, national security, or other relevant impacts) against the benefits of designating it (primarily, the conservation value of the area). If the Secretary concludes that the benefits of excluding particular areas outweigh the benefits of designation, the Secretary may exclude the particular area(s) so long as the Secretary concludes on the basis of the best scientific and commercial data available that the exclusion will not result in extinction of the species (16 U.S.C. 1533(b)(2)). We have adopted a policy setting out non-binding guidance explaining generally how we exercise our discretion under 4(b)(2). *See* Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (''4(b)(2) policy,'' 81 FR 7226, February 11, 2016).

While section 3(5) of the ESA defines critical habitat as ''specific areas,'' section 4(b)(2) requires the agency to consider the impacts of designating any ''particular area.'' Depending on the biology of the species, the characteristics of its habitat, and the nature of the impacts of designation, ''particular'' areas may be—but need not necessarily be—delineated so that they are the same as the already identified ''specific'' areas of potential critical habitat. For the reasons set forth below, we are not exercising the discretion delegated to us by the Secretary to exclude any particular areas from the critical habitat designation.

The primary impacts of a critical habitat designation arise from the ESA section 7(a)(2) requirement that Federal agencies ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat (*i.e.,* adverse modification standard). Determining these impacts is complicated by the fact that section 7(a)(2) contains the overlapping requirement that Federal agencies ensure that their actions are not likely to jeopardize the species' continued existence. One incremental impact of critical habitat designation is the extent to which Federal agencies change their proposed actions to ensure they are not likely to adversely modify critical habitat, beyond any changes they would make to ensure actions are not likely to jeopardize the continued existence of the species. Additional impacts of critical habitat designation include any state and/or local protection that may be triggered as a direct result of designation (we did not identify any such impacts for this designation), and other benefits that may arise, such as education of the public regarding the importance of an area for species conservation.

In determining the impacts of designation, we focused on the incremental change in Federal agency actions as a result of critical habitat designation and the adverse modification standard (see *Ariz. Cattle Growers' Ass'n* v. *Salazar,* 606 F.3d 1160, 1172–74 (9th Cir. 2010) (holding that the USFWS permissibly attributed the economic impacts of protecting the northern spotted owl as part of the baseline and was not required to factor those impacts into the economic analysis of the effects of the critical habitat designation)). We analyzed the impacts of this designation based on a comparison of conditions with and without the designation of critical habitat for the Beringia DPS. The ''without critical habitat'' scenario represents the baseline for the analysis. It includes process requirements and habitat protections already extended to bearded seals of the Beringia DPS under its ESA listing and under other Federal, state, and local regulations. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the Beringia DPS.

Our analysis for this final rule is described in detail in the associated Final Impact Analysis Report. This analysis assesses the incremental costs and benefits that may arise due to the critical habitat designation, with economic costs estimated over the next

10 years. We chose the 10-year timeframe because it is lengthy enough to reflect the planning horizon for reasonably predicting future human activities, yet it is short enough to allow reasonable projections of changes in use patterns in an area, as well as of exogenous factors (*e.g.,* world supply and demand for petroleum, U.S. inflation rate trends) that may be influential. This timeframe is consistent with guidance provided in Office of Management and Budget (OMB) Circular A–4 (OMB 2003, 2011). We recognize that economic costs of the designation are likely to extend beyond the 10-year timeframe of the analysis, though we have no information indicating that such costs in subsequent years would be different from those projected for the first 10-year period. However, we could not monetize or quantify such costs, as forecasting potential future Federal actions that may require section 7 consultation regarding critical habitat for the Beringia DPS becomes increasingly speculative beyond the 10-year time window of the analysis.

Below, we summarize our analysis of the impacts of designating the specific area identified in this final rule as meeting the definition of critical habitat for the Beringia DPS. Additional detail is provided in the Final Impact Analysis Report prepared for this final rule.

Benefits of Designation

We expect that the Beringia DPS will increasingly experience the ongoing loss of sea ice and changes in ocean conditions associated with climate change, and the significance of other habitat threats will likely increase as a result. As noted above, the primary benefit of a critical habitat designation—and the only regulatory consequence—stems from the ESA section 7(a)(2) requirement that all Federal agencies ensure that any actions authorized, funded, or carried out by such agencies are not likely to destroy or adversely modify the designated habitat. This benefit is in addition to the section 7(a)(2) requirement that all Federal agencies ensure that their actions are not likely to jeopardize listed species' continued existence. Another benefit of critical habitat designation is that it provides Federal agencies and the public specific notice of the areas and features essential to the conservation of the Beringia DPS, and the types of activities that may reduce the conservation value or otherwise affect the habitat. This information will consistently focus future ESA section 7 consultations on key habitat attributes. The designation of critical habitat can also inform Federal agencies regarding the habitat needs of the Beringia DPS, which may facilitate using their authorities to support the conservation of this species pursuant to ESA section 7(a)(1), including to design proposed projects in ways that avoid, minimize, and/or mitigate adverse effects to critical habitat from the outset.

In addition, the critical habitat designation may result in indirect benefits, as discussed in detail in the Final Impact Analysis Report, including education and enhanced public awareness, which may help focus and contribute to conservation efforts for bearded seals of the Beringia DPS and their habitat. For example, by identifying areas and features essential to the conservation of the Beringia DPS, complementary protections may be developed under state or local regulations or voluntary conservation plans. These other forms of benefits may be economic in nature (whether market or non-market, consumptive, non-consumptive, or passive), educational, cultural, or sociological, or they may be expressed through enhanced or sustained ecological functioning of the species' habitat, which itself yields ancillary welfare benefits (*e.g.,* improved quality of life) to the region's human population. For example, because the critical habitat designation is expected to result in enhanced conservation of the Beringia DPS over time, residents of the region who value these seals, such as subsistence users, could experience indirect benefits by enjoying subsistence activities associated with this species. As another example, the geographic area identified as meeting the definition of critical habitat for the Beringia DPS overlaps substantially with the range of the polar bear (*Ursus maritimus*) in the United States, and the bearded seal is a prey species of the polar bear, so the designation may also enhance conservation of the polar bear, and in turn provide indirect benefits (*e.g.,* existence and option values). Indirect benefits may also be associated with enhanced habitat conditions for other co-occurring species, such as the Pacific walrus (*Odobenus rosmarus divergens*), the Arctic ringed seal, and other seal species.

It is not presently feasible to monetize, or even quantify, each component part of the benefits accruing from the designation of critical habitat for the Beringia DPS. Therefore, we augmented the quantitative measurements that are summarized here and discussed in detail in the Final Impact Analysis Report with qualitative and descriptive assessments, as provided for under 50 CFR 424.19(b) and in guidance set out in OMB Circular A–4. Although we cannot monetize or quantify all of the incremental benefits of the critical habitat designation, we conclude that they are not inconsequential.

Economic Impacts

Direct economic costs of the critical habitat designation accrue primarily through implementation of section 7(a)(2) of the ESA in consultations with Federal agencies (''section 7 consultations'') to ensure that their proposed actions are not likely to destroy or adversely modify critical habitat. Those economic impacts may include both administrative costs and costs associated with project modifications. Based on the best scientific and commercial data available and our assessment of the record of section 7 consultations from 2013 to 2019 on activities that may have affected the essential features (relatively few relevant consultations were identified for the 3 years prior to when the Beringia DPS was listed under the ESA), as well as available information on planned activities, we have not identified any likely incremental economic impacts associated with project modifications that would be required solely to avoid impacts to Beringia DPS critical habitat. The critical habitat designation is not likely to result in more requested project modifications because our section 7 consultations on potential effects to bearded seals and our incidental take authorizations for Arctic activities under section 101(a) of the Marine Mammal Protection Act (MMPA) both typically address habitat-associated effects to the seals even in the absence of a critical habitat designation. This is not to say such project modifications could not occur in situations we are unable to predict at this time, but based on the best information available for the 10-year period of the analysis, it is likely that any project modifications necessary to avoid impacts to critical habitat for the Beringia DPS would also be necessary to avoid impacts to the species in section 7 consultations that would occur irrespective of this designation. As a result, the direct incremental costs of this critical habitat designation are expected to be limited to the additional administrative costs of considering Beringia DPS critical habitat in future section 7 consultations.

To identify the types of Federal activities that may affect critical habitat for the Beringia DPS, and therefore would be subject to the ESA section 7 adverse modification standard, we

examined the record of section 7 consultations from 2013 to 2019. These activities include oil and gas related activities, dredge mining, navigation dredging, in-water construction, commercial fishing, oil spill response, and certain military activities. We projected the occurrence of these activities over the timeframe of the analysis (the next 10 years) using the best available information on planned activities and the frequency of recent consultations for particular activity types. Notably, all of the projected future Federal actions that may trigger an ESA section 7 consultation because of their potential to affect one or more of the essential habitat features also have the potential to affect bearded seals of the Beringia DPS. In other words, none of the activities we identified would trigger a section 7 consultation solely on the basis of the critical habitat designation. We recognize there is inherent uncertainty involved in predicting future Federal actions that may affect the essential features of critical habitat for the Beringia DPS; however, we did not receive any relevant new information that would change our projections in response to our specific request for comments and information regarding the types of activities that are likely to be subject to section 7 consultation as a result of the designation.

We expect that the majority of future ESA section 7 consultations analyzing potential effects on the essential habitat features will involve NMFS and BOEM authorizations and permitting of oil and gas related activities. In assessing costs associated with these consultations, we took a conservative approach by estimating that future section 7 consultations addressing these activities would be more complex than for other activities, and would therefore incur higher third party (*i.e.,* applicant/permittee) incremental administrative costs per consultation to consider effects to Beringia DPS bearded seal critical habitat (see Final Impact Analysis Report). These higher third party costs may not be realized in all cases because the administrative effort required for a specific consultation depends on factors such as the location, timing, nature, and scope of the potential effects of the proposed action on the essential features. There is also considerable uncertainty regarding the timing and extent of future oil and gas exploration and development in Alaska's Outer Continental Shelf (OCS) waters, as indicated by Shell's 2015 withdrawal from exploratory drilling in the Chukchi Sea, BOEM's 2017–2022 OCS Oil and Gas Leasing Program, and the reinstatement of the 2016 withdrawal of the Chukchi Sea and most of the Beaufort Sea from consideration for oil and gas leasing in January 2021 (Executive Order (E.O.) 13990). Although NMFS completed formal consultations for oil and gas exploration activities in the Chukchi Sea in all but 2 years between 2006 and 2015, no such activities or related consultations with NMFS have occurred since that time.

As detailed in the Final Impact Analysis Report, the total incremental costs associated with this critical habitat designation over the next 10 years, in discounted present value terms, are estimated to be $563,000 at 7 percent discount rate and $658,000 at a 3 percent discount rate, for an annualized cost of $74,900 at both a 7 percent and a 3 percent discount rate. About 81 percent of the incremental costs attributed to the critical habitat designation are expected to accrue from ESA section 7 consultations associated with oil and gas activities in the Chukchi and Beaufort seas and adjacent onshore areas.

We have concluded that the potential economic impacts associated with the critical habitat designation are modest both in absolute terms and relative to the level of economic activity expected to occur in the affected area, which is primarily associated with oil and gas activities that may occur in the Beaufort and Chukchi seas. As a result, and in light of the benefits of critical habitat designation discussed above and in the Final Impact Analysis Report, we are not exercising our discretion to further consider and weigh the benefits of excluding any particular area based on economic impacts against the benefits of designation.

National Security Impacts

Section 4(b)(2) of the ESA also requires consideration of national security impacts. As noted in the Application of ESA Section 4(a)(3)(B)(i) section above, before publication of this proposed rule, we contacted the DOD regarding any potential military operations impacts of designating critical habitat for the Beringia DPS. In a letter dated June 3, 2013, the DOD Regional Environmental Coordinator indicated that no impacts on national security were foreseen from such a designation. More recently, by letter dated March 17, 2020, the Navy submitted a request for exclusion of a particular area north of the Beaufort Sea shelf from the designation of critical habitat based on national security impacts. This area does not overlap with the specific area identified as meeting the definition of critical habitat for the Beringia DPS. In this letter, the Navy also provided information regarding its training and testing activities that currently occur or are planned to occur in U.S. waters inhabited by bearded seals. The Navy commented that based on the current and expected training and testing activities occurring in the Arctic region, it has determined that training and testing activities do not pose any substantial threat to the essential features of the habitat of the Beringia DPS.

In addition, by letter dated April 30, 2020, the Air Force provided information concerning its activities at radar sites located adjacent to the area under consideration for designation as critical habitat (relevant sites identified above in the Application of ESA Section 4(a)(3)(B)(i) section). The Air Force requested that we consider excluding critical habitat near these sites under section 4(b)(2) of the ESA due to impacts on national security. Although we do not exempt the radar sites pursuant to section 4(a)(3)(B)(i) of the ESA, as discussed above, here we consider whether to exclude critical habitat located adjacent to these sites under section 4(b)(2) based on national security impacts.

The Air Force noted that annual fuel and cargo resupply activities occur at these radar sites primarily in the summer, and installation beaches are used for offload. The Air Force indicated that coastal operations at these installations are limited, and when barge operations occur, protective measures are implemented per the Polar Bear and Pacific Walrus Avoidance Plan (preliminary final 2020) associated with the INRMP in place for these sites. The Air Force discussed that it also conducts sampling and monitoring at these sites as part of the DOD's Installation Restoration Program, and conducts larger scale contaminant or debris removal in some years that can require active disturbance of the shoreline. Coastal barge operations are a feature of both monitoring and removal actions.

Federal agencies have an existing obligation to consult with NMFS under section 7(a)(2) of the ESA to ensure the activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Beringia DPS of bearded seals, regardless of whether or where critical habitat is designated for the species. The specific area identified as meeting the definition of critical for the Beringia DPS in this final rule includes marine habitat extending seaward from particular isobaths, rather than from the line of MLLW as we had proposed. Thus, waters adjacent to the

radar sites identified by the Air Force overlap to lesser extent with this specific area. The activities described in the Air Force's exclusion request are localized and small in scale, and it is unlikely that modifications to these activities would be needed to address impacts to critical habitat beyond any modifications that may be necessary to address impacts to Beringia DPS bearded seals. We therefore anticipate that the time and costs associated with consideration of the effects of future Air Force actions on critical habitat of the Beringia DPS under section 7(a)(2) of the ESA would be limited, if any, and the consequences for the Air Force's activities would be negligible even if we do not exclude the requested areas from critical habitat designation.

As a result, and in light of the benefits of critical habitat designation discussed above and in the Final Impact Analysis Report, we have concluded that the benefits of exclusion do not outweigh the benefits of designation and are therefore not exercising our discretionary authority to exclude these particular areas pursuant to section 4(b)(2) of the ESA based on national security impacts.

Other Relevant Impacts

Finally, under ESA section 4(b)(2) we consider any other relevant impacts of critical habitat designation. For example, we may consider potential adverse effects on existing management or conservation plans that benefit listed species, and we may consider potential adverse effects on tribal lands or trust resources. In preparing this critical habitat designation, we have not identified any such management or conservation plans, tribal lands or resources, or anything else that would be adversely affected by the critical habitat designation. Some Alaska Native organizations and tribes have expressed concern that the critical habitat designation might restrict subsistence hunting of bearded seals or other marine mammals, such that important hunting areas should be considered for exclusion, but no restrictions on subsistence hunting are associated with this designation. Accordingly, we are not exercising our discretion to conduct an exclusion analysis pursuant to section 4(b)(2) of the ESA based on other relevant impacts.

Final Critical Habitat Designation

We are designating as critical habitat a specific area of marine habitat in Alaska and offshore Federal waters of the Bering, Chukchi, and Beaufort seas, within the geographical area presently occupied by the Beringia DPS of bearded seals. This critical habitat area contains physical or biological features essential to the conservation of the Beringia DPS of bearded seals that may require special management considerations or protection. We are not excluding any areas based on economic impacts, impacts to national security, or other relevant impacts of this designation. We have not identified any unoccupied areas that are essential to the conservation of the Beringia DPS of bearded seals, and thus we are not designating any such areas as critical habitat. In accordance with our regulations regarding critical habitat designation (50 CFR 424.12(c)), the map we include in the regulation, clarified by the accompanying regulatory text, constitutes the official boundaries of the critical habitat designation.

Effects of Critical Habitat Designation

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. Federal agencies must consult with us on any agency action that may affect listed species or critical habitat. During interagency consultation, we evaluate the agency action to determine whether the action is likely to adversely affect listed species or critical habitat. 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 (50 CFR 402.02). The potential effects of a proposed action may depend on, among other factors, the specific timing and location of the action relative to the seasonal presence of essential features or seasonal use of critical habitat by listed species for essential life history functions. Although the requirement to consult on an action that may affect critical habitat applies regardless of the season, NMFS addresses spatial-temporal considerations when evaluating the potential impacts of a proposed action during the ESA section 7 consultation process. For example, if an action with short-term effects is proposed during a time of year that sea ice is not present, we may advise that consequences to critical habitat are unlikely. If we conclude in a biological opinion pursuant to section 7(a)(2) of the ESA that the agency action would likely result in the destruction or adverse modification of critical habitat, we would recommend one or more reasonable and prudent alternatives to the action that avoid that result.

Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat. NMFS may also provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where (among other reasons): (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which consultation has been completed if those actions may affect designated critical habitat for the Beringia DPS. Activities subject to the ESA section 7 consultation process include activities on Federal lands as well as activities requiring a permit or other authorization from a Federal agency (*e.g.,* a section 10(a)(1)(B) permit from NMFS), or some other Federal action, including funding (*e.g.,* Federal Highway Administration or Federal Emergency Management Agency funding). Consultation under section 7 of the ESA would not be required for Federal actions that do not affect listed species or designated critical habitat, and would not be required for actions on non-Federal and private lands that are not carried out, funded, or authorized by a Federal agency.

Activities That May Be Affected by Critical Habitat Designation

Section 4(b)(8) of the ESA requires, to the maximum extent practicable, in any regulation to designate critical habitat, an evaluation and brief description of those activities that may adversely modify such habitat or that may be affected by such designation. A variety of activities may affect critical habitat

designated for the Beringia DPS of bearded seals and, if carried out, funded, or authorized by a Federal agency, may be subject to ESA section 7 consultation. Such activities include: In-water and coastal construction; activities that generate water pollution; dredging; commercial fishing; oil and gas exploration, development, and production; oil spill response; and certain military readiness activities. Section 7 consultations must be based on the best scientific and commercial information available, and outcomes are case-specific. Inclusion (or exclusion) from this list, therefore, does not predetermine the occurrence or outcome of any section 7 consultation. However, as explained above, based on our review of prior consultations in the area, we have not identified a circumstance in which project modifications would be necessary solely to avoid impacts to critical habitat for the Beringia DPS, as it is likely any such modifications would also be necessary to avoid impacts to the species.

Private or non-Federal entities may also be affected by the critical habitat designation if a Federal permit is required, Federal funding is received, or the entity is involved in or receives benefits from a Federal project. These activities would need to be evaluated with respect to their potential to destroy or adversely modify Beringia DPS critical habitat. For ongoing activities, this designation of critical habitat may trigger reinitiation of past consultations. Although we cannot predetermine the outcome of section 7 consultations, we do not anticipate at this time that the outcome of reinitiated consultations would require project modifications because habitat-related effects on Beringia DPS bearded seals would likely have been assessed in the original consultation. We are committed to working closely with other Federal agencies to conduct any reinitiated consultations in an efficient and streamlined manner to the maximum extent possible and consistent with our statutory and regulatory requirements.

References Cited

A complete list of all references cited in this final rule can be found on the NMFS website at *www.fisheries.noaa.gov/species/bearded-seal#conservation-management,* the Federal eRulemaking Portal at *www.regulations.gov/docket/NOAA-NMFS-2020-0029,* and is available upon request from the NMFS office in Juneau, Alaska (see **FOR FURTHER INFORMATION CONTACT**).

Summary of Comments and Responses

We solicited comments on the proposed rule to designate critical habitat for the Beringia DPS and the associated Draft Impact Analysis Report during a 90-day comment period and held three public hearings, as described above. We also contacted Federal, State, Tribal, and local agencies, and other interested parties by mail and invited them to comment on the proposed rule, and we issued news releases and published notices in local newspapers summarizing the proposed rule and inviting public comments. We received 31 unique written comment submissions and testimony from seven people during the public hearings.

In addition, we solicited peer review from four reviewers of our evaluation, interpretation, and use of available data regarding what areas meet the definition of critical habitat in the proposed rule. The peer reviewers generally agreed that we relied on the best available data regarding the habitat requirements of the Beringia DPS of bearded seals and generally concurred with our application of this information in determining specific areas that meet the definition of critical habitat, except for some particular aspects that we address below in our responses to peer reviewer comments. We also solicited peer review from three reviewers of the information we considered in the Draft Impact Analysis Report for the proposed designation. The peer reviewers found the information considered in the Draft Impact Analysis Report to be thorough and analyzed using appropriate methods.

Most of the peer reviewers provided additional information, clarifications, and suggestions to further inform and improve the analyses. Some peer reviewers provided comments of an editorial nature that noted minor errors in the proposed rule or Draft Impact Analysis Report and offered non-substantive but clarifying changes in wording. We have addressed these editorial comments in the final rule and the Final Impact Analysis Report, as appropriate. Because these editorial comments did not result in substantive changes to the final rule, we have not detailed them here. The peer reviewer comments are available online (see *Information Quality Act and Peer Review* section). A few peer reviewers volunteered comments related to aspects of the proposed designation that were outside the scope of the requested reviews. We address those comments below in our responses to public comments.

We have reviewed and fully considered all comments and significant new information received from peer reviewers and the public. Summaries of the substantive comments received and our responses are provided below. As some peer reviewer and public comments were similar, we have, in certain cases, combined the comments and responded to both the peer reviewer and public comments in the *Peer Review Comments* section below. General comments that did not provide information pertinent to the proposed rule have been noted but are not addressed further here. We have not responded to comments or concerns outside the scope of this rulemaking, such as comments disagreeing with NMFS's prior decision to list the Beringia DPS as threatened under the ESA.

Peer Review Comments

Evaluation of Critical Habitat

Comment 1: One peer reviewer commented that the bearded seal lifespan we identified is low relative to sample collections from the subsistence harvested bearded seals in Alaska between 2000 and 2019, which indicate that the life span and reproductively active age are likely longer, and the reviewer summarized other related information (Quakenbush 2020a; ADF&G, unpublished data).

Response: We have updated the Description and Natural History section of this final rule to reflect the peer reviewer's comment regarding bearded seal lifespan and reproductively active age.

Comment 2: In reference to the statement in the proposed rule that adult bearded seals have rarely been seen hauled out on land in Alaska, one peer reviewer commented this may no longer be the case. The peer reviewer stated that in September 2019, two adult bearded seals were captured for tagging while they were hauled out on land near Utqiaġvik, Alaska (ADF&G, unpublished data). Additionally, the peer reviewer noted that a recent study by Olnes *et al.* (2020) reported that during summer when sea ice was minimal, about half of the juvenile bearded seals tagged during the study hauled out on land in Kotzebue Sound and Norton Sound, while the others remained near and continued to haul out on sea ice; and a couple individuals used both strategies in different years.

Response: We appreciate the information provided by the peer reviewer. We have considered this information and have incorporated the additional reference and information

into the Description and Natural History section of this final rule. In addition, we have clarified in the preamble that although adult bearded seals have rarely been seen hauled out on land, two adults were captured for tagging while hauled out on land near Utqiaġvik.

Comment 3: In reference to the description in the proposed rule of sea ice used by bearded seals, one peer reviewer noted that a recently published study by Olnes *et al.* (2021) found that juvenile bearded seals selected intermediate ice concentrations, but in the later years of the study the selected ice concentrations occurred farther from the ice edge than during the earlier study years. Another peer reviewer pointed out that Olnes *et al.* (2021) suggested juvenile bearded seals ''are adjusting'' to changes in ice conditions, and stated that we should consider the significance of those behavioral adjustments in terms of expected impacts on lifetime reproductive success.

Response: We appreciate the information provided by the peer reviewer. We have considered and incorporated information from the recent publication by Olnes *et al.* (2021) into the preamble of this final rule where applicable and relevant. Although not directly relevant to determining critical habitat for this species, regarding the comment about implications of the adjustments to changing sea ice conditions reported by that study, the authors concluded that it is not clear at this time how the observed changes in juvenile bearded seal selection of sea ice habitat affect seal health or relate to adult bearded seal behavior.

Comment 4: We stated in the proposed rule that observations of some bearded seals remaining at sea for prolonged periods provides some evidence that bearded seals might not require sea ice for hauling out other than during reproduction and molting. One peer reviewer commented that it is a feature of habitat loss that species occupy suboptimal habitat, and thus these observations might instead reflect seals forced by habitat loss to remain at sea.

Response: We have clarified in the preamble to this final rule that there is some evidence that, other than during the critical life history periods related to reproduction and molting, bearded seals can remain at sea for extended periods without requiring the presence of sea ice for hauling out.

Comment 5: One peer reviewer stated that a recent study by Olnes *et al.* (2020) showed that north-south movements of tagged bearded seals (largely juveniles), relative to sea ice advance, differed by where seals were tagged, and some seals did not track sea ice advance at all, including one juvenile tagged in Kotzebue Sound that remained there during winter. The peer reviewer also noted that one juvenile female and one adult male bearded seal tagged in the Beaufort Sea overwintered in the vicinity of Barrow Canyon in two consecutive winters (Quakenbush *et al.* 2019, Quakenbush 2020b; ADF&G, unpublished data).

Response: We appreciate the information provided by the peer reviewer. We have considered this information and have incorporated it into the Description and Natural History section of this final rule.

Comment 6: One peer reviewer stated that a recently published paper corroborates that the bearded seal molt is protracted compared to ringed and spotted seals and documents that this behavior requires less energy than the shorter molting period of ringed and spotted seals (Thometz *et al.* 2021). The peer reviewer suggested that given this new information, along with greater evidence of bearded seals hauling out on land (Quakenbush *et al.* 2019, Olnes *et al.* 2020; ADF&G, 2020, unpublished data), sea ice may not be as critical to bearded seals for molting as previously thought.

Response: We appreciate the information provided by the peer reviewer. We have considered this information and have updated the Description and Natural History section of this final rule to include a brief summary of the findings of Thometz *et al.* (2021). We note that the reviewer's assertion that the protracted molt in bearded seals ''requires less energy'' than in spotted and ringed seals was not a finding of Thometz *et al.* (2021). While the bearded seal in that study showed only a slight elevation in metabolic rate during molt, its long molting period still implies that a large amount of energy is required overall. We also note that the authors observed the haul-out time of the bearded seal in their study to increase markedly during molting, which they suggested indicates benefits of increased skin temperatures for molting, even though there were minimal changes in daily energetic cost. Although we recognize that primarily juvenile bearded seals have been observed hauling out on land, typically during the open-water season following the peak period of their annual molt, this does not imply that bearded seals necessarily have potential to shift to use of haul-out sites on shore during molting, which would require bearded seals to adapt to novel conditions. Increased use of shorelines by bearded seals for molting may distance them from preferred foraging locations and expose them to greater predation risk (Thometz *et al.* 2021). Further, as compared to shorelines, sea ice provides a far more extensive substrate for bearded seals to haul out on during the molt, as well as isolation from terrestrial predators and disturbances (*e.g.,* from anthropogenic activities or presence of terrestrial animals). For example, Quakenbush *et al.* (2019) reported that haul-out duration for tagged bearded seals on land was lower than haul-outs on ice (about half the duration), which they suggested was likely because the incidence of disturbance was greater on land. We continue to conclude, based on the best scientific data available, that sea ice habitat suitable as a platform for molting is essential to the conservation of the Beringia DPS.

Comment 7: Two peer reviewers questioned the statement in the proposed rule that sea ice provides bearded seals some protection from predators. Both of the reviewers pointed out that sea ice actually makes the seals more accessible to polar bears, which are their primary predator. One of the peer reviewers added that, although sea ice provides bearded seals some protection from predation by killer whales, the magnitude of such predation is unknown.

Response: We agree that sea ice can facilitate polar bear access to bearded seals but under conditions of drastically reduced or absence of summer sea ice, bearded seals and polar bears would likely be forced into greater proximity on shore, where predation on the seals could well increase. Bearded seals, when they have a choice, select ice floes for hauling out that afford good visibility and quick access to the water. As summer ice in the Arctic continues to diminish, the remaining, reduced ice area is likely to be composed of greater proportions of multi-year ice with higher surface relief, favoring polar bears' hunting success. Sea ice also provides bearded seals isolation from other terrestrial predators, as well as some protection from predation by killer whales, although as noted by a peer reviewer, the magnitude of such predation is unknown (Cameron *et al.* 2010). Thus, our statement that sea ice provides some protection from predators is supported by the best available scientific data. Nevertheless, we clarified the statement in the preamble to this final rule, consistent with our explanation here.

Comment 8: One peer reviewer commented that although increased disease transmission is often cited as a

potential threat to ice-associated pinnipeds, there are many examples of pinnipeds using large terrestrial haulouts without serious disease transmission issues (*e.g.,* walrus, Steller sea lion, and northern fur seal). The peer reviewer suggested that because bearded seals are less gregarious and would likely haul out on land in low densities during molting, disease transmission would be even less likely.

Response: We re-examined this language in the preamble to the proposed rule and determined that we sufficiently qualified the statement concerning disease transmission, as we stated that there is the ''potential'' for disease transmission if molting occurs on land. Because coastal shorelines provide a far less extensive haulout substrate for bearded seals than sea ice, there may be greater tendency for intraspecific contact in use of haul-out sites on shore, and bearded seals hauled out on land could also be at risk of exposure to terrestrial pathogens that they would not be exposed to on sea ice.

Comment 9: One peer reviewer asked whether the edges of landfast ice are used by bearded seals of the Beringia DPS for whelping and molting, as documented in Svalbard (Kovacs *et al.* 1996), and stated that if so, the definitions of the sea ice essential features should be expanded to include this habitat.

Response: Although some bearded seals may use the edges of landfast ice for whelping and molting, we are not aware of available information indicating that this is common enough within the range of the Beringia DPS to be considered essential for the persistence of the DPS. Therefore, we did not expand the definitions of the sea ice essential features to include such ice.

Comment 10: One peer reviewer suggested that we consider expanding the brief discussion of differences in the diets of bearded seals among age classes (*e.g.,* Young *et al.* 2010, Crawford *et al.* 2015), particularly as it is applicable for defining foraging habitat as part of the critical habitat designation. The peer reviewer noted that diet may also be influenced by interannual variations in sea ice extent (*e.g.,* Hindell *et al.* 2012).

Response: We have updated the discussion of bearded seal diets in the preamble to this final rule to reflect the peer reviewer's suggestions. Rather than delineating particular areas bearded seals use for foraging, in accordance with ESA section 3(5)(A), we delineated a specific area within the geographical area occupied by the species where the primary prey resources essential feature occurs.

Comment 11: One peer reviewer commented they agreed that, as stated in the proposed rule, the diversity of prey consumed by bearded seals makes identification of particular essential prey species impracticable. However, the peer reviewer stated that they disagreed with our characterization of bearded seals as ''benthic specialists,'' arguing that because they feed on a wide variety of benthic prey taxa, bearded seals would be more accurately described as ''benthic generalists.'' The peer reviewer added that given the wide array of fish and invertebrate prey eaten by bearded seals, virtually the entire shallow Bering and Chukchi shelf provides feeding habitat. The peer reviewer further stated that our description of the diet of bearded seals in the ''Description and Natural History'' section of the proposed rule is too general and implies that there are few common prey items, giving a very different impression about their diets than has been documented for bearded seals harvested in Alaska. The peer reviewer suggested that it would be more useful to provide examples of the species of schooling pelagic fishes, demersal fishes, and invertebrates that are consumed by bearded seals in Alaska, and included a summary of related information regarding prey species consumed by bearded seals in the Alaskan Bering and Chukchi seas (Quakenbush *et al.* 2011, Crawford *et al.* 2015, Quakenbush 2020a).

Response: We appreciate the comments and information provided by the peer reviewer. We have revised the preamble text to state that bearded seals are benthic generalists. We have also updated our discussion of the primary prey resources essential feature in this final rule preamble to incorporate bearded seal diet information from the recent analysis by Quakenbush (2020a) (see Physical and Biological Features Essential to the Conservation of the Species section), which we considered as part of the best scientific data available to inform our analysis. We have provided a level of detail that is appropriate for this final rule and have cited the relevant sources of information regarding bearded seal diets.

Comment 12: One peer reviewer commented that the restriction of critical habitat to the area presently occupied by the species seems to be required by the ESA, but challenges conservation of a species whose habitat is rapidly diminishing, noting that for the Beringia DPS we cited recent reductions in sea ice in Kuskokwim Bay as a rationale for not including this area in the proposed designation.

Response: As we stated in the proposed rule, the ESA defines critical habitat as (1) 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 that are essential to the conservation of the species and 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 by the Secretary that such areas are essential for the conservation of the species. As we explained in the preamble to our 2016 final rule with USFWS that amended the regulations for designating critical habitat, the ESA allows for flexibility to address the effects of climate change in a critical habitat designation in cases where the best scientific data available indicate that a species may be shifting habitats or habitat use (81 FR 7414, 7426; February 11, 2016). In such cases, it is permissible to include specific areas accommodating these changes in a designation, provided that we can explain why the areas meet the definition of critical habitat. In other words, we may find that an unoccupied area is currently essential for the conservation of the species even though the functions the habitat is expected to provide may not be used by the species until a point in the foreseeable future. However, we have not identified any such areas for bearded seals of the Beringia DPS, as they occupy their entire historical range, which in the Bering Sea extends south over the continental shelf and includes Kuskokwim Bay. Although our decision regarding the southern boundary of critical habitat relative to Kuskokwim Bay takes into consideration reductions in sea ice in this area, the designation includes the majority of reproductive and molting habitat in the Bering Sea.

Comment 13: To further describe acoustic conditions that allow for effective communication by bearded seals for breeding purposes, one peer reviewer asked whether it would be possible to analyze ''background'' acoustic noise in recordings collected by passive acoustic moorings where bearded seal trills were detected during the breeding season and where whelping has been observed, as these conditions would arguably be where effective communication is possible. The peer reviewer also asked whether it would be possible to analyze how reductions in sea ice extent and concentration have changed background acoustic noise during the breeding

period using the time series of passive acoustic data available from several mooring locations in the region, as this might provide insight into acoustic conditions and how they are changing. The peer reviewer commented that the reduced presence of sea ice will increase abiotic noises from wind and precipitation, lead to changes in the acoustic environment, and could conceivably lead to increases in anthropogenic noises such as from boats. The peer reviewer added that it should also be possible to quantify how much of the noise from such sources overlaps with the frequency ranges used by male bearded seals during the breeding period.

Response: We appreciate the suggestions of the peer reviewer. While we agree that analyses such as those suggested by the peer reviewer may enhance understanding of the acoustic ecology of bearded seals during the breeding season, the ESA requires us to designate critical habitat within a specific timeframe based on the best scientific data available. In light of this mandatory timeframe, conducting such additional analyses is not feasible. We will continue to support further research that generates knowledge needed to conserve this species, including with respect to understanding of bearded seal reproductive ecology. As discussed in more detail below, following consideration of public comments received, we have not retained the proposed essential habitat feature related to acoustic conditions for bearded seals in this final rule (*e.g.,* see our response to Comment 32).

Comment 14: Three peer reviewers and several other commenters, including the Marine Mammal Commission, identified a few recent scientific publications related to bearded seal acoustic communication and responses to noise that might provide additional relevant data. One peer reviewer also suggested that we include information on detection of bearded seal vocalizations outside of the breeding period, as bearded seal vocalizations may be used for communication during other parts of the year.

Response: We appreciate the additional information provided by the peer reviewers and other commenters. While we did not expand our discussion of bearded seal vocalizations in this final rule, we thoroughly considered this information in our re-evaluation of the proposed acoustic essential feature (see Summary of Changes From the Proposed Designation section).

Comment 15: Two peer reviewers questioned why we excluded tidally-influenced channels of tributary waters from proposed critical habitat, given that the information available indicates that some, primarily juvenile, bearded seals use this habitat. One of the peer reviewers noted that indigenous hunters have reported that bearded seals feed in estuaries in numerous locations along the Alaska coast, while the other noted that some of the juvenile bearded seals tagged in Alaska were captured in rivers. Another peer reviewer stated that although juvenile bearded seals are commonly seen up rivers in some areas, they are solitary and not present in large numbers, and noted that it is not likely all juveniles practice this behavior. Similarly, several other commenters, including Kawerak and the Native Village of Kotzebue, recommended that critical habitat include nearshore areas, river mouths, and extensive inshore estuaries/lagoon systems found throughout the Seward Peninsula and Norton Sound, as well as in Kotzebue Sound. Commenters stated that well-documented IK indicates that bearded seals, in particular juveniles, use these areas during the ice-free period, and described the capture of young bearded seals in rivers for tagging telemetry studies. Kawerak and another commenter stated that young seals use estuaries as sheltered calmer waters during adverse weather conditions, to escape large-bodied predators like killer whales, and to hone their fishing skills in these shallow waters during the ice-free months. Kawerak also noted that these estuaries have aquatic plants that young seals use as cover when stalking the variety of small-bodied fishes and invertebrates that reside in or travel through these waters.

Response: We recognize that bearded seal use of river mouths and inshore lagoons during the open-water period has been reported and documented, and we reviewed and thoroughly considered the references that were cited in these comments, along with information presented in other available reports and peer-reviewed publications (*e.g.,* Oceana and Kawerak 2014, Northwest Arctic Borough 2016, Huntington *et al.* 2017d) regarding this aspect of bearded seal habitat use. The ESA requires that we identify the physical or biological features that are essential to support the life-history needs of a particular species based on the best scientific data available. With regard to river mouths and inshore estuaries/lagoons, the best information available indicates that some juvenile bearded seals occur in these areas during the open-water period. However, we lack sufficient data to develop a description of the specific physical or biological features of this habitat that support bearded seal life history needs, and to assess how those features provide for the life history requirements of the species such that they are essential to the conservation of the Beringia DPS. Given this and our consideration of the best information available, in the Bering and Chukchi seas, including the areas referenced by the commenters, we are not designating any river mouths or shallow inshore estuaries/lagoon systems as critical habitat for the Beringia DPS. In the event that additional information becomes available indicating whether and what essential features occur in these or similar habitats, we can consider revising critical habitat accordingly. Although the critical habitat designation for bearded seals does not include those requested areas, ESA section 7 consultation requirements apply to any action that may affect bearded seals, including in river mouths or those shallow inshore estuaries/lagoon systems not identified as critical habitat. With regard to nearshore waters relative to the shoreward boundary of the designation, see our response below to Comment 39.

Comment 16: With regard to the proposed shoreward boundary of critical habitat, one peer reviewer requested that we provide a definition for the term mean lower low water (MLLW). The peer reviewer agreed that it is important to include habitat up to this shoreward boundary, as it is possible that the use of land by bearded seals may expand in the future, and noted that bearded seals have been observed hauling out on land in Svalbard during summer in areas with no drifting sea ice (Merkel *et al.* 2013).

Response: MLLW, a tidal datum defined and maintained by NOAA, is calculated as the average of the lower low water height of each tidal day observed over a given period (*e.g.,* the 19-year National Tidal Datum Epoch). Thus, the line of MLLW is the intersection of the water surface with the shore (land) at the elevation of MLLW. The ESA defines critical habitat within the geographical area occupied by the species in terms of essential physical and biological features, and the associated regulations require us to focus on those features in the designation process. Although we proposed to identify the shoreward boundary of the designation for the Beringia DPS as the line of MLLW, we have revised this boundary after considering public comments and re-evaluating the best scientific data available, as described below in the

section Summary of Changes From the Proposed Designation.

Comment 17: One peer reviewer suggested that we consider extending the proposed southern boundary of critical habitat to the continental shelf break in the Bering Sea given that some tagged juvenile bearded seals have used this habitat for foraging. However, the peer reviewer acknowledged that because a limited number of bearded seals have been tagged, it is hard to accurately know the proportion of juvenile bearded seals that use the southern continental shelf break as a foraging area. A related comment questioned whether our consideration of Bering Sea ice edge use by juvenile bearded seals relative to the proposed southern boundary of critical habitat suggested this habitat was an essential feature.

Response: As we discussed in the proposed rule, although some tagged juvenile bearded seals selected habitat near the ice edge (which, depending on ice conditions, may extend to near the shelf break) and the 100-m isobath in the Bering Sea, other tagged juveniles did not show this use pattern. Further, as noted in this final rule, a recent study by Olnes *et al.* (2021) reported that in the later years of their study, juvenile bearded seals selected ice concentrations that occurred well north of the southern ice edge in the Bering Sea, in contrast to earlier study years. The authors suggested that the contrasting pattern of habitat selection in the later period reflected changes in ice conditions that coincided with this period. While it seems likely that prey resources would also be an important factor, data are not available on this aspect of the habitat use patterns documented for these seals.

In response to public comments and concerns regarding our delineation of the boundaries of critical habitat with respect to bearded seal primary prey resources, as well as peer reviewer and public comments related to bearded seal use of habitat for foraging, we re-evaluated the best scientific data available and the approach we used to identify the specific area(s) that contain this essential feature. In the proposed rule, we identified one specific area in the Bering, Chukchi, and Beaufort seas containing the essential features. Although the same seaward boundaries were identified for this specific area with respect to both the primary prey resources essential feature and the sea ice essential features, the shoreward boundary was identified as the line of MLLW based on occurrence of the primary prey resources essential feature. However, in reviewing the comments and considering the available data, we recognized that available information on the distributions of bearded seal primary prey species indicates that these prey resources are widely distributed across the geographic area occupied by these seals, and as such, we concluded it was not possible to delineate the boundaries of critical habitat based on the description of this feature alone. We also have no information that suggests this portion of the species' occupied habitat contains primary prey resources that differ from those found within the specific area defined by the sea ice essential features. Given that the movements and habitat use of bearded seals are strongly influenced by the seasonality of sea ice, we determined that the best approach to identify the appropriate boundaries for the specific area(s) containing all of the essential features is to base the delineation on the same boundaries identified for the sea ice essential features (*i.e.,* sea ice essential for whelping, nursing, and molting). As a result of this change in our approach, we have revised the shoreward boundary of the designation (see Summary of Changes From the Proposed Designation section); the boundaries are otherwise unchanged from the proposed rule. We note that the southern extent of critical habitat designated for the Beringia DPS in the Bering Sea includes some areas near the 100-m isobath, and some portion of habitat near the ice edge may be located within the designated area during late winter and spring, depending upon ice conditions in a given year.

Comment 18: One peer reviewer suggested that it might be possible to create an index of bearded seal prey using existing data from benthic samples and fish trawls to better define foraging areas, similar to the approach used by Jay *et al.* (2017) to develop an index of walrus prey.

Response: While we appreciate this suggestion, suitable data on the distributions and abundances of bearded seal primary prey species within U.S. waters occupied by bearded seals are not available at this time to develop such an index for those prey. Although future research may enhance understanding of bearded seal foraging habitat, the ESA requires us to designate critical habitat based on the best scientific data available. This information is sufficient to support our determination that the specific area designated as critical habitat for the Beringia DPS contains the primary prey resources essential feature.

Comment 19: One peer reviewer stated that in our evaluation of climate change as a source of potential threats to the essential features that may require special management considerations or protection, more specific attention to ocean acidification would be appropriate.

Response: Although our evaluation does not consider an exhaustive list of threats that could impact the essential features, in response to this comment, as well as public comments (see our response to Comment 49), in the preamble to this final rule we have added ocean warming and acidification to our discussion of impacts on the essential features from climate change.

Comment 20: In reference to our discussion of primary sources of potential threats to the essential features that may require special management considerations or protection, one peer reviewer suggested that the analysis by Quakenbush *et al.* (2019) of tagged bearded seal movements relative to both oil and gas lease areas in the Chukchi and Beaufort seas, and shipping traffic in the northern Bering and Chukchi seas, could be used to describe the temporal overlap of bearded seals and these activities.

Response: We appreciate this suggestion. However, our evaluation of oil and gas activity and marine shipping and transportation as sources of threats that may require special management considerations or protection focuses on potential impacts to each of the essential features of bearded seal critical habitat. Because the analysis referenced by the peer reviewer does not pertain directly to effects of these activities on the essential features, we have not incorporated the suggested information into that evaluation.

Comment 21: One peer reviewer noted that, in addition to our reference to the Deep Water Horizon oil spill in discussing risks to the essential features associated with oil production in the Arctic, it might be useful to refer to information from studies on the long-term impacts of the 1989 Exxon Valdez oil spill in discussing risks of oil spills/discharges from vessels.

Response: We have updated our discussion of oil and gas activity in the preamble of this final rule to note that experience with spills in subarctic regions, such as in Prince William Sound, Alaska, have shown that large oil spills can have lasting ecological effects.

Comment 22: One peer reviewer commented that of the four sources of potential threats for which we concluded the essential features may require special management considerations or protection (climate change, oil and gas activity, marine

shipping and transportation, and commercial fisheries), only oil and gas activity and commercial fisheries typically have a Federal nexus requiring ESA section 7 consultation. The peer reviewer stated that although climate change is the source of the most serious habitat threats, it does not appear to lend itself to management that would benefit the Beringia DPS now or in the future. Similarly, several other commenters asserted that our finding that the essential features may require special management considerations or protection relied on threats that are nonexistent or minor compared to climate change. Commenters further asserted that this finding is not consistent with ESA requirements because we did not identify any specific management considerations or measures that would be useful in protecting the essential features or identify how such measures would be implemented. Commenters also stated that existing regulatory mechanisms such as the MMPA and other Federal, State and local regulatory mechanisms already sufficiently protect the species from threats and impacts. Two of the commenters further asserted that, therefore, the identified essential features do not support designation of critical habitat because there are no special management considerations or protections that would be useful in protecting these features.

Response: In accordance with section 3(5)(A)(i) of the ESA and our implementing regulations at 50 CFR 424.12(b)(1)(iv), we evaluated whether each of the essential features ''may require special management considerations or protection.'' An important word in this statutory phrase is ''may.'' We must show that such special management considerations or protection may be needed now or in the future, not that the habitat features definitively will require such considerations or protection. Moreover, 50 CFR 424.02 defines special management considerations or protection to ''mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.'' In other words, any relevant method or procedure qualifies as special management considerations or protection. Even if specific management measures are presently undeterminable, they may become determinable in the future because of continuing advances in science and technology. (*See Alaska Oil & Gas Ass'n* v. *Salazar,* 916 F. Supp. 2d 974, 990–992 (D. AK 2013) (''The Service has shown that someday, not necessarily at this time, such considerations or protection *may* be required . . . For example, the evidence in the record showing that sea ice is melting and that it will continue to melt in the future, perhaps at an accelerated rate, is more than enough proof that protection *may* be needed at some point''), reversed on other grounds by *Alaska Oil & Gas Ass'n* v. *Jewell,* 815 F.3d 544 (9th Cir. 2016)). Additionally, the question is whether the essential features identified may require special management considerations or protection, not whether all threats to those features, including climate change, could be cured through management. For example, if sea ice suitable for whelping and nursing becomes more scarce in the future, special management considerations or protections for remaining ice may become necessary, not to prevent or reverse the effects of climate change, but to further protect use of the remaining essential features. As discussed in detail in the Special Management Considerations or Protection section of this final rule, the ''may require'' standard is met or exceeded with respect to each of the essential features of critical habitat for the Beringia DPS.

Comment 23: One peer reviewer stated that better use could have been made of IK despite its dispersed nature and the challenges of accessing it. A number of other commenters, including the Ice Seal Committee and the North Slope Borough, also indicated that we should further utilize IK in our determination of critical habitat for the Beringia DPS. The North Slope Borough stated that due to the amount of existing scientific uncertainty concerning bearded seal habitat requirements, IK constitutes the best scientific data available and should be used in developing and designating any critical habitat for the species. They further stated that we should solicit and collect IK about ice conditions used by bearded seals for whelping and nursing, and how flexible they are in the types of habitat they use for these activities, and we should use this information to modify the proposed designation.

Response: In developing this final rule, we considered the best scientific data available, including comments submitted from individuals who provided IK about bearded seal habitat use, and available publications and reports that documented IK for coastal communities located in western and northern Alaska. We also attempted to incorporate additional information from Alaska Native hunters into the determination of critical habitat by soliciting input from the Ice Seal Committee regarding the essential features of bearded seal critical habitat and specifically offering to consult with Alaska Native tribes and organizations regarding the development of the designation. Although we received some input in response, we recognize that additional IK exists that we have been unable to incorporate. However, the ESA does not allow us to defer the designation of critical habitat in order to collect additional data. Under a court-approved stipulated settlement agreement, we must complete a final critical habitat determination by March 15, 2022 (see Background section).

Draft Impact Analysis Report

Comment 24: One peer reviewer suggested that the analysis of the impacts of the critical habitat designation could be put into perspective by including a brief reference to the rate of climate change in the Arctic. The peer reviewer commented that oil and gas is the industry most affected by the critical habitat designation, and yet those activities are the ones most likely to negatively impact the seals, as well as other marine resources within the area under consideration for designation. Another peer reviewer questioned the language in the Draft Impact Analysis Report that referred to ''long-term reductions in sea ice expected to occur within the foreseeable future,'' given that rapid sea ice loss is already occurring at unprecedented rates. This peer reviewer advised that the analysis would be strengthened and more grounded in current science by acknowledging that GHG emissions are wholly responsible for Arctic sea ice loss. Further, the peer reviewer stated that activities that release GHGs into the atmosphere are ''the'' major contributing factor to climate change and sea ice loss, rather than ''a'' factor, as stated in the report. The peer reviewer noted that the effectiveness of the designation for the species' conservation is, however, most dependent on the elimination of GHG emissions by mid-century, keeping global temperatures from rising beyond 1.5 °C above pre-industrial levels, and consequently minimizing sea ice loss.

Response: We have incorporated a reference to the rate of climate change in the Arctic into the Final Impact Analysis Report, as suggested by the peer reviewer. Although the report contains a limited discussion of climate change and sea ice loss in the Arctic, we discuss this topic in more detail in the Special Management Considerations or Protection section of this final rule. We agree with the peer reviewer's comment

that activities that release GHGs are the major contributing factor to climate change and sea ice loss, and we have modified the preamble of this final rule and the Final Impact Analysis Report accordingly. We acknowledge that the critical habitat designation will not halt the ongoing loss of sea ice. However, the designation can help address other potential threats to the species' habitat and mitigate the effects of climate change. Furthermore, it is possible that actions may be taken that could reduce GHG emissions and slow the changes in sea ice habitat, particularly toward the latter part of this century. Bearded seals will increasingly experience the impacts of habitat alteration stemming from climate change and it is therefore important to identify and provide protection under ESA section 7 for the habitat features and areas essential to the species' conservation.

Comment 25: One peer reviewer suggested that it might be informative to compare the estimated incremental administrative costs of future section 7 consultations attributable to the critical habitat designation with financial data (*e.g.,* overall production costs, as well as profits) from certain industries, in particular the oil and gas industry. The peer reviewer commented that other industry expenditures associated with leasing, exploration, drilling, etc., surely must greatly exceed potential incremental administrative costs of consultations.

Response: Although the information suggested by the peer reviewer could provide additional perspective on the estimated incremental costs of future section 7 consultations for oil and gas related activities, we determined that the information considered in the Final Impact Analysis Report provides sufficient context for the analysis. We also note that this report includes information on average annual receipts for oil and gas operations identified as potentially subject to future section 7 consultations addressing the critical habitat.

Comment 26: One peer reviewer commented that it is important to underscore educational, scientific, and non-consumptive use benefits from increased public awareness generated by the critical habitat designation process itself. Similarly, another commenter stated that the designation process educates managers, state and local governments, and the public regarding the conservation value of critical habitat areas to listed species, which can inform management decisions, conservation programs, and recovery efforts. The peer reviewer also suggested that the potential role of marine mammals in general as the ''canary in the coal mine'' on climate change is something useful for scientists as well as the general public. In addition, the peer reviewer stated that the distributional impacts of the designation are importantly in favor of Alaska Native communities, who depend on marine resources for subsistence, employment, and income. Another peer reviewer commented that the discussion of the positive impacts of the designation to community resilience of underserved Arctic coastal communities could be strengthened.

Response: We agree with the peer reviewers and the other commenter that the critical habitat designation for the Beringia DPS can have a number of ancillary and indirect economic, socioeconomic, cultural, and educational benefits, such as those described in these comments. Such benefits are discussed in detail and Section 4 of the Final Impact Analysis Report and additional information regarding potential benefits has been incorporated into this section of the report as appropriate. As discussed in this report, all of the types of benefits identified are at least partially co-extensive with those afforded through the ESA listing of the species (*i.e.,* they are not attributable solely to critical habitat designation). Data are not available to determine the extent to which such benefits would be attributable specifically to critical habitat designation.

Comment 27: One peer reviewer stated that while they did not disagree with the conclusion in the Draft Impact Analysis Report that there are likely some incremental benefits from designating critical habitat for the Beringia DPS, they found it unclear if the information in the report supports finding that there is a net benefit (and also questioned whether such a finding is necessary). To address this, the peer reviewer suggested that the report clearly set out (qualitatively) how the designation would result in an incremental change in benefits from the baseline (without critical habitat). The peer reviewer also commented that for some of the benefits ascribed to the designation (*e.g.,* support of subsistence activities and commercial fishing), it would seem there needs to be an incremental change in the quality of the habitat from the baseline, which suggests the designation would result in a change to activities that impact the critical habitat, even though section 7 consultations are not expected to result in additional project modification requests attributable to the designation. The peer reviewer suggested that the report further characterize the ability of the designation to influence the design of projects prior to consultation, or include additional information regarding other ways that the designation could result in an incremental change in habitat quality. Alternatively, the peer reviewer suggested focusing on benefits they believe have stronger support (education, scientific knowledge, cultural support, and non-use values associated with habitat protection). In contrast, another peer reviewer stated that the report provided a very thorough summary of the expected costs and benefits and made a well-grounded assessment of the longer-term costs/benefits versus shorter-term costs/benefits.

Response: The ESA requires us to designate critical habitat to the maximum extent prudent and determinable for threatened and endangered species listed under the ESA (16 U.S.C. 1533(a)(3)(A)(i)). Section 4(b)(2) of the ESA requires us to designate critical habitat on the basis of the best scientific data available after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. In addition, section 4(b)(2) describes an optional process by which we may go beyond the mandatory consideration of impacts and weigh the benefits of excluding any particular area against the benefits of designating it. We did not intend to convey in the Draft Impact Analysis Report that the ESA requires any showing that a designation will result in net benefits. We have revised the Final Impact Analysis Report to better communicate the purpose and need for this analysis. In addition, in response to the peer reviewers' comments and suggestions, we expanded Section 4 of the Final Impact Analysis Report to incorporate additional details presented in the proposed rule regarding ways in which critical habitat designation for the Beringia DPS can result in incremental benefits. Although we do not anticipate modifications to Federal actions expressly to avoid impacts to the critical habitat as distinct from impacts to bearded seals, we note that this does not mean such modifications could not occur in situations we are unable to predict at this time.

Several non-regulatory benefits are expected to result from the designation. Critical habitat designation provides specific notice to Federal agencies and the public of the geographic areas and physical and biological features essential to the conservation of the

species, and information about the types of activities that may reduce the conservation value of the habitat. This information will focus future section 7 consultations on key habitat attributes. Designation of critical habitat can also inform Federal agencies of the habitat needs of the species, which may facilitate using their authorities to support the conservation of the species pursuant to section 7(a)(1) of the ESA, including to design proposed projects in ways that avoid, minimize, and/or mitigate adverse effects to critical habitat from the outset. Public awareness of critical habitat designations may also stimulate voluntary conservation actions by the public, as well as research, education, and outreach activities.

In addition to the benefits of critical habitat to the seals, as detailed in Section 4 of the Final Impact Analysis Report and summarized in the *Benefits of Designation* section of this final rule, other forms of benefits may also accrue. These benefits may be economic in nature (whether market or non-market, consumptive, non-consumptive, or passive), educational, cultural, or sociological, or they may be expressed through beneficial changes in the ecological functioning of the species' habitat, which itself yields ancillary welfare benefits (*e.g.,* improved quality of life) to the region's human population. For example, because the designation is expected to result in enhanced conservation of the Beringia DPS over time, residents of the region who value these seals, such as subsistence hunters, may experience indirect benefits. As discussed in Sections 4 and 6 of the Final Impact Analysis report, although available information is insufficient to quantify or monetize the benefits of designation, they are not inconsequential, and the potential incremental economic impacts associated with the designation are modest both in absolute terms and relative to the level of economic activity expected to occur in the affected area (see *Economic Impacts* section).

Public Comments

Essential Features

Comment 28: One commenter stated that although we identified areas of at least 15 percent ice concentration as essential for molting, this criterion does not appear to be based on any specific data regarding sea ice concentrations necessary for molting. They also pointed out that we indicated Ver Hoef *et al.* (2014) informed the conclusion in the status review of the bearded seal (Cameron *et al.* 2010) that 15 percent ice concentration would be minimally sufficient for molting, but stated we could not have relied on Ver Hoef *et al.* (2014) because it was in fact published several years after the status review was completed.

Response: As we explained in the proposed rule, the minimum 15 percent ice concentration identified for sea ice habitat essential as a platform for molting is consistent with the ice concentration considered by Cameron *et al.* (2010) to be minimally sufficient for molting in the status review of the bearded seal. They assumed that ice concentration requirements for molting would be less stringent than those for whelping and nursing, which they had concluded were 25 percent or greater, and they judged the minimum value for molting to be 15 percent, which also corresponds to the ice edge in many observation and modeling products for sea ice; it would be impractical to use a value below that which is typically used to denote areas of sea ice in satellite observations and modeling products. The authors determined the minimum ice concentration for whelping and nursing in light of available information from two studies, Simpkins *et al.* (2003) and Ver Hoef *et al.* (*In review*). Because the latter study was subsequently published in a scientific journal, the published version (Ver Hoef *et al.* 2014) was cited in the proposed rule. There were no substantive differences in the patterns of probability of occurrence of bearded seals among 25 percent ice classes between the published and in-review versions of this study that would change our conclusions that sea ice habitat essential as a platform for whelping and nursing has at least 25 percent ice concentrations and for molting has at least 15 percent ice concentration.

Comment 29: One commenter stated that the definition of the primary prey resources essential feature is exceedingly and impermissibly generic in that it includes all species that may be prey for bearded seals rather than the specific prey species that are essential to the conservation of the Beringia DPS. They also stated that although we indicated that bearded seals are considered ''benthic specialists,'' the best scientific information available demonstrates that the diet of bearded seals in Alaska has shifted over time, with bearded seals consuming a greater proportion and diversity of fish species (Quakenbush *et al.* 2011). They suggested that this further demonstrates that there is no particular prey species that is essential to the conservation of the Beringia DPS, diet is flexible, and that designating critical habitat based on primary prey resources may not be critical for bearded seals to forage in waters 200 m or less in depth.

Response: Because bearded seals rely on their primary prey resources in waters 200 m or less to support their annual energy budgets, we continue to conclude in this final rule that primary prey resources compose a habitat feature essential to the conservation of the Beringia DPS. We disagree that the definition of the primary prey essential feature is too generic. In the proposed rule, we identified those primary prey resources as benthic organisms, including epifaunal and infaunal invertebrates, and demersal and schooling pelagic fishes found in water depths of 200 m or less. Peer reviewer and public comments led us to re-evaluate and refine the definition of this essential feature to focus on benthic organisms specifically (see Summary of Changes From the Proposed Designation section). As we explained in our final rule, Implementing Changes to the Regulations for Designating Critical Habitat (81 FR 7414; February 11, 2016), the level of specificity in our description of essential features is primarily determined by the state of the best scientific information available for the species at issue. The best scientific data available indicate that the diet of bearded seals is taxonomically diverse, and thus specification of particular primary prey species is impracticable. Still, bearded seals do not consume every species of marine organism found within the range of the Beringia DPS; they are selective. We therefore find that the level of specificity provided in the regulatory definition of the primary prey resources essential feature adopted in this final rule is appropriate for defining this essential feature based on the best scientific data available. Consistent with the commenter's point about bearded seals being opportunistic feeders within their preferred habitats, in this final rule we refer to bearded seals as ''benthic generalists'' rather than the previous ''benthic specialists.''

Comment 30: One commenter stated that we should identify habitat for seasonal movements of bearded seals (*i.e.,* dispersal and migration) as an essential feature, given that we indicated in the proposed rule that many seals migrate seasonally to maintain access to sea ice and, and noted that they are also known to migrate between foraging patches. The commenter stated that we should overlay information from bearded seal telemetry studies off Alaska with the critical habitat map to ensure that important migratory and dispersal habitat falls within the critical habitat

boundaries, and then include such habitat as a separate essential feature.

Response: Many bearded seals do make north-south movements associated with the annual retreat and advance of sea ice, and as the commenter noted, studies that have inferred locations of foraging activity for bearded seals tagged in Alaska based on movement and dive data show some overlap in areas used extensively by individual seals. However, the spatial patterns of habitat use and locations of intensive use can vary substantially among individuals. The tracking information available also represents habitat use by primarily juvenile tagged bearded seals and it is unknown how representative it is for older animals. Moreover, bearded seals have a widespread distribution and can range widely. Thus, based on the best scientific data available, we are unable to identify specific physical or biological features indicating that a given area constitutes migratory and dispersal habitat. We note, however, that the late spring to early summer time period during which bearded seals use sea ice habitat essential for molting coincides with when the sea ice edge retreats northward. Thus, there is some temporal overlap between when this essential feature is used by bearded seals and seasonal movements of those seals that follow the receding ice edge northward.

Comment 31: Two commenters stated that the essential features and expansive area proposed for designation do not account for the observed flexibility and resilience of bearded seals, their wide-ranging movements, and their broad dietary preferences and behavior, due to widely variable conditions from year to year regardless of climate change.

Response: We acknowledge that bearded seals can make wide-ranging movements, have diverse diets, and inhabit a range of sea ice conditions. Nevertheless, as discussed elsewhere in this final rule, bearded seals require suitable sea ice for whelping, nursing, and molting, as well as primary prey resources in waters 200 m or less in depth to support their energetic requirements. We continue to find, based on the best scientific data available, that these physical or biological features are essential to the conservation of the species (see Physical and Biological Features Essential to the Conservation of the Species section), and that each of these essential features may require special management considerations or protection (see Special Management Considerations or Protection section).

Comment 32: We received several comments, including from the BOEM, Bureau of Land Management (BLM), and the North Slope Borough, recommending that we remove the proposed essential feature of acoustic conditions that allow for effective communication by bearded seals for breeding purposes. Commenters expressed the following concerns: (1) There is insufficient information currently available regarding bearded seal breeding behavior and acoustic conditions to determine whether this feature is essential or that its inclusion in the designation would benefit the species; (2) the area proposed for designation is too expansive with respect to this proposed essential feature; (3) the proposed definition of the feature is too vague and no criteria were specified that could be used to determine whether impacts to this proposed essential feature are likely to occur; and (4) there is insufficient information currently available to accurately assess the potential effects of noise-related activities on this proposed essential feature, or to identify project-specific mitigation measures, which would make it difficult to address effects of such activities on this feature through a destruction or adverse modification analysis. Additionally, commenters stated that this proposed essential feature is not consistent with the ESA, as it reflects the absence of certain sounds levels, and as such, they believe it is not a tangible physical or biological feature that can be found in a specific area. Further, these commenters stated that any potential effects of noise are properly considered in section 7 consultations as effects on the seals under the jeopardy standard. One commenter also stated that if this essential feature is included in the designation, we should exclude areas with existing anthropogenic noise (*e.g.,* ports, villages, other infrastructure, areas of shipping, etc.) because this feature would not be found in those areas. Finally, BLM stated that prior to including the acoustic environment as an essential feature of critical habitat, we should develop this concept further by perhaps initiating research into the acoustic needs of breeding bearded seals or establishing a working group to identify information needs and establish guidelines and metrics for understanding acoustic impacts to bearded seal habitat.

Response: In the proposed rule, we identified ''acoustic conditions that allow for effective communication by bearded seals for breeding purposes within waters used by breeding bearded seals'' as an essential feature because acoustic communication plays an important role in bearded seal reproductive behavior. However, we acknowledged the limited nature of the scientific data available to inform our identification of this feature, requested comment, and indicated that we would re-evaluate the feature in developing the final critical habitat designation for the Beringia DPS. After carefully considering public comments and the best scientific data available, we have concluded that at this time, we are unable to describe the acoustic feature in sufficient detail to provide a reasonable basis upon which to identify when and where the feature occurs or adequately assess the possible impacts of future activities on such a feature. We therefore are not including an acoustic feature in the critical habitat designation. However, we may in the future consider developing guidelines for understanding acoustic impacts to bearded seal habitat, as suggested by BLM.

We have included a qualitatively defined feature (or characteristic of a feature) pertaining to acoustic conditions in previous critical habitat designations for Main Hawaiian Islands insular false killer whales (83 FR 35062, July 24, 2018) and Cook Inlet beluga whales (76 FR 20180, April 11, 2011). For Cook Inlet beluga whale critical habitat, the feature is focused on noise levels that do not lead to abandonment of the area, and for Main Hawaiian Islands insular false killer whales, the characteristic of a feature is focused on sound levels that would not significantly impair whales' use or occupancy. Thus, in contrast to the acoustic feature we proposed for the Beringia DPS, the feature included in these designations relates to use or occupancy of critical habitat by a species with a limited range or area of occupancy.

The protections of the ESA and the need to consult apply when a proposed Federal action may affect a listed species and/or designated critical habitat. We will continue to consider and address the effects of anthropogenic noise on bearded seals in consultations under section 7 of the ESA (under the jeopardy standard). Scientific understanding of the acoustic ecology of bearded seals is continuing to advance and will enhance our ability to consider the impacts of sound in our analyses of effects to bearded seals through sections 7 consultations. For example, a recent study by Sills *et al.* (2020a) has quantified bearded seals' ability to detect specific sounds embedded within background noise.

Comment 33: Several commenters, including the Marine Mammal

Commission and the Native Village of Kotzebue, stated the proposed acoustic essential feature should be included in the designation, and two commenters suggested that we expand the proposed definition of this feature beyond the focus on bearded seal communication for breeding purposes because the seals rely on acoustic communication at other times as well. Most of the commenters expressed concerns about the potential for impacts on bearded seal communication from anthropogenic noise, and noted that reduced ice cover under a changing climate will result in an increasingly noisy environment, including from physical factors associated with ice cover changes, and potentially from increased intraspecific competition in shrinking areas of suitable habitat.

Response: As we explained in our previous response (to Comment 32), after carefully considering public comments and the best scientific data available, we have concluded that at this time, we are unable to adequately characterize the acoustic conditions that allow for effective communication by bearded seals for breeding purposes (or what constitutes ''effective communication'') and to thereby provide a reasonable basis upon which to identify when and where the feature occurs, and assess possible impacts to such a feature. We therefore are not including an acoustic feature in this critical habitat designation. We agree with the commenters that acoustic conditions that allow for effective communication and other uses of sound by bearded seals are important for the conservation of the species. We will continue to consider and address the effects of anthropogenic noise on bearded seals in consultations under section 7 of the ESA. We will also consider results of future studies related to acoustic conditions for bearded seals, and we can consider revising the critical habitat designation in the future as warranted.

Specific Areas

Comment 34: We received a number of comments that expressed support for the proposed designation, and several commenters including the Marine Mammal Commission and Kawerak indicated that they concurred that the proposed critical habitat contains the physical and biological features essential to the conservation of the Beringia DPS.

Response: We acknowledge these comments. We note that we made some changes to the proposed designation, which are described in the Summary of Changes From the Proposed Designation section of this final rule.

Comment 35: Several commenters stated that the proposed designation is overbroad because it includes most of the geographical area occupied by the Beringia DPS within the U.S. EEZ. The commenters asserted that as such, the proposed designation is inconsistent with congressional intent and the ESA requirement that critical habitat not include the entire geographical area occupied by the species. The commenters also referred to the Supreme Court ruling in *Weyerhaeuser Co.* v. *U.S. Fish & Wildlife Serv.,* 139 S. Ct. 361, 368 (2018), in which the court stated that critical habitat is a subset of habitat, and stated that this indicates critical habitat must be designated more narrowly to include only those specific areas where the essential elements presently required for survival of the species are located.

In addition, the commenters stated that the proposed rule did not provide scientific data demonstrating with any specificity that the entirety of the area proposed for designation actually contains one or more of the identified essential features. ADF&G suggested that in the proposed rule, the description of the essential features as dynamic and variable on both temporal and spatial scales, and related language stating that critical habitat was identified based on the expected occurrence of the essential features, indicates that we identified the specific area proposed for designation without supporting data identifying the location of the essential features. They stated that although the designation is to be done at a scale determined by the Secretary, the proposed designation, at a huge scale, stretches the bounds of what is reasonable. They referred to the revised designation of critical habitat for North Atlantic right whales as an example of a designation that is compact and targeted relative to the species' range, even though it expanded the designated critical habitat. They also pointed to the critical habitat designation for North Pacific right whales as an example of a designation that they described as similarly compact and targeted, despite an acknowledged lack of data. They went on to assert that we did not fully analyze the report they provided on bearded seal movements (Quakenbush *et al.* 2019) as a primary source of spatial data. They stated that we should make the best use of all the available data to delineate the most essential areas within a species' range, and that we instead overcompensated for lack of data or difficulty in determining where essential feature are located by proposing an overly expansive designation. They also contended that based on statutory language, NMFS's goal must be to identify and designate those specific areas that demonstrably contain the highest value physical and biological features for the species. Related comments stated that establishing priority habitat areas for designation would be more manageable and efficient.

Response: Under the ESA, a specific area qualifies as critical habitat if it was occupied by the species at the time of listing and contains one or more of the physical or biological features essential to the conservation of the species and that may require special management considerations or protection. Specific areas are eligible for designation if they meet these criteria. Our regulations clarify that the geographical area occupied by the species 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; 50 CFR 424.02). Further, physical or biological features may include habitat characteristics that support ephemeral or dynamic habitat conditions, and thus, they need not be present throughout critical habitat at all times.

We have long interpreted ''geographical area occupied'' in the definition of critical habitat to mean the entire range of the species at the time it was listed, inclusive of all areas the species uses and moves through seasonally (45 FR 13011, February 27, 1980). Further, in *Arizona Cattle Grower's Assoc.* v. *Salazar,* 606 F.3d 1160 (9th Cir. 2010), the Ninth Circuit affirmed the interpretation of USFWS that ''occupied'' areas means areas that the species uses with sufficient regularity such that it is likely to be present during any reasonable span of time. As we discuss in the Geographical Area Occupied by the Species section of this final rule, based on the best scientific data available, the range of the Beringia DPS was identified in the final ESA listing rule (77 FR 76740; December 28, 2012) as the Arctic Ocean and adjacent seas in the Pacific Ocean between 145° E longitude and 130° W longitude, except west of 157° E longitude, or west of the Kamchatka Peninsula, where the Okhotsk DPS of the bearded seal is found. We cannot designate areas outside U.S. jurisdiction as critical habitat. Thus, the geographical area that was under consideration for this designation was limited to areas under the jurisdiction of

the United States that bearded seals of the Beringia DPS occupied at the time of listing. This occupied area extends to the outer boundary of the U.S. EEZ in the Chukchi and Beaufort seas, and south over the continental shelf in the Bering Sea.

We acknowledge that critical habitat constitutes a subset of what qualifies as ''habitat'' for a particular species. *See Weyerhaeuser* v. *U.S. Fish and Wildlife Serv.,* 139 S. Ct. 361 (2018). Consistent with the definition of critical habitat under the ESA and based on the best scientific data available, the specific area designated as critical habitat for the Beringia DPS in this final rule contains the physical and biological features identified as essential to the conservation of the Beringia DPS and that may require special management considerations or protection. This critical habitat is a subset of the habitat occupied and used by bearded seals of the Beringia DPS in U.S. waters, and it is also a subset of the habitat that is occupied and used by this species in their broader distribution beyond U.S. waters. Moreover, because all of the Beringia DPS's critical habitat is currently occupied by the species, the Supreme Court's decision in *Weyerhaeuser* v. *U.S. Fish and Wildlife Serv.* (139 S. Ct. 361 (2018))—which held in the context of unoccupied habitat that an area must logically be ''habitat'' in order to meet the narrower category of ''critical habitat'' as defined under the ESA—is not directly relevant to the designation of critical habitat for the Beringia DPS. Specific areas that are occupied by a species are inherently ''habitat.''

Delineation of specific areas that contain essential features is done at a scale determined by the Secretary (of Commerce) to be appropriate (50 CFR 424.12(b)(1)). In making decisions about the appropriate scale and boundaries for the specific areas we are designating as critical habitat, we considered, among other factors, the life history of the species and the scales at which data are available to inform our analysis. The seasonality of sea ice cover strongly influences the movements, foraging, and reproductive behavior of bearded seals, and the dynamic variations in sea ice cover result in individuals distributing broadly and using sea ice habitats within a range of suitable conditions. Therefore, our delineation of critical habitat for the Beringia DPS reflects the considerations described elsewhere in this final rule regarding the variability in the spatial and temporal distributions of the essential features, in particular of the sea ice essential features, the overlap in timing of whelping and nursing with molting, the widespread distribution of bearded seals using the essential features, and the spatial scale of the seals' movements in utilizing their habitat.

In that regard, our approach is similar to USFWS's designation of critical habitat for polar bears. Recognizing that sea ice is dynamic and highly variable on both temporal and spatial scales, and that polar bear use of specific areas of sea ice habitat varies daily and seasonally, the extent of the continental shelf within the area occupied by the polar bear in the United States was identified as the sea ice critical habitat unit containing the essential sea ice feature (75 FR 76086, December 7, 2010) (this designation was challenged and ultimately upheld by the Ninth Circuit, *see Alaska Oil & Gas Ass'n* v. *Jewell,* 815 F. 3d 544, 555–62 (9th Cir. 2016)). For Beringia DPS bearded seal critical habitat, the essential features are dynamic, and we identified where one or more of these essential features occurs at a coarse scale with as much specificity as the best scientific data available allows (see Specific Areas Containing the Essential Features section).

As stated above, under the ESA, an area qualifies as critical habitat if, based on the best scientific data available, it was occupied by the species at the time of listing and contains one or more of the physical or biological features essential to the conservation of the species and that may require special management considerations or protection. Specific areas are eligible for designation if they meet these criteria. Neither the ESA's definition of critical habitat nor our implementing regulations at 50 CFR part 424 restrict critical habitat to only the most important core habitats of the species. Further, where, as here, one or more essential features are not static, and their location changes both seasonally and annually, a critical habitat designation must be large enough to account for such changes in the locations of essential features and the particular species' habitat requirements throughout their life history, as discussed above. Following thorough consideration of peer reviewer and public comments and information submitted, we conclude, based on the best scientific data available, including the information reported by Quakenbush *et al.* (2019), that the specific area we are designating as critical habitat most accurately identifies where the physical and biological features essential to the conservation of the Beringia DPS occur. We acknowledge that this designation is much larger than the designations for the North Atlantic right whale and the North Pacific right whale. Each critical habitat designation reflects consideration of the best scientific data available at the time of designation regarding the particular species and its habitat characteristics and requirements.

Comment 36: Several commenters stated that critical habitat should be designated on a seasonal basis to reflect the specific times and places in which the essential features are used by bearded seals for critical life functions. Some commenters contended that the proposed rule would ''over-designate'' critical habitat and rely on subsequent section 7 consultations as a means to refine what constitutes critical habitat, which they stated would effectively remove the designation from notice and comment rulemaking and shift the burden of designation decisions to the consultation process. BOEM specifically recommended that the designation should identify continental shelf waters in depths over 3 m as critical habitat used in summer/fall, and the southern ice front and lead system as critical habitat used in winter/spring, stating that there are few bearded seals in the Beaufort Sea in winter/spring because they avoid fast ice, pack ice away from leads, and ice over deep water beyond the shelf break.

Response: The ESA focuses on the spatial presence of the essential features within occupied areas, but does not mention the temporal presence of those features. Under the ESA's definition of critical habitat, if an area is occupied by a listed species and one or more essential features can be found in that area, even if the features are present only seasonally, then that area qualifies as critical habitat. The statute does not allow critical habitat designations to fluctuate seasonally, nor does it specify that critical habitat must contain any particular essential feature at all times. In addition, our implementing regulations at 50 CFR 424.12(c) specify that ephemeral reference points cannot be used to clarify or refine the boundaries of critical habitat. A dynamic boundary based on seasonal presence of the essential features would be inconsistent with this requirement. Moreover, even if seasonal designations of critical habitat were authorized under the ESA or the implementing regulations, such designations could potentially miss an important aspect of critical habitat: The protection afforded by designation even when the species may not be present, thus ensuring that Federal actions are not likely to adversely modify or destroy critical habitat that is important to support

essential life history functions during particular times of the year.

The size of the critical habitat designation is in no way related to shifting any burdens to the section 7 consultation process. Where, as here, one or more essential features are not static, and their location changes both seasonally and annually, a critical habitat designation must be large enough to account for such changes in the locations of essential features and the particular species' habitat requirements throughout their life history. The potential effects of a proposed Federal action depend on, among other factors, the specific timing and location of the action relative to seasonal presence of essential features or seasonal use of critical habitat by listed species for essential life history functions. It is therefore common practice in consultations under section 7 of the ESA to address spatial-temporal considerations as part of the analysis of how a particular Federal action would impact the conservation value of critical habitat, and these considerations can be effectively addressed for such analyses involving Beringia DPS bearded seal critical habitat. It is likely that most Federal actions that would occur outside the time periods when the sea ice essential features are present would not adversely affect those features. However, some actions that temporally avoid the presence of non-static essential features such as sea ice may still impact the habitat that bearded seals use or occupy. For example, the construction of an offshore facility when sea ice is not present could still render some bearded seal habitat unusable after the construction of the project. Thus, during consultation, NMFS considers the particular set of facts relevant to that consultation, such as the nature of the activities being conducted, the location of the action, and the spatial and temporal scale, in order to determine the potential effects of the activity on critical habitat and ultimately, whether the activity is likely to destroy or adversely modify critical habitat.

Comment 37: One commenter requested that we consider basing the southern boundary of critical habitat on the position of the ice edge in March instead of April because portions of the Bering Sea that are potentially crucial to bearded seal reproductive success would otherwise be excluded. The commenter stated that although we indicated that April is the peak month for bearded seal whelping, IK indicates that bearded seal pups are born by the end of March.

Response: As we explained in the proposed rule and the Specific Areas Containing the Essential Features section of this final rule, in determining the southern boundary, we focused on delineating the southern extent of where the sea ice essential feature that supports whelping and nursing is found on a consistent basis. Because bearded seals use nearly the entire extent of pack ice over the Bering Sea shelf in spring, depending upon ice conditions in a given year, some bearded seals may use sea ice for whelping south of this median ice edge. We acknowledge that, as discussed in the proposed rule, newborn pups have been observed in the Bering Sea from mid-March to early May Cameron *et al.* (2010). However, based on the best information available, we conclude the main period of bearded seal whelping occurs in April. We therefore continue to conclude that the best scientific data available suggests that median position of the ice edge for April provides the best estimate of the southern extent of where sea ice essential for whelping and nursing occurs on a consistent basis. This does not imply that habitat in the Bering Sea not included in the designation is unimportant to bearded seals, or may not support their conservation. Rather, the designation delineates the subset of habitat within the area occupied by the Beringia DPS in U.S. waters that meets the definition of critical habitat under the ESA based on the best scientific data currently available, and includes the majority of reproductive habitat, as well as molting habitat, in the Bering Sea.

Comment 38: One commenter asserted that designation of critical habitat in the Beaufort Sea east of Utqiaġvik would have little conservation value to the Beringia DPS and that this area should therefore not be included in the designation. The commenter stated that the data currently available on bearded seal use of this habitat, such as bearded seal sighting densities from aerial surveys, which the commenter summarized, indicate very few bearded seals are present in these waters, and that this indicates that the area does not does not provide essential features in enough quantity or quality to support a high number of seals. The commenter also noted that the passive acoustic studies cited in the proposed rule recorded only a small number of individuals in the western Beaufort Sea. The commenter also pointed out that suitable habitat for bearded seals is more limited in the Beaufort Sea than in the Chukchi and Bering seas, as the continental shelf is narrower and the pack ice edge frequently occurs seaward of the shelf over water too deep for the seals to forage, and as such, it provides marginal habitat in comparison.

Response: The ESA states that an area qualifies as critical habitat if, based on the best scientific data available, it was occupied by the species at the time of listing and contains one or more of the physical or biological features essential to the conservation of the species and that may require special management considerations or protection. Specific areas are eligible for designation if they meet these criteria, although we may elect to use our discretion delegated by the Secretary to consider exclusion of particular areas under section 4(b)(2) of the ESA. The ESA does not mandate the exclusion of particular areas, and for the reasons discussed in the Analysis of Impacts Under Section 4(b)(2) of the ESA section of this final rule, we have not exercised our discretion to exclude any particular areas from the designation of critical habitat for the Beringia DPS. We agree that the region that includes the Bering and Chukchi seas forms a much larger area of habitat that is known to be highly productive for bearded seal foraging and provides favorable conditions for bearded seals during winter and spring in comparison to the Beaufort Sea. However, the best scientific data available also indicates that critical habitat designated in the Beaufort Sea in this final rule is occupied by the species and contains one or more essential features that may require special management considerations or protection. As we explained in our response to Comment 17 and in further detail in the following response to Comment 39, in developing this final rule, we re-evaluated the best scientific data available and the approach we used to identify specific area(s) containing the primary prey resources essential feature. As a result of this evaluation, the shoreward boundary of critical habitat in the Beaufort Sea is now defined as the 20-m isobath (relative to MLLW).

Comment 39: BOEM commented that during winter/spring bearded seals do not use shallow nearshore areas, river deltas, or lagoons with water depths less than 3 m because the shorefast ice in these areas frequently freezes to the bottom and into the seabed. In addition, they stated that nearshore areas of the Beaufort and Chukchi seas included in the proposed designation, especially shorelines along the coast and around islands and some shoals, are surrounded by fast ice during winter/spring and thus do not meet the proposed definition of sea ice essential as a platform for molting. Another commenter stated that critical habitat should be delineated to exclude landfast

ice, which they suggested occurs to approximately the 20-m isobath (*e.g.,* Mahoney *et al.* 2005, Mahoney *et al.* 2007), as well as the transitional zone between stationary, landfast ice, and pack ice. The commenter noted, as did BOEM and BLM, that coastal areas where seasonal landfast ice occurs, some of which is grounded, do not have pack ice; therefore, these areas do not contain the sea ice essential features. BLM stated that if no additional information is forthcoming, we should reconsider the nearshore coastal area as critical habitat for the Beringia DPS.

Response: We proposed to designate as critical habitat for the Beringia DPS one specific area of marine habitat in the Bering, Chukchi, and Beaufort seas containing one or more of the physical and biological features essential to the conservation of this species. We identified the proposed shoreward boundary of this specific area as the line of MLLW based on occurrence of the primary prey resources essential feature, rather than on the sea ice essential feature. In response to these and other related peer reviewer and public comments, we re-evaluated the best scientific data available and the approach we used to identify specific area(s) containing the primary prey resources essential feature to determine if different boundaries may be appropriate. As a result of this evaluation, we now identify a single specific area that contains all of the essential features based on our delineation of the boundaries for the sea ice essential features (see also our response to Comment 17).

Our descriptions of sea ice habitat essential for whelping and nursing, as well as sea ice habitat essential for molting, identify such habitat as areas with waters 200 m or less in depth containing pack ice, *i.e.,* sea ice other than fast ice, of suitable concentrations. We therefore considered available information regarding the spatial extent of landfast and its seasonal cycle in the Beaufort, Chukchi, and Bering seas (Mahoney *et al.* 2007, Mahoney *et al.* 2014, Jensen *et al.* 2020) to inform our delineation of the shoreward boundary with respect to occurrence of one or both of the sea ice essential features. As described in more detail in the Specific Areas Containing the Essential Features section of this final rule, this information indicates that relationships between landfast ice and bathymetry differ regionally and locally, and there are significant inter-annual differences in the maximum extent of landfast ice. In addition, there is evidence of decreases in landfast ice extent in the Chukchi and Bering seas and trends in earlier landfast ice breakup. It is therefore impracticable to delineate a single isobath as the shoreward boundary for the specific area containing one or both of the sea ice essential features that accounts precisely for where landfast may occur in a given year during the period of whelping, nursing, and molting. However, we concluded that defining the nearshore boundary by a depth contour at a coarse level for each region is appropriate given that landfast ice forms in areas of shallow bathymetry and such ice is not identified as essential to the conservation of the Beringia DPS. Because the best scientific data available indicates that in the Beaufort region (northeastern Chukchi Sea and Beaufort Sea), the 20-m isobath provides a reasonable approximation of the average stable extent of landfast ice, and landfast ice extent has not changed significantly in the past several decades, we have identified the shoreward boundary of critical habitat in the Beaufort Sea as the 20-m isobath (relative to MLLW). The available information indicates that in the Chukchi and Bering regions (Chukchi extending south of Wainwright to the top of the northern Seward Peninsula and the Bering Sea extending to Kuskokwim Bay), landfast ice occupies shallower water overall. We considered the best available information on landfast ice in determining the shoreward boundary of critical habitat in each region, which is identified as the 10-m isobath (relative to MLLW) in the Chukchi region, and the 5-m isobath (relative to MLLW) in the Bering region. The shoreward boundary of the designation is not intended to delineate where landfast ice is uniformly present every year, but rather to define the specific area that contains all of the identified essential features at an appropriate scale based on the best scientific data available.

Comment 40: BOEM recommended that the designation focus on areas of greatest prey abundance and suggested that to address this we remove areas that do not support adequate prey resources, such as shallow nearshore areas that have bottom-fast ice or are subject to scour, and/or identify thresholds of minimum prey abundance for bearded seals to persist. They went on to state that many shallow nearshore areas are lacking in adequate prey resources because the benthic habitats and communities are subject to disturbance from bottom-fast ice, strudel scouring in spring, and frequent ice gouging throughout the year, which destroy benthos and prevent benthic communities from developing. They also noted that influxes of fresh water where rivers and streams empty into the ocean kill or drive off marine benthic organisms. BLM similarly noted the potential for bottom-fast ice and scouring effects on nearshore benthic communities, and requested that we provide information that supports that nearshore areas have a benthic community to support bearded seals such that those areas qualify as critical habitat. BLM stated that we should present a more comprehensive analysis of bearded seal prey resources by providing information on the ranges and distributions of bearded seal prey species (both fish and benthic species), and noted that there is a lack of information considered in the critical habitat analysis on benthic communities, especially in the nearshore. BLM added that we should include an analysis of this information relative to where prey species distributions overlap with bearded seal habitats, and where there is greatest prey species abundance, including seasonally. They stated that the proposed rule gives the impression that prey species are distributed homogenously throughout the Beringia DPS's range, although this is most likely not the case.

Response: As we explained in our responses above to Comments 17 and 39, we re-evaluated the best scientific data available and the approach we used to identify the proposed boundaries of critical habitat with respect to the primary prey resources essential feature to determine if they were drawn appropriately. As a result of this evaluation, we now identify as critical habitat the specific area that contains all of the essential features based on our delineation of the boundaries for the sea ice essential features, with the shoreward boundary of the designation defined by particular isobaths. As discussed previously, the movements of bearded seals and their use of habitat for foraging are influenced by a variety of factors, including the seasonality of ice cover, the seals forage throughout the year, and they are broadly distributed and can range widely. In addition, bearded seals have a diverse diet with a large variety of prey items, and diet can vary seasonally and geographically. Our delineation of critical habitat in this final rule is based on the best information available regarding the co-occurrence of bearded seal primary prey species and the sea ice essential features, including information on the distribution of prey and their documented occurrence within the

geographical area specified. The commenters did not provide any relevant literature or data that would support the identification of specific thresholds of minimum abundance for bearded seal primary prey species, nor of specific areas where concentrations of the prey species are found on a recurrent basis within bearded seal habitats in Alaska. Habitat selection by bearded seals with respect to prey is not well understood. While it is likely that bearded seal primary prey species are distributed unevenly, the limits of the available information on the distribution and abundance of these prey species, and more importantly, the considerations discussed above, make it infeasible to delineate critical habitat more finely than we describe in this final rule.

Comment 41: BLM stated that we should develop more detailed critical habitat maps that identify seasonal presence/absence of each essential feature in both nearshore and offshore waters to provide clarity regarding where each essential feature is found, rather than designating critical habitat as a single large unit. They stated that we should otherwise better explain why the boundary for each essential feature is the same, how the boundary for each essential feature overlaps with other essential features, or why they have all been incorporated into a single mapped unit.

Response: As we explained in the proposed rule, the temporal overlap of bearded seal molting with whelping and nursing, combined with the dynamic nature of sea ice, makes it impracticable to separately identify specific areas where each of the sea ice essential features occurs. Further, as we have previously stated, bearded seals forage throughout the year and their prey species are spatially dynamic due to the influences of various abiotic and biotic factors. Moreover, there is no requirement that we develop detailed maps depicting where each essential feature occurs.

Comment 42: BOEM stated that it is not clear whether certain areas proposed as critical habitat in the Bering and Chukchi seas contain enough suitable food resources to support the long-term survival of the Beringia DPS and that additional analyses are necessary to support designation for areas that are dominated by pelagic species. They stated that the northern Bering Sea underwent a regime shift in the 1980s to a pelagic system from what was previously a very productive benthic system, and referred to studies conducted in recent years in the Chukchi Sea indicating a similar regime shift is now occurring or has already occurred in the southern Chukchi Sea, south of Cape Lisburne.

Response: The ESA states that an area qualifies as critical habitat if, based on the best scientific data available, it was occupied by the species at the time of listing and contains one or more of the physical or biological features essential to the conservation of the species and that may require special management considerations or protection. Specific areas are eligible for designation if they meet these criteria. As we described in the Physical and Biological Features Essential to the Conservation of the Species section of this final rule, the best scientific data available indicate that bearded seals have a diverse diet with a large variety of prey items, and diet can vary seasonally and geographically. Further, these data indicate that the shallow seasonally ice-covered waters of the Bering and Chukchi, seas support an abundance of bearded seal benthic prey resources. Moreover, the habitat features that bearded seals rely upon are dynamic and variable on both spatial and temporal scales. While we acknowledge that bearded seals forage on patchily distributed benthic prey, there is insufficient information available about their prey distributions to be more specific about smaller areas. As such, we identified where one or more of the essential features occurs at a coarse scale, because this is as much specificity as the best scientific data available allow. Based on the best scientific data available, we determined that the prey resources essential to the conservation of the Beringia DPS occur throughout the specific area that we are designating as critical habitat, and that this feature may require special management considerations or protection.

Changes in the distribution, abundance, and/or species composition of bearded seal primary prey resources are likely due to changes in ocean conditions related to climate change (*e.g.,* ocean warming, decreases in ice cover, ocean acidification). However, the extent and timing of such changes remain uncertain, and the possibilities are complex (see, *e.g.,* review of bearded seal prey communities in the status review of the bearded seal by Cameron *et al.* (2010)). Thus, given that the quality and quantity of primary prey resources essential to support bearded seals may be diminished by the effects of climate change, we identify climate change as a source of threats to this essential feature that may require special management considerations or protection. Finally, while we recognize that reductions in sea ice coverage and increasing ocean temperatures could shift the benthic-dominated systems in the northern Bering and Chukchi seas to be more pelagic-dominated, we do not agree there is scientific consensus that the ''northern Bering Sea underwent a regime shift in the 1980s to a pelagic system,'' as suggested by the commenter.

Comment 43: One commenter suggested that we delineate primary prey resource units that identify presence/absence of each primary prey item to the extent possible within subsets of the larger designation. The commenter stated that this would be useful for future section 7 consultations and would serve as a means to identify priority areas and help support the adaptive management practices necessary for bearded seal conservation as the Arctic continues to experience changes.

Response: As we explained in our response to Comment 40, data limitations and considerations related to the dynamic nature of the primary prey resources essential feature make it infeasible to delineate critical habitat more finely than we describe in this final rule based on the best scientific data available. Regarding the comment concerning adaptive management, while this is a useful strategy for conservation of listed species and their habitats, under the ESA we designate critical habitat through a regulatory process that requires us to make decisions based on the best scientific data available at the time of designation. If new information becomes available concerning the effects of environmental changes on bearded seal primary prey resources that indicates revision of critical habitat may be appropriate to effectively provide for the conservation of the species, we can consider using the authority provided under section 4(a)(3)(A)(ii) of the ESA to revise the designation.

Comment 44: One commenter stated that identifying areas containing prey is not sufficiently precise to describe a specific area or feature that, by statute, is required to be both specific and essential to the conservation of the species. The commenter stated that they agree that certain prey species may occur in nearshore waters in the Bering, Chukchi, and Beaufort seas, but that we acknowledge that the diverse assemblage of prey species consumed by bearded seals includes both benthic and pelagic species, and such a diversity of prey may occur throughout the entire region of the Bering, Chukchi, and Beaufort seas. They asserted that we should revise the proposed designation to delineate a primary foraging area where these prey species are

concentrated instead of including areas where prey species may occur, and that this should reflect the best available science regarding limited presence of bearded seals in the western Beaufort Sea, preference of pack ice over landfast ice, and diversity of diet.

Response: Neither the ESA definition of critical habitat nor our implementing regulations at 50 CFR part 424 require that we designate critical habitat with the level of specificity asserted by the commenter. Rather, under the ESA we identify what prey are essential to the conservation of the Beringia DPS and then identify where those prey occur within the geographical area occupied by the species. The ESA does not require that before designating an area as critical habitat we demonstrate that bearded seals actively or substantially use the area, that they use it to a significant degree, or that we focus on areas of greatest prey abundance. *Alaska Oil & Gas Ass'n* v. *Jewell,* 815 F. 3d 544, 555–56 (9th Cir. 2016) (holding the ESA required USFWS to identify where the features essential to the conservation of a species occur, and does not require evidence a species currently uses those features in any particular area). The commenter did not provide any relevant literature or data that would support the identification of specific areas where concentrations of the primary prey species are found on a recurrent basis within habitat occupied by bearded seals in Alaska. Based on the best scientific data available, and consistent with the ESA, we determined that the primary prey resources essential to the conservation of the Beringia DPS occur throughout the specific area we are designating as critical habitat.

Comment 45: One commenter stated that we must identify the specific prey species and the specific locations (spatially and temporally) where foraging on those prey species is essential to the conservation of the Beringia DPS and in need of special management considerations or protection, and that the proposed rule did not provide a sufficiently specific delineation of critical habitat with respect to the proposed primary prey resources essential feature. They referred to the preamble to our 2016 final rule that amended the regulations for designating critical habitat, which said the descriptions of the physical and biological features essential to the conservation of the species would maintain the specificity of the primary constituent elements identified in previous designations (81 FR 7414, 7426; February 11, 2016). They stated that under the prior regulations (which used the term ''primary constituent elements''), we were required to identify ''feeding sites'' to support the designation of critical habitat based on prey species.

Response: We disagree. Neither the ESA's definition of critical habitat nor our implementing regulations at 50 CFR part 424 require that we designate critical habitat with the level of specificity asserted by the commenter, and this was also not required under the prior version of our regulations. The prior regulations listed ''feeding sites'' among examples of what may constitute primary constituent elements (referred to in our current regulations as physical or biological features) that may be defined and described as essential to the conservation of the species. Rather than identify where bearded seals actually feed on their primary prey, as we indicated earlier in our response to Comment 44, under the ESA we identify what prey are essential to the conservation of the Beringia DPS and then identify where those prey occur within the geographical area occupied by the species. Based on the best scientific data available, we determined that the primary prey resources essential to the conservation of the Beringia DPS occur throughout the specific area we are designating as critical habitat.

Comment 46: BLM stated that the proposed rule was unclear regarding the overlap in nearshore areas between the essential feature of acoustic conditions that allow for effective communication by bearded seals and the sea ice essential features. They stated that based on the description in the proposed rule, bearded seal breeding habitat does not appear to include nearshore, landfast ice areas. However, they asked us to clarify and explain with supporting information whether nearshore areas in the Beaufort Sea contain the acoustic essential feature. They also requested a detailed critical habitat map that represents the acoustic essential feature.

Response: As we explained in our earlier response to Comment 32, after carefully considering the best scientific data available, we have concluded that at this time, our scientific understanding is not adequate to sufficiently characterize an acoustic essential feature so as to provide a reasonable basis upon which to identify when and where such a feature occurs. Therefore, we have not included an acoustic feature in this designation.

Comment 47: BOEM stated that, although it is clear in the preamble to the proposed rule that critical habitat for the Beringia DPS may contain one or more of the essential features, we should clarify that this is the case in the regulatory language for the designation.

Response: We find the regulatory text contained in the proposed rule to be sufficiently clear—an area qualifies as critical habitat if it is occupied by the species and contains one or more physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection (16 U.S.C. 1532(5)(A)).

Special Management Considerations or Protection

Comment 48: BOEM stated that because sea ice is projected to continue to retreat northward, we should provide data and analysis of how the geography of the critical habitat for the Beringia DPS would change in the future with substantial sea ice loss. They also stated that we should highlight those areas within critical habitat that are expected to retain suitable sea ice conditions for bearded seals long into the future, as this would help emphasize the need for further development of geographic solutions for habitat conservation.

Response: In our evaluation of whether the essential features of critical habitat for the Beringia DPS may require special management considerations or protection, we indicated that the quantity and quality of these essential features, in particular sea ice, may be diminished by the effects of climate change. Although there will continue to be considerable annual variability in the rate and timing of the breakup and retreat of sea ice, trends are toward ice that is more susceptible to melt (Markus *et al.* 2009) and areas of earlier spring ice retreat (Stammerjohn *et al.* 2012, Frey *et al.* 2015). Thus, the earlier retreat of sea ice in the spring supports including the northern portion of the critical habitat in particular, as it retains sea ice suitable for whelping and nursing and/or molting the longest. Regarding the comment that we should explain how the geography of critical habitat may change in the future with substantial sea ice loss, the critical habitat boundaries will not automatically change in areal extent as sea ice distribution and extent diminish; they will remain fixed until such time as NMFS revises them based on new information.

Comment 49: One commenter stated that climate change, driven by anthropogenic emissions of GHGs, poses an existential threat to the Beringia DPS, and noted that climate change impacts on bearded seals include changing temperatures, rapid loss of sea ice, altered precipitation regimes, ocean acidification, extreme weather events,

and effects on key prey species. The commenter provided information and references regarding trends in GHG emissions, the relationship between GHG emissions and sea ice loss, and the impacts of climate change in the Arctic. In addition, another commenter stated that we should discuss ocean acidification and its effects on bearded seal prey. Several other commenters also expressed concerns over the impacts of climate change on the species, and one commenter, an Alaska Native hunter, reported their personal observations of sea ice loss and declines in the number of marine mammals.

Response: We appreciate the comments and references provided by the commenters, which we reviewed and considered in developing the final critical habitat designation. As discussed in the proposed rule, we identified climate change as one of four primary sources of threats to the identified essential features of critical habitat for the Beringia DPS that may require special management considerations or protection. Although our evaluation does not consider an exhaustive list of threats that could impact the essential features, in response to these and other peer reviewer and public comments, in this final rule we have added ocean warming and acidification to our discussion of impacts on the essential features from climate change.

Comment 50: One commenter requested that we remove the following statement in the proposed rule because it was unsupported and unnecessary: ''The best scientific data available do not allow us to identify a causal linkage between any particular single source of GHG emissions and identifiable effects on the physical and biological features essential to the conservation of the Beringia DPS.'' The commenter stated that scientific studies have documented continuing severe and rapid reductions in sea ice extent and thickness and increases in ocean acidification resulting from GHG emissions, citing related scientific publications. The commenter further stated that GHG emissions from individual projects cumulatively contribute to habitat degradation and loss for the Beringia DPS, and appreciable GHG emissions from large-scale projects can make a measurable difference in the amount of sea ice loss.

Response: We acknowledge that particular point sources, such as a single power plant, contribute incrementally to global indicators like atmospheric concentration of GHGs or global average temperature. In response to this comment, we have omitted the statement in question in the preamble of this final rule because it is not needed to support our identification of climate change as a primary source of threats to each of the essential features of critical habitat for the Beringia DPS.

Comment 51: Two commenters provided information concerning regulation of the commercial crab and groundfish fisheries and measures taken to minimize impacts of these fisheries on harvested species and benthic habitat and organisms. One of the commenters stated that with changing environmental conditions there could be more commercial fisheries moving north into designated critical habitat, but if commercial crab fisheries follow this pattern, they do not believe that it would have substantial impacts on bearded seals. The other commenter stated that the seafloor effects of trawl gear discussed in the proposed rule did not reflect the best available information because, with the required gear modification for flatfish trawls developed through the essential fish habitat process, it is highly unlikely that these fisheries would have any significant effect on seafloor habitat that would affect bearded seal prey species. The commenter also noted that of the bearded seal prey species identified, sculpins are most often encountered by their fleet, but they are not targeted or retained, and that observer data indicate, on average, less than one metric ton of saffron cod catch annually and essentially no catch of Arctic cod.

Response: In determining whether the essential features of critical habitat for the Beringia DPS may require special management considerations or protection, we base our determination on whether such management or protection may be required, rather than whether management is currently in place, or whether that management is adequate. As we discussed in the proposed rule, given the potential changes in commercial fishing that may occur with the expected increasing length of the open-water season and range expansion of some commercially valuable species responding to climate change, we concluded that the primary prey resources essential feature may require special management considerations or protection in the future to address potential adverse effects of commercial fishing on this feature.

Comment 53: Several commenters expressed concerns over potential impacts to bearded seals from commercial fisheries, in particular from bottom trawling activities. Specifically, they expressed concerns about the risk of incidental mortality of bearded seals if bottom trawlers are allowed further north into the northern Bering Sea and Bering Strait region. They noted that there is also concern about potential impacts on bearded seals from hook injuries due to the 2019 arrival of a large-scale Pacific cod longline fleet to this region. Two other commenters expressed concern about potential impacts of commercial bottom trawl fishing on bearded seal prey species, such as yellowfin sole, in the Bristol Bay region. One of the commenters, an Alaska Native hunter, reported past observations of bearded seals feeding on herring in bays located south of the proposed critical habitat and expressed concern that fishing activities have reduced herring biomass.

Response: We understand the concern expressed by the commenters that commercial fisheries may impact bearded seal prey resources. Designation of critical habitat does not, in and of itself, regulate or restrict any activities. Rather, through the section 7 consultation process, Federal agencies must ensure that their actions are not likely to destroy or adversely modify designated critical habitat. Therefore, once the critical habitat designation for the Beringia DPS becomes effective, any section 7 consultations on federally managed fisheries will be required to address the additional requirement that Federal agencies ensure that their actions are not likely to adversely modify or destroy designated critical habitat. We note, however, that we consult on Federal actions and thus not every fishery is subject to section 7 consultation, as there are fisheries with no Federal nexus. Although we acknowledge the concerns regarding the risks posed to bearded seals by direct interactions with commercial fishing gear (*e.g.,* hookings or entanglements), such impacts are considered threats to individual bearded seals themselves and not the habitat. To date, section 7 consultations completed on the effects of Federal groundfish fisheries in the Bering Sea and Aleutian Islands Management Area on bearded seals have concluded that the seals are only occasionally taken in those fisheries, and that the fisheries are not likely to jeopardize the continued existence of the Beringia DPS.

Comment 53: Several commenters expressed concerns over the potential impacts of vessel traffic, in particular icebreakers, on bearded seals, *e.g.,* during the whelping and nursing period. One commenter requested that we expand the discussion of special management considerations or protection to include Arctic marine tourism, and stated that we should

consider and discuss how marine tourism differs from other types of shipping traffic, as ice-reinforced vessels reportedly under construction may facilitate purposefully seeking out icy waters and areas with wildlife. In addition, several commenters specifically noted concerns over potential impacts from vessel discharges, spills of oil or other hazardous materials, and release of marine debris.

Response: We agree that vessel traffic, in particular icebreaking activities, may affect the essential features of critical habitat for the Beringia DPS, and we addressed those potential effects in our evaluation of whether these features may require special management considerations or protection. As we discuss in the Special Management Considerations or Protection section of this final rule, in addition to the potential effects of icebreaking on the essential features, the most significant threat posed by marine shipping and transportation is considered to be the accidental or illegal discharge of oil or other toxic materials. Regarding marine tourism, in this evaluation we identified cruise ships as part of the maritime traffic along the western and northern Alaska coasts, and in the draft and final versions of the impact analysis reports for this designation (NMFS 2020, 2021), we discussed that a limited but increasing number of cruise ships bring tourists to waters within Beringia DPS critical habitat. As previously explained, section 7 consultation requirements apply only when a Federal action is involved (*i.e.,* an action authorized, funded, or carried out by a Federal agency). For icebreaking or other vessel-based activities with a Federal nexus, NMFS and the action agency would evaluate potential effects on a case-by-case basis.

Comment 54: BLM recommended that we provide a more thorough oil spill and oil spill response analysis, specifically for the North Slope of Alaska, to frame the possibility of this impact more accurately with current information. They stated that we need to acknowledge the progress that has occurred since AMAP (2007) to prevent and minimize oil spills in the Arctic and current response mechanisms in place. They specifically requested that we review and incorporate appropriate Alaska Clean Seas policies and protocols, including response and training infrastructure. They also stated that we should update the information on the risk of oil spills, and provide additional context by acknowledging that the most common development of oil fields would most likely be near existing nearshore oil and gas infrastructure in the Beaufort Sea, rather than in remote areas, and that there are offshore producing fields there that have been operating for many years with no major oil spills.

Response: We recognize that there are existing oil spill prevention and response mechanisms in place; however, as we explained in the proposed rule, in determining whether the essential features may require special management considerations or protection, we do not base our decisions on whether management is currently in place or whether such management is adequate. We are required to make a determination about whether the essential features *may* require special management considerations or protection either now or in the future, and the existence of oil spill prevention and response mechanisms is evidence that the essential features do in fact require special management considerations. Our evaluation of oil and gas activities in the Special Management Considerations or Protection section of this final rule is sufficient to establish that the ''may require'' standard is met or exceeded with respect to the risk posed to the essential features of critical habitat for the Beringia DPS by these activities, primarily through pollution (particularly the possibility of large oil spills), noise, and physical alteration of the species' habitat.

Impacts of Critical Habitat Designation

Comment 55: Two commenters stated that the timeframe used in the Draft Impact Analysis Report was arbitrarily truncated at 10 years, and thus failed to account for costs associated with the designation that will undoubtedly accrue beyond this timeframe. One of the commenters noted that USFWS considered economic impacts of designation of critical habitat for the polar bear over a 30-year timeframe. This commenter also contended that the use of a 10-year timeframe is inherently contradictory and arbitrary given that the listing determination for the Beringia DPS was based on ''a 100-year foreseeable future.'' The other commenter stated that the analysis of economic impacts should be revised to use a timeframe coextensive with the anticipated duration of the designation, citing in support of this contention a court decision involving the limited timeframe considered in a particular biological opinion (*Wild Fish Conservancy* v. *Salazar,* 628 F.3d. 513 (9th Cir. 2010)).

Response: As discussed in Section 2.4 of both the draft and final versions of the impact analysis reports for this designation, guidance from OMB indicates that ''if a regulation has no predetermined sunset provision, the agency will need to choose the endpoint of its analysis on the basis of a judgment about the foreseeable future'' (OMB 2011). Because rules designating critical habitat have no predetermined sunset, we determined the endpoint for our analysis based on a judgment regarding the foreseeable future economic effects and, in particular, the difficulty in making reliable forecasts of Federal activities and costs beyond this timeframe. The information upon which the analysis of impacts of the designation is based includes NMFS's record of section 7 consultations from 2013 to 2019 on activities that may have affected the essential features of critical habitat for the Beringia DPS (relatively few relevant consultations were identified for the 3 years prior to when the Beringia DPS was listed under the ESA), as well as available information on planned activities that may affect these essential features. We acknowledge that the critical habitat designation for the Beringia DPS is expected to result in costs that will be incurred more than 10 years into the future, and although we do not quantify the probable economic impacts beyond the 10-year time period, we believe that the estimated economic impacts of the designation over the next 10 years generally reflect the nature and relative magnitude of costs beyond this timeframe. This timeframe is also consistent with OMB guidance stating that ''[f]or most agencies, a standard time period of analysis is 10 to 20 years, and rarely exceeds 50 years'' (OMB 2011), and longstanding NMFS practice (*e.g.,* economic analyses of critical habitat designations for the Central America, Mexico, and Western North Pacific distinct population segments (DPSs) of humpback whales, Main Hawaiian Islands insular false killer whales, Northwest Atlantic DPS of loggerhead sea turtles, Cook Inlet beluga, and smalltooth sawfish). Although not relevant to the timeframe used in the economic analysis, we note that in the listing analysis for this species, we did not identify a single specific time as the foreseeable future. Rather, we addressed the foreseeable future based on the available data for each respective threat, and we had sufficient information to establish that threats stemming from climate change were foreseeable through approximately the end of the 21st century (77 FR 76740, December 28, 2012).

Comment 56: Several commenters, including the Alaska Department of Natural Resources (ADNR), stated that the Draft Impact Analysis Report substantially underestimated the impacts of the proposed critical habitat designation because it primarily identified the incremental administrative costs associated with conducting section 7 consultations that include the critical habitat. The commenters stated that the analysis did not sufficiently account for the full range of likely consequences of the designation, including costs that could result under other Federal regulatory programs, threatened and actual lawsuits, delay and impediment of activities, and effects related to increased regulatory uncertainty. Commenters asserted that because these additional costs are likely to occur, can be assessed and calculated, and would have significant impacts on activities that occur on and adjacent to the North Slope, the draft report should be revised to include an analysis of these impacts, both quantitative and qualitative.

Commenters also noted that the U.S. Army Corps of Engineers (USACE) can impose significantly higher mitigation costs for Clean Water Act (CWA) section 404 permits on projects located in critical habitat compared to projects located outside of critical habitat. They added that the CWA's National Pollution Discharge Elimination System (NPDES) permit program mandates special considerations and protections for areas designated as critical habitat. ADNR and another commenter stated this was also the case under the Outer Continental Shelf Lands Act. Additionally, a commenter noted that areas designated as critical habitat have informed the imposition of additional mitigation measures and modifications to proposed activities in authorizations issued under the MMPA. ADNR and another commenter described that areas designated as critical habitat have been expressly excluded from coverage in at least two Alaska-related NPDES permits. In addition, regarding section 404 permits, ADNR described as a specific example that compensatory mitigation for the Point Thomson project involved significantly greater total acreage and therefore greater costs solely because affected wetlands were located in polar bear critical habitat.

Regarding the potential for litigation, commenters stated that oil and gas and other activities on the North Slope and in the Chukchi and Beaufort seas are already frequently the subject of lawsuits intended to delay, impede, and prevent projects from proceeding. ADNR cited as examples lawsuits regarding the polar bear critical habitat designation (*Alaska Oil and Gas Ass'n* v. *Jewell,* Case No. 13–35919 (9th Cir. 2016)), and the Cook Inlet beluga whale critical habitat designation. ADNR stated that time delays and uncertainty could add significant costs (perhaps millions of dollars) to projects requiring Federal permits. ADNR added that because of the limited time window available when construction may occur, depending on the project, delays could have cascading effects on the timing of construction, the start of operations, and the ability to produce oil, gas, or other resources. In addition, ADNR stated that the designation will devalue acquired and future oil and gas leases due to increased risks associated with the developing those leases.

Response: As described in Section 3 of the Final Impact Analysis Report, the analysis of economic impacts of the critical habitat designation considers direct, incremental costs associated with section 7 consultations (*i.e.,* administrative costs of consultations and any project modifications requested by NMFS to avoid or minimize potential destruction or adverse modification of critical habitat), as well as the potential for indirect impacts (*i.e.,* not related to section 7 outcomes), such as time delays or regulatory uncertainty. This analysis considered all relevant incremental costs associated with the designation, and these costs were monetized to the fullest extent that reasonable estimates could be made, and were otherwise treated qualitatively when monetization was not possible. Section 6 of the Draft Impact Analysis report recognized that some potential exists for the designation to result in costs associated with indirect impacts. However, the incremental costs associated with such effects were not quantified in the analysis due to significant uncertainty and information limitations. In response to public comments, the Final Impact Analysis Report (see Section 6.10 of the report) provides an expanded discussion of the concerns expressed by the commenters regarding the potential for indirect incremental impacts, such as the potential for future third-party litigation over specific section 7 consultations, time delays, and other sources of regulatory uncertainty, as we describe in more detail below. We considered both the quantitative and qualitative information presented in that report in developing the final critical habitat designation for the Beringia DPS.

The Final Impact Analysis Report acknowledges the concern expressed by commenters that, under certain circumstances, Federal agencies such as USACE (as well as local and State agencies) may choose to manage areas differently after critical habitat is designated. However, we are not aware of plans by any agency to institute future restrictions to provide specific protections for Beringia DPS critical habitat. We note that in the specific NPDES general permits cited as examples by commenters, the critical habitat excluded from coverage reflected the U.S. Environmental Protection Agency's consideration of potential effects of permitted discharges to one particular listed species and its critical habitat. Not all designated critical habitat was excluded from coverage in these permits, and there is no basis to assume that the critical habitat designated for the Beringia DPS in this rule would be excluded. With regard to the concern related to requirements for authorizations that NMFS may issue under the MMPA, as discussed in Section 6 of this report, our review of recent actions in the critical habitat area has not identified a circumstance in which a section 7 consultation would likely result in project modifications solely to avoid impacts to critical habitat for the Beringia DPS. Because it is not possible to predict the timing, frequency, or extent to which this critical habitat designation may trigger specific additional requirements under non-ESA regulatory programs, the report concludes that attempting to forecast such hypothetical outcomes would be speculative.

With regard to comments concerning the potential for the critical habitat to be used in litigation, we note that the specific court case cited by ADNR as an example (*Alaska Oil and Gas Ass'n* v. *Jewell,* Case No. 13–35919 (9th Cir. 2016)) challenged the polar bear critical habitat rule itself. However, when considering the economic impacts of the designation, we do not consider costs of litigation associated with challenging the critical habitat rule. Historical precedent does exist for third-party lawsuits to challenge activities occurring in designated critical habitat. However, these lawsuits typically include claims regarding effects to both listed species and critical habitat, and may include claims under other laws, *e.g.,* the MMPA, the National Environmental Policy Act, etc. Moreover, it is not possible to predict the nature, frequency, timing, or outcome of such lawsuits, and as such, attempting to do so would involve significant speculation. The Final Impact Analysis Report describes the concern and the potential for lawsuits but concludes that determining the

outcomes of such third-party litigation would be speculative.

Regarding concerns related to time delays specifically associated with the need to address critical habitat in future section 7 consultations, Federal agencies are already required to consult with NMFS under section 7 for actions that may affect bearded seals. These consultations typically analyze habitat-related effects to the seals, such as effects to prey, even in the absence of a critical habitat designation. While Federal actions that may affect the essential features of the critical habitat will require an analysis to ensure that these actions are not likely to result in the destruction or adverse modification of the critical habitat, which will impose some minor incremental costs to consultations, we do not expect that this will require substantial additional time or resources, especially for new consultations (see also our response to Comment 57). Further, timelines for section 7 consultations are specified in statute and our implementing regulations and the number of listed species or critical habitats considered in any given consultation does not affect these timelines.

Although there is potential for regulatory uncertainty, whether and to what extent projects or associated economic behavior may be affected due to regulatory uncertainty stemming from the critical habitat designation is significantly uncertain. The types of data that would be necessary to quantify costs associated with regulatory uncertainty, such as data linking the designation to changes in industry economic behavior, are unavailable. As for ADNR's concern that the designation will devalue oil and gas leases, we are not aware of any empirical evidence or studies of such effects for the areas included in the designation, and none were identified in these comments. Therefore, the Final Impact Analysis Report describes the commenters' concerns about potential indirect effects stemming from regulatory uncertainty, as well as the concern expressed by ADNR over potential devaluation of oil and gas leases. However, due to the significant uncertainty and information limitations, it concludes that attempting to forecast changes in economic behavior resulting from regulatory uncertainty on the part of industry relative to this critical habitat designation would be speculative.

Comment 57: One commenter stated that the impacts associated with a critical habitat designation cannot be simply dismissed as mere additional administrative costs in the section 7 consultation context. They noted that section 7 consultations typically require, for example, the preparation of biological assessments, consultant services to identify potential effects of the proposed action and potential mitigation or conservation measures, robust engagement with the relevant federal agencies, and frequent litigation regarding the outcome. They stated that the addition of critical habitat to the consultation process creates additional analytical components with additional potential modifications to the proposed action to avoid any destruction or adverse modification of critical habitat, and that these factors increase the duration of project reviews, impose additional regulatory burdens, and create additional legal risks.

Response: As we stated in our response to Comment 56, Federal agencies have an existing obligation to consult with NMFS to ensure that any action authorized, funded, or carried out by them (*i.e.,* Federal action) is not likely to jeopardize the continued existence of the Beringia DPS. As discussed in Section 6 of the Final Impact Analysis Report, based on the best information available, the Federal actions projected to occur within the timeframe of the analysis that may trigger a section 7 consultation due to the potential to affect one or more of the essential features of the critical habitat also have the potential to affect bearded seals. Thus, we expect that none of the activities we identified would trigger a consultation solely on the basis of this critical habitat designation. Public comments did not provide any new information that could be used to revise this analysis. In addition, as discussed in Section 6 of the Final Impact Analysis Report and in the *Economic Impacts* section of this final rule, at this time, we do not anticipate that section 7 consultations would result in additional requests for project modifications to avoid or minimize adverse modification of critical habitat for the Beringia DPS beyond any modifications that may be necessary to address impacts to the seals (*i.e.,* under the jeopardy standard). In particular, this is because section 7 analyses of the effects of proposed Federal actions on listed species, which are triggered by the threatened status of the Beringia DPS under the ESA, already consider habitat-related impacts to the seals. Although each proposed Federal action must be reviewed at the time of consultation based on the best scientific and commercial data available at that time, it is unlikely that any project modifications are likely to result from such consultations that would be attributable solely to the critical habitat designation, since any modifications required to avoid jeopardy for this species would likely be identical to measures needed to avoid adverse modification of critical habitat. While we recognize that Federal actions that may affect the essential features of critical habitat for the Beringia DPS will require an analysis to ensure that these actions are not likely to result in the destruction or adverse modification of the critical habitat, which will impose some minor additional costs, we do not expect that this will require substantial additional time or resources. Further, timelines for section 7 consultations are specified in statute and our implementing regulations, and the number of listed species or critical habitats considered in any given consultation does not affect these timelines.

As discussed in Section 3.1 of the Final Impact Analysis Report, the estimates of administrative consultation costs applied in the economic analysis are based on a review of consultation records from several field offices across the country, and modifications to reflect our experience with consultations in Alaska. These cost estimates take into consideration the anticipated level of effort that would be required to address potential effects on critical habitat in consultations, as well as the complexity of the consultations (*e.g.,* formal versus informal).

With regard to the comment on legal risks and other indirect impacts of the designation, see our response above to Comment 56.

Comment 58: Several commenters emphasized that oil and gas exploration, development, and production on the North Slope and in adjacent offshore areas provide very substantial economic benefits, and ADNR and another commenter stressed that these activities are of national strategic significance and provide important energy, economic and national security benefits. ADNR and another commenter expressed that Congress established, and courts have affirmed, that leasing, exploration, and development of these resources are a national priority and in the public interest. They added that the present and future contribution of oil and gas from the North Slope of Alaska and from adjacent state and Federal waters meets a substantial portion of our national energy needs. Further, they stated that development of domestic energy resources, including oil and gas located in, and adjacent to, Alaska, is a well-documented matter of national security and is consistent with the well-established mandates of Federal law.

All of these commenters asserted that the proposed critical habitat designation will result in additional section 7 consultations, project modifications, and likely litigation, and that project delays and increased costs may thus result in impediment of oil and gas activities, less exploration, fewer opportunities to discover economic reserves, and therefore, less development and production of domestic oil and gas resources in these areas, to the detriment of local communities, the State of Alaska, and the United States. ADNR expressed similar concerns regarding potential impacts of the designation on development of critical minerals, citing as an example the Graphite One mine project north of Nome. The North Slope Borough commented that the development of natural resources in and adjacent to the North Slope largely supports the regional economy, allows the Borough to provide essential services and other benefits to its residents, and supports the municipal tax base. The Borough expressed concern that because a significant portion of its revenue is derived from taxes on oil and gas infrastructure, additional impacts to these projects as a result of the designation would be felt by the Borough.

Response: As discussed in the *Economic Impacts* section of this final rule and detailed in the Final Impact Analysis Report, the total incremental costs associated with the critical habitat designation for the Beringia DPS within the 10-year post-designation timeframe, in discounted present value terms, were estimated at $563,000 (discounted at 7 percent) to $658,000 (discounted at 3 percent). About 81 percent of the incremental costs attributed to the critical habitat designation are expected to accrue from ESA section 7 consultations associated with oil and gas related activities in the Chukchi and Beaufort seas. To avoid understating the cost estimates, we assumed that a high projected level of oil and gas activity will occur annually, although such a high level of activity is unlikely to occur in each and every year. As detailed in the Final Impact Analysis Report, the costs associated with the designation of critical habitat for the Beringia DPS are expected to primarily consist of additional administrative costs to consider the critical habitat as part of future section 7 consultations, with third-party costs primarily borne by the oil and gas sector. Costs to the oil and gas industry are expected to be limited to administrative costs of adding bearded seal critical habitat to section 7 consultations that are already required to address effects to bearded seals (and potentially other listed species). At this time, we have no information to suggest incremental project modification requests are likely to result from these consultations above and beyond any modification requests related to addressing impacts to bearded seals. Including a critical habitat analysis in consultations would slightly increase permitting costs for oil and gas sector activities, but such costs attributable to this designation are not anticipated to change the level of oil and gas sector activities within critical habitat. As discussed in Section 9.2 of the Final Impact Analysis Report, ESA section 7 consultations have occurred for numerous oil and gas projects within the area of the designation (*e.g.,* regarding possible effects on endangered bowhead whales) without adversely affecting energy supply, distribution, or use. The same outcome is expected relative to critical habitat for the Beringia DPS. This designation is not expected to significantly affect oil and gas production decisions, subsequent oil and gas supply, or the cost of energy production. We have therefore determined that the energy effects of this designation of critical habitat are unlikely to exceed the thresholds in E.O. 13211, and that this rulemaking is not a significant energy action (see *Executive Order 13211, Energy Supply, Distribution, and Use* section). Also, see our responses above to Comment 56 regarding potential indirect impacts of the designation, and Comment 57, regarding section 7 consultation costs, generally.

Comment 59: The North Slope Borough stated that we failed to consider impacts on municipal and village activities, such as construction of sea walls, repair and maintenance of roads, water treatment activities, and building and other infrastructure construction. The Borough commented that these activities will likely require a Federal permit or involve Federal funding, and thus will likely require section 7 consultation and mitigation and/or modifications to avoid adverse modification or destruction of the critical habitat. The Borough stated that the additional effort for consultations and implementation of mitigation measures will add possible delays and substantial costs to local projects such that many of them will no longer be affordable.

Response: The Draft Impact Analysis Report projected the occurrence of Federal activities by level of consultation (formal or informal) over the timeframe of the analysis, including for coastal construction projects, as well as for activities involving ports and harbors (see Table 5–16 and Section 6 of this report). The commenter did not provide specific relevant information or examples of planned municipal or village activities with a Federal nexus that could be used to revise this analysis. As summarized in Table 5–16 of the draft and final versions of the impact analysis report (NMFS 2020, 2021), most of the forecasted consultations for these types of activities are expected to conclude informally (*i.e.,* conclude with a letter of concurrence that the action is not likely to adversely affect the critical habitat rather than requiring a biological opinion). Further, it is not likely that section 7 consultations involving these types of activities would result in additional requests for project modifications attributable to the critical habitat designation given the nature of these activities, their potential to affect the essential features, and the existing need to consider effects on the seals due to the threatened status of the species (which typically includes consideration of habitat-associated threats). With respect to incremental costs of consultations, also see our response to Comment 57.

Comment 60: Several commenters asserted that we failed to fully consider or analyze the economic and other impacts of the critical habitat designation on Alaska Natives, the North Slope Borough, coastal communities in western and northern Alaska, and municipal and village activities in these regions. The commenters stated these impacts would be unreasonably and disproportionately imposed upon Alaska Natives, and in particular, upon residents of the North Slope. The North Slope Borough stated that the development of natural resources in and adjacent to the North Slope largely supports the regional economy, allows for the provision of essential services, supports the municipal tax base, and allows the Borough to provide other benefits to its residents. The Borough stressed that any impact on the development of these natural resources will therefore also impact the Borough and its residents. The Borough added that the proposed rule did not address any of the requirements of E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations). The Borough noted that the Draft Impact Analysis Report briefly addressed these requirements, but disagreed with the conclusion in the report that no

disproportionate adverse economic impacts are anticipated.

Response: We understand that the potential for impacts of the designation is of significant concern to the commenters. As discussed in the *Economic Analysis* section of this final rule, we have considered and evaluated the potential economic impact of the critical habitat designation under section 4(b)(2) of the ESA, as identified in the Final Impact Analysis Report. Based on this evaluation, we concluded that the potential economic impacts associated with the critical habitat designation are modest both in absolute terms and relative to the level of economic activity expected to occur in the affected area, which is primarily associated with oil and gas activities that may occur in the Chukchi and Beaufort seas. As indicated in our response above to Comment 57, the costs associated with the designation are expected to primarily consist of additional administrative costs to consider the critical habitat as part of future section 7 consultations, with third-party costs primarily borne by the oil and gas sector. The designation is not expected to significantly affect oil and gas production decisions, subsequent oil and gas supply, or the cost of energy production. In addition, as detailed in Section 9.1 of the Final Impact Analysis Report, based on the best information available, the critical habitat designation is expected to result in minimal impacts to small entities. We therefore do not expect the critical habitat designation to have a disproportionately high effect on low income or minority populations and this designation is consistent with the requirements of E.O. 12898. We also underscore here that no restrictions on subsistence hunting by Alaska Natives are associated with the critical habitat designation for the Beringia DPS.

Comment 61: ADNR stated that we neglected to identify Alaska as a potentially affected economic sector or group in the Draft Impact Analysis Report. They stressed that there are substantial economic benefits to Alaska and its citizens from mining, oil and gas, and other activities on the North Slope and in the adjacent state and Federal waters of the Chukchi and Beaufort seas, and additionally, that Alaska has interest in access to and transportation in the proposed critical habitat areas. ADNR and ADF&G expressed concerns that the critical habitat designation will place disproportionate regulatory burdens and economic costs on Alaskans and may result in less mining, oil, gas, and other activities, to the detriment of Alaska.

Response: The draft and final versions of the impact analysis report (NMFS 2020, 2021) analyze in detail the incremental and other relevant impacts of the proposed critical habitat designation for the Beringia DPS. Section 5.4 of these reports describes the economic and social activities within, and in the vicinity of, the critical habitat designation, including Arctic North Slope oil and gas exploration, development and production, mining, ports and coastal construction, commercial fisheries, Alaska Native subsistence, recreation and tourism, commercial shipping and transportation, military activities, and education and scientific activities. These reports considered all relevant economic impacts, and developed cost (and benefit) estimates at an appropriate scale based on the best data available. As discussed in the *Economic Impacts* section of the proposed rule and this final rule, the direct incremental costs of this critical habitat designation are expected to be limited to the additional administrative costs of considering critical habitat for the Beringia DPS in future section 7 consultations. We conclude in the final rule that the potential economic impacts associated with the designation of critical habitat for the Beringia DPS are modest both in absolute terms and relative to the level of economic activity expected to occur in the affected areas. This conclusion has not changed from the proposed rule.

Comment 62: BLM stated that the costs associated with the proposed critical habitat designation were underestimated because we did not address the potential costs of acoustic studies, including the development of acoustic models, that they believe would be needed to understand and mitigate impacts to the proposed acoustic environment essential feature. They recommended that we revise the economic analysis to incorporate estimates of these potential costs and to identify the parties that would bear such costs.

Response: As we explained in our response above to Comment 32, this final rule does not include the proposed acoustic essential feature, and we have therefore evaluated the impacts of the critical habitat designation based solely on the sea ice essential features and the primary prey resources essential feature.

Comment 63: One commenter stated that portions of the proposed critical habitat, particularly along its southern edge and southwest of Nunivak Island, can be important to the groundfish fisheries in some years, in particular for species such as yellowfin sole. The commenter noted that variability in the harvest in recent years seems to be partially related to annual climate conditions, especially the extent of the Bering Sea cold pool, and recommended that given this variability, commercial fisheries data for additional years be included in the analysis of impacts of the designation.

Response: In response to this comment, we have incorporated groundfish fisheries harvest data for additional years into the Final Impact Analysis Report.

Comment 64: Two commenters indicated that they appreciated that we clearly stated in the proposed rule that no restrictions on subsistence hunting are associated with the critical habitat designation. Still, the Marine Mammal Commission recommended that we discuss and highlight in the final rule and in other appropriate outreach materials and fora that the critical habitat designation is not expected to have any adverse impact on Alaska Native subsistence activities. The Commission commented that there is a widely held perception that designating critical habitat has adverse consequences for Alaska Natives who hunt marine mammals, but that is not the case.

Response: As indicated by the commenters and stated in this final rule, although this critical habitat designation overlaps with areas used by Alaska Natives for subsistence, cultural, and other purposes, no restrictions are associated with the designation. We have emphasized this point in public venues, such as the public hearings on the proposed designation, and in our communications with the Ice Seal Committee, the Alaska Native organization with which we co-manage the subsistence use of ice-associated seals under section 119 of the MMPA. We have also conveyed this message in letters sent to tribes and Alaska Native corporations concerning the critical habitat designation. We agree with the Marine Mammal Commission that it is important to continue to highlight this information in appropriate outreach materials and fora.

Benefits of Critical Habitat Designation

Comment 65: Several commenters, including the State of Alaska (ADNR and ADF&G) stated that bearded seals are already sufficiently protected from adverse impacts by the MMPA, CWA, Clean Air Act, Outer Continental Shelf Lands Act, National Environmental Policy Act, Oil Pollution Act of 1990; and other Federal, state, and local regulations. Commenters emphasized that activities such as oil and gas exploration and development are

regulated pursuant to the MMPA to ensure that they have no more than a negligible impact on bearded seals, and referred to the record of incidental take authorizations issued for Arctic oil and gas activities. One commenter stated that USFWS has already determined, and courts have agreed, that the provisions of the MMPA provide a greater level of protection to marine mammals than the ESA. In addition, ADNR stated that the oil and gas industry has coexisted with bowhead whales under MMPA protections for decades, and there has been no attempt to designate critical habitat for this species. ADF&G and another commenter stated that moreover, the proposed designation is redundant with existing habitat protections for polar bears, notwithstanding differences in habitat use between the two species, as there is substantial overlap between the area proposed for designation and the area already designated for polar bears.

Response: We recognize that certain laws and regulatory regimes already protect, to different degrees and for various purposes, U.S. waters occupied by the Beringia DPS, and therefore, to a certain extent, the essential features. However, the existing laws and regulations do not ensure that current and proposed Federal actions are not likely to adversely modify or destroy Beringia DPS critical habitat. For example, regulations under the MMPA provide specific protections for bearded seals but they do not specifically protect the essential features and conservation value of critical habitat for the Beringia DPS. Moreover, critical habitat must be designated regardless of whether other laws or measures already provide protection. *See Natural Res. Def. Council* v. *U.S. Dep't of the Interior,* 113 F.3d 1121, 1127 (9th Cir. 1997) (''Neither the Act nor the implementing regulations sanctions [sic] nondesignation of habitat when designation would be merely *less* beneficial to the species than another type of protection.'').

Regarding the comment that the critical habitat designation is redundant with existing habitat protections for polar bears, we disagree. Bearded seals may use some of the same habitat in the northern Bering, Chukchi, and Beaufort seas used by polar bears, but the critical habitat designation and listing protections for polar bears are established to promote the conservation and recovery of that species specifically. Polar bear critical habitat does not explicitly protect the physical and biological features essential to the conservation of the Beringia DPS. Further, section 7 consultations involving polar bear critical habitat would not address impacts to bearded seals' habitat.

Comment 66: ADF&G asserted that designating very large areas as critical habitat dilutes or undermines the conservation benefits it supplies compared with targeting designations toward areas with higher documented conservation value, and results in designations with little or no benefits to listed species. They stated that this is because the evaluation of whether a proposed Federal action is likely to destroy or adversely modify critical habitat under section 7 of the ESA is based on impacts to the whole of the designated critical habitat. They argued that as a result, when evaluating the impacts of a Federal action on a large critical habitat designation in a section 7 consultation, negative impacts to a ''genuinely critical'' area within a species' range are ''swamped'' by the sheer size of the designated critical habitat. They stated that therefore, the proposed designation for the Beringia DPS would simply add a regulatory layer under section 7 of the ESA, while providing little or no educational or other benefits. They added that their analysis provided to NMFS to inform the designation of critical habitat for listed DPSs of humpback whales demonstrates that designating very large areas will likely provide no conservation benefits to these populations while adding unnecessary regulatory burdens to oil and gas operations, transportation, and other uses. Two commenters also stated that because we do not anticipate that additional requests for project modifications will result specifically from designation of critical habitat for the Beringia DPS, the designation would provide little or no conservation benefit to the species beyond what is already afforded by virtue of its listing under the ESA.

Response: The ESA requires us to designate critical habitat to the maximum extent prudent and determinable. Critical habitat within the geographical area occupied by the species as defined in section 3 of the ESA includes areas on which are found those physical or biological features that are essential to the conservation of the listed species and may require special management considerations or protection (16 U.S.C. 1532(5)(A)). The term ''conservation'' is further defined in section 3 of the ESA as the use of all methods and procedures necessary to bring any endangered or threatened species to the point at which their protection under the ESA is no longer necessary (16 U.S.C. 1532(3)). Therefore, a critical habitat designation must be determined based on consideration of the nature of the habitat features that support the life history and conservation needs of the particular listed species. As we discussed in the proposed rule and in our response above to Comment 35, bearded seals have a widespread distribution, their movements and habitat use are strongly influenced by the seasonality of sea ice cover, and they can range widely. Moreover, the habitat features they rely upon, in particular the sea ice essential features, are dynamic and variable on both spatial and temporal scales. As such, we identified where the essential features occur at a coarse scale, as this is as much specificity as the best scientific data available allows.

Our critical habitat determination for the Beringia DPS reflects these factors, and our analysis is appropriate and sufficient to designate critical habitat as defined by the ESA. Although we reviewed the analysis ADF&G provided to NMFS to inform the designation of critical habitat for listed DPSs of humpback whales, as we discussed in detail in the preamble to the final rule for that designation (75 FR 21082, April 21, 2021), the ESA, implementing regulations at 50 CFR 424.12, and case law guide us in our evaluation of areas that meet the definition of critical habitat, and none of these sources provide support for the analytical approach advocated by the commenter.

We also disagree with the assumption that the conservation benefits of critical habitat are strictly limited to any changes to Federal actions that are made to avoid destruction or adverse modification of critical habitat. Once designated, critical habitat provides specific notice to Federal agencies and the public of the geographic areas and physical and biological features essential the conservation of the species, as well as information about the types of activities that may reduce the conservation value of that habitat. Thus, designation of critical habitat can inform Federal agencies of the habitat needs of the species, which may facilitate using their authorities to support the conservation of the species pursuant to section 7(a)(1) of the ESA, including to design proposed projects in ways that avoid, minimize, and/or mitigate adverse effects to critical habitat from the outset. As discussed in the *Benefits of Designation* section of this final rule and in more detail in the Final Impact Analysis report, in addition, other benefits are recognized, such as public awareness of the status of the species and its habitat needs,

which can stimulate research, as well as outreach and education activities.

Comment 67: One commenter expressed concern that because we indicated that the critical habitat designation is not likely to result in additional requests for project modifications, we have made a preemptive determination that no changes to projects will be necessary in any future section 7 consultation to avoid adverse modification or destruction of the critical habitat. The commenter stated that this also conveys the impression that NMFS will not meaningfully evaluate the effects of proposed Federal action on the critical habitat in future consultations. The commenter added that given the way that NMFS conducts consultations on a case-by-case basis with an extremely restrictive definition of cumulative effects, and that there have been very few consultations in which NMFS has issued an adverse modification finding, it is unlikely that the designation will provide additional protection to the ecosystem upon which bearded seals of the Beringia DPS depend.

Response: We disagree with these comments. We are making no preemptive determinations about future section 7 consultations in this critical habitat designation. While we cannot predict the outcome of future consultations with certainty, on the basis of the best scientific and commercial data available, we have not identified a circumstance in which this critical habitat designation would be likely to result in additional requests for project modifications in section 7 consultations. This does not mean that Federal actions will not undergo meaningful and rigorous review through the section 7 consultation process or that project modifications specifically designed to avoid impacts to critical habitat could never occur. Rather, it means only that we have no basis to conclude that such modifications are likely to occur and that therefore incremental impacts of this critical habitat designation should be forecasted in our impacts analysis. Based on the best information available regarding potential future Federal actions, and given the high level of existing baseline protections for the seals under the MMPA and due to their listing under the ESA, project modifications made to lessen impacts to bearded seals or to avoid jeopardy would likely encompass measures needed to reduce impacts to (and potentially avoid adverse modification of) critical habitat. That is, while section 7 consultations may result in project modifications, such modifications would likely be necessary to protect bearded seals in addition to protecting the essential features on which the species relies.

In addition, as we explained in our response above to Comment 66, the benefits of critical habitat designation cannot simply be measured by the outcome of section 7 consultations, as there are other benefits of critical habitat that extend beyond the direct benefits through section 7 consultations. Regarding consideration of cumulative effects, in formulating our biological opinion as to whether or not a particular proposed Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat, our regulations at 50 CFR 424.14 require that we assess the status of the species and the critical habitat (including threats and trends), the environmental baseline of the action area, and cumulative effects, which in this context are defined to be the effects of any unrelated future non-Federal activities that are reasonably certain to occur within the action area. The summary of the status of the critical habitat considers the historical and past impacts of activities across time and space. The effects of any particular action are thus evaluated in the context of this assessment, which incorporates the effects of all current and previous actions. This avoids situations where each individual action is viewed as causing only relatively minor adverse effects but, over time, the aggregated effects of these actions would erode the conservation value of the critical habitat (81 FR 7214, February 11, 2016; 84 FR 44976, August 27, 2019).

Comment 68: A number of commenters stated that critical habitat is important to supporting the conservation of bearded seals. Some commenters noted the greater protective standard afforded to critical habitat under section 7 of the ESA will help address threats associated with activities such as oil and gas development, which can help increase the species' resilience to climate change. Some commenters also stated that critical habitat provides important public outreach and education opportunities that enhance conservation, including furthering awareness of the impacts of climate change, the plight of listed species, and the conservation value of critical habitat areas. In addition, some commenters suggested that benefits resulting from the designation could extend to other species that rely on the habitat, such as polar bears and ringed seals.

Response: We agree with these comments.

Comment 69: One commenter stated that the proposed designation would provide no meaningful public education benefits because Alaska Native communities and regulated industries that undertake activities within the potentially designated areas are already fully familiar with the species and have implemented protective measures pursuant to the MMPA for decades, and these areas are otherwise largely devoid of human activity. Another commenter also questioned how non-regulatory benefits discussed in the proposed rule, such as enhanced conservation or indirect benefits to subsistence users, would actually materialize, and stated that the overlap of critical habitat and its protections for bearded seals, Arctic ringed seals, and polar bears seems purely redundant and without the benefit of any additional protection.

Response: As discussed in the *Benefits of Designation* section of this final rule, and in more detail in the Final Impact Analysis Report, we conclude that designation of critical habitat for the Beringia DPS can have a number of indirect benefits. We recognize that Alaska Native subsistence hunting communities adjacent to the Beaufort, Chukchi, and northern Bering seas are very familiar with the species and its habitat, as are certain other entities operating within Beringia DPS critical habitat. Still, it is our experience that after critical habitat has been designated for listed species, increased awareness of the habitat needs of listed species on the part of the public as well as planners, government entities, and others, has promoted the conservation of the species. For example, the designation provides specific notice of the habitat features essential to the conservation of the Beringia DPS, which can facilitate the design of proposed projects by Federal agencies in ways that minimize or avoid effects to critical habitat. However, we also note that the ESA requires designation of critical habitat for listed species to the maximum extent prudent and determinable, regardless of protections afforded by other environmental laws or increased public awareness of the habitat needs of listed species associated with critical habitat designations.

Comments Concerning Exclusions

Comment 70: A group of oil and gas trade associations stated that all critical habitat proposed for designation should be excluded, or alternatively, at least all areas in which human activities occur, or will foreseeably occur, should be excluded from designation because of the importance to the Alaska economy

and national energy needs of oil and gas exploration and development, and the strong potential for the designation to impose unnecessary costs and litigation risks on the oil and gas industry, Alaska Native communities, and state and local governments. They asserted that the economic impacts of designation substantially outweigh any very marginal benefits of designation, and stated that: (1) Oil and gas activities, as well as Alaska Native subsistence harvest of bearded seals, are not expected to threaten the species or its habitat in the foreseeable future, as evidenced in the final rule listing the Beringia DPS as threatened; (2) oil and gas activities, as well as other activities, are regulated pursuant to the MMPA and other Federal and state laws to ensure that they have no more than a negligible impact on bearded seals; and (3) the designation will result in no benefits to the species under section 7 of the ESA in that there are no measures or protections necessary for conservation of bearded seals that are not already imposed by the MMPA, and NMFS does not anticipate that the designation will result in additional project modifications.

Response: Section 4(b)(2) of the ESA provides that the Secretary shall designate critical habitat on the basis of the best scientific data available after taking into consideration the economic impact, impact on national security, and any other relevant impacts of specifying any particular area as critical habitat. The economic analysis included in the Final Impact Analysis Report was developed to address the potential economic impacts of the critical habitat designation. As discussed in the *Economic Impacts* section of this final rule and detailed in the Final Impact Analysis Report, the total incremental costs associated with the critical habitat designation for the Beringia DPS within the 10-year post-designation timeframe, in discounted present value terms, were estimated at $563,000 (discounted at 7 percent) to $658,000 (discounted at 3 percent). About 81 percent of the incremental costs attributed to the critical habitat designation are expected to accrue from ESA section 7 consultations associated with oil and gas related activities in the Chukchi and Beaufort seas. To avoid understating the cost estimates, we assumed that a high projected level of oil and gas activity will occur annually, although such a high level of activity is unlikely to occur in each and every year. After thoroughly considering the available information, we conclude that the potential economic impacts associated with this designation are modest both in absolute terms and relative to the level of economic activity expected to occur in the affected area. This has not changed from the proposed rule.

We disagree with the characterization of the benefits of the critical habitat designation as ''very marginal.'' The designation of critical habitat and identification of essential features will provide substantive benefits to the conservation of the Beringia DPS. At a minimum, the designation ensures that Federal agencies, through the consultation process under section 7 of the ESA, consider the impacts of their projects and activities on critical habitat for the Beringia DPS, and will focus such future consultations on the essential features of the critical habitat. Designation of critical habitat thus provides clarity and consistency to Federal action agencies regarding specific areas and habitat features that should be considered and addressed during these consultations. Designation of critical habitat can also inform Federal agencies of the habitat needs of the species, which may facilitate using their authorities to support the conservation of the species pursuant to section 7(a)(1) of the ESA, including to design proposed projects in ways that avoid, minimize, and/or mitigate adverse effects to critical habitat. Other benefits of the designation include enhanced public awareness of the habitat needs of the species, which can help focus conservation efforts (for additional details, see *Benefits of Designation* section, as well as the Final Impact Analysis Report). We have therefore not exercised the discretion delegated to us by the Secretary to conduct an exclusion analysis to further consider and weigh the benefits of designation and exclusion of any particular area based on economic impacts.

Comment 71: A group of oil and gas trade associations stated that we should clarify that the proposed regulatory language indicating that permanent manmade structures such as boat ramps, docks, and pilings that were in existence by the effective date of the rule are not part of critical habitat also applies to existing infrastructure associated with North Slope and adjacent Outer Continental Shelf (OCS) oil and gas activities. In addition, they stated that we should exclude from designation the infrastructure, ice roads, trails, pads, and surrounding waters necessary to maintain safe access to the facilities identified and described in their comments, including Milne Point Unit F-Pad, Oliktok Point and Spy Island Drill Site, Oooguruk Drill Site, and Northstar Unit Seal Island). They stated that the benefits of excluding these areas from designation far outweigh any benefits of designation, and are justified because they are fundamental to continuity and safety of oil and gas operations and: (1) The identified areas are not essential to the conservation of bearded seals, nor do they require special management considerations or protection; (2) the areas are extremely small relative to the amount of habitat available to bearded seals; and (3) these types of facilities have been constructed and maintained for decades without any indication that these exclusions would impede recovery or have any population level impacts on bearded seals.

Response: With regard to the proposed regulatory language indicating that permanent manmade structures in existence are not a part of the designation, we find that this language provides sufficient clarity, as it applies to any such permanent manmade structures, including those in existence that are associated with oil and gas activities, and the final rule includes that same language. While activities such as dredging and screeding occur in association with the areas requested for exclusion, this does not necessarily indicate that there are likely to be significant additional costs or other indirect impacts from including these areas in the designation. Where there is a Federal nexus for an activity occurring in these areas, we expect that there will in most, if not all cases, be an existing need to address the impacts of these activities on bearded seals themselves. In other words, for activities such as dredging and screeding, the requirement to consult under section 7 of the ESA would be triggered even in the absence of Beringia DPS critical habitat. These consultations typically analyze habitat-related effects to the seals, even in the absence of a critical habitat designation. While Federal actions that may affect the essential features of critical habitat for the Beringia DPS will require an analysis to ensure that these actions are not likely to result in the destruction or adverse modification of the critical habitat, we do not expect that this will require substantial additional time or resources, especially for new consultations. We have therefore not exercised the discretion delegated to us by the Secretary to conduct an exclusion analysis to further consider and weigh the benefits of designation and exclusion of the identified areas based on economic impacts. Further, under the ESA, the relevant question is whether the identified areas contain

physical or biological features essential to the conservation of the Beringia DPS, not whether use of these areas is essential to conservation of bearded seals or whether these areas (as opposed to the features within them) require special protection. Because we find that one or more essential features occur in all parts of the specific area designated as critical habitat, to the extent these comments are suggesting the identified areas do not meet the definition of critical habitat, we disagree. Finally, because we have revised the proposed shoreward boundary of critical habitat in this final rule, the areas that the commenter requested be excluded are not included in the final designation, as the shoreward boundary in the Beaufort Sea is now defined as the 20-m isobath (relative to MLLW) rather than as the line of MLLW (see Summary of Changed From the Proposed Designation).

Comment 72: The North Slope Borough stated that we should exclude from designation 10-mile buffer zones around all North Slope villages and all lands conveyed to the North Slope Borough or Alaska Native corporations in order to prevent detrimental economic impacts and possible delays in municipal-type projects or other developments that require Federal approval or rely on Federal funding. They indicated that such activities include, but are not limited to, erosion protection, road construction, water treatment activities, port infrastructure, and municipal expansion. They stated that although these activities may not rise to the level of adverse modification, Borough communities and residents should not be forced to bear the additional section 7 consultation costs or possible delays in development of projects associated with maintaining basic services. In addition, they stated that we should exclude from designation similar areas around locations that are currently being developed for oil and gas, as a significant portion of the Borough's revenue is derived from taxes on oil and gas infrastructure. They also commented that without the collaboration of seal hunters and Alaska Native communities who live in those areas, NMFS would be unable to adequately monitor bearded seals. They suggested that designating critical habitat adjacent to coastal villages could alienate residents of subsistence communities, and thus there is a real collaborative benefit to such exclusions. The Ice Seal Committee similarly stated that we must exclude from designation aquatic areas around villages, Alaska Native corporation lands, and other lands where development and infrastructure-related activities are occurring in consideration of the harmful effects of the designation on Alaska Native communities. Additionally, ADF&G requested that a distance of 20 miles around communities and the Beaufort Sea coast be excluded from designation to avoid unnecessary disproportionate regulatory burdens to those areas that are not balanced by the limited conservation benefits provided to bearded seals.

Response: While we recognize that the proximity of a number of coastal communities and certain other developed sites to Beringia DPS critical habitat raises concerns about potential impacts on human activities, our final economic analysis did not indicate any disproportionate or significant economic impacts are likely to result from the designation. The critical habitat designation includes no regulatory restrictions on human activities, and where no Federal authorization, permit, or funding is involved, activities are not subject to section 7 consultation. For the types of actions we expect to occur in coastal villages or on Alaska Native lands that have a Federal nexus, based on our experience consulting on such activities, we do not expect that the additional need to consult on the critical habitat would result in additional or novel project modifications beyond those that result from consultations that are already required due to the threatened status of the species and the MMPA (see also our response to Comment 59). We have therefore not exercised the discretion delegated to us by the Secretary to conduct an exclusion analysis to further consider and weigh the benefits of designation and exclusion of buffers around the requested areas based on economic or any other relevant impacts. In addition, waters adjacent to coastal villages within the 10-mile and 20-mile distances requested for exclusion by the commenters overlap to lesser extent with the final critical habitat because the shoreward boundary of the designation has been shifted seaward to the 20-m isobath (relative to MLLW) in the Beaufort Sea and northeastern Chukchi Sea, the 10-m isobath (relative to MLLW) in the remainder of the Chukchi Sea, and the 5-m isobath (relative to MLLW) in the Bering Sea, from the proposed boundary of MLLW (see Summary of Changes From the Proposed Designation section).

With regard to the comment concerning the effect of the critical habitat designation on NMFS's working relationships with seal hunters and Alaska Native communities, we recognize that Alaska Natives make important contributions to the conservation and management of bearded seals. NMFS works closely with the North Slope Borough and other partners to implement co-management and conserve marine mammals. We understand that a number of parties have concerns about ESA listings and critical habitat designations, but we are optimistic that such concerns will not impair our working relationships with co-management partners and other stakeholders over the long term, especially given our continued efforts to provide accurate information regarding the effects of this designation.

Regarding exclusions from critical habitat of buffers around locations where oil and gas development is occurring, we do not consider exclusion from critical habitat to be appropriate in this case. The primary industrial activities occurring within Beringia DPS's critical habitat are associated with the oil and gas industry. Areas of importance to the oil and gas industry within the critical habitat include the physical and biological features essential to the conservation of the Beringia DPS, and there are conservation benefits to bearded seals if the areas requested for exclusion remain in the designation. Moreover, the presence of designated critical habitat for other marine mammal species has not resulted in the inability of the oil and gas industry to engage in exploration, development, and production activities. Regarding benefits of the designation, also see our response to Comment 27.

Comment 73: Two commenters stated that we should exclude from designation areas that are ice-free at certain times of the year and that support activities that are vital and necessary for residents in northern coastal communities, such as shipping lanes used by vessels to transport the vast majority of goods and services, to ensure that there are no impacts on such activities. One commenter stated that from approximately mid-June in some regions through September this shipping not only transports goods, but also serves as a cultural link among coastal Alaska Native communities.

Response: The critical habitat designation would not preclude or restrict shipping activities. Section 7 consultation requirements apply only when a Federal action is involved (*i.e.,* an action authorized, funded, or carried out by a Federal agency). We are not aware of a Federal nexus for the vessel traffic referred to by the commenters such that this activity would be subject

to section 7 consultation. As summarized in the *Economic Impacts* section of this final rule, and discussed in more detail in the Final Impact Analysis Report, we anticipate that the impacts of the designation will be limited to incremental administrative effort to consider potential adverse modification of Beringia DPS critical habitat as part of future section 7 consultations, and that most of these consultations will be associated with oil and gas activities. Therefore, we find that there is not a clear basis to exercise the discretion delegated to us by the Secretary to conduct an exclusion analysis to further consider and weigh the benefits of designation and exclusion of shipping lanes.

Legal and Procedural Comments

Comment 74: Several commenters cited our regulations at 50 CFR 424.12(a)(1)(ii) in stating that we should determine that designation of critical habitat is not prudent for the Beringia DPS, in particular, because the primary threats to the species stem solely from climate change, and therefore, they cannot be addressed through management actions resulting from section 7 consultations. Commenters also referred to the preamble to the 2019 final rule that revised portions of the regulations at 50 CFR part 424, which discussed this newly added provision relative to listed species experiencing threats stemming from climate change. Additionally, one commenter pointed to our statement in the proposed critical habitat rule regarding our inability to draw a causal linkage between any particular single source of GHG emissions and identifiable effects on the proposed essential features. Commenters added that there is a strong basis for determining that designation would not be prudent because: (1) The Beringia DPS is sufficiently protected under existing laws and regulations, including the MMPA; (2) the species is not threatened or otherwise negatively impacted by any of the regulated activities that occur within its range; (3) NMFS anticipates that the designation will not result in additional project modifications through section 7 consultations; and (4) there are insufficient data available to support the identification of critical habitat. ADF&G also contended that critical habitat is not determinable, citing some similar considerations. The Ice Seal Committee likewise indicated that they believe designation of critical habitat for the Beringia DPS is not necessary or prudent at this time.

Response: Section 4(a)(3)(A) of the ESA requires that we designate critical habitat to the maximum extent prudent and determinable at the time a species is listed. Finding that critical habitat is not determinable at the time of listing allows NMFS to extend the deadline for finalizing a critical habitat designation by one year under section 4(b)(6)(C)(ii) of the ESA (16 U.S.C. 1533(b)(6)(C)(ii)). At the end of the 1-year extension, NMFS must use the best scientific data available to make the critical habitat determination. When we listed the Beringia DPS as threatened in December 2012, critical habitat was not determinable. Subsequently, we researched, reviewed, and compiled the best scientific data available to develop a critical habitat designation for the Beringia DPS. Critical habitat is now determinable.

With regard to making a ''not prudent'' determination, our regulations at 50 CFR 424.12(a)(1) provide a non-exhaustive list of circumstances in which we may, but are not required to, find that it would not be prudent designate critical habitat. In 2019, several revisions to this regulatory provision were finalized, including the addition of the following circumstance, cited by commenters, in § 424.12(a)(1)(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 ESA (84 FR 45020, August 27, 2019). Here, the Beringia DPS is threatened throughout all of its range by ongoing and projected reductions in sea ice habitat (77 FR 76740, December 28, 2012). Further, the threats to the essential features of Beringia DPS critical habitat do not stem solely from causes that cannot be addressed through management actions from consultations under section 7(a)(2) of the ESA. Rather, as we discussed in the proposed rule, we identified four primary sources of threats to the essential features of Beringia DPS critical habitat—climate change, oil and gas activity, marine shipping and transportation, and commercial fisheries—that may require special management considerations or protection for the essential features. The situation for the Beringia DPS thus differs from the scenarios discussed in the preamble to the 2019 revisions to the ESA regulations in which threats to the listed species' habitat stem solely from climate change. Additionally, if a listed species does fall into that category, a not prudent finding is not mandatory, as we may determine that designating critical habitat could still contribute to the conservation of the species. Moreover, the other reasons given by the commenters in support of making a ''not prudent'' determination (*e.g.,* whether existing protections are sufficient and whether project modifications in section 7 consultations result from the designation) do not provide any basis for determining that the Beringia DPS falls within any of the other circumstances identified in our regulations at 50 CFR 424.12(a)(1) in which we may determine a designation would not be prudent. The identification of critical habitat is not expected to increase the degree of threat to the species, areas within U.S. jurisdiction provide more than negligible conservation value for this species, and a specific area meets the definition of critical habitat.

Comment 75: Several commenters stated that critical habitat is unnecessary to conserve the Beringia DPS because the species is healthy and abundant, widely distributed throughout its historical range, and has not shown any indication of a decline in population. They stated that moreover, the Beringia DPS was listed as threatened under the ESA based on impacts to habitat from climate change projected to occur decades into the future. They questioned expending resources on developing a critical habitat designation in this circumstance.

Response: As we indicated in our response to Comment 74, the ESA requires that we designate critical habitat to the maximum extent prudent and determinable at the time a species is listed under the ESA, or within one year of listing if critical habitat is not determinable at that time. The comments regarding abundance, distribution, and population trends are relevant to ESA listing decisions (and were addressed in the final rule listing the Beringia DPS as threatened; see 77 FR 76740, December 28, 2012), but they do not have any bearing on whether critical habitat should be designated. Habitat is a fundamental aspect of conserving any species, and as discussed above, we are required to designate critical habitat for listed species except in the very limited circumstances in which it is determined not to be prudent.

Comment 76: One commenter stated that we should delay designation of critical habitat until after completing the ongoing 5-year review of the species under the ESA.

Response: The ESA requires us to designate critical habitat, to the maximum extent prudent and determinable, at the time species are

listed (16 U.S.C. 1533(a)(3)(A)(i)). If designation is not then determinable, we may extend this deadline by not more than one additional year. A lawsuit was filed in Federal court alleging we did not meet the statutory deadline to designate critical habitat, and under a court-approved stipulated settlement agreement, we must complete a final critical habitat determination by March 15, 2022 (see Background section). We cannot further delay the statutory requirement to designate critical habitat in order to complete the 5-year review.

Comment 77: One commenter stated that because the recent amendments to our joint NMFS/USFWS regulations implementing section 4 of the ESA (84 FR 45020, August 27, 2019; 85 FR 81411, December 16, 2020) are currently the subject of several lawsuits and are included in a list of regulatory actions that are being reviewed by the current administration, we should not rely on those regulatory amendments in designating critical habitat for the Beringia DPS.

Response: In designating critical habitat, we are required to adhere to the ESA implementing regulations that are currently in effect. The regulatory amendments published on August 27, 2019, became effective and applicable for proposed critical habitat rules published after September 26, 2019. However, those recent revisions did not materially change our determination of critical habitat for the Beringia DPS because they involve the procedures and criteria used for designating unoccupied areas and making discretionary determinations that designating critical habitat would not be prudent. A regulatory amendment published on December 16, 2020, which added a definition of ''habitat'' to our ESA implementing regulations, became effective on January 15, 2021, and is applicable to critical habitat rulemakings for which a proposed critical habitat rule is published after that date. As a result, that rule does not apply to the critical habitat rulemaking for the Beringia DPS. We note, however, that the new regulatory definition of ''habitat'' is consistent with our consideration of habitat in designating critical habitat for the Beringia DPS.

Comment 78: The North Slope Borough and the Ice Seal Committee expressed concern that we did not adequately inform or consult with the Ice Seal Committee during preparation of the proposed rule, and stated that the Ice Seal Committee membership has a significant amount of IK and experience that is directly relevant to various elements of the designation. They requested that we consult with the Ice Seal Committee and provide the opportunity to provide recommendations concerning the critical habitat designation prior to proceeding further with the designation. The Ice Seal Committee further commented that given that bearded seals are essential for subsistence and the continuation of traditional ways of life, this consultation and any subsequent regulatory actions must be based on IK of threats to the species and the conservation actions considered necessary. In addition, another commenter urged us to conduct additional meaningful outreach that engages local Alaska Native hunters and other experts and consider their input in developing the critical habitat designation. In addition, one commenter stated that it appeared that no Alaska Native Indigenous experts provided review and input on the proposed designation prior to its publication.

Response: We understand the concerns expressed by the Ice Seal Committee about coordination and input on the designation of critical habitat for the Beringia DPS, and recognize that Alaska Native subsistence hunting communities have unique knowledge of bearded seals, which are an essential traditional subsistence resource. We gave presentations and updates to the Ice Seal Committee on the designation of critical habitat for bearded seals and sought their input beginning in 2013. Prior to developing a proposed critical habitat designation, we discussed the process for developing the proposal during the Ice Seal Committee co-management meeting in January 2020, where we reviewed a list of relevant questions regarding the identification of critical habitat for the Ice Seal Committee's consideration and input. At that meeting, we also distributed an informational flyer that addressed the designation process and related topics. In September 2020, we provided an update to the Ice Seal Committee by email about the schedule for issuing the proposed designation and related information. In January 2021, we notified the Ice Seal Committee by email in advance of the scheduled publication of the proposed rule, and we subsequently followed up by letter regarding the proposed designation and the comment period on the proposal. During the Ice Seal Committee co-management meeting in February 2021, we presented information regarding the proposed designation, the comment period, and the schedule for hearings, and we highlighted the types of data and information we were particularly seeking to inform development of the final designation. We also provided information to the Ice Seal Committee regarding the public hearings by email. In response to their requests to do more to publicize the proposed designation and the scheduled hearings, we provided a flyer to the Ice Seal Committee to share and we arranged to run public service announcements on the radio to inform people about the upcoming hearings. During the Ice Seal Committee meeting in September 2021, we provided an update on the status of development of the final critical habitat designation and sought input about our efforts to coordinate with, and gain input from, the Ice Seal Committee regarding the designation. We will continue to make efforts to improve our communications with the Ice Seal Committee on matters pertaining to the conservation and management of ice seals in Alaska. With regard to the comments concerning our consideration of IK, also see our response to Comment 23.

Regarding the comment concerning review of the proposed designation by Alaska Native Indigenous experts prior to publication, we sought such input from Alaska Native hunters, including some elders with considerable IK, during Ice Seal Committee meetings as discussed in the preceding paragraph. In developing the final critical habitat designation, we fully considered all of the comments received on the proposed rule, including from the Ice Seal Committee, some Ice Seal Committee partner organizations, Alaska Native hunters, and residents of western and northern coastal communities.

Comment 79: The Ice Seal Committee expressed concern that NMFS is not sufficiently providing notice of regulatory actions or engaging with Alaska Native ice seal hunters. To promote outreach and engagement with the Alaska Native community, the Ice Seal Committee suggested that we prepare and distribute handouts that summarize proposed and final regulatory measures that clearly identify implications and requirements for affected Alaska Native hunters. The Ice Seal Committee committed to assisting NMFS in these efforts. Another commenter similarly urged NMFS to work with Alaska Native organizations to develop improved processes to ensure meaningful outreach and consultation. In addition, another commenter urged NMFS to engage in consultation with Tribes and Alaska Native corporations going forward before drafting and publishing proposed rules, so the proposed rules can

incorporate and reflect the expertise of Indigenous Alaskans from the start.

Response: We understand and welcome the Ice Seal Committee's interest in furthering our communications and engagement with Alaska Native communities and ice seal hunters, and we will continue to work closely with them regarding conservation and management issues related to ice seals. We note that the primary regulatory impact of critical habitat designation is that actions authorized, funded, or carried out by Federal agencies, and that may affect critical habitat, must undergo consultation under section 7 of the ESA to assess the effects of such actions on critical habitat, and must ensure that their actions are not likely to destroy or adversely modify critical habitat. We do not expect this critical habitat designation to have any adverse impact on Alaska Native subsistence activities. We also do not expect the critical habitat designation to result in any new reporting, sampling, or other procedural requirements for Alaska Native subsistence harvests. Regarding the comment about consultations with Tribes and Alaska Native Corporations, we contacted potentially affected tribes and Alaska Native Corporation by mail and offered them the opportunity to consult on the designation of critical habitat for the Beringia DPS and discuss any concerns they may have. We received no requests for consultation in response to that mailing.

Comment 80: One commenter stated that navigating the NMFS website was challenging and made it more difficult to review all the relevant information and submit written comments on the proposed critical habitat designation.

Response: The commenter may be referring to the eRulemaking Portal where we accepted electronic comments on the proposed rule and the documents associated with the proposal could be accessed. This website transitioned to a new interface during the comment period on the proposed rule, which may have complicated use by the commenter. Although electronic comments on the proposal were accepted during the comment period via the eRulemaking Portal, we also provided links to the documents associated with this rulemaking on our website, and we accepted written comments by mail.

Other Comments

Comment 81: The Marine Mammal Commission and two others commenters noted that as sea ice extent continues to decline substantially Arctic-wide, and the timing, rate, and extent of seasonal sea ice loss and formation in the Bering and Chukchi seas continue to shift, areas currently considered to be critical habitat may change. They recommended that we therefore review the critical habitat designation for the Beringia DPS every 5 years, or as substantial new information becomes available, to evaluate whether there is a need to revise the designation.

Response: We anticipate that future research will add to our knowledge of the habitat needs of bearded seals and how changing sea ice and ocean conditions are affecting the seals and the habitat features essential to their conservation. If additional data become available that support a revision to this critical habitat designation, we can consider using the authority provided under section 4(a)(3)(A)(ii) of the ESA to revise the designation, as appropriate.

Comment 82: The Marine Mammal Commission stated that finding an effective way of addressing the risks posed by climate change is likely the only way to fulfill the ESA's mandate to conserve the Beringia DPS and the ecosystem on which they depend. The Commission recommended that we work with key Federal agencies on a coordinated strategy to address the broader underlying problem—the need to reduce GHG emissions, thereby mitigating the negative impacts of climate change on Arctic marine mammals, including bearded seals, and their habitat. They noted that this strategy should be supported by work with Federal and state agencies, co-management partners, and local communities via existing research partnerships to foster routine inclusion of IK along with conventional science in assessing and predicting habitat transformation in the Arctic. In addition, other commenters stated that addressing loss of sea ice habitat would require international collaboration.

Response: We agree that addressing the effects of climate change on bearded seals and their habitat will require continued monitoring and research, and we look forward to working with our partners and stakeholders in furthering the conservation of this species. In addition to ongoing research on bearded seals conducted by NOAA's Marine Mammal Laboratory, NOAA provides climate analyses, sea ice forecasts, and other information to help other agencies and the public understand changes in the Earth's atmosphere and climate. These types of information products are used by a variety of state, Federal, and international bodies to inform decisions related to the root causes of climate change. NOAA also provides funding to and works cooperatively with other agencies on these efforts.

Comment 83: Two commenters stated that although there are sufficient data available to support the designation, additional studies and data are needed.

Response: As we explain elsewhere in this final rule (see Critical Habitat Definition and Process section), the ESA requires that we base critical habitat designations on the best scientific data available, provided that these data form a sufficient basis to determine that the ESA's standards are met for the specific area designated, and we have done so in this final rule. Nonetheless, we agree that additional research would add to the ecological knowledge of this species and potentially improve conservation efforts and management decisions.

Comment 84: One commenter cited several references pertaining to sea ice extent and dynamics that they stated provide additional recent information we should consider relative to bearded seal seasonal movements.

Response: We reviewed and considered the references provided by the commenter; however, we found they do not provide new information that changed our understanding of bearded seal seasonal movements.

Summary of Changes From the Proposed Designation

Based on our consideration of comments and information received from peer reviewers and the public on our January 9, 2021, proposed rule (86 FR 1433), and additional information we reviewed as part of our reconsideration of issues discussed in the proposed rule, we made several changes from the proposed critical habitat designation. These changes are briefly summarized below and discussed in further detail in the relevant responses to comments and other sections of the preamble of this final rule.

(1) *Eliminated as an essential feature* ''*acoustic conditions that allow for effective communication by bearded seals for breeding purposes within waters used by breeding bearded seals.*'' In the proposed rule, we identified an acoustic-related essential feature because acoustic communication plays an important role in bearded seal reproductive behavior. We explained that, although we recognized the limited nature of the scientific data available to inform our identification of acoustic conditions as an essential feature, this information represented the best scientific information available, and we were not aware of any other data that would allow us to describe in greater detail the acoustic conditions necessary

to avoid impairing affective communication by bearded seals for breeding purposes. We indicated that we would re-evaluate this proposed essential feature in developing the final critical habitat designation for the Beringia DPS. We specifically solicited comments concerning the proposed inclusion of acoustic conditions as an essential feature, as well as additional data that would assist Federal action agencies and NMFS in determining characteristics of noise that result in adverse effects on the feature. Several public comments expressed support for inclusion of this proposed essential feature, and most noted concerns about potential impacts on bearded seal communication from anthropogenic noise and other factors. In addition, some peer reviewers and commenters identified scientific literature that they suggested might provide relevant data. Other public comments questioned the validity of acoustic conditions as an essential feature, arguing that our qualitative description was too vague, and that lack of available information regarding the relevant acoustic conditions would make it difficult to identify and meaningfully evaluate when an activity may have an effect or to determine what management actions and mitigation measures for acoustic conditions would benefit the conservation of the species.

In conducting our re-evaluation of the proposed acoustic conditions essential feature, we re-examined the information supporting the identification of this feature and where it occurs. We also reviewed and considered comments and additional relevant information received from peer reviewers and the public, including new information that became available after we developed the proposed rule, to determine whether additional relevant scientific data were available to further support or refine our approach in the proposed rule. Throughout our review, we considered whether we could sufficiently characterize the acoustic conditions that are essential to bearded seal communication for breeding purposes, in light of what is known.

As we described in the proposed rule, male bearded seals vocalize intensively during the breeding season, and their vocalizations have been studied in detail. Male vocalizations are thought to advertise breeding condition, signal competing males of a claim on a female, or proclaim a territory (Ray *et al.* 1969, Cleator *et al.* 1989, Van Parijs 2003, Van Parijs and Clark 2006, Risch *et al.* 2007). The studies we reviewed and considered in re-evaluating the proposed acoustic conditions essential feature, many of which are cited above or in the proposed rule, document the vocal activity of bearded seals during the breeding season, including bearded seal call characteristics and spatial and temporal patterns of vocalizations. Results of recent research that became available after the proposed rule was developed also provide information on seasonal variation in bearded seal vocal activity during the breeding season in a variety of habitats and differing ice conditions (Boye *et al.* 2020, Heimrich *et al.* 2021, Llobet *et al.* 2021), underwater hearing capabilities in bearded seals, and auditory effects of impulsive noise exposure in bearded seals (Sills *et al.* 2020a, Sills *et al.* 2020b). In addition, a recent study by Fournet *et al.* (2021) reported results suggesting that male bearded seals may have a limited capability to compensate for elevated ambient noise by increasing the level of their calls, in that vocalizing bearded seals increased their call levels until ambient noise reached an observable threshold.

We anticipate that the findings of these studies will enhance our ability to consider the potential effects of in-water sound levels on bearded seal detection of acoustic communication in consultations with Federal action agencies. However, after carefully reviewing and considering the comments received and the best scientific data available, we were unable to sufficiently characterize acoustic conditions as an essential feature so as to provide a reasonable basis upon which to identify when and where the essential feature occurs. Based on public comments received, including from other Federal agencies, we recognize that without better understanding of the acoustic conditions needed by Beringia DPS bearded seals to communicate for breeding purposes it would be difficult to determine what measures might be needed to avoid or minimize impacts to these acoustic conditions.

In our proposed rule, we concluded that because the best information available indicates that bearded seals are widely distributed, and there is overlap in the annual timing of the bearded seal breeding season with bearded seal whelping, nursing, and molting, the specific area identified for the sea ice essential features also defines the specific area associated with the acoustic conditions essential feature. However, we acknowledged the limited nature of the data available to describe this proposed essential feature, and as noted above, we indicated that we would re-evaluate the proposed essential feature in developing this final rule. In order to protect an essential feature, the feature needs to be reasonably specific and identifiable. We recognize that, while the available scientific information for the Beringia DPS is evolving, we still need additional relevant data in order to adequately define the acoustic conditions that allow for effective communication by bearded seals for breeding purposes and thereby provide a reasonable basis upon which to identify when and where the essential feature occurs. As public commenters pointed out, without this level of specificity it would be difficult to assess possible impacts to an acoustic conditions essential feature during section 7 consultations or for Federal action agencies to design projects to avoid or minimize impacts to the proposed essential feature. We considered the possible impact on conservation of the Beringia DPS of not identifying an acoustic-related essential feature of critical habitat, and we determined that we can consider and address the effects of anthropogenic noise on bearded seals to the extent possible in consultations under section 7 of the ESA, although we remain constrained by the limited scientific information available.

Based on our re-evaluation of the best scientific data available and public comments, we have not included an acoustic conditions essential feature in this final rule. We will, however, continue to consider results of future studies and if additional information becomes available that would enable us to describe an acoustic-related essential feature appropriately, we may consider revising the critical habitat designation accordingly.

(2) *Refined the primary prey resources essential feature.* In the proposed rule, we identified primary prey resources to support bearded seals in waters 200 m or less in depth as benthic organisms, including epifaunal and infaunal invertebrates, and demersal and schooling pelagic fishes. In response to peer reviewer and public comments that raised questions related to the proposed designation of critical habitat for this proposed essential feature, we re-evaluated the best scientific data available, including a recent analysis identified by a peer reviewer (Quakenbush 2020a), to determine if revision of the proposed definition of this feature may be appropriate.

As we stated in the proposed rule, the broad number of prey species consumed by bearded seals makes specification of particular essential prey species impracticable. However, after re-evaluating the best scientific data available on the diets of bearded seals in Alaska, we recognized that the high

prevalence of benthic invertebrates and demersal fishes reported reflects the seals' reliance on seafloor prey communities in particular to meet their annual energy budgets. We therefore concluded that the primary prey resources to support bearded seals are specifically benthic organisms, including epifaunal and infaunal invertebrates, and demersal fishes. Accordingly, we have refined the regulatory definition of this essential feature in this final rule. The refined description of the essential feature is as follows: Primary prey resources to support bearded seals: Waters 200 m or less in depth containing benthic organisms, including epifaunal and infaunal invertebrates, and demersal fishes.

(3) *Revised shoreward boundary of critical habitat.* In the proposed rule, we identified one specific area in the Bering, Chukchi, and Beaufort seas containing the essential features. Although the same seaward boundaries were identified for this specific area with respect to both the primary prey resources essential feature and the sea ice essential features, the shoreward boundary was identified as the line of MLLW based on occurrence of the proposed primary prey resources essential feature. We expressed in the proposed rule that data to determine the specific area containing the essential features are limited, and we specifically requested data and comments on our proposed delineation of these boundaries. In response to public comments that raised concerns regarding the proposed boundaries of the critical habitat designation with respect to the primary prey resources essential feature (as well as to peer reviewer and public comments related to bearded seal primary prey resources and their use of habitat for foraging), we re-evaluated the best scientific data available and the approach we had used to identify the proposed boundaries to ensure that they were drawn appropriately.

In reviewing these comments and considering the available data, we recognized that the available information on the distributions of bearded seal primary prey species indicate that these prey resources are widely distributed across the geographic area occupied by these seals. We concluded it was not possible to delineate the boundaries of critical habitat based solely on the description of the primary prey essential feature without implying the species' entire occupied range qualifies as critical habitat. We also have no information that suggests any portions of the species' occupied habitat contains prey species that are of greater importance or otherwise differ from those found within the specific area defined by the sea ice essential features. The best information available indicates that bearded seal movements and their use of habitat for foraging are influenced by a variety of factors and the seals' spatial patterns of habitat use and locations of intensive use can vary substantially among individuals. Most importantly, the movements and habitat use of bearded seals are strongly influenced by the seasonality of ice cover and they forage throughout the year. Given this and our consideration of the best scientific data available, we concluded that the best approach to determine the appropriate boundaries for critical habitat is to identify the specific area(s) in which both the primary prey essential feature and the sea ice essential features occur, and that this specific area contains sufficient primary prey resources to support the conservation of the Beringia DPS of bearded seals. Because, as noted above, the proposed shoreward boundary of critical habitat was based on occurrence of the primary prey resources essential feature, we re-evaluated the best available information to determine the appropriate shoreward boundary of critical habitat based on the sea ice essential features.

Sea ice habitat identified as essential for bearded seal whelping, nursing, and molting is found in waters 200 m or less in depth containing pack ice, *i.e.,* sea ice other than fast ice, of suitable concentrations. We therefore considered available information regarding the spatial extent of landfast ice and its seasonal cycle in the Beaufort, Chukchi, and Bering seas (Mahoney *et al.* 2007, Mahoney *et al.* 2012, Mahoney *et al.* 2014, Jensen *et al.* 2020) to inform our delineation of the shoreward boundary of critical habitat. Here we refer to the north northeastern Chukchi Sea (from Wainwright to Point Barrow) and Beaufort Sea as the Beaufort region, the Chukchi Sea extending south of Wainwright to the tip of the northern Seward Peninsula as the Chukchi region, and the Bering Sea from there south to Kuskokwim Bay as the Bering region. This information indicates that relationships between landfast ice and bathymetry in the Beaufort, Chukchi, and Bering regions differ regionally and locally. Significant inter-annual differences in the maximum extent of landfast ice were also documented, in particular in the Beaufort region. In addition, there is evidence of a decrease in the extent of landfast ice and trends in earlier breakup of this ice in the Chukchi region, and information from IK similarly indicates such trends in the Bering region (Oceana and Kawerak 2014, Huntington *et al.* 2017e). It is therefore impracticable to delineate a single isobath as the shoreward boundary for the entire specific area containing the sea ice essential features that accounts precisely for where landfast may occur in a given year during the period of whelping, nursing, and molting. However, we concluded that defining the nearshore boundary by a depth contour at a coarse level for each region is appropriate given that landfast ice forms in areas of shallow bathymetry and such ice is not identified as essential to the conservation of the Beringia DPS.

Because the best scientific data available indicate that in the Beaufort Sea, the 20-m isobath provides a reasonable approximation of the average stable extent of landfast ice, and landfast ice extent has not changed significantly in the past several decades (Mahoney *et al.* 2012, Mahoney *et al.* 2014), we selected the 20-m isobath (relative to MLLW) as the shoreward boundary in the Beaufort region. The available information indicates that in the Chukchi and Bering regions, landfast ice occupies shallower water overall, and water depths at the landfast ice edge are more variable and locally specific. In addition, as noted above, there is evidence of decreases in the extent of landfast ice and trends in earlier breakup of this ice in the Chukchi region, as well as of changes in landfast ice conditions in the Bering region in recent years. Therefore, in determining the shoreward boundary in the Chukchi and Bering regions, we considered the available information on landfast ice in these regions and examined existing information on the spring distribution of bearded seals from aerial surveys of the Bering Sea (in 2012 and 2013) and parts of the Chukchi Sea (in 2016) (NMFS Marine Mammal Laboratory, unpublished data). After considering the available data, we selected the 10-m isobath (relative to MLLW) as the shoreward boundary in the Chukchi Sea, and the 5-m isobath (relative to MLLW) as the shoreward boundary in the Bering Sea. We note that we adjusted the shoreward boundary to form a continuous line crossing the entrance to Port Clarence Bay because available information does not indicate this area contains the sea ice essential features. For the purpose of delineating the shoreward boundary, we defined the division between the Beaufort and Chukchi regions as the line

of latitude south of Wainwright at 70°36′ N, and the division between the Chukchi and Bering regions as the line of latitude south of Cape Prince of Wales (tip of the Seward Peninsula) at 65°35′ N.

(5) *Final Impact Analysis Report.* In response to peer reviewer and public comments, we revised and updated the Draft Impact Analysis Report to further explain and clarify our analysis of the economic costs and benefits of the designation, and to correct typographical and other minor errors. We also revised the analysis of the incremental administrative costs of section 7 consultations associated with the critical habitat designation based on the revised delineation of the shoreward boundary of the designation explained above. In addition, we updated the timeframe, wage schedule, and dollar year of the analysis to reflect the implementation schedule of the final rule.

(6) *New information.* In this final rule, we have made minor updates and incorporated additional information and references as appropriate, including information from IK documented for coastal communities located in western and northern Alaska, based on peer reviewer and public comments, new information we received or reviewed after publication of the proposed rule, and our internal review of the proposed rule.

Classifications

National Environmental Policy Act

We have determined that an environmental assessment as provided for under the National Environmental Policy Act is not required for critical habitat designations made pursuant to the ESA. *See Douglas Cnty.* v. *Babbitt,* 48 F.3d 1495, 1502–08 (9th Cir. 1995), *cert. denied,* 116 S. Ct. 698 (1996).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency publishes 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 not-for-profit organizations, and small government jurisdictions). We have prepared a final regulatory flexibility act analysis (FRFA) that is included as part of the Final Impact Analysis Report for this rule. The FRFA estimates the potential number of small businesses that may be directly regulated by rule, and the impact (incremental costs) per small entity for a given activity type. Specifically, based on an examination of the North American Industry Classification System (NAICS), this analysis classifies the economic activities potentially directly regulated by this action into industry sectors and provides an estimate of their number in each sector, based on the applicable NAICS codes. A summary of the FRFA follows.

A description of the action (*i.e.,* designation of critical habitat), why it is being considered, and its legal basis are included in the preamble of this rule. This action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with this action. Existing Federal laws and regulations overlap with this rule only to the extent that they provide protection to natural resources within the area designated as critical habitat generally. However, no existing regulations specifically prohibit destruction or adverse modification of critical habitat for the Beringia DPS of bearded seals.

This critical habitat designation rule does not directly apply to any particular entity, small or large. The regulatory mechanism through which critical habitat protections are enforced is section 7 of the ESA, which directly regulates only those activities carried out, funded, or permitted by a Federal agency. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. In some cases, small entities may participate as third parties (*e.g.,* permittees, applicants, grantees) during ESA section 7 consultations (the primary parties being the Federal action agency and NMFS) and thus they may be indirectly affected by the critical habitat designation.

Based on the best information currently available, the Federal actions projected to occur within the timeframe of the analysis (*i.e.,* the next 10 years) that may trigger an ESA section 7 consultation due to the potential to affect one or more of the essential habitat features also have the potential to affect the Beringia DPS of bearded seals. Thus, as discussed above, we expect that none of the activities we identified would trigger a consultation solely on the basis of this critical habitat designation; in addition, we have no information to suggest that additional requests for project modifications are likely to result specifically from this designation of critical habitat. Therefore, the direct incremental costs of this critical habitat designation are expected to be limited to the additional administrative costs of considering bearded seal critical habitat in future section 7 consultations that would occur regardless, based on the listing of the Beringia DPS of bearded seals.

As detailed in the Final Impact Analysis Report, the oil and gas exploration, development, and production industries participate in activities that are likely to require consideration of critical habitat in ESA section 7 consultations. The Small Business Administration size standards used to define small businesses in these cases are: (1) An average of no more than 1,250 employees (crude petroleum and natural gas extraction industry); or (2) average annual receipts of no more than $41.5 million (support activities for oil and gas operations industry). Only two of the parties identified in the oil and gas category appear to qualify as small businesses based on these criteria. Based on past ESA section 7 consultations, the additional third party administrative costs in future consultations involving Beringia DPS critical habitat over the next 10 years are expected to be borne principally by large oil and gas operations. The estimated range of annual third party costs over this 10 year period is $22,900 to $42,100 (discounted at 7 percent), virtually all of which is expected to be associated with oil and gas activities. It is possible that a limited portion of these administrative costs may be borne by small entities (based on past consultations, an estimated maximum of two entities). Two government jurisdictions with ports appear to qualify as small government jurisdictions (serving populations of fewer than 50,000). The total third-party costs that may be borne by these small government jurisdictions over 10 years are estimated to be less than $1,000 (discounted at 7 percent) for the additional administrative effort to consider Beringia DPS critical habitat as part of a future ESA section 7 consultation involving one port. In addition, the analysis anticipates three section 7 consultations on coastal construction activities over 10 years that may include third parties. It is not known whether the third parties are likely to be large or small entities. The total administrative costs associated with these three consultations that may be borne by third parties over 10 years are estimated to be $2,000 (discounted at 7 percent).

As required by the RFA (as amended by the SBREFA), we considered alternatives to the proposed critical

habitat designation for the Beringia DPS. Under section 4(b)(2) of the ESA, NMFS must consider the economic impacts, impacts to national security, and other relevant impacts of designating any particular area as critical habitat. NMFS has the discretion to exclude any area from critical habitat if the benefits of exclusion (*i.e.,* the impacts that would be avoided if an area were excluded from the designation) outweigh the benefits of designation (*i.e.,* the conservation benefits to the Beringia DPS if an area were designated), as long as exclusion of the area will not result in extinction of the species. However, based on the best information currently available, we concluded that this rule would result in minimal impacts to small entities and the economic impacts associated with the critical habitat designation would be modest. Therefore, we are not excluding any areas from the critical habitat designation pursuant to section 4(b)(2) of the ESA. Instead, we selected the alternative of designating as critical habitat the entire specific area that contains at least one identified essential feature because it would result in a critical habitat designation that provides for the conservation of the species and is consistent with the ESA and joint NMFS and USFWS regulations concerning critical habitat at 50 CFR part 424.

Paperwork Reduction Act

This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

This rule will not produce a Federal mandate.

Information Quality Act and Peer Review

The data and analyses supporting this action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (Section 515 of Pub. L. 106–554).

On December 16, 2004, the OMB issued its Final Information Quality Bulletin for Peer Review (Bulletin) establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The primary purpose of the Bulletin, which was implemented under the Information Quality Act, is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of ''influential scientific information'' and ''highly influential scientific information'' prior to public dissemination. Influential scientific information is defined as information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. Stricter standards were established for the peer review of ''highly influential scientific assessments,'' defined as information whose dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the information is novel, controversial, or precedent-setting, or has significant interagency interest.

The evaluation of critical habitat presented in this final rule and the information presented in the supporting Final Impact Analysis Report are considered influential scientific information subject to peer review. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review from four reviewers of our evaluation of available data, and our use and interpretation of this information, in making conclusions regarding what areas meet the definition of critical habitat in the proposed rule; and from three reviewers of the information considered in the Draft Impact Analysis Report for the proposed rule. The peer reviewer comments are addressed in this rule and in the Final Impact Analysis Report, and were compiled into two reports that are available at: *www.noaa.gov/organization/information-technology/peer-review-plans*.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, E.O.s, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175 on Consultation and Coordination with Indian Tribal Governments outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

As the entire critical habitat area is located seaward of the 5-m isobath, no tribal-owned lands overlap with the designation. Although this designation overlaps with areas used by Alaska Natives for subsistence, cultural, and other purposes, no restrictions on subsistence hunting are associated with the critical habitat designation. We coordinate with Alaska Native hunters regarding management issues related to bearded seals through the Ice Seal Committee, a co-management organization under section 119 of the MMPA. We discussed the designation of critical habitat for the Beringia DPS of bearded seals with the Ice Seal Committee and provided updates regarding the timeline for publication of this rule. We also contacted potentially affected tribes and Alaska Native corporations by mail and offered them the opportunity to consult on the proposed designation of critical habitat for the Beringia DPS and discuss any concerns they may have. We did not receive any requests from potentially affected tribes or Alaska Native corporations in response to the proposed rule.

Executive Order 12898, Environmental Justice

The designation of critical habitat is not expected to have a disproportionately high effect on minority populations or low-income populations.

Executive Order 12630, Takings

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this rule does not have significant takings implications. The designation of critical habitat directly affects only Federal agency actions (*i.e.,* those actions authorized, funded, or

carried out by Federal agencies). Further, no areas of private property exist within the critical habitat and hence none would be affected by this action. Therefore, a takings implication assessment is not required.

Executive Order 12866, Regulatory Planning and Review

OMB has determined that this rule is significant for purposes of E.O. 12866 review. A Final Impact Analysis Report has been prepared that considers the economic costs and benefits of this critical habitat designation and alternatives to this rulemaking as required under E.O. 12866. To review this report, see the **ADDRESSES** section above.

Based on the Final Impact Analysis Report, the total estimated present value of the incremental impacts of the critical habitat designation is approximately $563,000 over the next 10 years (discounted at 7 percent) for an annualized cost of $74,900. Overall, economic impacts are expected to be small and Federal agencies are anticipated to bear at least 44 percent of these costs. While there are expected beneficial economic impacts of designating critical habitat for the Beringia DPS, there are insufficient data available to monetize those impacts (see *Benefits of Designation* section).

Executive Order 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations in which a regulation may preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Pursuant to E.O. 13132, we determined that this rule does not have significant federalism effects and that a federalism assessment is not required. The designation of critical habitat directly affects only the responsibilities of Federal agencies. As a result, this rule 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 the Order. State or local governments may be indirectly affected by this critical habitat designation if they require Federal funds or formal approval or authorization from a Federal agency as a prerequisite to conducting an action. In these cases, the State or local government agency may participate in the ESA section 7 consultation as a third party. One of the key conclusions of the economic impact analysis is that the incremental impacts of the critical habitat designation will likely be limited to additional administrative costs to NMFS, Federal agencies, and to third parties stemming from the need to consider impacts to critical habitat as part of the forecasted section 7 consultations. The designation of critical habitat is not expected to have substantial indirect impacts on State or local governments.

Executive Order 13211, Energy Supply, Distribution, and Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking any significant energy action. Under E.O. 13211, a significant energy action means any action by an agency that is expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. We have considered the potential impacts of this critical habitat designation on the supply, distribution, or use of energy (see Final Impact Analysis Report for this rule). This critical habitat designation overlaps with five BOEM planning areas for Outer Continental Shelf oil and gas leasing; however, the Beaufort and Chukchi Sea planning areas are the only areas with existing or planned leases.

Currently, the majority of oil and gas production occurs on land adjacent to the Beaufort Sea and the critical habitat area. Any proposed offshore oil and gas projects would likely undergo an ESA section 7 consultation to ensure that the project would not likely destroy or adversely modify designated critical habitat. However, as discussed in the Final Impact Analysis Report for this rule, such consultations will not result in any new and significant effects on energy supply, distribution, or use. ESA section 7 consultations have occurred for numerous oil and gas projects within the area of the critical habitat designation (*e.g.,* regarding possible effects on endangered bowhead whales, a species without designated critical habitat) without adversely affecting energy supply, distribution, or use, and we would expect the same relative to critical habitat for the Beringia DPS of bearded seals. We have, therefore, determined that the energy effects of this rule are unlikely to exceed the impact thresholds identified in E.O. 13211, and that this rulemaking is not a significant energy action.

List of Subjects

50 CFR Part 223

Endangered and threatened species.

50 CFR Part 226

Endangered and threatened species.

Dated: March 18, 2022.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 226 are amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, in the table in paragraph (e), under Marine Mammals revise the entry for ''Seal, bearded (Beringia DPS)'' to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species [1]			Citation (s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals					
*	*	*	*	*	*
Seal, bearded (Beringia DPS).	*Erignathus barbatus nauticus.*	Bearded seals originating from breeding areas in the Arctic Ocean and adjacent seas in the Pacific Ocean between 145° E Long. (Novosibirskiye) and 130° W Long., and east of 157° E Long. or east of the Kamchatka Peninsula.	77 FR 76740, Dec. 28, 2012.	226.229	NA
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722; February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612; November 20, 1991).

* * * * *

PART 226—DESIGNATED CRITICAL HABITAT

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 4. Add § 226.229 to read as follows:

§ 226.229 Critical Habitat for the Beringia Distinct Population Segment of the Bearded Seal Subspecies *Erignathus barbatus nauticus.*

Critical habitat is designated for the Beringia distinct population segment of the bearded seal subspecies *Erignathus barbatus nauticus* (Beringia DPS) as described in this section. The map and textual descriptions in this section are the definitive sources for determining the critical habitat boundaries.

(a) *Critical habitat boundaries.* Critical habitat for the Beringia DPS includes marine waters within one specific area in the Bering, Chukchi, and Beaufort seas, extending from the shoreward boundary to an offshore limit with a maximum water depth of 200 m from the ocean surface within the U.S. Exclusive Economic Zone (EEZ). The shoreward boundary follows the 20-m isobath (relative to MLLW) westward from the eastern limit of the U.S. EEZ in the Beaufort Sea and continuing into the northeastern Chukchi Sea to its intersection with latitude 70°36′ N south of Wainwright; then follows the 10-m isobath (relative to MLLW) to its intersection with latitude 65°35′ N near Cape Prince of Wales; then follows the 5-m isobath (relative to MLLW) to its intersection with longitude 164°46′ W near the mouth of the Kolovinerak River in the Bering Sea, except at Port Clarence Bay where the shoreward boundary is defined as a continuous line across the entrance. The eastern boundary in the Beaufort Sea follows the eastern limit of the U.S. EEZ beginning at the nearshore boundary defined by the 20-m isobath (relative to MLLW), extends offshore to the 200-m isobath, and then follows this isobath generally westward and northwestward to its intersection with the seaward limit of the U.S EEZ in the Chukchi Sea. The boundary then follows the limit of the U.S. EEZ southwestward and south to the intersection of the southern boundary of the critical habitat in the Bering Sea at 60°32′26″ N/179°9′53″ W. The southern boundary extends southeastward from this intersection point to 57°58′ N/170°25′ W, then eastward to 58°29′ N/164°46′ W, then follows longitude 164°46′ W to its intersection with the nearshore boundary defined by the 5-m isobath (relative to MLLW) near the mouth of the Kolovinerak River. This includes waters off the coasts of the Bethel, Kusilvak, and Nome Census Areas, and the Northwest Arctic and North Slope Boroughs, Alaska. Critical habitat does not include permanent manmade structures such as boat ramps, docks, and pilings that were in existence within the legal boundaries as of May 2, 2022.

(b) *Essential features.* The essential features for the conservation of the Beringia DPS are:

(1) Sea ice habitat suitable for whelping and nursing, which is defined as areas with waters 200 m or less in depth containing pack ice of at least 25 percent concentration and providing bearded seals access to those waters from the ice.

(2) Sea ice habitat suitable as a platform for molting, which is defined as areas with waters 200 m or less in depth containing pack ice of at least 15 percent concentration and providing bearded seals access to those waters from the ice.

(3) Primary prey resources to support bearded seals: Waters 200 m or less in depth containing benthic organisms, including epifaunal and infaunal invertebrates, and demersal fishes.

(c) *Map of Beringia DPS critical habitat* follows.

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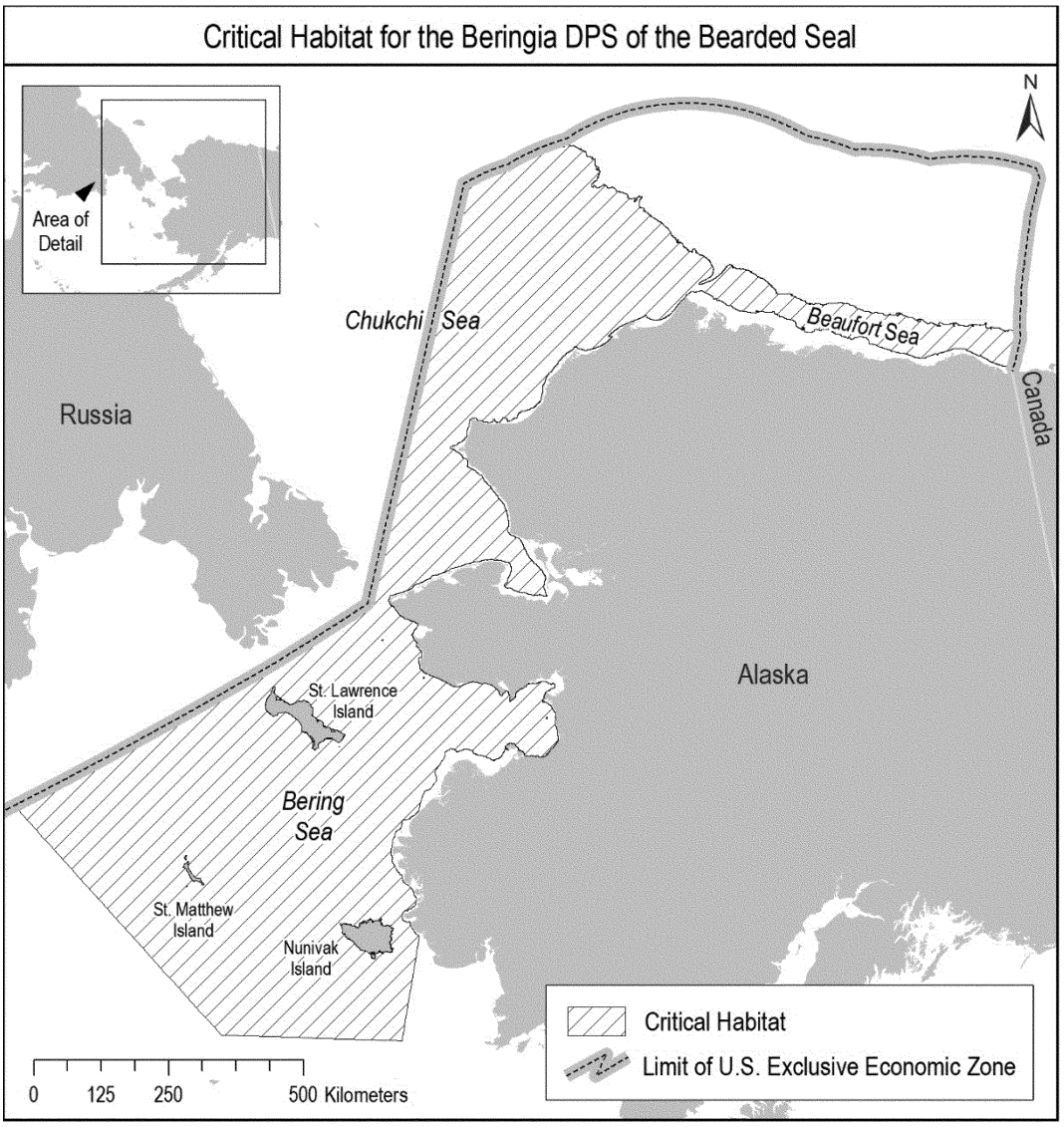
Figure 1 to paragraph (c)



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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 226

Endangered and Threatened Species; Designation of Critical Habitat for the Arctic Subspecies of the Ringed Seal; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 226

[Docket No. 220318–0072]

RIN 0648–BC56

Endangered and Threatened Species; Designation of Critical Habitat for the Arctic Subspecies of the Ringed Seal

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), issue this final rule to designate critical habitat for the Arctic subspecies of the ringed seal (*Pusa hispida hispida*) under the Endangered Species Act (ESA). The critical habitat designation comprises an area of marine habitat in the Bering, Chukchi, and Beaufort seas. Based on consideration of national security impacts, we have excluded an area north of the Beaufort Sea shelf from the designation.

DATES: This rule is effective May 2, 2022.

ADDRESSES: The final rule, critical habitat map, and associated Final Impact Analysis Report (*i.e.,* report titled ''Final RIR/ESA Section 4(b)(2) Preparatory Assessment/FRFA of Critical Habitat Designation for the Arctic Ringed Seal'') can be found on the NMFS website at *www.fisheries.noaa.gov/species/ringed-seal#conservation-management.*

FOR FURTHER INFORMATION CONTACT: Tammy Olson, NMFS Alaska Region, (907) 271–5006; Jon Kurland, NMFS Alaska Region, (907) 586–7638; or Heather Austin, NMFS Office of Protected Resources, (301) 427–8422.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2012, we published a final rule to list the Arctic ringed seal as threatened under the ESA (77 FR 76706). Section 4(b)(6)(C) of the ESA requires the Secretary to designate critical habitat concurrently with listing a species as threatened or endangered unless it is not determinable at that time, in which case the Secretary may extend the deadline for this designation by one year. At the time of listing, we announced our intention to designate critical habitat for the Arctic ringed seal in a separate rulemaking, as its critical habitat was not then determinable. Concurrently, we solicited information to assist us in (1) identifying the physical or biological features essential to the conservation of Arctic ringed seals, and (2) assessing the economic impacts of designating critical habitat for this species.

On December 3, 2014, we published a proposed rule to designate critical habitat for the Arctic ringed seal under the ESA (79 FR 71714). Due to a clerical error, that document contained mistakes, and we therefore published a corrected proposed rule on December 9, 2014 (79 FR 73010). We requested public comments on this proposed designation through March 9, 2015. In response to comments, we extended the public comment period through March 31, 2015 (80 FR 5498, February 2, 2015). We held five public hearings in Alaska on the proposed rule (80 FR 1618, January 13, 2015; 80 FR 5498, February 2, 2015).

On March 17, 2016, the listing of Arctic ringed seals as a threatened species was vacated by the U.S. District Court for the District of Alaska (*Alaska Oil & Gas Ass'n* v. *Nat'l Marine Fisheries Serv.,* Case Nos. 4:14–cv–29–RRB, 4:15–cv–2–RRB, 4:15–cv–5–RRB, 2016 WL 1125744 (D. Alaska Mar. 17, 2016)). This decision was reversed by the U.S. Court of Appeals for the Ninth Circuit on February 12, 2018 (*Alaska Oil & Gas Ass'n* v. *Ross,* 722 F. App'x 666 (9th Cir. 2018)), and the listing was reinstated on May 15, 2018.

On June 13, 2019, the Center for Biological Diversity filed a complaint in the U.S. District Court for the District of Alaska alleging that NMFS had failed to timely designate critical habitat for the Arctic ringed seal. Under a court-approved stipulated settlement agreement between the parties, NMFS published a revised proposed rule to designate critical habitat for the Arctic ringed seal on January 8, 2021 (86 FR 1452). Our revised proposed designation incorporated additional relevant information that became available since publication of the 2014 proposed rule, including information received during the comment period on that proposal. In the revised proposed rule, we discussed the differences from the 2014 proposal and described our revised proposed designation of critical habitat for the Arctic ringed seal. Specifically, we proposed to designate as critical habitat for the Arctic ringed seal an area of marine habitat in the northern Bering, Chukchi, and Beaufort seas containing physical and biological features essential to the conservation of the species and that may require special management considerations or protection. Based on consideration of national security impacts under section 4(b)(2) of the ESA, we also proposed to exclude an area north of the Beaufort Sea shelf from the critical habitat designation.

We requested public comments on the revised proposed designation and associated Draft Impact Analysis Report (NMFS 2020) through March 9, 2021, and held three public hearings (86 FR 7686, February 1, 2021). In response to requests, we extended the public comment period through April 8, 2021 (86 FR 13517, March 9, 2021). For a complete description of our proposed action, we refer readers to the revised proposed rule (86 FR 1452, January 8, 2021).

This final rule describes the critical habitat designation for the Arctic ringed seal and the basis for the designation, including a summary of, and responses to, comments received. A detailed discussion and analysis of probable economic impacts associated with this critical habitat designation is provided in the Final Impact Analysis Report (NMFS 2021), which is referenced throughout this final rule. The Arctic ringed seal is listed with the scientific name *Phoca* (=*Pusa*) *hispida hispida.* In this final rule, we continue to use the genus name *Pusa* to reflect currently accepted use (*e.g.,* Committee on Taxonomy (Society for Marine Mammalogy) 2019, Integrated Taxonomic Information System (online database) 2019).

Critical Habitat Definition and Process

Section 3(5)(A) of the ESA defines critical habitat as (1) 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 essential to the conservation of the species and 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 by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). Section 3(5)(C) of the ESA provides that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. Also, by regulation, critical habitat shall not be designated within foreign countries or in other areas outside U.S. jurisdiction (50 CFR 424.12(g)).

Conservation is defined in section 3(3) of the ESA as 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 this Act are no longer necessary (16 U.S.C. 1532(3)). Therefore, a critical habitat designation is not limited to the areas necessary for the survival of the species, but rather includes areas necessary for supporting the species' recovery. (*See Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059, 1070 (9th Cir. 2004) (''Clearly, then, the purpose of establishing 'critical habitat' is for the government to carve out territory that is not only necessary for the species' survival but also essential for the species' recovery.''), *amended on other grounds,* 387 F.3d 968 (9th Cir. 2004); *Alaska Oil and Gas Ass'n* v. *Jewell,* 815 F.3d 544, 555–56 (9th Cir. 2016).)

Section 4(b)(2) of the ESA requires the Secretary to designate critical habitat for threatened and endangered species 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 impact of specifying any particular area as critical habitat. This section also grants the Secretary discretion to exclude any area from critical habitat if he or she determines the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. However, the Secretary may not exclude areas if such exclusion will result in the extinction of the species (16 U.S.C. 1533(b)(2)).

Critical habitat designations must be based on the best scientific data available, rather than the best scientific data *possible. Bldg. Indus. Ass'n. of Superior Cal.* v. *Norton,* 247 F.3d 1241, 1246–47 (D.C. Cir. 2001). *See also Alaska Oil & Gas Ass'n* v. *Jewell,* 815 F.3d 544, 555 (9th Cir. 2016) (The ESA ''requires use of the best available technology, not perfection.''). Provided that the best available information is sufficient to enable us to make a determination as required under the ESA, we must rely on it even though there is some degree of imperfection or uncertainty. *See Alaska* v. *Lubchenco,* 825 F. Supp. 2d 209, 223 (D.D.C. 2011) (''[E]ven if plaintiffs can poke some holes in the agency's models, that does not necessarily preclude a conclusion that these models are the best available science. Some degree of predictive error is inherent in the nature of mathematical modeling.''); *Oceana, Inc.* v. *Ross,* 321 F. Supp. 3d 128, 142 (D.D.C. 2018) (''[E]ven where data may be inconclusive, an agency must rely on the best available scientific information.''). There is no obligation to conduct independent studies and tests to acquire the best possible data. *Ross,* 321 F. Supp. 2d at 142 (citations omitted). *See also San Luis & Delta-Mendota Water Auth.* v. *Locke,* 776 F.3d 971, 995 (9th Cir. 2014) (holding that the best available science standard ''does not require an agency to conduct new tests or make decisions on data that does not yet exist.''); *Am. Wildlands* v. *Kempthorne,* 530 F.3d 991, 999 (D.C. Cir. 2008); *Southwest Ctr. for Biological Diversity* v. *Babbitt,* 215 F.3d 58, 60 (D.C. Cir. 2000) (''The 'best available data' requirement makes it clear that the Secretary has no obligation to conduct independent studies.'')

Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). This requirement is additional to the section 7(a)(2) requirement that Federal agencies ensure that their actions are not likely to jeopardize the continued existence of ESA-listed species (sometimes referred to as the ''jeopardy'' standard). Specifying the geographic location of critical habitat also facilitates implementation of section 7(a)(1) of the ESA by identifying areas where Federal agencies can focus their conservation programs and use their authorities to further the purposes of the ESA (16 U.S.C. 1536(a)(1)). Critical habitat requirements do not apply to citizens engaged in actions on private land that do not involve a Federal agency.

Description and Natural History

The Arctic ringed seal is the smallest of the northern seals, with typical adult body size of 1.5 meters (m) in length and 70 kilograms in weight (Kelly *et al.* 2010a). Age of sexual maturity for female Arctic ringed seals generally ranges from 3 to 7 years of age (Smith 1987, Holst *et al.* 1999, Quakenbush *et al.* 2011, Crawford *et al.* 2015), and for males ranges from 5 to 7 years of age (Frost and Lowry 1981), but with geographic and temporal variability depending on animal condition and population structure (Kelly *et al.* 2010a). It is well established that ringed seals can live to more than 40 years of age (Kelly *et al.* 2010a), and that many females surviving into their 30s remain reproductive; the average life span is likely to be much lower, due to high first-year mortality rates (Kelly 1988a).

Distribution and Habitat Use

Arctic ringed seals are circumpolar and are found throughout ice-covered waters of the Arctic Ocean Basin and southward into adjacent seas, including the Bering, Chukchi, and Beaufort seas off Alaska's coast (Frost and Lowry 1981, Frost 1985, Kelly 1988a, Rice 1998). Ringed seals are adapted to remaining in heavily ice-covered areas throughout the fall, winter, and spring by using the stout claws on their foreflippers to maintain breathing holes in the ice. Arctic ringed seals are highly associated with sea ice, and use the ice as a substrate for resting, whelping (birthing), nursing, and molting (shedding and regrowing hair and outer skin layers). The seasonality of ice cover strongly influences Arctic ringed seal movements, foraging, reproductive behavior, and vulnerability to predation. Kelly *et al.* (2010b) referred to three periods important to Arctic ringed seal seasonal movements and habitat use: The winter through early spring ''subnivean period'' when the seals rest primarily in subnivean lairs (snow caves on top of the ice); the late spring to early summer ''basking period'' between abandonment of the lairs and melting of the seasonal sea ice when the seals undergo their annual molt; and the open-water ''foraging period'' from ice breakup to freeze-up in the fall, when feeding occurs most intensively.

Information on movements of individual ringed seals tagged in Alaska indicates that the seals can range extensively across the Bering, Chukchi, and Beaufort seas annually (Crawford *et al.* 2012a, Von Duyke 2018, Crawford *et al.* 2019, Quakenbush *et al.* 2019, Quakenbush 2020, Von Duyke *et al.* 2020). Von Duyke *et al.* (2020) reported that during the August to December period, the median cumulative distance traveled by 17 ringed seals tagged in Alaska was 4,790 kilometers (km) per seal (range 2,719 to 5,988 km).

Subnivean Period: With the onset of freeze-up in the fall, many Arctic ringed seals that summer in the Beaufort and Chukchi seas are thought to move generally southward with the advancing ice, while others remain in these waters over winter (Frost 1985). Adult movements during the subnivean period have been reported as typically limited, especially where ice cover is extensive (Kelly and Quakenbush 1990, Harwood *et al.* 2007, Kelly *et al.* 2010b, Crawford *et al.* 2012b, Luque *et al.* 2014), likely due to maintenance of breathing holes and social behavior during the breeding season (Kelly *et al.* 2010b). For example, Kelly *et al.* (2010b) reported that the home ranges of 55 adult ringed seals inhabiting landfast (shorefast) ice in the Chukchi and Beaufort seas ranged from less than 1 to 27.9 square kilometers in April to June. However, some adult males have been found to make long-distance movements in the Chukchi and

Bering seas during January to March (Quakenbush *et al.* 2019). In contrast, subadult Arctic ringed seals have been observed to travel relatively long distances to remain near the ice edge in the Bering Sea in winter (Crawford *et al.* 2012a, 2019). Crawford *et al.* (2012a) suggested that this habitat may be important for overwintering subadult ringed seals; almost all of the subadults monitored by Crawford *et al.* (2019) showed this winter habitat use pattern along with dive behavior indicative of foraging.

During freeze-up, ringed seals surface to breathe in the remaining open water of cracks and leads, and as these openings in the ice freeze over, the seals open breathing holes that they maintain as the ice thickens by abrading the ice with the claws on their foreflippers (Smith and Stirling 1975). Ringed seals excavate lairs in snowdrifts over their breathing holes where snow depth is sufficient (*e.g.,* McLaren 1958, Smith and Stirling 1975, Smith 1987). These subnivean lairs are occupied for resting, whelping, and nursing pups in areas of annual landfast ice (McLaren 1958, Burns 1970, Kelly *et al.* 1986, Frost and Burns 1989, Smith *et al.* 1991, Oceana and Kawerak 2014) and stable pack ice (Finley *et al.* 1983, Fedoseev *et al.* 1988, Wiig *et al.* 1999, Pilfold *et al.* 2014). Snowdrifts of sufficient depth typically occur only where the ice has undergone a low to moderate amount of deformation (*i.e.,* rafting, ridging, or hummocking due to wind and ocean currents) and where snow on the ice has drifted along pressure ridges or ice hummocks (Smith and Stirling 1975, Lydersen and Gjertz 1986, Furgal *et al.* 1996, Lydersen 1998).

Once mature, females give birth annually to a single pup in their lairs generally from mid-March through April, and the pups are nursed in the lairs for an average of 39 days (Hammill and Smith 1991), with considerable variation (Kelly *et al.* 2010a). Females continue to forage throughout lactation while making frequent visits to birth lairs (Hammill 1987, Kelly and Wartzok 1996, Simpkins *et al.* 2001). The pups develop foraging skills before weaning (Lydersen and Hammill 1993), and are normally weaned before breakup of spring ice (McLaren 1958, Smith 1973, Kelly 1988a, Smith *et al.* 1991).

Subnivean lairs provide protection from cold and predators throughout the winter months, but they are especially important for protecting newborn ringed seals. The lairs conceal ringed seals from predators, an advantage especially important to pups because they start life with minimal tolerance for immersion in cold water (Smith *et al.* 1991). Major predators of ringed seals include polar bears (*Ursus maritimus*) and Arctic foxes (*Alopex lagopus*) (*e.g.,* Smith 1976, Frost and Burns 1989, Derocher *et al.* 2004, Thiemann *et al.* 2008). Pups in lairs with thin snow cover are more vulnerable to polar bear predation than pups in lairs with thick snow cover (Hammill and Smith 1989, Ferguson *et al.* 2005). For example, Hammill and Smith (1991) noted that polar bear predation on ringed seal pups increased four-fold in a year when average snow depths in their study area decreased from 23 to 10 centimeters (cm). Stirling and Smith (2004) surmised that most pups that survived exposure to cold after their subnivean lairs collapsed during unseasonal rains were eventually killed by polar bears, Arctic foxes, or gulls. Similarly, Alaska Native hunters from Kotzebue, Alaska, reported that when the snow melts early, there is no protection for ringed seal pups from predators such as jaegers, ravens, and foxes (Huntington *et al.* 2017a); and hunters in the Bering Strait region suggested that other land predators (grizzly bear (*Ursus arctos*), wolverine (*Gulo gulo*)) may also prey on ringed seal pups not protected in lairs (Gadamus *et al.* 2015).

Subnivean lairs also provide refuge from air temperatures too low for survival of ringed seal pups. When forced to flee into the water to avoid predators, the ringed seal pups that survive depend on the subnivean lairs to subsequently warm themselves (Smith *et al.* 1991). When snow depth is insufficient, pups can freeze in their lairs, as documented when roofs of lairs in the White Sea were only 5 to 10 cm thick (Lukin and Potelov 1978). Stirling and Smith (2004) also documented exposure of ringed seals to hypothermia following the collapse of subnivean lairs during unseasonal rains near southeastern Baffin Island.

During winter and spring, ringed seals are found throughout the Chukchi and Beaufort seas (Frost 1985, Kelly 1988a). In the Bering Sea, surveys indicate that ringed seals use nearly the entire ice field over the Bering Sea shelf. During an exceptionally high ice year (1976), Braham *et al.* (1984) found ringed seals present in the southeastern Bering Sea north of the Pribilof Islands to outer Bristol Bay, primarily north of the ice front. But the authors noted that most of these seals were likely immature or nonbreeding animals. Frost (1985) indicated that ringed seals ''occur as far south as Nunivak Island and Bristol Bay, depending on ice conditions in a particular year, but generally are not abundant south of Norton Sound except in nearshore areas.'' More recently, surveys conducted in the Bering Sea during spring documented numerous ringed seals in both nearshore and offshore habitat, including south of Norton Sound (NMFS Marine Mammal Laboratory, 2012–2013, unpublished data). Relatively few ringed seal pups were documented during these surveys (n=65; Lindsay *et al.* 2021), perhaps reflecting, at least in part, that pups were sheltered in subnivean lairs and thus would not have been detected during the surveys. Although highest pup densities were located in Norton Sound, pups were also documented in offshore habitat farther south (Lindsay *et al.* 2021). Satellite tracking data for ringed seals tagged in Kotzebue Sound, Alaska, showed that adults remained, for the most part, in the Chukchi Sea and Bering Sea north of St. Lawrence Island during winter and spring (Crawford *et al.* 2012a). However, movement data for ringed seals tagged near Utqiaġvik, Alaska, in 2011 indicated that some adults overwintered toward the shelf break in the Bering Sea (North Slope Borough, 2012, unpublished data). Ringed seals tagged more recently in the Chukchi and Beaufort seas (primarily adults) used areas as far south as Nunivak Island during December to May, but the core-use area was located in southern Kotzebue Sound (Quakenbush *et al.* 2019, Quakenbush 2020). Finally, the subsistence harvest of ringed seal pups by hunters in Quinhagak, Alaska (Coffing *et al.* 1998), suggests that some ringed seals may whelp south of Nunivak Island.

Basking Period: Numbers of ringed seals hauled out on the surface of the ice typically begin to increase during spring as the temperatures warm and the snow covering the seals' lairs melts. Although the snow cover can melt rapidly, the ice remains largely intact and serves as a substrate for annual molting, during which time seals spend many hours basking in the sun (Smith 1973, Finley 1979, Smith and Hammill 1981, Kelly and Quakenbush 1990, Kelly *et al.* 2010b). Adults generally molt from mid-May to mid-July (McLaren 1958), although there is regional variation (Ryg and Øritsland 1991), and pups molt at or shortly after weaning (Kelly 1988a, Lydersen and Hammill 1993). Subadult harbor seals *(Phoca vitulina*) and spotted seals (*Phoca largha*) tend to molt earlier than adults (Ashwell-Erickson *et al.* 1986, Burns 2002, Daniel *et al.* 2003), and this may also be the case for subadult ringed seals (Kelly and Quakenbush 1990). Usually, the largest numbers of basking seals are observed in June (Smith 1973, Finley 1979, Smith

et al. 1979, Smith and Hammill 1981, Moulton *et al.* 2002a). Thometz *et al.* (2021) reported that metabolism in ringed seals increased markedly in association with the molt; and discussed that, although a study on the molt in harbor and spotted seals by Ashwell-Erickson *et al.* (1986) has often been cited as evidence of declines in metabolism, that study actually documented increasing metabolic rates during the regenerative phase of molt. Feeding is reduced during the molt, and as seals complete this phase of the annual pelage cycle and the seasonal sea ice melts during the summer, ringed seals spend increasing amounts of time in the water feeding (Kelly *et al.* 2010b).

Existing information on the distribution and abundance of Arctic ringed seals in the U.S. Chukchi and Beaufort seas during the molting period comes largely from aerial surveys conducted for the most part over the continental shelf within about 25 to 40 km of the Alaska coast. However, Bengtson *et al.* (2005) reported results for spring aerial surveys conducted during two successive years in the Chukchi Sea that included a limited number of offshore (beyond 43 km from the coast) transect lines flown perpendicular from the coast up to 185 km. Ringed seals were observed along these offshore transects, albeit at lower densities than transects flown closer to the coast. Aerial surveys conducted in spring to early summer (coincident with the periods of Arctic ringed seal reproduction and molting) in the U.S. Beaufort Sea to investigate bowhead whale density and distribution were concentrated over the continental shelf, but less extensive surveys were also conducted over the adjacent shelf slope and deeper waters up to about 100 km north of the shelf (Ljungblad 1981, Ljungblad *et al.* 1982, Ljungblad *et al.* 1983, 1984, Ljungblad *et al.* 1985, Ljungblad *et al.* 1986, Alaska Fisheries Science Center 2020). Incidental sightings of ringed seals were recorded throughout the survey area, including in the limited areas surveyed north of the shelf.

Open-Water Period: Most Arctic ringed seals that winter in the Bering and southern Chukchi seas are believed to migrate northward in spring as the ice edge recedes and spend the summer open-water period in the pack ice of the northern Chukchi and Beaufort seas (Frost 1985). Arctic ringed seals are also dispersed in ice-free areas of the Bering, Chukchi, and Beaufort seas during this period. Tracking data indicate that tagged ringed seals made extensive use of the continental shelf waters of the U.S. Chukchi and Beaufort seas during the open-water period (Crawford *et al.* 2012a, Quakenbush *et al.* 2019, Quakenbush 2020, Von Duyke *et al.* 2020). Kelly *et al.* (2010b) found that ringed seals tagged during their study ranged during the open-water period up to 1,800 km from their small winter/spring home ranges. In addition, Harwood *et al.* (2012) documented long-distance westward movements of mostly subadult seals tagged in the Canadian Beaufort Sea through the Beaufort Sea offshore of the Alaska North Slope and continuing into the Chukchi Sea (range: 706–6,140 km).

Quakenbush *et al.* (2019) identified a high-use area for tagged ringed seals during the open-water period that included Barrow Canyon and the western Beaufort Sea over the continental shelf similar to where Citta *et al.* (2018) mapped a relatively high density of locations of tagged ringed seals during summer. Although tagged ringed seals tracked in U.S. waters tended to remain over the continental shelf, several individuals also made trips into the deep waters north of the shelf (Crawford *et al.* 2019, Quakenbush *et al.* 2019, Quakenbush 2020, Von Duyke *et al.* 2020; Alaska Department of Fish and Game (ADF&G) and North Slope Borough, 2020, unpublished data). Von Duyke *et al.* (2020) reported that most of the forays by tagged ringed seals north of the shelf involved movements to retreating pack ice and included days when the seals hauled out on the ice. Dive recorders indicated that foraging-type movements occurred over both the continental shelf and north of the shelf, suggesting that both areas may be important during the open-water period. Similarly, during the open-water period, some, primarily subadult, ringed seals satellite-tagged in Svalbard, Norway, made forays into the Arctic Ocean Basin, and that time spent there increased after a major collapse of sea ice in this region, when the seals traveled farther to find sea ice (Hamilton *et al.* 2015, Hamilton *et al.* 2017). Observations of ringed seals near and beyond the outer boundary of the U.S. Exclusive Economic Zone (EEZ) north of the shelf were also documented by marine mammal observers during a research geophysical survey conducted in the summer of 2010 (Beland and Ireland 2010).

Arctic ringed seals typically lose a significant proportion of their blubber mass in late winter to early summer and then replenish their blubber reserves during late summer or fall and into winter (Lowry *et al.* 1980b, Ryg *et al.* 1990, Ryg and Øritsland 1991, Belikov and Boltunov 1998, Goodyear 1999, Quakenbush *et al.* 2011, Young and Ferguson 2013, Quakenbush *et al.* 2020).

Critical Habitat Identification

In the following sections, we describe the relevant definitions and requirements in the ESA and implementing regulations at 50 CFR part 424, and the key information and criteria used to prepare this final critical habitat designation. In accordance with section 4(b)(2) of the ESA, this critical habitat designation is based on the best scientific data available. Our primary sources of information include the status review report for the ringed seal (Kelly *et al.* 2010a), our proposed and final rules to list four subspecies of ringed seals, including the Arctic ringed seal, under the ESA (75 FR 77476, December 10, 2010; 77 FR 76706, December 28, 2012), articles in peer-reviewed journals, other scientific reports, peer reviewer and public comments on the revised proposed rule, and relevant Geographic Information System (GIS) and satellite data (*e.g.,* shoreline data, U.S. maritime limits and boundaries data, sea ice extent) for geographic area calculations and mapping. We also rely upon Indigenous Knowledge (IK) of Alaska Native subsistence users.

To identify specific areas that may qualify as critical habitat for Arctic ringed seals, in accordance with 50 CFR 424.12(b), we followed a five-step process: (1) Identify the geographical area occupied by the species at the time of listing; (2) identify physical or biological habitat features essential to the conservation of the species; (3) determine the specific areas within the geographical area occupied by the species that contain one or more of the physical and biological features essential to the conservation of the species; (4) determine which of these essential features may require special management considerations or protection; and (5) determine whether a critical habitat designation limited to geographical areas occupied by the species at the time of listing would be inadequate to ensure the conservation of the species. Our evaluation and conclusions are described in detail in the following sections, and incorporate changes in response to peer reviewer and public comments (see Summary of Comments and Responses and Summary of Changes From the Revised Proposed Designation sections).

Geographical Area Occupied by the Species

The phrase ''geographical area occupied by the species at the time it is listed,'' which appears in the statutory

definition of critical habitat, is defined by regulation as an area that may generally be delineated around species' occurrences as determined by the Secretary (*i.e.,* range) (50 CFR 424.02). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis, such as migratory corridors, seasonal habitats, and habitats used periodically, but not solely, by vagrant individuals (*Id.*).

Based on existing literature, including available information on Arctic ringed seal sightings and movements, we identified the range of the Arctic ringed seal in the final ESA listing rule (77 FR 76706; December 28, 2012) as the Arctic Ocean and adjacent seas, except west of 157°00′ E longitude (the Kamchatka Peninsula), where the Okhotsk subspecies of the ringed seal occurs, or in the Baltic Sea where the Baltic subspecies of the ringed seal is found. As noted previously, we cannot designate areas outside U.S. jurisdiction as critical habitat. Thus, the geographical area under consideration for this designation is limited to areas under U.S. jurisdiction that Arctic ringed seals occupied at the time of listing. This area extends to the outer boundary of the U.S. EEZ in the Chukchi and Beaufort seas, and as far south as Bristol Bay in the Bering Sea (Kelly *et al.* 2010a).

Physical and Biological Features Essential to the Conservation of the Species

The statutory definition of critical habitat refers to ''physical or biological features essential to the conservation of the species,'' but the ESA does not specifically define or further describe these features. Implementing regulations at 50 CFR 424.02 define such features as those that occur in specific areas and that are essential to support the life-history needs of the species. The regulations provide additional details and examples of such features.

As described below in the section, Summary of Changes From the Revised Proposed Designation, peer reviewer and public comments led us to re-evaluate and revise the descriptions of the essential features identified in the revised proposed rule. Based on the best scientific information available regarding the natural history of the Arctic ringed seal and the habitat features that are essential to support the species' life-history needs, we have identified the following physical and biological features that are essential to the conservation of the Arctic ringed seal within U.S. waters occupied by the species.

(1) *Snow-covered sea ice habitat suitable for the formation and maintenance of subnivean birth lairs used for sheltering pups during whelping and nursing, which is defined as waters 3 m or more in depth (relative to MLLW) containing areas of seasonal landfast (shorefast) ice or dense, stable pack ice, that have undergone deformation and contain snowdrifts of sufficient depth to form and maintain birth lairs (typically at least 54 cm deep).*

Snow-covered sea ice habitat suitable for the formation and maintenance of subnivean birth lairs used for sheltering pups during whelping and nursing is essential to conservation of the Arctic ringed seal because without the protection of lairs, ringed seal pups are more vulnerable to freezing and predation (Lukin and Potelov 1978, Smith 1987, Hammill and Smith 1991, Smith *et al.* 1991, Smith and Lydersen 1991, Stirling and Smith 2004, Ferguson *et al.* 2005).

Snowdrifts of sufficient depth for birth lair formation and maintenance typically occur on deformed ice where drifting has taken place along pressure ridges or ice hummocks (Smith and Stirling 1975, Lydersen and Gjertz 1986, Smith 1987, Kelly 1988a, Furgal *et al.* 1996, Lydersen 1998). For purposes of assessing potential impacts of projected changes in April Northern Hemisphere snow conditions on ringed seals, Kelly *et al.* (2010a) considered 20 cm to be the minimum average snow depth required on areas of flat ice to form drifts of sufficient depth to support birth lair formation. Further, Kelly *et al.* (2010a, p. 109) discussed that ringed seals require snowdrift depths of 50 to 65 cm or more to support birth lair formation. To identify the typical snowdrift depth for snow-covered sea ice habitat that we consider sufficient for Arctic ringed seal birth lair formation and maintenance, we derived a specific depth threshold as follows. At least seven studies have reported minimum snowdrift depth measurements at Arctic ringed seal birth lairs (typically measured near the center of the lairs or over the breathing holes) off the coasts of Alaska (Kelly *et al.* 1986, Frost and Burns 1989), the Canadian Arctic Archipelago (Smith and Stirling 1975, Kelly 1988b, Furgal *et al.* 1996), Svalbard (Lydersen and Gjertz 1986), and in the White Sea (Lukin and Potelov 1978). The average minimum snowdrift depth measured at birth lairs was 54 cm across all of the studies combined, and 64 cm in the Alaska studies only. The average from studies in Alaska is based on data from fewer years over a shorter time span than from all seven studies combined (3 years during 1982–1984 versus 11 years during 1971–1993, respectively); consequently, the Alaska-specific average is more likely to be biased if an anomalous weather pattern occurred during its more limited timeframe. For this reason, we conclude that the average minimum snowdrift depth based on all studies combined (54 cm) provides the best available estimate of the typical minimum snowdrift depth that is sufficient for birth lairs.

Arctic ringed seals have been reported to favor landfast ice as whelping habitat (*e.g.,* Smith and Stirling 1975, 1978, Smith and Hammill 1981, Lydersen and Gjertz 1986, Smith and Lydersen 1991, Pilfold *et al.* 2014). However, landfast ice extending seaward from shore may freeze to the sea bottom in very shallow water (typically less than about 1.5 to 2 m deep), such as in lagoons, near river deltas, and close to shore, during the course of winter (commonly referred to as ''bottom-fast'' ice; Reimnitz *et al.* 1977, Newbury 1983, Hill *et al.* 1991, Dammann *et al.* 2018, Dammann *et al.* 2019). Where sea ice in very shallow waters is bottom-fast, there would presumably be little to no ice-free water present that would allow the seals to swim under and gain access to the ice surface for the construction and maintenance of birth lairs, except perhaps where cracks form in the ice, or where the ice is not uniformly frozen to or resting on the seafloor. Thus, we expect use of bottom-fast ice by Arctic ringed seals to be low relative to use of ice in deeper waters. Although we are aware of few scientific reports or publications that provide specific information on Arctic ringed seal use of sea ice in very shallow areas during the period of whelping and nursing, Lukin *et al.* (2006) reported that in the White Sea, Arctic ringed seal breathing holes and lairs were present in water less than 3 m deep; however, no birth lairs were recorded there. In addition, a study to investigate the effects of offshore oil development on ringed seals (Williams *et al.* 2002, Williams *et al.* 2006) documented several lairs, including two birth lairs, as well as breathing holes, seaward of the barrier islands west of Prudhoe Bay which, based on their locations relative to depths shown on the survey maps and navigation charts, appear to have been located in water that was about 3 m or less in depth, although water depth is approximate and it is possible that sea ice conditions may differ there from those along the mainland coast. There is also some evidence that observed ringed seal densities are lower in very shallow ice-covered waters, at least in the Alaskan

Beaufort Sea during late May to early June (during the molting period) in waters less than 3 m deep (Moulton *et al.* 2001, Moulton *et al.* 2002b, Moulton *et al.* 2002a, Moulton *et al.* 2003), and in waters estimated to be between 3 and 5 m deep (Frost *et al.* 2004).

The extent of landfast ice that becomes bottom-fast over winter varies along the coast (*e.g.,* Dammann *et al.* 2018), and a portion of the landfast ice in very shallow waters becomes bottom-fast over winter. Use of such ice by Arctic ringed seals is expected to be low relative to use of ice in waters greater than 2 to 3 m depth, and there is some evidence that Arctic ringed seal densities are lower in waters less than 3 to 5 m deep, at least in the Beaufort Sea during late May to early June. We therefore concluded that sea ice habitat essential for birth lairs is best described in reference to a minimum water depth, rather than with a specific focus on bottom-fast ice in itself. Specifically, for the purpose of describing sea ice habitat that is essential for the formation and maintenance of birth lairs, we selected 3 m as the minimum water depth for this essential feature.

Arctic ringed seal whelping has also been observed on both nearshore and offshore drifting pack ice. As Reeves (1998) noted, nearly all research on Arctic ringed seal reproduction has been conducted in landfast ice, and the potential importance of stable but drifting pack ice has not been adequately investigated. Studies in the Barents Sea (Wiig *et al.* 1999), Baffin Bay (Finley *et al.* 1983) and the Canadian Beaufort Sea (Pilfold *et al.* 2014) have documented pup production in pack ice, and Smith and Stirling (1975), citing unpublished data from the ''Western Arctic'' (presumably the Canadian Beaufort Sea), also indicated that ''the offshore areas of shifting but relatively stable ice are an important part of the breeding habitat.'' Lentfer (1972) reported ''a significant amount of ringed seal denning and pupping on moving heavy pack ice north of Barrow [*i.e.,* Utqiaġvik].'' Moreover, surveys conducted in the Bering and Chukchi seas during spring have documented ringed seals, including observations of pups, in offshore areas (NMFS Marine Mammal Laboratory, 2012–2013 and 2016, unpublished data). Ringed seal vocalizations detected throughout the winter and spring in multi-year acoustic recordings collected along the shelf break north-northwest of Utqiaġvik, along with a seasonal change in the repertoire during the breeding season, also suggest that some Arctic ringed seals overwinter and breed in offshore pack ice (Jones *et al.* 2014). We therefore conclude that the best scientific information available indicates that snow-covered sea ice habitat essential for the formation and maintenance of birth lairs (in waters 3 m or more in depth relative to MLLW) includes areas of both landfast ice and dense, stable pack ice that have undergone deformation and contain snowdrifts of sufficient depth to form and maintain birth lairs, typically at least 54 cm deep.

(2) *Sea ice habitat suitable as a platform for basking and molting, which is defined as areas containing sea ice of 15 percent or more concentration in waters 3 m or more in depth (relative to MLLW).*

Sea ice habitat suitable as a platform for basking and molting is essential to conservation of the Arctic ringed seal because molting is a biologically-important, energy-intensive process that could incur increased energetic costs if it were to occur in water, or increased risk of predation if it were to occur on land due to the absence of readily accessible escape routes to avoid predators (*i.e.,* breathing holes or natural openings in sea ice). Moreover, we are unaware of any studies establishing whether Arctic ringed seals can molt successfully in water, or reports of healthy Arctic ringed seals hauled out on land during the molt (they are known to come ashore during this period when sick). IK indicates that ringed seals, mostly young individuals, have been occasionally seen hauled out on land in spring near Elim, as well as south of Utqiaġvik, Alaska, although molt status was not addressed (Huntington *et al.* 2015c, 2015d). If Arctic ringed seals' molt becomes more frequently interrupted by being forced to spend inordinate time in water while completing their annual molt, they could incur increased energetic costs and risk microbial infections of the skin (Fay *et al.* 1978).

During their annual molt, Arctic ringed seals transition from lair use to basking on the surface of the ice for long periods of time near breathing holes, lairs, or cracks in the ice (Kelly *et al.* 2010a). The relatively long periods of time that ringed seals spend out of the water during the molt (*e.g.,* Smith 1973, Smith and Hammill 1981, Kelly *et al.* 2010b) have been ascribed to the need to maintain elevated skin temperatures during new hair growth (Feltz and Fay 1966, Kelly and Quakenbush 1990). Higher skin temperatures are facilitated by basking on the ice and this may accelerate shedding and regrowth of hair and skin (Feltz and Fay 1966).

Limited data are available on ice concentrations (percentage of ocean surface covered by sea ice) used by Arctic ringed seals during the basking period, in particular for the period following ice breakup. Although a number of studies have reported an apparent preference for consolidated stable ice (*i.e.,* landfast ice and consolidated pack ice), at least during the initial weeks of the basking period, some of these studies have also reported observations of Arctic ringed seals hauled out at low densities in unconsolidated ice (*e.g.,* Stirling *et al.* 1982, Kingsley *et al.* 1985, Lunn *et al.* 1997, Chambellant *et al.* 2012). Arctic ringed seals in the Chukchi Sea have also been observed basking in high densities on the last remnants of the seasonal sea ice during late June to early July, near the end of the molting period (S. Dahle, NMFS, personal communication, 2013). Crawford *et al.* (2012a) reported that the average ice concentrations (and standard error (SE), a measure of variability in the data) used by several ringed seals in the Chukchi and Bering seas during the basking period in June was 20 percent (SE = 7.8 percent) for subadults and 38 percent (SE = 21.4 percent) for adults. For a normal distribution of ice concentrations used by the seals (*i.e.,* is a bell-shaped curve), selecting the mean value for ice concentration as a lower threshold for the essential feature would exclude about half of the range of ice concentrations used by the seals. Therefore, to select a lower threshold that encompasses a majority of the ice concentrations used by the seals during molting, we subtracted one SE from each mean. The average of these adjusted values for subadults and adults (12.2 percent and 16.6 percent, respectively) is 14.4 percent. This is nearly identical to the value of 15 percent ice concentration that is commonly used to define the ice edge (National Snow and Ice Data Center (NSIDC) 2021) and for which there are spatial data layers readily available. For the purpose of describing the essential feature of sea ice habitat that is suitable as a platform for basking and molting, we selected 15 percent as the minimum ice concentration.

As discussed above, landfast ice extending seaward from shore may freeze to the sea bottom in very shallow water (typically less than about 1.5 to 2 m deep) during the course of winter and remain so into spring, potentially during part of the basking and molting period. Although some Arctic ringed seals may use very shallow ice covered waters, where ice is bottom-fast, there would presumably be little to no ice-free water present that would allow the seals to swim under and gain access to the ice

surface for basking and molting, except perhaps where cracks form in the ice, or where the ice is not uniformly frozen to or resting on the seafloor. Thus, we expect use of bottom-fast ice by Arctic ringed seals to be low relative to use of ice in deeper waters. Also, as indicated above, there is some evidence that observed ringed seal densities are lower in very shallow ice-covered waters, at least in the Alaskan Beaufort Sea during late May to early June in waters less than 3 to 5 m deep. Based on the best scientific information available, we therefore conclude that sea ice habitat essential for basking and molting is of at least 15 percent ice concentration in waters 3 m or more in depth (relative to MLLW).

(3) *Primary prey resources to support Arctic ringed seals, which are defined to be small, often schooling, fishes, in particular Arctic cod, saffron cod, and rainbow smelt; and small crustaceans, in particular, shrimps and amphipods.*

Primary prey resources are essential to conservation of the Arctic ringed seal because the seals likely rely on these prey resources the most to meet their annual energy budgets. Arctic ringed seals rarely prey upon more than 10 to 15 species in any specific geographic location, and typically not more than 2 to 4 species are considered to be key prey (Węsławski *et al.* 1994). Most prey are small, and preferred fishes tend to be schooling species that form dense aggregations (Kovacs 2007). Despite regional and seasonal variations in the diets of Arctic ringed seals, fishes of the cod family tend to dominate their diet in many areas from late autumn through early spring, and invertebrates can also be important in some regions, at least seasonally (as reviewed by Kelly *et al.* 2010a). Although Arctic ringed seals feed on a wide variety of vertebrate and invertebrate prey species, certain prey species appear to occupy a prominent role in their diets in waters along the Alaskan coast.

Quakenbush *et al.* (2011; Tables 4–6) reported that prey items commonly consumed by ringed seals (considered for the studies discussed here to be prey items identified in at least 25 percent of ringed seal stomachs with contents) within the 1961 to 1984 and 1998 to 2009 periods in the Bering and Chukchi seas included Arctic cod, saffron cod (*Eleginus gracilis*), shrimps (from the families Hippolytidae, Pandalidae, and Crangonidae), and amphipods (primarily from the families Gammaridae and Hyperiidae). The authors found that diet composition shifted between the two periods toward an increased proportion and diversity of fish within the recent period, when other commonly consumed prey items included walleye pollock (*Theragra chalcogramma*) in the Bering Sea and rainbow smelt (*Osmerus dentex;* previously called *O. mordax* or *O. mordax dentex,* also Arctic smelt and boreal smelt in some references by authors cited herein) in the Chukchi Sea. An earlier study by Lowry *et al.* (1980b; Table 2) also indicated that ringed seals sampled in the Bering Strait region (at Nome) and in the Chukchi Sea (at Shishmaref) commonly consumed (considered here to be at least 25 percent of the total food volume in ringed seal stomachs with contents in any of the five seasonal samples) Arctic cod, saffron cod, shrimps, and amphipods (Shishmaref, specifically).

Crawford *et al.* (2015; Tables 1 and 2) indicated that prey items commonly consumed by ringed seals during May through July within the 1975 to 1984 and 2003 to 2012 periods in the Bering Strait near Diomede included Arctic cod and shrimps (for non-pup seals [≥1 year of age]); and in the Chukchi Sea near Shishmaref included saffron cod and shrimps (for both pup and non-pup seals). This study similarly found that diet composition shifted between the two periods toward an increased proportion of fish within the recent period for non-pup seals from Diomode and pups from Shishmaref. Other prey items commonly consumed within the recent period near Diomede included walleye pollock and sculpins (family Cottidae) (for non-pup seals); and near Shishmaref included rainbow smelt (for both pup and non-pup seals) and Pacific herring (*Clupea pallasi*) (24.5 percent of non-pup seals).

In addition, Quakenbush *et al.* (2020; Table 1) compared ringed seal diet in the Bering and Chukchi seas (not reported separately for each sea) by season and age class (pup and non-pup, *i.e.,* ≥1 year of age) between the recent 2016 to 2020 and earlier 2000 to 2015 periods. Within both periods, during the ice-covered (November to May) and/or open-water (June to October) season, ringed seals (both pup and non-pup) commonly consumed Arctic cod, saffron cod, shrimps, and amphipods (primarily gammarids); and non-pup seals commonly consumed rainbow smelt. In addition, another prey species—capelin (*Mallotus villosus*)—was commonly consumed within the 2016 to 2020 period by pups during both seasons, and mysids (family Mysidae, *Neomysis* sp.) were commonly consumed by pups within this period during the ice-covered season.

Two studies provide limited information on the diet of ringed seals near Utqiaġvik and in the central Beaufort Sea. Dehn *et al.* (2007; Table 2) indicated that in the Utqiaġvik vicinity, prey items commonly consumed by ringed seals between 1996 and 2001 (primarily during summer) included euphausiids (*Thysanoessa* spp.), cods (primarily Arctic and saffron cod), mysids (*Mysis* and *Neomysis* spp.), amphipods, and pandalid shrimps. In addition, Frost and Lowry (1984; Table III) found that prey items commonly consumed by ringed seals (considered here to be at least 25 percent of the mean total food volume in ringed seal stomachs with contents in any of the three seasonal samples) collected near Utqiaġvik and in the central Beaufort Sea (approximately 80 km northwest of Prudhoe Bay and near Pingok Island and Beaufort Lagoon), primarily between 1977 and 1980, included Arctic cod, as well as gammarid and hyperiid amphipods.

IK about ringed seals documented for coastal communities located in western and northern Alaska aligns in general with the ringed seal diet information from the studies reviewed above. Alaska Native hunters interviewed in several communities in the Bering Strait region, as well as in two communities in the northern Bering Sea region, reported that ringed seals feed on Pacific herring, in particular during spawning (*e.g.,* Oceana and Kawerak 2014, Gadamus *et al.* 2015, Huntington *et al.* 2016, 2017c, 2017b). Other prey species reported for ringed seals in these regions included fishes such as capelin, saffron cod, Arctic cod, sculpins, salmon, and whitefish species, as well as invertebrates such as shrimps and crabs (Nelson 1981, Huntington 2000, Oceana and Kawerak 2014, Gadamus *et al.* 2015, Huntington *et al.* 2015c, 2015a, 2016, 2017b), and near Wainwright in the Chukchi Sea included smelt, saffron cod, and invertebrates such as shrimps (Nelson 1981).

In summary, Arctic cod, saffron cod, shrimps, and amphipods were identified as prominent prey species for the studies conducted in both the Bering Sea and the Chukchi Sea, and Arctic cod and amphipods were also identified as prominent prey species for ringed seals sampled near Utqiaġvik and in the central Beaufort Sea. Rainbow smelt was also a prominent prey species since about 2000 in the Bering and/or Chukchi seas. Several other prey species were reported as commonly consumed by ringed seals, but these reports were more spatially and temporally limited. Still, diet composition and the relative prominence of certain prey species varied both geographically and seasonally, and differences in diet between age classes (pups and non-pup

seals), as well as a temporal shift in diet in the Bering and Chukchi seas, have been reported. In addition, ringed seal diet information for the Beaufort Sea is relatively limited. Therefore, based on the best scientific data available, we conclude that small, often schooling, fishes, in particular, Arctic cod, saffron cod, and rainbow smelt; and small crustaceans, in particular, shrimps and amphipods, are the primary prey resources of Arctic ringed seals in U.S. waters. We find that this level of specificity, naming species known to be prominent in Arctic ringed seals' diet but not limiting the definition to only those species, is most appropriate for defining this essential feature based on the best scientific data available. Because Arctic ringed seals feed on a variety of prey items and regional and temporal differences in diet have been reported, we conclude that areas in which the primary prey essential feature occurs are those that contain one or more of these particular prey resources.

Specific Areas Containing the Essential Features

To determine which areas qualify as critical habitat within the geographical area occupied by the species, we are required to identify ''specific areas'' that contain one or more of the physical or biological features essential to the conservation of the species (and that may require special management considerations or protection, as described below) (50 CFR 424.12(b)(1)(iii)). Delineation of the specific areas is done at a scale determined by the Secretary to be appropriate (50 CFR 424.12(b)(1)). Regulations at 50 CFR 424.12(c) also require that each critical habitat area be shown on a map.

In determining the scale and boundaries for the specific areas, we considered, among other things, the scales at which biological data are available and the availability of standardized geographical data necessary to map boundaries. Because the ESA implementing regulations allow for discretion in determining the appropriate scale at which specific areas are drawn (50 CFR 424.12(b)(1)), we are not required, nor was it possible, to determine whether each square inch, acre, or even square mile independently meets the definition of ''critical habitat.'' A main goal in determining and mapping the boundaries of the specific areas is to provide a clear description and documentation of the areas containing the identified essential features. This is ultimately fundamental to ensuring that Federal action agencies are able to determine whether their particular actions may affect the critical habitat.

As described below in the section Summary of Changes From the Revised Proposed Designation, after revising the proposed definitions of the essential features, and in response to public comments that expressed concerns regarding our proposed delineation of the boundaries of critical habitat with respect to the primary prey resources essential feature, we re-evaluated the best scientific data available to ensure that those boundaries were drawn appropriately. As a result, we now identify one specific area that contains the primary prey resources essential feature in addition to the sea ice essential features as described in this section.

As we explain below, the essential features of Arctic ringed seal critical habitat, in particular the sea ice essential features, are dynamic and variable on both spatial and temporal scales. Arctic ringed seal movements and habitat use are strongly influenced by the seasonality of sea ice, and the seals can range widely in response to the specific locations of the most suitable habitat conditions. Based on the best scientific data available, we have therefore identified one specific area that comprises parts of the Bering, Chukchi, and Beaufort seas, within which all of the identified essential features can be found in any given year.

We first focused on identifying where sea ice essential features occur that support the species' life history functions of whelping and nursing (when birth lairs are constructed and maintained) and molting. As discussed above, Arctic ringed seals are highly associated with sea ice, and the seals tend to migrate seasonally to maintain access to the ice. Arctic ringed seal whelping, nursing, and molting takes place in the Bering, Chukchi, and Beaufort seas. Therefore, we considered where the sea ice essential features occur in all of these waters.

The dynamic nature of sea ice and the spatial and temporal variations in sea ice and on-ice snow cover conditions constrain our ability to map precisely the specific geographic locations where the sea ice essential features occur. Sea ice characteristics such as ice extent, ice concentration, and ice surface topography vary spatiotemporally (*e.g.,* Iacozza 2011). Snowdrift depths on sea ice are also spatiotemporally variable, as drifting of snow is determined by characteristics of the ice, such as surface topography and weather conditions (*e.g.,* wind speed/direction and snowfall amounts), among other factors (Iacozza and Ferguson 2014). The specific geographic locations of essential sea ice habitat used by Arctic ringed seals vary from year to year, or even day to day, depending on many factors, including time of year, local weather, and oceanographic conditions (*e.g.,* Frost *et al.* 1988, Frost *et al.* 2004, Gadamus *et al.* 2015). In addition, the duration that sea ice habitat essential for birth lairs, or for basking and molting, is present in any given location can vary annually depending on the rate of ice melt and other factors. The temporal overlap of Arctic ringed seal molting with whelping and nursing, combined with the dynamic nature of sea ice and on-ice snow depths, also makes it impracticable to separately identify specific areas where each of these essential features occurs. However, it is unnecessary to distinguish between specific areas containing sea ice essential for birth lairs and sea ice essential for basking and molting because the ESA permits the designation of critical habitat where one or more essential features occur.

Arctic ringed seals can range widely, which, combined with the dynamic variations in sea ice and on-ice snow depths, results in individuals distributing broadly and using sea ice habitats within a range of suitable conditions. We integrated these physical and biological factors into our identification of specific areas where one or both sea ice essential features occur by considering the information currently available on the seasonal distribution and movements of Arctic ringed seals during the annual period of reproduction and molting, along with satellite-derived estimates of the position of the sea ice edge over time. Although this approach allowed us to identify specific areas that contain one or both of the sea ice essential features at certain times, the available data supported delineation of specific areas only at a coarse scale. Consequently, we delineated a single specific area that contains the sea ice features essential to the conservation of Arctic ringed seals, as follows.

We first identified the southern boundary of this specific area. We relied on the birth lair essential feature to determine the southern boundary of critical habitat because peak molting (for adults) takes place later in the spring as sea ice retreats northward, and also because the annual extent and timing of sea ice are especially variable in the southern periphery of the Arctic ringed seal's habitat in the Bering Sea (Boveng *et al.* 2009, Stabeno *et al.* 2012, Frey *et al.* 2015). Consequently, we concluded that the southern extent of sea ice suitable for birth lairs also

provides the best estimate of the southern extent of sea ice suitable for basking and molting.

As discussed in detail below, because existing information is limited on whelping locations and the distribution of Arctic ringed seals in the Bering Sea during spring, a precise southern boundary for the critical habitat cannot be determined based on such information. Available estimates of snow-depth on Arctic sea ice derived from satellite remote-sensing data are spatially and temporally limited and are subject to a variety of sources of uncertainty (Spreen and Kern 2017, Sturm and Massom 2017, Webster *et al.* 2018). Further, there is a high degree of variability in snow depths on sea ice and the spatial distribution of those depths within and between years (Sturm and Massom 2017, Webster *et al.* 2018). We therefore turned to Sea Ice Index data maintained by the NSIDC (Fetterer *et al.* 2017, Version 3.0, accessed November 2019) for information on the estimated monthly position of the ice edge in the Bering Sea during spring based on a time series of satellite records. Although April is the peak month for ringed seal whelping, snow-covered sea ice would need to persist for several weeks for pups to be sheltered and nursed in birth lairs. We therefore considered information on the position of the ice edge in the Bering Sea during May to assess whether basing the southern boundary on this ice edge (rather than the April ice edge) would most accurately represent the southern extent of where the birth lair essential feature occurs on a consistent basis. We examined the estimated position of the May median ice edge for both the 30-year 1981 to 2010 reference period currently used by NSIDC for the Sea Ice Index, and for the more recent 30-year period of 1990 to 2019, which was calculated using methods and data types similar to those used for the Sea Ice Index. We note that the two most recent years included in the 1990 to 2019 period had record low ice extent in the Bering Sea (Stabeno and Bell 2019). The May median ice edge from the Sea Ice Index is located about 22 km southwest of St. Matthew Island and about 85 km north of Nunivak Island, and for the more recent 1990 to 2019 period, is generally similar to that of the Sea Ice Index, except that east of St. Matthew Island the ice edge for the more recent period has a more variable shape. As a result, although the median ice edge for both 30-year periods reaches the coast at a similar location south of Hooper Bay, between that location and St. Matthew Island, the median ice edge for the more recent period is primarily located north of Hooper Bay.

To inform our evaluation of the above information relative to determining the southern boundary, we considered data available on the spring distribution of ringed seals in the Bering Sea from aerial surveys conducted in in 2012 and 2013 (NMFS Marine Mammal Laboratory, 2012–2013, unpublished data). Briefly, these surveys collected paired thermal and high-resolution digital imagery. Semi-automated techniques were used to detect seals from the thermal imagery, and expert observers then assigned species and age class to the detections from the associated photographs (Moreland *et al.* 2013). For the revised proposed designation, we considered information on the spatial distribution of ringed seal detections (with species identification confidence classified as ''positive'' or ''likely''). After the revised proposed designation was published, a scientific publication by Lindsay *et al.* (2021) became available that produced maps of ringed seal densities from the aerial survey dataset (based on ringed seal detections for all values of species identification confidence). We therefore considered this information in developing the final designation. Overall, ringed seal densities in the Bering Sea appeared to be higher in areas proximate to and north of St. Matthew and Nunivak Islands (as compared to areas surveyed farther south toward the shelf break), with highest densities in Norton Sound, although ringed seals were documented as far south as Bristol Bay. Relatively few ringed seal pups were documented during these surveys (perhaps reflecting, at least in part, that pups were sheltered in subnivean lairs and thus would not have been detected during the surveys). Although pup densities were highest in Norton Sound, pups were also documented in offshore habitat, primarily proximate to and north of St. Matthew and Nunivak Island, and several pups were detected in offshore areas farther south.

Taken as a whole, we concluded that the best scientific data available on the spring distribution of ringed seals in the Bering Sea suggests that the median position of the ice edge for May provides the best estimate of the southern extent of where the birth lair essential feature occurs on a consistent basis. In drawing this conclusion, we took into consideration that the 2012 and 2013 surveys were conducted in years with above-average ice extent and that our focus in delineating the southern boundary is on identifying the best estimate of the southern extent of where the birth lair essential feature (and potentially sea ice essential for molting) occurs on a consistent basis in more than limited areas. Given the reduction in sea ice east of St. Matthew Island between the reference period used for the Sea Ice Index and the more recent 30-year period described above, we elected to base the southern boundary on the estimated position of the May median ice edge for the more recent 1990 to 2019 period. Because Arctic ringed seals use nearly the entire ice field over the Bering Sea shelf in the spring, depending upon ice conditions in a given year, some ringed seals may use sea ice for whelping south of the southern boundary described above. But we concluded that the variability in the annual extent and timing of sea ice in this southernmost portion of the Arctic ringed seal's range in the Bering Sea (*e.g.,* Boveng *et al.* 2009, Stabeno *et al.* 2012, Frey *et al.* 2015) renders these waters unlikely to contain the sea ice essential features on a consistent basis in more than limited areas.

To simplify the southern boundary for purposes of delineation on maps, we modified the line representing the May median ice edge for the 1990 to 2019 period as follows: (1) Intermediate points along this line between its intersection point with the seaward limit of the U.S. EEZ (61°18′15″ N/177°45′56″ W) and the point southwest of St. Matthew Island where it turns northeastward (60°7′ N/172°1′ W) were removed to form the segment of the southern boundary that extends from the seaward limit of the U.S. EEZ southeastward approximately 340 km; and (2) intermediate points along this line between the point southwest of St. Matthew Island and the point where it reaches the coast near Cape Romanzof were removed and connected to the coast to form the second segment of the southern boundary that extends northeastward approximately 370 km (at 61°48′42″ N/166°6′5″ W). This editing produced a simplified southern boundary that retains the general shape of the original line representing the May median ice edge.

We then identified the northern boundary of the specific area that contains one or both of the sea ice essential features. As discussed above, Arctic ringed seals have a widespread distribution, including in offshore pack ice. The period during which ringed seals bask and molt overlaps with when many ringed seals also migrate north with the receding ice edge. In addition, sea ice and on-ice snow depths are dynamic and variable on both spatial and temporal scales, and sea ice suitable

for basking and molting, and potentially for birth lairs, occurs over waters extending up to and beyond the seaward limit of the U.S. EEZ (see, *e.g.,* Fetterer *et al.* 2017, Sea Ice Index Version 3.0, accessed November 2019, Blanchard-Wrigglesworth *et al.* 2018). We therefore concluded that the outer limit of the U.S. EEZ to the north, west, and east best defines the remaining seaward boundaries of the area containing the sea ice essential features. We note that Canada contests the limits of the U.S. EEZ in the eastern Beaufort Sea, asserting that the line delimiting the two countries' EEZs should follow the 141st meridian out to a distance of 200 nautical miles (nm) as opposed to an equidistant line that extends seaward perpendicular to the coast at the U.S.-Canada land border. Finally, we defined the shoreward boundary of the specific area delineated for the sea ice essential features as the 3-m isobath (relative to MLLW), consistent with the 3-m minimum water depth identified for both features.

The primary prey species essential to support Arctic ringed seals are found in a range of habitats in U.S. waters occupied by these seals. For example, amphipods documented in the diet of Arctic ringed seals in U.S. waters include the pelagic hyperiid amphipod *Parathemisto libellula;* gammarid amphipod species that inhabit the underside of sea ice; and benthic amphipods and shrimps, which were well represented in sampling conducted for benthic assessments in the Beaufort, Chukchi, and northern Bering seas (*e.g.,* Bluhm *et al.* 2009, Goddard *et al.* 2014, Ravelo *et al.* 2014, Grebmeier *et al.* 2015, Ravelo *et al.* 2015, Sigler *et al.* 2017). Notably, Arctic cod and saffron cod make up a substantial portion of the fish biomass in the U.S. Chukchi Sea and Arctic cod dominates the fish biomass in the U.S. Beaufort Sea (North Pacific Fishery Management Council 2009, Logerwell *et al.* 2015). Arctic cod are widely distributed, and are regularly observed in association with sea ice, but they are also found in seasonally ice-free waters (Bluhm and Gradinger 2008, Love *et al.* 2016, Mecklenburg *et al.* 2016). Arctic cod have been documented in surveys of the Beaufort Sea and Chukchi Sea shelf and slope (*e.g.,* Frost and Lowry 1983, Parker-Stetter *et al.* 2011, Crawford *et al.* 2012b, Logerwell *et al.* 2015, Norcross *et al.* 2017a, Norcross *et al.* 2017b, Forster *et al.* 2020), and their general distribution extends northward into deeper waters off the shelf (Cohen *et al.* 1990, Love *et al.* 2016, Mecklenburg *et al.* 2016), where Arctic cod were observed in water wedges along the edges of summer pack ice floes, along with amphipods under the ice, and diving ringed seals were observed at numerous locations (Gradinger and Bluhm 2004). The southern extent of the distribution of Arctic cod and its abundance in the northern and eastern Bering Sea are more limited and linked to the extent of ice cover and associated cold bottom temperatures (Love *et al.* 2016, Mecklenburg *et al.* 2016, Forster 2019, Marsh and Mueter 2019). The distribution of saffron cod overlaps to some extent with that of Arctic cod in the Chukchi and Beaufort seas, but this species is typically found in warmer water and has a more shallow coastal distribution that extends farther south in the Bering Sea (Love *et al.* 2016, Mecklenburg *et al.* 2016). Similarly, rainbow smelt are found primarily in shallow coastal waters of the Bering, Chukchi, and Beaufort seas (Haldorson and Craig 1984, Burns 1990, Logerwell *et al.* 2015, Love *et al.* 2016, Ormseth 2019).

In summary, the available data on the distributions of Arctic ringed seal primary prey species indicate that they occur throughout the geographical area occupied by the species. However, except in limited circumstances that do not apply here, the Secretary cannot designate as critical habitat the entire geographical area occupied by a species. We have no information that suggests any portions of the species' occupied habitat contain prey species that are of greater importance or otherwise differ from those found within the specific area defined by the sea ice essential features. Although ringed seals may forage seasonally in some particular areas, such as Barrow Canyon, the seals also make extensive use of a diversity of habitats for foraging across much broader areas in the Bering, Chukchi, and Beaufort seas. Most importantly, the movements and habitat use of Arctic ringed seals are strongly influenced by the seasonality of sea ice and they forage throughout the year (albeit with reduced feeding during molting). Given this and our consideration of the best scientific data available, we concluded that the best approach to determine the appropriate boundaries for critical habitat is to base the delineation on the boundaries identified above for the sea ice essential features. We conclude this specific area contains sufficient primary prey resources to support the conservation of Arctic ringed seals. Thus, we are designating as critical habitat a single specific area that contains all three of the identified essential features.

Special Management Considerations or Protection

A specific area within the geographic area occupied by a species may only be designated as critical habitat if the area contains one or more essential physical or biological feature that may require special management considerations or protection (16 U.S.C. 1532(5)(A)(i); 50 CFR 424.12(b)(1)(iv)). ''Special management considerations or protection'' is defined as methods or procedures useful in protecting the physical or biological features essential to the conservation of listed species (50 CFR 424.02). In determining whether the essential physical or biological features ''may require'' special management considerations or protection, it is necessary to find only that there is a possibility that the features may require special management considerations or protection in the future; it is not necessary to find that such management is presently or immediately required. *Home Builders Ass'n of N. California* v. *U.S. Fish and Wildlife Serv.,* 268 F. Supp. 2d 1197, 1218 (E.D. Cal. 2003). The relevant management need may be ''in the future based on possibility.'' *Bear Valley Mut. Water Co.* v. *Salazar,* No. SACV 11–01263–JVS, 2012 WL 5353353, at *25 (C.D. Cal. Oct. 17, 2012). *See also Cape Hatteras Access Pres. Alliance* v. *U.S. Dept. of Interior,* 731 F. Supp. 2d 15, 24 (D.D.C. 2010) (''The Court explained in CHAPA I that 'the word ''may'' indicates that the requirement for special considerations or protections need not be immediate' but must require special consideration or protection 'in the future.' '') (citing *Cape Hatteras Access Pres. Alliance* v. *U.S. Dept. of Interior,* 344 F. Supp. 2d 108, 123–24 (D.D.C. 2004)).

We have identified four primary sources of potential threats to one or more of the habitat features identified above as essential to the conservation of Arctic ringed seals: Climate change; oil and gas exploration, development, and production; marine shipping and transportation; and commercial fisheries. As further detailed below, both sea ice essential features and the primary prey essential feature may require special management considerations or protection as a result of impacts (either independently or in combination) from these sources. Our evaluation does not consider an exhaustive list of threats that could have impacts on the essential features, but rather considers the primary potential threats that we are aware of at this time that support our conclusion that special management considerations or

protection of each of the essential features may be required. Further, we highlight particular threats associated with each source of impacts while recognizing that certain threats are associated with more than one source (*e.g.,* marine pollution and noise).

Climate Change

The principal threat to the persistence of the Arctic ringed seal is anticipated loss of sea ice and reduced on-ice snow depths stemming from climate change. Climate-change-related threats to the Arctic ringed seal's habitat are discussed in detail in the ringed seal status review report (Kelly *et al.* 2010a), as well as in our proposed and final rules to list the Arctic ringed seal as threatened. Total Arctic sea ice extent has been showing a decline through all months of the satellite record since 1979 (Meier *et al.* 2014). Although there will continue to be considerable annual variability in the rate and timing of the breakup and retreat of sea ice, trends in climate change are moving toward ice that is more susceptible to melt (Markus *et al.* 2009), and areas of earlier spring ice retreat (Stammerjohn *et al.* 2012, Frey *et al.* 2015). Notably, February and March ice extent in the Bering Sea in 2018 and 2019 were the lowest on record (Stabeno and Bell 2019), and in the spring of 2019, melt onset in the Chukchi Sea occurred 20 to 35 days earlier than the 1981 to 2010 average (Perovich *et al.* 2019). Along with reductions in the extent and timing of sea ice cover, observations indicate a decline in spring snow depth on Arctic ice attributed to later sea ice formation in autumn (Webster *et al.* 2014, Webster *et al.* 2018), and a trend toward earlier spring rain-on-snow events throughout much of the Arctic Ocean in recent decades (Dou *et al.* 2021). Based on climate models, a study by Hezel *et al.* (2012) projected a substantial decline over this century in average snow depth on Arctic sea ice.

Activities that release carbon dioxide and other heat-trapping greenhouse gases (GHGs) into the atmosphere, most notably those that involve fossil fuel combustion, are the major contributing factor to climate change and loss of sea ice (Intergovernmental Panel on Climate Change (IPCC) 2013, U.S Global Climate Change Research Program 2017, Stroeve and Notz 2018, IPCC 2021). Such activities may adversely affect the essential features of Arctic ringed seal habitat by diminishing snow-covered sea ice suitable for birth lairs and sea ice suitable for basking and molting, and by causing changes in the distribution, abundance, and/or species composition of prey resources (including Arctic ringed seal primary prey resources) in association with changes in ocean conditions, such as warming and acidification (caused primarily by uptake of atmospheric CO_2) (as reviewed by Kelly *et al.* 2010a, also, *e.g.,* Kortsch *et al.* 2015, Alabia *et al.* 2018, Arctic Monitoring and Assessment Programme (AMAP) 2018, Holsman *et al.* 2018, Thorson *et al.* 2019, Baker *et al.* 2020, Huntington *et al.* 2020). Declines in the extent and timing of sea ice cover may also lead to increased shipping activity (discussed below) and other changes in anthropogenic activities, with the potential for increased risks to the habitat features essential to Arctic ringed seal conservation (Kelly *et al.* 2010a). Given that the quality and quantity of these essential features, in particular sea ice, may be diminished by the effects of climate change, we conclude that special management considerations or protection may be necessary, either now or in the future.

Oil and Gas Activity

Oil and gas exploration, development, and production activities in the U.S. Arctic may include: Seismic surveys; exploratory, delineation, and production drilling operations; construction of artificial islands, causeways, ice roads, shore-based facilities, and pipelines; and vessel and aircraft operations. These activities have the potential to affect the essential features of Arctic ringed seal critical habitat, primarily through pollution (particularly in the event of a large oil spill), noise, and physical alteration of the species' habitat.

Large oil spills (considered in this section to be spills of relatively great size, consistent with common usage of the term) are generally considered to be the greatest threat associated with oil and gas activities in the Arctic marine environment (AMAP 2007). Experiences with spills in subarctic regions, such as in Prince William Sound, Alaska, have shown that large oil spills can have lasting ecological effects (AMAP 2007, Barron *et al.* 2020). In contrast to spills on land, large spills at sea, especially when ice is present, are difficult to contain or clean up (National Research Council 2014, Wilkinson *et al.* 2017). Responding to a sizeable spill in the Arctic environment would be particularly challenging. Reaching a spill site and responding effectively would be especially difficult, if not impossible, in winter when weather can be severe and daylight extremely limited. Oil spills under ice or in ice-covered waters are the most challenging to deal with due to, among other factors, limitations on the effectiveness of current containment and recovery technologies when sea ice is present (Wilkinson *et al.* 2017). The extreme depth and the pressure that oil was under during the 2010 blowout at the Deepwater Horizon well in the Gulf of Mexico may not exist in the shallow continental shelf waters of the Beaufort and Chukchi seas. Nevertheless, the difficulties experienced in stopping and containing the Deepwater Horizon blowout, where environmental conditions, available infrastructure, and response preparedness were comparatively good, point toward even greater challenges in containing and cleaning a large spill in a much more environmentally severe and geographically remote Arctic location.

Although planning, management, and use of best practices can help reduce risks and impacts, the history of oil and gas activities indicates that accidents cannot be eliminated (AMAP 2007). Data on large spills (*e.g.,* operational discharges, spills from pipelines, blowouts) in Arctic waters are limited because oil exploration and production there has been limited. The Bureau of Ocean Energy Management (BOEM) (2011) estimated the chance of one or more oil spills greater than or equal to 1,000 barrels occurring if development were to take place in the Beaufort Sea or Chukchi Sea Planning Areas as 26 percent for the Beaufort Sea over the estimated 20 years of production and development, and 40 percent for the Chukchi Sea over the estimated 25 years of production and development.

Icebreaking vessels, which may be used for in-ice seismic surveys or to manage ice near exploratory drilling ships, also have the potential to affect the sea ice essential features of Arctic ringed seal critical habitat through physical alteration of the sea ice (see also *Marine Shipping and Transportation* section). Other examples of activities associated with oil and gas exploration and development that may physically alter the essential sea ice features include construction and maintenance of offshore ice roads, ice pads, and camps, as well as other offshore through-ice activities such as trenching and installation of pipelines. In addition, there is evidence that noise associated with activities such as seismic surveys can result in behavioral and other effects on fishes and invertebrate species (Carroll *et al.* 2017, Slabbekoorn *et al.* 2019), although the available data on such effects are currently limited, in particular for invertebrates (Hawkins *et al.* 2015, Hawkins and Popper 2017), and the nature of potential effects specifically

on the primary prey resources of Arctic ringed seals are unclear.

In summary, a large oil spill could render areas containing the identified essential features unsuitable for use by Arctic ringed seals. In such an event, sea ice habitat essential for whelping, nursing, and/or for basking and molting could be oiled. Arctic ringed seal primary prey resources could also become contaminated, experience mortality, or be otherwise adversely affected by spilled oil. In addition, disturbance effects (both physical alteration of habitat and acoustic effects) could alter the quality of the essential features of Arctic ringed seal critical habitat, or render habitat unsuitable. We conclude that the essential features of the habitat of the Arctic ringed seal may require special management considerations or protection in the future to minimize the risks posed to these features by oil and gas exploration, development, and production.

Marine Shipping and Transportation

The reduction in Arctic sea ice that has occurred in recent years has renewed interest in using the Arctic Ocean as a potential waterway for coastal, regional, and trans-Arctic marine operations and in extension of the navigation season in surrounding seas (Brigham and Ellis 2004, Arctic Council 2009). Marine traffic along the western and northern coasts of Alaska includes tug, towing, and cargo vessels, tankers, research and government vessels, vessels associated with oil and gas exploration and development, fishing vessels, and cruise ships (Adams and Silber 2017, U.S. Committee on the Marine Transportation System 2019). Automatic Identification System data indicate that the number of unique vessels operating annually in U.S. waters north of the Bering Sea in 2015 to 2017 increased 128 percent over the number recorded in 2008 (U.S. Committee on the Marine Transportation System 2019). Climate models predict that the warming trend in the Arctic will accelerate, causing the ice to begin melting earlier in the spring and resume freezing later in the fall, resulting in an expansion of potential transit routes and a lengthening of the potential navigation season, and a continuing increase in vessel traffic (Khon *et al.* 2010, Smith and Stephenson 2013, Stephenson *et al.* 2013, Huntington *et al.* 2015b, Melia *et al.* 2016, Aksenov *et al.* 2017, Khon *et al.* 2017). For instance, analysis of four potential growth scenarios (ranging from reduced activity to accelerated growth) suggests from 2008 to 2030, the number of unique vessels operating in U.S. waters north of 60° N (*i.e.,* northern Bering Sea and northward) may increase by 136 to 346 percent (U.S. Committee on the Marine Transportation System 2019).

The fact that nearly all vessel traffic in the Arctic, with the exception of icebreakers, purposefully avoids areas of ice, and primarily occurs during the ice-free or low-ice seasons, helps to mitigate the risks of shipping to the essential habitat features identified for Arctic ringed seals. However, icebreakers pose greater risks to these features since they are capable of operating year-round in all but the heaviest ice conditions and are often used to escort other types of vessels (*e.g.,* tankers and bulk carriers) through ice-covered areas. Furthermore, new classes of ships are being designed that serve the dual roles of both tanker/carrier and icebreaker (Arctic Council 2009). Therefore, if icebreaking activities increase in the Arctic in the future, as expected, the likelihood of negative impacts (*e.g.,* habitat alteration and risk of oil spills) occurring in ice-covered areas where Arctic ringed seals reside will likely also increase. We are not aware of any data currently available on the effects of icebreaking on the habitat of Arctic ringed seals during the reproductive and molting periods. Although impacts of icebreaking are likely to vary between species depending on a variety of factors, Wilson *et al.* (2017) demonstrated the potential for impacts of icebreaking, which for Caspian seal (*Pusa caspica*) mothers and pups and their sea-ice-breeding habitat, included displacement, breakup of whelping and nursing habitat, and vessel collisions with mothers or pups. The authors noted that while pre-existing shipping channels were used by seals as artificial leads, which expanded access to whelping habitat, seals that whelp on the edge of such leads are vulnerable to vessel collision and repeated disturbance.

In addition to the potential effects of icebreaking on the essential features, the maritime shipping industry transports various types of petroleum products, both as fuel and cargo. In particular, if increased shipping involves the tanker transport of crude oil or oil products, there would be an increased risk of spills (Arctic Climate Impact Assessment 2005, U.S. Arctic Research Commission 2012). Similar to oil and gas activities, the most significant threat posed by shipping activities is considered to be the accidental or illegal discharge of oil or other toxic substances carried by ships (Arctic Council 2009).

Vessel discharges associated with normal operations, including sewage, grey water, and oily wastes are expected to increase as a result of increasing marine shipping and transportation in Arctic waters (Arctic Council 2009, Parks *et al.* 2019), which could affect the primary prey of Arctic ringed seals. Increases in marine shipping and transportation and other vessel traffic is also introducing greater levels of underwater noise (Arctic Council 2009, Moore *et al.* 2012), with the potential for behavioral and other effects in fishes and invertebrates (Slabbekoorn *et al.* 2010, Hawkins and Popper 2017, Popper and Hawkins 2019), although there are substantial gaps in the understanding of such effects, in particular for invertebrates (Hawkins *et al.* 2015, Hawkins and Popper 2017), and the nature of potential effects specifically on the primary prey of Arctic ringed seals are unclear.

We conclude that the essential features of the habitat of the Arctic ringed seal may require special management considerations or protection in the future to minimize the risks posed by potential shipping and transportation activities because: (1) Physical alteration of sea ice by icebreaking activities could reduce the quantity and/or quality of the sea ice essential features; (2) in the event of an oil spill, sea ice essential for birth lairs and/or for basking and molting could become oiled; and (3) the quantity and/or quality of the primary prey resources could be diminished as a result of spills, vessel discharges, and noise associated with shipping, transportation, and ice-breaking activities.

Commercial Fisheries

The specific area identified in this final rule as meeting the definition of critical habitat for the Arctic ringed seal overlaps with the Arctic Management Area and the Bering Sea and Aleutian Islands Management Area identified by the North Pacific Fishery Management Council. No commercial fishing is permitted within the Arctic Management Area due to insufficient data to support the sustainable management of a commercial fishery there. However, as additional information becomes available, commercial fishing may be allowed in this management area. Two of the primary Arctic ringed seal prey species identified as essential to the species' conservation—Arctic cod and saffron cod—have been identified as likely initial target species for commercial fishing in the Arctic Management Area in the future (North Pacific Fishery Management Council 2009).

In the northern portion of the Bering Sea and Aleutian Islands Management Area, commercial fisheries overlap with the southernmost portion of the critical habitat. Portions of the critical habitat also overlap with certain state commercial fisheries management areas. Commercial catches from waters in the critical habitat area primarily include: Pacific halibut (*Hippoglossus stenolepis*), several other flatfish species, Pacific cod (*Gadus macrocephalus*), several crab species, walleye pollock, and several salmon species.

Commercial fisheries may affect the primary prey resources identified as essential to the conservation of the Arctic ringed seal, through removal of prey biomass and potentially through modification of benthic habitat by fishing gear that contacts the seafloor. Given the potential changes in commercial fishing that may occur with the expected increasing length of the open-water season and distribution shifts of some economically valuable species responding to climate change (*e.g.,* Stevenson and Lauth 2019, Thorson *et al.* 2019, Spies *et al.* 2020), we conclude that the primary prey resources essential feature may require special management considerations or protection in the future to address potential adverse effects of commercial fishing on this feature.

Unoccupied Areas

Section 3(5)(A)(ii) of the ESA authorizes the designation of specific areas outside the geographical area occupied by the species, if those areas are determined to be essential for the conservation of the species. Our regulations at 50 CFR 424.12(b)(2) require that we first evaluate areas occupied by the species, and only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species. Because Arctic ringed seals are considered to occupy their entire historical range that falls within U.S. jurisdiction, we find that there are no unoccupied areas within U.S. jurisdiction that are essential to their conservation.

Application of ESA Section 4(a)(3)(B)(i)

Section 4(a)(3)(B)(i) of the ESA precludes designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), 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. *See* 16 U.S.C. 1533(a)(3)(B)(i); 50 CFR 424.12(h). Where these standards are met, the relevant area is ineligible for consideration as potential critical habitat. The regulations implementing the ESA set forth a number of factors to guide consideration of whether this standard is met, including the degree to which the plan will protect the habitat of the species (50 CFR 424.12(h)(4)). This process is separate and distinct from the analysis governed by section 4(b)(2) of the ESA, which directs us to consider the economic impact, the impact on national security, and any other relevant impact of designation, and affords the Secretary discretion to exclude particular areas if the benefits of exclusion outweigh the benefits of inclusion of such areas. *See* 16 U.S.C. 1533(b)(2).

Before publication of the revised proposed rule (86 FR 1452, January 9, 2021), we contacted DOD (Air Force and Navy) and requested information on any facilities or managed areas that are subject to an INRMP and are located within areas that could potentially be designated as critical habitat for the Arctic ringed seal. In response to our request, the Air Force provided information regarding an INRMP addressing twelve radar sites, 10 of which (7 active and 3 inactive) are located adjacent to the area that was under consideration for designation as critical habitat: Barter Island Long Range Radar Site (LRRS), Cape Lisburne LRRS, Cape Romanzof LRRS, Kotzebue LRRS, Oliktok LRRS, Point Barrow LRRS, Tin City LRRS, Bullen Point Short Range Radar Site (SRRS), Point Lay LRRS, and Point Lonely SRRS. The Air Force requested exemption of these 10 radar sites pursuant to section 4(a)(3)(B)(i) of the ESA. Based on our review of the INRMP (draft 2020 update), the area we are designating as critical habitat, all of which occurs seaward of the 3-m isobath, does not overlap with DOD lands subject to this INRMP. Therefore, we conclude that there are no properties owned, controlled, or designated for use by DOD that are subject to ESA section 4(a)(3)(B)(i) for this critical habitat designation, and thus the exemptions requested by the Air Force are not necessary because no critical habitat would be designated in those radar sites.

Analysis of Impacts Under Section 4(b)(2) of the ESA

Section 4(b)(2) of the ESA requires the Secretary to designate critical habitat for threatened and endangered species on the basis of the best scientific data available after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. Regulations at 50 CFR 424.19(b) also specify that the Secretary will consider the probable impacts of the designation at a scale that the Secretary determines to be appropriate, and that such impacts may be described qualitatively or quantitatively. The Secretary is also required to compare impacts with and without the designation (50 CFR 424.19(b)). In other words, we are required to assess the incremental impacts attributable to the critical habitat designation relative to a baseline that reflects existing regulatory impacts in the absence of the critical habitat.

Section 4(b)(2) also describes an optional process by which the Secretary may go beyond the mandatory consideration of impacts and weigh the benefits of excluding any particular area (that is, avoiding the economic, national security, or other relevant impacts) against the benefits of designating it (primarily, the conservation value of the area). If the Secretary concludes that the benefits of excluding particular areas outweigh the benefits of designation, the Secretary may exclude the particular area(s) so long as the Secretary concludes on the basis of the best scientific and commercial data available that the exclusion will not result in extinction of the species (16 U.S.C. 1533(b)(2)). We have adopted a policy setting out non-binding guidance explaining generally how we exercise our discretion under 4(b)(2). *See* Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (''4(b)(2) policy,'' 81 FR 7226, February 11, 2016).

While section 3(5) of the ESA defines critical habitat as ''specific areas,'' section 4(b)(2) requires the agency to consider the impacts of designating any ''particular area.'' Depending on the biology of the species, the characteristics of its habitat, and the nature of the impacts of designation, ''particular'' areas may be—but need not necessarily be—delineated so that they are the same as the already identified ''specific'' areas of potential critical habitat. For the reasons set forth below, we exercised the discretion delegated to us by the Secretary to conduct an exclusion analysis based on national

security impacts with respect to a particular area north of the Beaufort Sea shelf that meets the definition of critical habitat for the Arctic ringed seal, and we exclude this area from the designation because we concluded that the benefits of exclusion outweigh the benefits of inclusion.

The primary impacts of a critical habitat designation arise from the ESA section 7(a)(2) requirement that Federal agencies ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat (*i.e.,* adverse modification standard). Determining these impacts is complicated by the fact that section 7(a)(2) contains the overlapping requirement that Federal agencies ensure that their actions are not likely to jeopardize the species' continued existence. One incremental impact of critical habitat designation is the extent to which Federal agencies change their proposed actions to ensure they are not likely to adversely modify critical habitat, beyond any changes they would make to ensure actions are not likely to jeopardize the continued existence of the species. Additional impacts of critical habitat designation include any state and/or local protection that may be triggered as a direct result of designation (we did not identify any such impacts for this designation), and other benefits that may arise, such as education of the public regarding the importance of an area for species conservation.

In determining the impacts of designation, we focused on the incremental change in Federal agency actions as a result of critical habitat designation and the adverse modification standard (see *Ariz. Cattle Growers' Ass'n* v. *Salazar,* 606 F.3d 1160, 1172–74 (9th Cir. 2010) (holding that USFWS permissibly attributed the economic impacts of protecting the northern spotted owl as part of the baseline and was not required to factor those impacts into the economic analysis of the effects of the critical habitat designation)). We analyzed the impacts of this designation based on a comparison of conditions with and without the designation of critical habitat for the Arctic ringed seal. The ''without critical habitat'' scenario represents the baseline for the analysis. It includes process requirements and habitat protections already extended to the Arctic ringed seal under its ESA listing and under other Federal, state, and local regulations. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the Arctic ringed seal.

Our analysis for this final rule is described in detail in the associated Final Impact Analysis Report. This analysis assesses the incremental costs and benefits that may arise due to the critical habitat designation, with economic costs estimated over the next 10 years. We chose the 10-year timeframe because it is lengthy enough to reflect the planning horizon for reasonably predicting future human activities, yet it is short enough to allow reasonable projections of changes in use patterns in an area, as well as of exogenous factors (*e.g.,* world supply and demand for petroleum, U.S. inflation rate trends) that may be influential. This timeframe is consistent with guidance provided in Office of Management and Budget (OMB) Circular A–4 (OMB 2003, 2011). We recognize that economic costs of the designation are likely to extend beyond the 10-year timeframe of the analysis, though we have no information indicating that such costs in subsequent years would be different from those projected for the first 10-year period. However, we could not monetize or quantify such costs, as forecasting potential future Federal actions that may require section 7 consultation regarding Arctic ringed seal critical habitat becomes increasingly speculative beyond the 10-year time window of the analysis.

Below, we summarize our analysis of the impacts of designating the specific area identified in this final rule as meeting the definition of critical habitat for the Arctic ringed seal. Additional detail is provided in the Final Impact Analysis Report prepared for this final rule.

Benefits of Designation

We expect that Arctic ringed seals will increasingly experience the ongoing loss of sea ice and changes in ocean conditions associated with climate change, and the significance of other habitat threats will likely increase as a result. As noted above, the primary benefit of a critical habitat designation—and the only regulatory consequence—stems from the ESA section 7(a)(2) requirement that all Federal agencies ensure that any actions authorized, funded, or carried out by such agencies are not likely to destroy or adversely modify the designated habitat. This benefit is in addition to the section 7(a)(2) requirement that all Federal agencies ensure that their actions are not likely to jeopardize listed species' continued existence. Another benefit of critical habitat designation is that it provides Federal agencies and the public specific notice of the areas and features essential to the conservation of the Arctic ringed seal, and the types of activities that may reduce the conservation value or otherwise affect the habitat. This information will consistently focus future ESA section 7 consultations on key habitat attributes. The designation of critical habitat can also inform Federal agencies regarding the habitat needs of Arctic ringed seals, which may facilitate using their authorities to support the conservation of this species pursuant to ESA section 7(a)(1), including to design proposed projects in ways that avoid, minimize, and/or mitigate adverse effects to critical habitat from the outset.

In addition, the critical habitat designation may result in indirect benefits, as discussed in detail in the Final Impact Analysis Report, including education and enhanced public awareness, which may help focus and contribute to conservation efforts for the Arctic ringed seal and its habitat. For example, by identifying areas and features essential to the conservation of the Arctic ringed seal, complementary protections may be developed under state or local regulations or voluntary conservation plans. These other forms of benefits may be economic in nature (whether market or non-market, consumptive, non-consumptive, or passive), educational, cultural, or sociological, or they may be expressed through enhanced or sustained ecological functioning of the species' habitat, which itself yields ancillary welfare benefits (*e.g.,* improved quality of life) to the region's human population. For example, because the critical habitat designation is expected to result in enhanced conservation of the Arctic ringed seal over time, residents of the region who value these seals, such as subsistence users, could experience indirect benefits by enjoying subsistence activities associated with this species. As another example, the geographic area identified as meeting the definition of critical habitat for the Arctic ringed seal overlaps substantially with the range of the polar bear in the United States, and the Arctic ringed seal is the primary prey species of the polar bear, so the designation may also enhance conservation of the polar bear, and in turn provide indirect benefits (*e.g.,* existence and option values). Indirect benefits may also be associated with enhanced habitat conditions for other co-occurring species, such as the Pacific walrus (*Odobenus rosmarus divergens*), the Beringia DPS bearded seal, and other seal species.

It is not presently feasible to monetize, or even quantify, each component part of the benefits accruing

from the designation of critical habitat for the Arctic ringed seal. Therefore, we augmented the quantitative measurements that are summarized here and discussed in detail in the Final Impact Analysis Report with qualitative and descriptive assessments, as provided for under 50 CFR 424.19(b) and in guidance set out in OMB Circular A–4. Although the best available information does not provide an estimate to monetize or quantify all of the incremental benefits of the critical habitat designation, we conclude that they are not inconsequential.

Economic Impacts

Direct economic costs of the critical habitat designation accrue primarily through implementation of section 7(a)(2) of the ESA in consultations with Federal agencies (''section 7 consultations'') to ensure that their proposed actions are not likely to destroy or adversely modify critical habitat. Those economic impacts may include both administrative costs and costs associated with project modifications. Based on the best scientific and commercial data available and our assessment of the record of section 7 consultations from 2013 to 2019 on activities that may have affected the essential features (relatively few relevant consultations were identified for the 3 years prior to when the Arctic ringed seal was listed under the ESA), as well as available information on planned activities, we have not identified any likely incremental economic impacts associated with project modifications that would be required solely to avoid impacts to Arctic ringed seal critical habitat. The critical habitat designation is not likely to result in more requested project modifications because our section 7 consultations on potential effects to Arctic ringed seals and our incidental take authorizations for Arctic activities under section 101(a) of the Marine Mammal Protection Act (MMPA) both typically address habitat-associated effects to the seals even in the absence of a critical habitat designation. This is not to say such project modifications could not occur in situations we are unable to predict at this time, but based on the best information available for the 10-year period of the analysis, it is likely that any project modifications necessary to avoid impacts to Arctic ringed seal critical habitat would also be necessary to avoid impacts to the species in section 7 consultations that would occur irrespective of this designation. As a result, the direct incremental costs of this critical habitat designation are expected to be limited to the additional administrative costs of considering Arctic ringed seal critical habitat in future section 7 consultations.

To identify the types of Federal activities that may affect critical habitat for the Arctic ringed seal, and therefore would be subject to the ESA section 7 adverse modification standard, we examined the record of section 7 consultations from 2013 to 2019. These activities include oil and gas related activities, dredge mining, navigation dredging, in-water construction, commercial fishing, oil spill response, and certain military activities. We projected the occurrence of these activities over the timeframe of the analysis (the next 10 years) using the best available information on planned activities and the frequency of recent consultations for particular activity types. Notably, all of the projected future Federal actions that may trigger an ESA section 7 consultation because of their potential to affect one or more of the essential habitat features also have the potential to affect Arctic ringed seals. In other words, none of the activities we identified would trigger a section 7 consultation solely on the basis of the critical habitat designation. We recognize there is inherent uncertainty involved in predicting future Federal actions that may affect the essential features of Arctic ringed seal critical habitat; however, we did not receive any new relevant information in response to our specific request for comments and information regarding the types of activities that are likely to be subject to section 7 consultation as a result of the designation that changed our projection of future Federal actions that may trigger consultation.

We expect that the majority of future ESA section 7 consultations analyzing potential effects on the essential habitat features will involve NMFS and BOEM authorizations and permitting of oil and gas related activities. In assessing costs associated with these consultations, we took a conservative approach by estimating that future section 7 consultations addressing these activities would be more complex than for other activities, and would therefore incur higher third-party (*i.e.,* applicant/permittee) incremental administrative costs per consultation to consider effects to Arctic ringed seal critical habitat (see Final Impact Analysis Report). These higher third-party costs may not be realized in all cases because the administrative effort required for a specific consultation depends on factors such as the location, timing, nature, and scope of the potential effects of the proposed action on the essential features. There is also considerable uncertainty regarding the timing and extent of future oil and gas exploration and development in Alaska's Outer Continental Shelf (OCS) waters, as indicated by Shell's 2015 withdrawal from exploratory drilling in the Chukchi Sea, BOEM's 2017–2022 OCS Oil and Gas Leasing Program, and the reinstatement of the 2016 withdrawal of the Chukchi Sea and most of the Beaufort Sea from consideration for oil and gas leasing in January 2021 (Executive Order (E.O.) 13990). Although NMFS completed formal consultations for oil and gas exploration activities in the Chukchi Sea in all but 2 years between 2006 and 2015, no such activities or related consultations with NMFS have occurred since that time.

As detailed in the Final Impact Analysis Report, the total incremental costs associated with the critical habitat designation over the next 10 years, in discounted present value terms, are estimated to be $714,000 at a 7 percent discount rate and $834,000 at a 3 percent discount rate, for an annualized cost of $95,000 at both a 7 percent and a 3 percent discount rate. About 83 percent of these incremental costs are expected to accrue from ESA section 7 consultations associated with oil and gas activities in the Chukchi and Beaufort seas and adjacent onshore areas.

We have concluded that the potential economic impacts associated with the critical habitat designation are modest both in absolute terms and relative to the level of economic activity expected to occur in the affected area, which is primarily associated with oil and gas activities that may occur in the Beaufort and Chukchi seas. As a result, and in light of the benefits of critical habitat designation discussed above and in the Final Impact Analysis Report, we are not exercising our discretion to further consider and weigh the benefits of excluding any particular area based on economic impacts against the benefits of designation.

National Security Impacts

Section 4(b)(2) of the ESA also requires consideration of national security impacts. As noted in the Application of ESA Section 4(a)(3)(B)(i) section above, before publication of our 2014 proposed rule, we contacted DOD regarding any potential military operations impacts of designating critical habitat for the Arctic ringed seal. In a letter dated June 3, 2013, the DOD Regional Environmental Coordinator indicated that no impacts on national security were foreseen from such a

designation. As a result, in that proposed rule we did not identify any direct impacts from the critical habitat designation on activities associated with national security.

Following publication of our 2014 proposed rule, by a letter dated April 17, 2015, DOD indicated that upon further review, it had identified national security concerns with the designation due to overlap of the proposed critical habitat with an area that is used by the U.S. Navy for training and testing activities. This area was described as waters north of Prudhoe Bay off the Beaufort Sea shelf between approximately 125 and 200 nm from shore, extending east to the Canadian border and seaward to the outer boundary of the U.S. EEZ. DOD requested that NMFS exclude this area from the critical habitat designation due to national security impacts, expressing the view that designation of this area will impact national security if training and testing activities are prohibited or severely degraded, as detailed in a comment letter from the Navy dated March 30, 2015. More recently, by letter dated March 17, 2020, the Navy reiterated its request for this exclusion due to national security impacts, but modified the description of the particular area to include waters off the Beaufort Sea shelf between approximately 100 and 200 nm from shore (noting that ice conditions have required the Navy to conduct some recent activities closer to shore). However, in developing this final rule, we followed up with the Navy regarding the location of this area. The Navy clarified that the description in its 2020 letter was outdated and inconsistent with the map included in the letter. The particular area the Navy intended to request be excluded from designation includes waters off the Beaufort Sea shelf between approximately 50 to 80 and 200 nm from shore.

The Navy indicated in its written communications that it conducts Arctic training and testing exercises, referred to by the Navy as Ice Exercises (ICEXs), on and below the sea ice within the particular area requested for exclusion. ICEXs and the accompanying base camps are established anywhere from 100 to 200 nm north of Prudhoe Bay, Alaska. These exercises are planned to occur every 2 years and typically last 25 to 45 days. ICEX camps include approximately 15 to 20 temporary shelters which support 30 to 65 personnel. Training and testing activities include: Submarine activities; submarine surfacing, in which submarines avoid pressure ridges and conduct surfacings in first year ice or in polynyas; aircraft operations; building of runways; and other on-ice activities. The Navy noted that ICEX activities alter the ice by creating holes to deploy training and testing equipment and surfacing submarines. The Navy explained that due to the need for stable ice, flights are conducted immediately prior to buildup of the ICEX camp to determine the final location.

The Navy also noted that the Office of Naval Research conducts research testing activities in the deep waters of the Beaufort Sea with acoustic sources and the use of icebreaking ships to deploy and retrieve these sources, which it plans to continue in the future, and expressed concern that the designation of critical habitat could impact these activities. The Navy indicated that it also conducts other training and testing activities in the Arctic region in support of gaining and maintaining military readiness in this region, and expects additional training and testing activities to occur in this region. The activities may be similar to those identified for ICEXs, and likely also would include vessel movements, icebreaking, and support transport by air and sea. Testing activities may include air platform/vehicle tests, missile testing, gunnery testing, and anti-submarine warfare tracking testing.

The Navy expressed the concern that the critical habitat may impact national security if training and testing activities are prohibited or are required to be mitigated (for the protection of critical habitat) to the point where training and testing value is severely degraded, or if the Navy is unable to access certain locations within the Arctic region. The Navy indicated that if the critical habitat designation maintains the same boundaries identified in our 2014 proposed designation, it does not foresee a way that its training and testing activities will be able to be conducted without significant impacts on those activities. The Navy indicated that due to the size of the area proposed in 2014 as critical habitat for the Arctic ringed seal and the uniqueness of Arctic conditions, the Navy would not be able to shift its training activities to other areas or to different times of the year.

In addition to the information provided by the Navy, by letter dated April 30, 2020, the Air Force provided information concerning its activities at radar sites located adjacent to the area under consideration for designation as critical habitat (relevant sites identified above in the Application of ESA Section 4(a)(3)(B)(i) section). The Air Force requested that we consider excluding critical habitat near these sites under section 4(b)(2) of the ESA due to impacts on national security. Although we do not exempt the radar sites pursuant to section 4(a)(3)(B)(i) of the ESA, as discussed above, here we consider whether to exclude critical habitat located adjacent to these sites under section 4(b)(2) based on national security impacts.

The Air Force noted that annual fuel and cargo resupply activities occur at these radar sites primarily in the summer and installation beaches are used for offload. The Air Force indicated that coastal operations at these installations are limited, and when barge operations occur, protective measures are implemented per the Polar Bear and Pacific Walrus Avoidance Plan (preliminary final 2020) associated with the INRMP in place for these sites. The Air Force discussed that it also conducts sampling and monitoring at these sites as part of the DOD's Installation Restoration Program, and conducts larger scale contaminant or debris removal in some years that can require active disturbance of the shoreline. Coastal barge operations are a feature of both monitoring and removal actions.

Federal agencies have an existing obligation to consult with NMFS under section 7(a)(2) of the ESA to ensure the activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Arctic ringed seal, regardless of whether or where critical habitat is designated for the species. The specific area identified as meeting the definition of critical for Arctic ringed seals in this final rule includes marine habitat extending seaward from the 3-m isobath (relative to MLLW), rather than from the line of MLLW as we had proposed. Thus, waters adjacent to the radar sites identified by the Air Force overlap to lesser extent with this specific area. The activities described in the Air Force's exclusion request are localized and small in scale, and it is unlikely that modifications to these activities would be needed to address impacts to critical habitat beyond any modifications that may be necessary to address impacts to Arctic ringed seals. We therefore anticipate that the time and costs associated with consideration of the effects of future Air Force actions on Arctic ringed seal critical habitat under section 7(a)(2) of the ESA would be limited if any, and the consequences for the Air Force's activities, even if we do not exempt or exclude the requested areas from critical habitat designation, would be negligible.

As a result, and in light of the benefits of critical habitat designation discussed above and in the Final Impact Analysis Report, with respect to the Air Force's

request, we have concluded that the benefits of exclusion do not outweigh the benefits of designation and therefore we are not exercising our discretionary authority to exclude these particular areas pursuant to section 4(b)(2) of the ESA based on national security impacts. However, given the specific national security concerns identified by the Navy, below we provide an analysis of our decision to exercise our discretionary authority under section 4(b)(2) of the ESA to exclude the area requested by the Navy based on national security impacts.

Other Relevant Impacts

Finally, under ESA section 4(b)(2) we consider any other relevant impacts of critical habitat designation. For example, we may consider potential adverse effects on existing management or conservation plans that benefit listed species, and we may consider potential adverse effects on tribal lands or trust resources. In preparing this critical habitat designation, we have not identified any such management or conservation plans, tribal lands or resources, or anything else that would be adversely affected by the critical habitat designation. Some Alaska Native organizations and tribes have expressed concern that the critical habitat designation might restrict subsistence hunting of ringed seals or other marine mammals, such that important hunting areas should be considered for exclusion, but no restrictions on subsistence hunting are associated with this designation. Accordingly, we are not exercising our discretion to conduct an exclusion analysis pursuant to section 4(b)(2) of the ESA based on other relevant impacts.

Exclusion Based on National Security Impacts

In the revised proposed rule, we proposed to exclude an area north of the Beaufort Sea shelf that is used by the Navy for training and testing activities based on our finding that the benefits to national security of exclusion outweigh the benefits of designation. In developing this final rule, we followed up with the Navy regarding the location of this area. The Navy clarified that the spatial data it previously provided to NMFS to map the requested exclusion inadvertently contained outdated information that did not reflect the full southern extent of the particular area they intended to request be excluded from the designation, which includes waters about 50 nm south of the southern boundary of the proposed exclusion area east of 150° W longitude. In reference to the southern extent of the requested exclusion, the Navy explained that the camp location for recent ICEXs has been positioned to the south of the area we proposed to exclude from designation in the revised proposed rule. In addition, the Navy requested that the western boundary of the proposed exclusion be extended one degree west to account for research activities being conducted by the Office of Naval Research within this area.

Based on the written information provided by the Navy (summarized in the *National Security Impacts* section above), and clarifications provided through subsequent communications with the Navy regarding the southern and western boundaries of the particular area requested for exclusion, we evaluated whether there was a reasonably specific justification indicating that designating certain areas as critical habitat would have a probable incremental impact on national security. In accordance with our 4(b)(2) policy (81 FR 7226, February 11, 2016), when the Navy provides a reasonably specific justification, we will defer to its expert judgment as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected by the critical habitat designation. In conducting our review of this exclusions request under section 4(b)(2) of the ESA, we gave great weight to the Navy's national security concerns. To weigh the national security impacts against conservation benefits of a potential critical habitat designation, we considered the following: (1) The size of the area requested for exclusion compared with the total size of the specific area that meets the definition of critical habitat for the Arctic ringed seal; (2) the conservation value of the area requested for exclusion; (3) the possibility that the Navy's activities would affect the area requested for exclusions and trigger ESA section 7 consultations, and the likelihood that Navy activities would need to be modified to avoid adverse modification or destruction of critical habitat; and (4) the likelihood that other Federal actions may occur that would no longer be subject to the ESA's critical habitat provisions if the particular area were excluded from the designation.

The area requested for exclusion comprises approximately 18 percent of the marine habitat that meets the definition of critical habitat for the Arctic ringed seal, and approximately 60 percent of the portion of this marine habitat north of the Beaufort Sea shelf (north of the 200-m isobath). As noted by the Navy in its exclusion request, and as discussed above in the *Distribution and Habitat Use* and Specific Areas Containing the Essential Features sections, data currently available on ringed seal use of the requested exclusion area, particularly for the northernmost portion, are limited. As we discussed above (see Specific Areas Containing the Essential Features section), aerial surveys of ringed seals during the periods of reproduction and molting have been conducted for the most part over the continental shelf within about 25 to 40 km of the Alaska coast. However, incidental sightings of ringed seals were documented up to about 100 km north of the Beaufort Sea shelf during bowhead whale aerial surveys conducted during spring and early summer. Although we are not aware of any similar data for U.S. waters farther north, the trend toward areas of earlier spring ice retreat suggests that habitat areas closer to the northern boundary of the U.S. EEZ are likely to retain sea ice suitable for birth lairs and/or basking and molting longer than habitat areas further to the south. In addition, recent satellite telemetry data for ringed seals tagged on the Alaska coast show that during the open-water season, some of these seals made forays north of the Beaufort Sea shelf, including into the westernmost part of the area requested for exclusion (Crawford *et al.* 2019, Quakenbush *et al.* 2019, Quakenbush *et al.* 2020, Von Duyke *et al.* 2020; ADF&G and North Slope Borough, 2020, unpublished data). We note that the telemetry data for these seals are unlikely to fully reflect the distribution of this species in U.S. waters for a number of reasons. For example, as discussed by Citta *et al.* (2018), the distribution of telemetry locations for tagged ringed seals is influenced by the location and season of tagging. Thus, although the area requested for exclusion contains one or more of the essential features of the Arctic ringed seal's critical habitat, data are limited at this time to inform our assessment of the relative value of this area to the conservation of the species. Dive recorders indicated that foraging-type movements of some of these tagged seals occurred over both the continental shelf and north of the shelf, suggesting that both areas may be important to ringed seals during the open-water period. Observations of ringed seals near and beyond the outer boundary of the U.S. EEZ in the Arctic Ocean Basin were also documented by marine mammal observers during a research geophysical

survey conducted in the summer of 2010.

The testing and training activities described in the Navy's exclusion request are temporally limited, localized, and small in scale. Based on our analysis of past Navy activities in the area, we think it is unlikely that modifications to such activities would be required if the particular area is designated as critical habitat (beyond modifications necessary to avoid impacts to ringed seals). However, we defer to the Navy's assessment of the critical importance of these activities to national security and acknowledge that any possibility of modifications could have adverse impacts on activities important to national security. The Navy has an existing obligation to consult with NMFS under section 7(a)(2) of the ESA to ensure the activities it funds or carries out are not likely to jeopardize the continued existence of the Arctic ringed seal, regardless of whether or where critical habitat is designated for the species. Aside from the Navy's training and testing activities, we are aware of few other Federal actions that would be expected to affect the particular area requested for exclusion.

In the revised proposed rule, we found that the benefits of excluding the requested area due to national security impacts outweighed the benefits of designating this area as critical habitat for the Arctic ringed seal, and exclusion of the area is not expected to result in the extinction of the species. As discussed in the Summary of Comments and Responses section of this final rule, we received public comments that expressed opposition to the exclusion and requested that we reduce or better justify it. In response to public comments, we followed up with the Navy and requested any additional information the Navy could provide regarding the size of the area requested for exclusion and how the Navy's activities would be impacted by the critical habitat designation.

In its written response, the Navy explained that to conduct ICEXs, the ice floe must meet strict criteria to support a camp and runway, such as thickness, lack of pressure ridges for the runway portion, and adjacent first-year and second-year ice. The Navy stated that given the variable nature of Arctic sea ice suitable to support the establishment of ice camps, the Navy's ICEX program requires flexibility for the area within which an ice camp may be established, as a location cannot be selected until just before the start of ICEX. The Navy explained that once established ice camps drift long distances (for example, as much as 100 miles) due to ocean currents and that the requested exclusion area ensures that the ice camp always remains within the bounds of that area for the entirety of ICEX.

The Navy qualified that because it has not consulted with NMFS under section 7 on Arctic ringed seal critical habitat, and because Navy tactics, technologies, and training events evolve over time, any descriptions of probable impacts to military readiness of designating the area requested for exclusion are necessarily in part theoretical. The Navy explained that the specific requirements for Navy camps along with the ephemeral nature of ice floes significantly limits the physical space in which Navy activities may occur, even apart from avoiding impacts to critical habitat. The Navy stated that it is not inconceivable that a warming climate would further reduce available space suitable for the Navy's activities, and if site selection of the camp were further constrained—*i.e.,* if Navy had to avoid locations in which its activities could have adverse impacts on the sea ice essential features—a suitable location may not be found, and necessitate cancellation of an exercise, which would result in impacts to Navy readiness. The Navy also stated that if impacts to the critical habitat were determined to be unacceptable in a future section 7 consultation, it would not be possible to shift ICEX to a suitable area not designated as critical habitat given the proposed boundaries of the designation. The Navy emphasized that the area requested for exclusion is uniquely suited for Navy training and testing in direct support of the National Command Authority's National Security Strategy in the Arctic region.

With regard to Office of Naval Research activities for which the Navy requested the western boundary of the proposed exclusion be extended one degree west, the Navy explained that these research activities include the deployment of moored acoustic sources that transmit intermittently year-round for the purpose of developing capabilities of navigating gliders or unmanned vehicles that can observe effects of climate change. The Navy described that the deployment or recovery of equipment may involve the use of an icebreaking vessel, which may remove or break up sea ice suitable for ringed seal basking and molting or birth lairs. The Navy stated that because locations to deploy and recover research equipment are pre-selected and there is little flexibility, there is similarly little to no flexibility in conducting icebreaking activities. The Navy discussed that for this reason, if NMFS required modifications to these research activities in a future section 7 consultation to avoid impacts to the critical habitat—such as seasonal or spatial avoidance areas or not breaking ice which has certain conditions—it would have significant impact on these activities. The Navy stated that understanding changing Arctic conditions is critical for maintaining U.S. naval effectiveness and ensuring national security capabilities.

We recognize that there are limited data currently available to inform our evaluation of the conservation value to the Arctic ringed seal of the particular area requested for exclusion. However, we do not think this portion of ringed seal habitat contains features that are not found throughout the specific area designated as critical habitat, nor that exclusion would inhibit protection of the physical and biological features essential to the conservation of the species. Therefore, given the Navy's specific justification regarding potential impacts of the critical habitat designation on its military readiness activities that occur within the area requested for exclusion, we have concluded that the benefits of excluding this particular area due to national security impacts outweigh the benefits of designating this area as critical habitat for the Arctic ringed seal. Moreover, failure to designate this area as critical habitat is not expected to result in the extinction of the species because the area is small in comparison to the entirety of the area we are designating as critical habitat, we have no reason to believe it is more valuable for Arctic ringed seals than other portions of the critical habitat based on the best information currently available, and threats to Arctic ringed seals in this area (including habitat-related threats) from Federal actions will continue to be subject to section 7 consultations. In addition, few to no other Federal actions are anticipated to occur in this particular area that would no longer be subject to consultation regarding impacts to ringed seal critical habitat if this area is excluded. Consequently, we are excluding this area from the designation of critical habitat for the Arctic ringed seal, and we have adjusted the critical habitat boundaries accordingly. We modified the curvilinear southern boundary of the exclusion area recommended by the Navy to simplify its delineation while still including the full area the Navy recommended, resulting in a slightly larger excluded area (about 0.5 percent more area).

As explained in the Final Impact Analysis Report, the total incremental costs associated with designating the entire area identified as meeting the definition of critical habitat for the Arctic ringed seal over the next 10 years, in discounted present value terms, are estimated to be about $726,000 (discounted at 7 percent). The total incremental costs associated with the particular area excluded, which stem from administrative costs that would have been incurred from adding critical habitat analyses to consultations on the Navy's ICEX activities over the next 10 years, are estimated to be $12,000 (discounted at 7 percent).

Final Critical Habitat Designation

We are designating as critical habitat a specific area of marine habitat in Alaska and offshore Federal waters of the Bering, Chukchi, and Beaufort seas, within the geographical area presently occupied by the Arctic ringed seal. This critical habitat area contains physical or biological features essential to the conservation of Arctic ringed seals that may require special management considerations or protection. We exclude from the designation a particular area of marine habitat north of the Beaufort Sea shelf that is used by the Navy for training and testing activities based on our finding that the benefits to national security of exclusion outweigh the benefits of designation. We have not identified any unoccupied areas that are essential to the conservation of the Arctic ringed seal, and thus we are not designating any such areas as critical habitat. In accordance with our regulations regarding critical habitat designation (50 CFR 424.12(c)), the map we include in the regulation, clarified by the accompanying regulatory text, constitutes the official boundary of the critical habitat designation.

Effects of Critical Habitat Designation

Section 7(a)(2) of the ESA requires Federal agencies to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. 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 (50 CFR 402.02). Federal agencies must consult with us on any agency action that may affect listed species or critical habitat. During interagency consultation, we evaluate the agency action to determine whether the action is likely to adversely affect listed species or critical habitat. The potential effects of a proposed action may depend on, among other factors, the specific timing and location of the action relative to the seasonal presence of essential features or seasonal use of critical habitat by listed species for essential life history functions. Although the requirement to consult on an action that may affect critical habitat applies regardless of the season, NMFS addresses spatial-temporal considerations when evaluating the potential impacts of a proposed action during the ESA section 7 consultation process. For example, if an action with short-term effects is proposed during a time of year that sea ice is not present, we may advise that consequences to critical habitat are unlikely. If we conclude in a biological opinion pursuant to section 7(a)(2) of the ESA that the agency action would likely result in the destruction or adverse modification of critical habitat, we would recommend one or more reasonable and prudent alternatives to the action that avoid that result.

Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat. NMFS may also provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where (among other reasons): (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which consultation has been completed if those actions may affect designated critical habitat for the Arctic ringed seal. Activities subject to the ESA section 7 consultation process include activities on Federal lands as well as activities requiring a permit or other authorization from a Federal agency (*e.g.,* a section 10(a)(1)(B) permit from NMFS), or some other Federal action, including funding (*e.g.,* Federal Highway Administration or Federal Emergency Management Agency funding). Consultation under section 7 of the ESA is not required for Federal actions that do not affect listed species or designated critical habitat, and is not required for actions on non-Federal and private lands that are not carried out, funded, or authorized by a Federal agency.

Activities That May Be Affected by Critical Habitat Designation

Section 4(b)(8) of the ESA requires, to the maximum extent practicable, in any regulation to designate critical habitat, an evaluation and brief description of those activities that may adversely modify such habitat or that may be affected by such designation. A variety of activities may affect Arctic ringed seal critical habitat and, if carried out, funded, or authorized by a Federal agency, may be subject to ESA section 7 consultation. Such activities include: In-water and coastal construction; activities that generate water pollution; dredging; commercial fishing; oil and gas exploration, development, and production; oil spill response; and certain military readiness activities. Section 7 consultations must be based on the best scientific and commercial information available, and outcomes are case-specific. Inclusion (or exclusion) from this list, therefore, does not predetermine the occurrence or outcome of any section 7 consultation. However, as explained above, based on our review of prior consultations in the area, we have not identified a circumstance in which project modifications would be necessary solely to avoid impacts to Arctic ringed seal critical habitat, as it is likely any such modifications would also be necessary to avoid impacts to the species.

Private or non-Federal entities may also be affected by the critical habitat designation if a Federal permit is required, Federal funding is received, or the entity is involved in or receives benefits from a Federal project. These activities would need to be evaluated with respect to their potential to destroy or adversely modify Arctic ringed seal critical habitat. For ongoing activities, this designation of critical habitat may trigger reinitiation of past consultations. Although we cannot predetermine the outcome of section 7 consultations, we do not anticipate at this time that the outcome of reinitiated consultations would likely require project

modifications because habitat-related effects on Arctic ringed seals would likely have been assessed in the original consultation. We are committed to working closely with other Federal agencies to conduct any reinitiated consultations in an efficient and streamlined manner to the maximum extent possible and consistent with our statutory and regulatory requirements.

Summary of Comments and Responses

We solicited comments on the revised proposed rule to designate critical habitat for Arctic ringed seals and the associated Draft Impact Analysis Report during a 90-day comment period and held three public hearings, as described above. We also contacted Federal, State, Tribal, and local agencies, and other interested parties by mail and invited them to comment on the revised proposed rule, and we issued news releases and published notices in local newspapers summarizing the revised proposed rule and inviting public comments. We received fifty unique written comment submissions and testimony from seven people during the public hearings.

In addition, we solicited peer review from three reviewers of our evaluation, interpretation, and use of available data regarding what areas meet the definition of critical habitat in the revised proposed rule. The peer reviewers generally agreed that we relied on the best available data regarding the Arctic ringed seal's habitat requirements and generally concurred with our application of this information in determining specific areas that meet the definition of critical habitat, except for some particular aspects that we address below in our responses to peer reviewer comments. We also solicited peer review from three reviewers of the information we considered in the Draft Impact Analysis Report for the proposed designation. The peer reviewers found the information considered in the Draft Impact Analysis Report to be thorough and analyzed using appropriate methods. Most of the peer reviewers provided additional information, clarifications, and suggestions to further inform and improve the analyses. Some peer reviewers provided comments of an editorial nature that noted minor errors in the revised proposed rule or Draft Impact Analysis Report and offered non-substantive but clarifying changes in wording. We have addressed these editorial comments in the final rule and the Final Impact Analysis Report, as appropriate. Because these editorial comments did not result in substantive changes to the final rule, we have not detailed them here. The peer reviewer comments are available online (see *Information Quality Act and Peer Review* section). A few peer reviewers volunteered comments related to aspects of the proposed designation that were outside the scope of the requested reviews. We address those comments below in our responses to public comments.

We have reviewed and fully considered all comments and significant new information received from peer reviewers and the public. Summaries of the substantive comments received and our responses are provided below. As some peer reviewer and public comments were similar, we have, in certain cases, combined the comments, and respond to both the peer reviewer and public comments in the *Peer Review Comments* section below. General comments that did not provide information pertinent to the revised proposed rule have been noted but are not addressed further here. We have not responded to comments or concerns outside the scope of this rulemaking, such as comments disagreeing with NMFS's prior decision to list the Arctic ringed seal as threatened under the ESA.

Peer Review Comments

Evaluation of Critical Habitat

Comment 1: We received comments from the three peer reviewers and several other commenters related to our proposed delineation of the southern boundary of critical habitat. Two peer reviewers, as well as two other commenters, recommended that we identify winter-spring Bering Sea ice edge foraging habitat of subadults as an additional essential feature of Arctic ringed seal critical habitat and base the southern boundary of critical habitat on the position of the ice edge for March or April rather than May to include areas that contain this feature. These peer reviewers and commenters referred to information on the movement and dive behavior of tagged subadult ringed seals in the vicinity of the Bering Sea ice edge in winter and spring (Crawford *et al.* 2012a, 2019). The peer reviewers further noted that the seasonal pattern of southern ice edge use by subadults is distinct from adults and discussed reasons why it may be important habitat to this age class, including for winter foraging. The third peer reviewer commented that our description of the findings of Crawford *et al.* (2012a) understated data showing that almost all tagged subadults (11 of 12) wintered in Bering Sea ice edge habitat (Crawford *et al.* 2019). The peer reviewers and commenters stated that the first few years of life after seals are weaned are an important life history period for maintaining the population.

Response: We thoroughly considered the information available on winter-spring use of Bering Sea ice edge habitat by subadult Arctic ringed seals. Regarding our description of the findings of Crawford *et al.* (2012a), our intent was not to downplay those data, but rather to explain our consideration of this information relative to our reasoning that the southern boundary of the specific area delineated for the sea ice essential features is also appropriate for defining the southern extent of where the primary prey resources essential feature occurs. We have clarified in the preamble to this final rule that almost all of the tagged subadult ringed seals monitored during the studies cited by the peer reviewer overwintered in Bering Sea ice edge habitat. The study by Crawford et al. (2012) provides information on certain aspects of winter-spring habitat in the Bering Sea used by tagged subadult ringed seals, such as distance to the southern ice edge, sea ice concentration, and water depth. However, there is insufficient information available at this time to identify what particular habitat characteristics are important determinants of subadult ringed seal use of such habitat, and to assess how those habitat characteristics provide for the species' life history requirements such that they are essential to the conservation of the Arctic ringed seal. We recognize that the survival of subadult ringed seals is important to the conservation of Arctic ringed seals and that subadults may select habitat differently than adults. However, the comments did not include any additional data or specific information to describe the physical or biological features that characterize this habitat, or to evaluate its importance to the conservation of the Arctic ringed seal, and we are not aware of any such data or information. Consequently, we have not identified ice edge habitat for overwintering subadults as an essential feature of Arctic ringed seal critical habitat. We note, however, that the ESA allows us to consider revising the critical habitat designation if, in the future, new information becomes available that indicates revision may be warranted. With regard to identification of critical habitat for the primary prey resources essential feature, see our response to Comment 31.

Comment 2: One peer reviewer and several other commenters stated that because Arctic ringed seal whelping occurs from mid-March through April it would be more appropriate to base the southern boundary of critical habitat on

the position of the ice edge for March or April rather than for May. The commenters expressed concern that because ice conditions fluctuate, areas south of the proposed southern boundary may be important for ringed seal whelping in some years, with one commenter suggesting that the timing of life-cycle activities is changing, for example basking is sometimes observed before May, which they believe also supports designating critical habitat further south. Two commenters also noted that because the seals move with the ice as it contracts northward, the May ice edge is largely inhabited by the same seals that previously occupied the ice edge further south. In addition, a commenter stated that we should clarify our statement that the majority of the limited detections of pups during aerial surveys of the Bering Sea (conducted in 2012 and 2013) occurred in Norton Sound. The commenter also suggested that we seek additional records of ringed seals and pups in the Bering Sea from Outer Continental Shelf Assessment Program (OCSEAP) cruises and a bowhead whale survey conducted in 1979, and stated that the historical presence of whelping ringed seals on the Bering Sea ice front in April indicates that it served as suitable habitat; therefore, discounting April ice because of recent deterioration of the ice implies that the critical habitat will shrink continuously as the ice further diminishes. One commenter also stated that because it is important to account for the habitat needs of young Arctic ringed seals that require sea ice for molting beginning in mid-April, the southern boundary should be based on the position of ice edge for March. In contrast, the Marine Mammal Commission concurred with our use of the estimated position of the sea ice edge in May to delineate the southern boundary of critical habitat.

Response: We understand the concern expressed by the peer reviewer and commenters. However, as we explained in the revised proposed rule and the Specific Areas Containing the Essential Features section of this final rule, in determining the southern boundary, we focused on delineating the southern extent of where the sea ice essential feature associated with birth lairs is found on a consistent basis. We relied on this essential feature in determining the southern boundary because peak molting (for adults) takes place later in the spring as sea ice retreats northward, and also because the annual extent and timing of sea ice is especially variable in the southern periphery of the Arctic ringed seal's habitat in the Bering Sea. Although April is the peak month for ringed seal whelping, snow-covered sea ice would need to persist for several weeks for pups to be sheltered and nursed in birth lairs. Taken as a whole, we continue to conclude that information available on the spring distribution of ringed seals in the Bering Sea suggests that the median position of the ice edge for May provides the best estimate of the southern extent of where the birth lair essential feature occurs on a consistent basis. We recognize that some ringed seals may use sea ice to whelp or molt south of the areas we are designating as critical habitat, depending upon ice conditions in a given year. However, as we stated in the revised proposed rule and this final rule, given the variability in the annual extent and timing of sea ice in this southernmost portion of the Arctic ringed seal's range in the Bering Sea, these waters are unlikely to contain the sea ice essential feature on a consistent basis in more than limited areas. This does not imply that habitat in the Bering Sea not included in the designation is unimportant to Arctic ringed seals, or may not support their conservation. Rather, the designation delineates the subset of habitat within the area occupied by the Arctic ringed seal in U.S. waters that meets the definition of critical habitat under the ESA based on the best scientific data currently available, and includes the majority of molting and reproductive habitat in the Bering Sea.

Regarding the comments concerning our statement in the revised proposed rule that the majority of ringed seal pups documented during aerial surveys were located in Norton Sound, as indicated above, this general spatial pattern was similarly reported in terms of pup densities in the recent publication by Lindsay *et al.* (2021), which we reference in this final rule. As for the comment concerning additional records of ringed seals and pups in the Bering Sea, the commenter did not provide any specific reference information, and we thoroughly considered all available evidence on the spring distribution of ringed seals in the Bering Sea and where they may whelp, including information from older OCSEAP and other surveys where references were readily available.

Comment 3: One peer reviewer commented that quality of Arctic ringed seal whelping habitat under climate change could be further considered, in particular regarding what is considered the sufficient depth of snowdrifts for birth lairs. The peer reviewer stated that it could be surmised that pup survival is variably affected by a continuum of snow depths, and argued that there is insufficient information available to establish a specific threshold snowdrift depth for the birth lair essential feature. The peer reviewer pointed out that the few studies that have measured snow depths at birth lairs were completed several decades ago before the modern period of substantial declines in sea ice, and noted that because these studies were not designed to measure snow depth requirements for successful whelping, per se, they are not necessarily the best source for determining a specific threshold snowdrift depth for birth lairs. The peer reviewer also commented that snow accumulation on sea ice is affected by several factors that have dramatically changed in recent years, for example, late formation of sea ice in the fall limits snow accumulation that contributes to lair construction and maintenance; and suggested that in recent years, it is possible that somewhat marginal whelping habitat is already found in the Pacific Arctic region, in the Bering and Chukchi seas in particular. Another commenter stated that because ringed seals will necessarily be faced with decreasing snow for birth lairs, we should base the minimum snowdrift depth for birth lairs on a measurement closer to the minimum depths that support ringed seal survival. In addition, a commenter stated that the snow depth data we relied on were typically from higher latitudes than the Bering Strait region, where habitat conditions are very different, and that it is well known that on-ice whelping occurs in this region.

Response: We based the minimum snowdrift depth for the proposed birth lair essential feature on the best scientific data available from measurements taken at Arctic ringed seal birth lairs during studies conducted in a number of different locations within an 11-year time span to account for variability in environmental conditions. We recognize that the minimum snowdrift depth sufficient for birth lairs is unlikely to be a sharp threshold, so there may be many cases where successful birth lairs are created and maintained by ringed seals in snowdrifts shallower than that minimum depth. We also acknowledge that there may be regional and local variability in the conditions of sea ice habitat used by Arctic ringed seals for birth lairs. However, we are not aware of available data that would allow us to define the birth lair essential feature with more specificity on a regional or local basis. We note that although we considered the average minimum

snowdrift depth measured at birth lair sites in Alaska, the average from these studies is based on data from fewer years over a shorter time span than from all the available studies combined (see Physical and Biological Features Essential to the Conservation of the Species section) and is more likely to be biased if an anomalous weather pattern occurred during a more limited timeframe. As we indicated in the revised proposed rule, given the limitations of the best scientific data available, for the birth lair essential feature, we defined snowdrifts of sufficient depth as ''typically'' at least 54 cm deep. This wording is to inform the reader that the minimum snowdrift depth is provided as guidance regarding where birth lairs may occur, rather than as a specific threshold snowdrift depth. With regard to the comment that the minimum snowdrift depth should be based on the minimum depths that support ringed seal survival, we are not aware of available scientific data that could provide a basis for identifying such depths.

Regarding changes in Arctic ringed seal whelping habitat under climate change, in the rule listing the Arctic ringed seal as threatened under the ESA, we recognized that the depths and duration of on-ice snow cover are projected to decrease substantially throughout the species' range (77 FR 76706; December 28, 2012). Thus, habitat conditions for ringed seal whelping are expected to deteriorate over time, in particular within the southern portion of the species' range. Although we acknowledge that some Arctic ringed seals may whelp and/or nurse their pups without the protection of lairs where snow depths are insufficient or lairs have collapsed, available data indicate that under these circumstances pup mortality is substantially higher as a result of hypothermia and predation. In addition, it is very likely that decreased snow cover over birth lairs would leave Arctic ringed seal pups more accessible to Arctic foxes. Furthermore, both polar bears and Arctic foxes would require less time to detect and attempt to catch Arctic ringed seal mothers and pups that are not concealed in birth lairs. Predation on pups by gulls and ravens is typically prevented by the pups' concealment in subnivean lairs. However, when the pups are prematurely exposed, predation by birds can be substantial (*e.g.,* Lydersen and Smith 1989). Alaska Native hunters from Kotzebue, Alaska, have similarly reported that when snow melts early, there is no protection for ringed seal pups from predators such as jaegers and ravens, as well as foxes (Huntington *et al.* 2017a).

Comment 4: One peer reviewer commented that the average life span of ringed seals that we identified is low relative to sample collections from the subsistence harvest in Alaska between 2000 and 2019, which indicate that life span, as well as reproductively active age, is likely longer than 25 years, and the reviewer summarized other related information (Quakenbush *et al.* 2020; Alaska Depatment of Fish and Game (ADF&G), unpublished data).

Response: We have updated the Description and Natural History section of this final rule to reflect the peer reviewer's comment regarding ringed seal life span and reproductively active age.

Comment 5: One peer reviewer commented that our description of the ''open water foraging period'' as when Arctic ringed seals feed most intensively is misleading without further explanation, as it implies this is the most important period for feeding, which is not correct, and recommended that the name for this period be changed. The peer reviewer stated that seasonal changes in ringed seal weight and/or blubber reserves documented by several studies indicate that ringed seals are thinnest in spring and summer and that they begin to regain fat stores toward the end of the open-water season and continuing into winter. In addition, the peer reviewer provided information on seasonal changes in the dive rate (an index of foraging effort) (Crawford *et al.* 2019; ADF&G, unpublished data), which overall was lower during July–September than October–February. The peer reviewer suggested that the reason why ringed seals are moving more but feeding less, or at least gaining little weight during the open-water period, may be due to what prey are available. The peer review noted that Lowry *et al.* (1980a) reported a seasonal switch from Arctic cod in winter to invertebrates in later summer, and suggested that invertebrate prey that are numerically more available but patchy in their distribution may explain an increase in movement and foraging intensity in summer without a corresponding weight gain.

Response: To address the peer review's comments, we have revised the statement regarding seasonal changes in ringed seal blubber reserves in the *Distribution and Habitat Use* section of this final rule to clarify that the seals lose a significant proportion of their blubber mass in late winter to early summer, and then replenish their blubber reserves during late summer or fall and into winter. In addition, in the preamble to this final rule we refer to the ''open-water period'' instead of the ''open-water foraging period.''

Comment 6: One peer reviewer commented that we should address a new publication by Thometz *et al.* (2021) in our discussion of the ''basking period.'' The peer reviewer noted that this study found that there were significant, but short-term, increases in captive ringed seal resting metabolic rate during molt, which is in contrast to the finding of Ashwell-Erickson et al. (1986) that resting metabolic rate in spotted seals decreased during molt. The peer reviewer also commented that the earlier molt documented for a ringed seal kept at local photoperiod in California, as compared to two ringed seals kept at local photoperiod in Alaska, suggests some flexibility in the timing of molt.

Response: We have updated the discussion of the basking period in the *Distribution and Habitat Use* section of this final rule to incorporate the information on ringed seal metabolic rate during the molt reported by Thometz *et al.* (2021). We disagree that photoperiod-driven molt timing reflects flexibility in the process, especially if the reviewer meant to suggest that this implies ringed seals may be able to shift the timing of critical life history functions as a way of adapting to earlier snow melt and ice breakup. The tight linkage between photoperiod and molt timing actually suggests a fairly rigid, rather than a flexible process, constrained by complex, highly evolved, long chains of dependence in photo-chemical and hormonal signaling pathways (Walker *et al.* 2019). In addition, photoperiod is not something we expect to change with Arctic warming (Walker *et al.* 2019). Therefore, we would not expect that the timing of molt or other critical life history events that are hormonally linked to photoperiod to naturally shift to track the loss of sea ice and snow cover that threaten Arctic ringed seals. Perhaps the reviewer meant that molt timing could be flexible in the sense that ringed seals could move latitudinally to align hormonal timing with local snow/ice conditions. However, the study by Thometz *et al.* (2021), which used ringed seals translocated to captive care facilities, doesn't address the capability or likelihood for wild ringed seal individuals to relocate their breeding and molting areas in response to degrading snow/ice habitat; nor does it address whether, on a population basis, shifts in breeding and molting areas can occur as rapidly as suitable habitat is anticipated to be lost.

Comment 7: One peer reviewer suggested adding rainbow smelt to the proposed definition of the primary prey resources essential feature because available diet information for Arctic ringed seals in Alaska indicates that this fish species has increased in importance in the seals' diets in the 2000s (Quakenbush *et al.* 2011, Crawford *et al.* 2015, Quakenbush *et al.* 2020). In addition, another commenter requested that euphausiids and mysids be identified as primary prey resources because they were reported as frequently consumed by ringed seals near Utqiaġvik. A commenter also expressed concern that herring was not identified as a primary prey species. This commenter reported that as a local subsistence hunter, they have observed ringed seals feeding on herring in bays located south of the proposed critical habitat, and suggested that it is likely this is also the case within the area being proposed for designation. In contrast, two other commenters stated that the best scientific information available demonstrates that Arctic ringed seals eat a variety of prey and, therefore, no particular prey species is essential to their conservation. The commenters referred to the status review of the ringed seal (Kelly *et al.* 2010a), which reported that the seals eat a wide variety of prey resources spanning several trophic levels; and also referred to a study by Quakenbush *et al.* (2011), which documented numerous prey species in the stomach contents of ringed seals, and found that ringed seals are consuming a greater diversity of fish species than they did historically.

Response: While we acknowledge that Arctic ringed seals have a diverse diet, and that Quakenbush *et al.* (2011) reported that the diet of Arctic ringed seals in the Alaskan Bering and Chukchi seas shifted between the historic and recent periods toward a greater proportion and diversity of fish during the recent period, we do not interpret this information as indicating that no particular prey species are essential to the seals' conservation. As we discussed in the revised proposed rule, the available data also indicate that certain prey species occupy a prominent role in the diets of ringed seals in waters along the Alaskan coast. Because the seals likely rely on these prey species the most to meet their annual energy budgets, they are an important habitat characteristic that supports the species' conservation. Accordingly, we continue to find that primary prey resources to support Arctic ringed seals compose an essential feature of Arctic ringed seal critical habitat.

We proposed to define primary prey resources to support Arctic ringed seals as Arctic cod, saffron cod, shrimps, and amphipods, based on our assessment of the diet information available for ringed seals in Alaska from studies that relied on stomach content analysis. Our initial goal was to identify a small number of the most important prey species to ringed seals across their range in Alaskan waters, and not just important in a single region or time period. We considered primary prey resources to be those particular prey species that were commonly consumed by ringed seals in more than one region (*i.e.,* Bering, Chukchi, and/or Beaufort seas), and for studies that reported diet information within both an historical and recent period, those particular prey species that were commonly consumed by ringed seals during both periods. However, in response to comments requesting additional prey species be included in the definition of the primary prey resources essential feature, we re-evaluated the information on ringed seal diets in Alaska used to support the proposed definition of this essential feature, along with new diet information provided in a recent report cited in the peer reviewer's comments (Quakenbush *et al.* 2020), to determine if revising the definition of this essential feature may be appropriate.

As noted by the peer reviewer, evidence from the available diet studies indicates that consumption of rainbow smelt by ringed seals in Alaska has increased since about 2000. The studies reported this species as commonly consumed (considered here to be prey items identified in at least 25 percent of ringed seal stomachs): (1) In the Bering and Chukchi seas (by non-pup seals) during the ice-covered and open-water seasons within both the 2016 to 2020 and 2000 to 2015 periods (Quakenbush *et al.* 2020); (2) in the Chukchi Sea (not reported by age class) during the ice-covered and open-water seasons within the 1998 to 2000 period (Quakenbush *et al.* 2011); and (3) near Shishmaref (pups and non-pup seals) during May through July (study results were limited to these specific months) within the 2003 to 2012 period (Crawford *et al.* 2015). With regard to the comment requesting inclusion of euphausiids and mysids as primary prey species, as indicated in the revised proposed rule, Dehn *et al.* (2007; Table 2) found that in the Utqiaġvik vicinity, euphausiids and mysids were commonly consumed by ringed seals (primarily during summer). However, the other diet studies we reviewed did not indicate that ringed seals commonly consumed euphausiids. Mysids were also commonly consumed by pups in the Bering and Chukchi seas within the 2016 to 2020 period during the ice-covered season specifically (Quakenbush *et al.* 2020), but they were otherwise reported only as prey items commonly consumed by ringed seals in these regions during the historical period evaluated (Quakenbush *et al.* 2011, Crawford *et al.* 2015). Regarding the commenter's concern over Pacific herring (*Clupea pallasi*), this species was commonly consumed by non-pup seals near Shishmaref during May through July within the 2003 to 2012 period specifically (Crawford *et al.* 2015), but for the diet studies we reviewed (Lowry *et al.* 1980b, Frost and Lowry 1984, Dehn *et al.* 2007, Quakenbush *et al.* 2011, Crawford *et al.* 2015, Quakenbush *et al.* 2020), this species was not otherwise identified as a commonly consumed prey species. Still, the commenter is a subsistence hunter with knowledge of ringed seals feeding on herring near Bristol Bay, and we note that IK documented for several communities in the Bering Strait and northern Bering Sea regions also indicates that ringed seals feed on Pacific herring, in particular during spawning (*e.g.,* Oceana and Kawerak 2014, Gadamus *et al.* 2015, Huntington *et al.* 2016, 2017c, 2017b).

As described in more detail in the Physical and Biological Features Essential to the Conservation of the Species section of this final rule, the available information on ringed seal diets in Alaska indicate that diet composition and the relative prominence of certain prey species vary both geographically and seasonally, and differences in diet between age classes (pups and non-pup seals), as well as a temporal shift in diet in the Bering and Chukchi seas, have been reported. In addition, ringed seal diet information for the Beaufort Sea is relatively limited. We have therefore revised the regulatory definition of the primary prey resources essential feature to include a description of the seals' most common types of prey, which are small, often schooling fishes, and small crustaceans, and to identify for those types of prey, the prominent prey species in the seals' diets in Alaska. We find that this level of specificity, naming species known to be prominent in Arctic ringed seals' diet but not limiting the definition to only those species, is most appropriate for defining this essential feature based on the best scientific data available. Although in the revised proposed rule we focused on prey species that were commonly consumed in both historical and more recent periods for studies that

provided this information, given the reported increase in occurrence of rainbow smelt in the diets of ringed seals in the Bering and/or Chukchi seas since about 2000, we concluded that it is appropriate to identify rainbow smelt as a primary prey species, along with those primary prey species identified in the revised proposed rule (*i.e.,* Arctic cod, saffron cod, shrimps, and amphipods). Because these prey species were prominent in the diets of ringed seals in Alaska, we conclude that they are essential to the conservation of the Arctic ringed seal. Although other prey items, such as those that commenters requested be identified as primary prey species (*i.e.,* euphausiids, mysids, and Pacific herring), were reported as commonly consumed by ringed seals (per the same 25 percent of stomachs with contents criterion considered above), these reports were more spatially and temporally limited. We identify the primary prey resources essential feature in this final rule as follows: Primary prey resources to support Arctic ringed seals, which are defined to be small, often schooling, fishes, in particular, Arctic cod, saffron cod, and rainbow smelt; and small crustaceans, in particular, shrimps and amphipods.

Comment 8: One peer reviewer commented that although there are not satellite tracking data available indicating ringed seals haul out on land during the molt, they likely do not need to, because sea ice is available during the molting period. The peer reviewer noted that four tagged ringed seals (three adults and one pup) were documented hauled out on land at other times (Quakenbush *et al.* 2019), which the reviewer suggested indicates that ringed seals could haul out on land to molt if necessary. In addition, with regard to the discussion of sea ice suitable for molting, the peer reviewer requested that we add references to support the following statement: ''If Arctic ringed seals were unable to complete their annual molt successfully, they would be at increased risk from parasites and disease.''

Response: We recognize that Arctic ringed seals have sometimes been observed hauled out on land, typically during the open-water period following their annual molt. However, several studies (Hamilton *et al.* 2015, Lone *et al.* 2019, Von Duyke *et al.* 2020) found that some tagged ringed seals made long excursions offshore to reach sea ice and haul out, even when the ice was in areas that seemed to be suboptimal for foraging or energetically costly to get to. This, and the fact that observations of ringed seals ashore remain rare, are consistent with our conclusion that the best scientific data available indicate a strong preference by Arctic ringed seals to haul out on sea ice during the molt, perhaps reflecting fitness tradeoffs such as predation risk associated with hauling out on shore. With regard to the statement concerning risk from parasites and disease, it is reasonable to infer that if ringed seals' molt becomes more frequently interrupted by being forced to spend inordinate amounts of time in water while completing their annual molt, they could incur increased energetic costs and risk microbial infections of the skin (Fay *et al.* 1978). We have revised the statement in question in the preamble of this final rule to reflect this reasoning.

Comment 9: One peer reviewer felt that referring to the median ice edge as a ''contour line'' is somewhat confusing, as this term is often used in the context of the marine environment to refer to bathymetric contours. The peer reviewer suggested it might be more straightforward to use different terminology, *e.g.,* ''the southern boundary,'' or to equate the median May ice edge with the nearest bathymetric contour to define a more natural boundary.

Response: We have modified the language used in this final rule preamble to instead refer to the ''line representing'' the sea ice edge. We appreciate the suggestion to use the nearest bathymetric contour line to define the southern boundary of critical habitat. However, the depth contours do not align well with the position and shape of the median May ice edge, so we have not based the southern boundary of critical habitat for Arctic ringed seals on a depth contour.

Comment 10: In reference to our discussion of primary sources of potential threats to the essential features that may require special management considerations or protection, one peer reviewer suggested that the analysis by Quakenbush *et al.* (2019) of tagged Arctic ringed seal movements relative to both oil and gas lease areas in the Chukchi and Beaufort seas, and shipping traffic in the northern Bering and Chukchi seas, could be used to describe the temporal overlap of ringed seals and these activities.

Response: We appreciate this suggestion. However, our evaluation of oil and gas activity and marine shipping and transportation as sources of threats that may require special management considerations or protection focuses on potential impacts to each of the essential features of Arctic ringed seal critical habitat. Because the analysis referenced by the peer reviewer does not pertain directly to effects of these activities on the essential features, we have not incorporated the suggested information into that evaluation.

Comment 11: One peer reviewer commented that of the four sources of potential threats for which we concluded the essential features may require special management considerations or protection (climate change, oil and gas activity, marine shipping and transportation, and commercial fisheries), only oil and gas activity and commercial fisheries typically have a Federal nexus requiring ESA section 7 consultation. The peer reviewer stated that although climate change is the source of the most serious habitat threats, it does not appear to lend itself to management that would benefit Arctic ringed seals now or in the future. Similarly, several other commenters asserted that our finding that the essential features may require special management considerations or protection relied on threats that are nonexistent or minor compared to climate change. Commenters further asserted that this finding is not consistent with ESA requirements because we did not identify any specific management considerations or measures that would be useful in protecting the essential features or identify how such measures would be implemented. Commenters also stated that existing regulatory mechanisms such as the MMPA and other Federal, State, and local regulatory mechanisms already sufficiently protect the species from threats and impacts. Two of the commenters further asserted that the identified essential features do not support designation of critical habitat because there are no special management considerations or protections that would be useful in protecting these features.

Response: In accordance with section 3(5)(A)(i) of the ESA and our implementing regulations at 50 CFR 424.12(b)(1)(iv), we evaluated whether each of the essential features ''may require special management considerations or protection.'' An important word in this statutory phrase is ''may.'' We must show that such special management considerations or protection may be needed now or in the future, not that the habitat features definitively will require such considerations or protection. Moreover, 50 CFR 424.02 defines special management considerations or protection to ''mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.'' In other words, any

relevant method or procedure qualifies as special management considerations or protection. Even if specific management measures are presently undeterminable, they may become determinable in the future because of continuing advances in science and technology. (*See Alaska Oil & Gas Ass'n* v. *Salazar,* 916 F. Supp. 2d 974, 990–992 (D. AK 2013) (''The Service has shown that someday, not necessarily at this time, such considerations or protection *may* be required . . . For example, the evidence in the record showing that sea ice is melting and that it will continue to melt in the future, perhaps at an accelerated rate, is more than enough proof that protection *may* be needed at some point''), reversed on other grounds by *Alaska Oil & Gas Ass'n* v. *Jewell,* 815 F.3d 544 (9th Cir. 2016)). Additionally, the question is whether the essential features identified may require special management considerations or protection, not whether all threats to those features, including climate change, could be cured through management. For example, if sea ice with snow depths suitable for construction of subnivean lairs becomes more scarce in the future, special management considerations or protections for remaining ice may become necessary, not to prevent or reverse the effects of climate change, but to further protect use of the remaining essential features. As discussed in detail in the Special Management Considerations or Protection section of this final rule, the ''may require'' standard is met or exceeded with respect to each of the essential features of Arctic ringed seal critical habitat.

Draft Impact Analysis Report

Comment 12: One peer reviewer suggested that the analysis of the impacts of the critical habitat designation could be put into perspective by including a brief reference to the rate of climate change in the Arctic. The peer reviewer commented that oil and gas is the industry most affected by the critical habitat designation, and yet those activities are the ones most likely to negatively impact the seals, as well as other marine resources within the area under consideration for designation. Another peer reviewer questioned the language in the Draft Impact Analysis Report that referred to ''long-term reductions in sea ice and on-ice snow depths expected to occur within the foreseeable future,'' given that rapid sea ice loss is already occurring at unprecedented rates. This peer reviewer advised that the analysis would be strengthened and more grounded in current science by acknowledging that GHG emissions are wholly responsible for Arctic sea ice loss. Further, the peer reviewer stated that activities that release GHGs into the atmosphere are ''the'' major contributing factor to climate change and sea ice loss, rather than ''a'' factor, as stated in the report. The peer reviewer noted that the effectiveness of the designation for the species' conservation is, however, most dependent on the elimination of GHG emissions by mid-century, keeping global temperatures from rising beyond 1.5 °C above pre-industrial levels, and consequently minimizing sea ice loss.

Response: We have incorporated a reference to the rate of climate change in the Arctic into the Final Impact Analysis Report, as suggested by the peer reviewer. Although the report contains a limited discussion of climate change and sea ice loss in the Arctic, we discuss this topic in more detail in the Special Management Considerations or Protection section of this final rule. We agree with the peer reviewer's comment that activities that release GHGs are the major contributing factor to climate change and sea ice loss, and we have modified the preamble of this final rule and the Final Impact Analysis Report accordingly. The critical habitat designation can help address potential threats to the species' habitat and mitigate the effects of climate change. Furthermore, it is possible that actions may be taken that could reduce GHG emissions and slow the changes in sea ice habitat, particularly toward the latter part of this century. Arctic ringed seals will increasingly experience the impacts of habitat alteration stemming from climate change and it is therefore important to identify and provide protection under ESA section 7 for the habitat features and areas essential to the species' conservation.

Comment 13: One peer reviewer suggested that it might be informative to compare the estimated incremental administrative costs of future section 7 consultations attributable to the critical habitat designation with financial data (*e.g.,* overall production costs, as well as profits) from certain industries, in particular the oil and gas industry. The peer reviewer commented that other industry expenditures associated with leasing, exploration, drilling, etc., surely must greatly exceed potential incremental administrative costs of consultations.

Response: Although the information suggested by the peer reviewer could provide additional perspective on the estimated incremental costs of future section 7 consultations for oil and gas related activities, we determined that the information considered in the Final Impact Analysis Report provides sufficient context for the analysis. We also note that this report includes information on average annual receipts for oil and gas operations identified as potentially subject to future section 7 consultations addressing the critical habitat.

Comment 14: One peer reviewer commented that it is important to underscore educational, scientific, and non-consumptive use benefits from increased public awareness generated by the critical habitat designation process itself. Similarly, another commenter stated that the designation process educates managers, state and local governments, and the public regarding the conservation value of critical habitat areas to listed species, which can inform management decisions, conservation programs, and recovery efforts. The peer reviewer also suggested that the potential role of marine mammals in general as the ''canary in the coal mine'' on climate change is something useful for scientists as well as the general public. In addition, the peer reviewer stated that the distributional impacts of the designation are importantly in favor of Alaska Native communities, who depend on marine resources for subsistence, employment, and income. Another peer reviewer commented that the discussion of the positive impacts of the designation to community resilience of underserved Arctic coastal communities could be strengthened.

Response: We agree with the peer reviewers and the other commenter that the critical habitat designation for the Arctic ringed seal can have a number of ancillary and indirect economic, socioeconomic, cultural, and educational benefits, such as those described in these comments. Such benefits are discussed in detail in Section 4 of the Final Impact Analysis Report, and additional information regarding potential benefits has been incorporated into that section of the report as appropriate. As discussed in this report, all of the types of benefits identified are at least partially co-extensive with those afforded through the ESA listing of the species (*i.e.,* they are not attributable solely to critical habitat designation). Data are not available to determine the extent to which such benefits would be attributable specifically to critical habitat designation.

Comment 15: One peer reviewer stated that while they did not disagree with the conclusion in the Draft Impact Analysis Report that there are likely some incremental benefits from

designating critical habitat for the Arctic ringed seal, they found it unclear if the information in the report supports a finding that there is a net benefit (and also questioned whether such a finding is necessary). The peer reviewer suggested that the report clearly set out (qualitatively) how the designation would result in an incremental change in benefits from the baseline (without critical habitat). The peer reviewer also commented that for some of the benefits ascribed to the designation (*e.g.,* support of subsistence activities and commercial fishing), it would seem there needs to be an incremental change in the quality of the habitat from the baseline, which suggests the designation would result in a change to activities that impact the critical habitat, even though section 7 consultations are not expected to result in additional project modification requests attributable to the designation. The peer reviewer suggested that the report further characterize the ability of the designation to influence the design of projects prior to consultation, or include additional information regarding other ways that the designation could result in an incremental change in habitat quality. Alternatively, the peer reviewer suggested focusing on benefits they believe have stronger support (education, scientific knowledge, cultural support, and non-use values associated with habitat protection). In contrast, another peer reviewer stated that the report provided a very thorough summary of the expected costs and benefits and made a well-grounded assessment of the longer-term costs/benefits versus shorter-term costs/benefits.

Response: The ESA requires us to designate critical habitat to the maximum extent prudent and determinable for threatened and endangered species listed under the ESA (16 U.S.C. 1533(a)(3)(A)(i)). Section 4(b)(2) of the ESA requires us to designate critical habitat on the basis of the best scientific data available after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. In addition, section 4(b)(2) describes an optional process by which we may go beyond the mandatory consideration of impacts and weigh the benefits of excluding any particular area against the benefits of designating it. We did not intend to convey in the Draft Impact Analysis Report that the ESA requires any showing that a designation will result in net benefits. We have revised the Final Impact Analysis Report to better communicate the purpose and need for this analysis. In addition, in response to the peer reviewers' comments and suggestions, we expanded Section 4 of the Final Impact Analysis Report to incorporate additional details presented in the revised proposed rule regarding ways in which critical habitat designation for the Arctic ringed seal can result in incremental benefits. Although we do not anticipate modifications to Federal actions expressly to avoid impacts to the critical habitat as distinct from impacts to ringed seals, we note that this does not mean such modifications could not occur in situations we are unable to predict at this time.

Several non-regulatory benefits are expected to result from the designation. Critical habitat designation provides specific notice to Federal agencies and the public of the geographic areas and physical and biological features essential to the conservation of the species, and information about the types of activities that may reduce the conservation value of the habitat. This information will focus future section 7 consultations on key habitat attributes. Designation of critical habitat can also inform Federal agencies of the habitat needs of the species, which may facilitate using their authorities to support the conservation of the species pursuant to section 7(a)(1) of the ESA, including to design proposed projects in ways that avoid, minimize, and/or mitigate adverse effects to critical habitat from the outset. Public awareness of critical habitat designations may also stimulate voluntary conservation actions by the public, as well as research, education, and outreach activities.

In addition to the benefits of critical habitat to the seals, as detailed in Section 4 of the Final Impact Analysis Report and summarized in the *Benefits of Designation* section of this final rule, other forms of benefits may also accrue. These benefits may be economic in nature (whether market or non-market, consumptive, non-consumptive, or passive), educational, cultural, or sociological, or they may be expressed through beneficial changes in the ecological functioning of the species' habitat, which itself yields ancillary welfare benefits (*e.g.,* improved quality of life) to the region's human population. For example, because the designation is expected to result in enhanced conservation of the Arctic ringed seal over time, residents of the region who value these seals, such as subsistence hunters, may experience indirect benefits. As discussed in Sections 4 and 6 of the Final Impact Analysis report, although available information is insufficient to quantify or monetize the benefits of designation, they are not inconsequential, and the potential incremental economic impacts associated with the designation are modest both in absolute terms and relative to the level of economic activity expected to occur in the affected area (see *Economic Impacts* section).

Public Comments

Essential Features

Comment 16: One commenter recommended that we omit the statement indicating that Arctic ringed seals favor landfast ice as whelping habitat because it is quite likely that the majority of Arctic ringed seals whelp in moving ice, even if highest densities have been reported in shorefast ice.

Response: As we noted in the revised proposed rule, nearly all research on Arctic ringed seal reproduction has been conducted in landfast ice, and although whelping has been observed on both nearshore and offshore drifting pack ice, the potential importance of stable but drifting pack ice to the species' reproduction has not been adequately investigated. In response to this comment, we have modified the related preamble text to clarify that Arctic ringed seals have been ''reported to'' favor landfast ice.

Comment 17: Two commenters suggested that the minimum snowdrift depth proposed for the birth lair essential feature based on research conducted during colder periods may not be applicable if temperatures warm as projected, and they added that some ringed seal populations (*e.g.,* Okhotsk subspecies) do not require subnivean lairs for pup survival. One of the commenters also stated that genetic data indicate that ringed seals have previously survived warmer periods with less snow.

Response: Like most phocid seals, Arctic ringed seals whelp and nurse their pups on sea ice. However, snow-covered lairs are particularly important for Arctic ringed seal pups given that: (1) Arctic ringed seal pups have the longest nursing period of any of the northern phocid species (about 6 weeks); and (2) during the period of whelping and nursing, Arctic ringed seal females and pups are limited in their movements, thus making them even more vulnerable to predation. Further, the Arctic ringed seal is the only ice-associated seal that has evolved to occupy landfast coastal ice, where surface predators are common. When snow depth is insufficient, pups can freeze in their lairs, as documented in

the White Sea by Lukin and Potelov (1978). Further, unseasonal warming and rains will become increasingly common as the climate warms (*e.g.,* Hezel *et al.* 2012), and such events have led to high pup mortality when collapse of lairs was followed by a return to cold temperatures (Lukin and Potelov 1978, Stirling and Smith 2004, Ferguson *et al.* 2005). Moreover, pups not sheltered in lairs would have to expend substantial energy reserves to maintain their core body temperature in such conditions, and would thus be more susceptible to other stressors. Pups in lairs with thin snow cover are also more vulnerable to predation than pups in lairs with thick cover (Hammill and Smith 1989, Ferguson *et al.* 2005), and pups not sheltered in lairs would be particularly vulnerable to predation (see also our response to Comment 3). It has been reported that when lack of snow cover has forced birthing to occur in the open, nearly 100 percent of pups died from predation (Smith *et al.* 1991, Smith and Lydersen 1991).

With regard to Okhotsk ringed seals, Heptner *et al.* (1976) pointed out that lairs ''can be detected only with the help of a dog.'' Kelly *et al.* (2010a) discussed that they were not aware of any attempts to locate subnivean lairs using dogs in the Sea of Okhotsk, and that the extent to which Okhotsk ringed seals rely on lairs is unknown. Further, Kelly *et al.* (2010a) commented that unlike Arctic ringed seals, Okhotsk ringed seal whelping appears largely restricted to areas of drifting pack ice where surface predators are relatively rare (and polar bears are absent from the Sea of Okhotsk), indicating that even if Okhotsk ringed seals have less reliance on lairs than Arctic ringed seals, such differences may be attributable to environmental factors rather than reflecting a universal ability of ringed seals to persist without lairs. The best scientific information available would suggest the Okhotsk population has decreased, but estimates of population size are poor (see Kelly *et al.* 2010a).

As for species persistence during previous warmer periods with less snow, we are uncertain what data from warm periods or years the commenter is suggesting we use instead of the data selected, and we are not aware of any data from previous warm periods that could serve as an appropriate analog for current climatic conditions, nor do we think considering birth lair depth in only the warmest years in the past several decades would provide us with an appropriate data set. We also note regarding warm interglacial periods, that we are not aware of any available information on ringed seal adaptive responses during those periods. A fundamental difficulty in using previous warm periods as analogs for the current climate disruption is that the rate of warming in prehistoric periods is poorly known. The species' resilience to those previous warming events, which may have been slower than the current warming, does not necessarily translate into present-day resilience. Moreover, there may be cumulative effects from climate warming and other anthropogenic impacts that combine to limit the species' resilience to the changes anticipated in the coming decades.

Comment 18: One commenter stated that the birth lair essential feature should be defined to include natural cavities in the sea ice that may also be used for birth lairs. The commenter further stated that we should also expand the definition of the birth lair essential feature to recognize the importance of subnivean haulouts used as resting areas during winter and spring. The commenter stated that to reflect use of these subnivean haulouts as winter resting sites beginning earlier in the season, the southern boundary of critical habitat should be based on the position of the ice edge in March rather than in May.

Response: While we acknowledge that Arctic ringed seal birth lairs may occasionally occur in natural cavities in the sea ice, we do not have data to conclude that this habitat is essential to the species' conservation. It has been suggested that lairs in such ice cavities may provide better protection from predators; however, they also provide less insulation, and the instability of such ice poses the risk of seals being crushed (McLaren 1958). As we discussed in the revised proposed rule, Arctic ringed seals use subnivean lairs for resting, as well as for whelping and nursing pups. Subnivean lairs used for resting have been documented as early as December or January in some areas (Smith *et al.* 1991, Williams *et al.* 2006). However, data on ringed seal use of lairs (and characteristics of those lairs) prior to when seals begin developing and occupying birth lairs are quite limited, and the conservation importance of lairs outside of the whelping and nursing period is less understood. In contrast, there are substantial data indicating the importance of sufficient snow depths for birth lairs. As we discussed in response to Comments 3 and 17 above, high rates of pup mortality due to hypothermia and predation have been reported as a consequence of inadequate snow cover. We therefore focused the subnivean lair essential feature of Arctic ringed seal critical habitat specifically on birth lairs.

Comment 19: Several commenters stated we did not sufficiently justify the exclusion of bottom-fast from the sea ice essential features. Commenters noted that: (1) The bottom-fast ice environment fluctuates throughout the seasons and the under-ice surface is irregular and can facilitate ringed seal access to this ice; (2) ringed seals and lairs have been observed on bottom-fast ice (Martinez-Bakker *et al.* 2013); (3) bottom-fast ice near cracks in the ice could provide escape routes for molting seals; (4) evidence that ringed seal densities are lower in very shallow waters does not equate to finding bottom-fast ice unsuitable; and (5) the exclusion of bottom-fast ice does not account for the uncertainty in predicting habitat use as climate change continues to affect the amount, locations, and dynamics of sea ice. One commenter also pointed out that the aerial surveys conducted by Frost *et al.* (2004), which were referenced in the revised proposed rule, did not include ice shoreward of the 3-m depth contour, which was estimated based on bathymetric charts and not actual depth estimates. In addition, the commenter noted that Moulton *et al.* (2002a) reported inconsistent relationships between seal densities and water depths and that they suggested that depth effects were artifacts of their relationship with ice features that, in fact, were driving observed differences in density. The commenter also described their personal experiences with locating subnivean lairs and breathing holes in shallow water (*e.g.,* lairs formed in snowdrifts formed by ice piled on the shoreline), including in Elson Lagoon and at Point Barrow. Two commenters also noted that ringed seal lairs are found along shorelines in Lake Saimaa (Niemi *et al.* 2019) and Lake Ladoga (Sipilä *et al.* 1996, Kunnasranta 2001) and that the seals access these lairs in very shallow water.

Response: In response to public comments received regarding the sea ice essential features relative to bottom-fast ice and very shallow nearshore waters (see Comment 28), we re-evaluated the proposed exclusion of bottom-fast ice and how the sea ice essential features may be best described relative to very shallow nearshore areas. As we explained in the revised proposed rule, although ringed seals use landfast sea ice as whelping habitat, landfast ice extending seaward from shore may freeze to the sea bottom in very shallow waters (typically 1.5 to 2 m deep). In the preamble to this final rule, we have further explained and clarified that

where sea ice is bottom-fast, there would presumably be little to no ice-free water present that would allow the seals to swim under and gain access to the ice surface for the construction and maintenance of birth lairs, or for basking and molting, except perhaps where cracks form in the ice, or where the ice is not uniformly frozen to or resting on the seafloor. Thus, while we acknowledge that some ringed seal lairs may be found in bottom-fast ice, we expect use of bottom-fast ice by Arctic ringed seals to be low relative to use of ice in deeper waters, and we continue to conclude that bottom-fast ice is not a component of sea ice that is essential for birth lairs or for basking and molting.

Mapping of bottom-fast sea ice extent by Dammann *et al.* (2019) (based on analysis of satellite imagery from spring 2017) indicated that prominent areas of bottom-fast ice in the U.S. Beaufort Sea were situated around certain river outlets, in particular the Colville River Delta, and in a number of lagoons along the coast, while in the Chukchi Sea, bottom-fast ice was predominantly within lagoons. The proposed definitions of the sea ice essential features therefore qualified that bottom-fast ice ''typically'' occurs in waters less than 1.5 to 2 m deep. This wording was to inform the reader that the depth information was provided as guidance regarding where bottom-fast ice *might* be present.

We reviewed the references cited by the commenters and found that they did not provide any new information regarding the issue of bottom-fast ice or very shallow ice-covered waters (*i.e.,* less than 2 to 3 m in depth) relative to Arctic ringed seal birth lair sites. We note that a study of the breeding habitat of ringed seals in Lake Saimaa by Sipilä (1990) reported that the water depth below birth lair breathing holes in the ice at the end of the breeding period (in 2 years when the water depth in the lake was not artificially lowered) during the winter was 0.6 to 1.5 m. The author explained that the steepness of the shore slope was important to allow the seals passage when the water level was low. We interpret this information as indicating that ice was not typically bottom-fast where birth lairs were constructed. Moreover, in contrast to sea ice habitat used by Arctic ringed seals, both Saimaa and Ladoga ringed seals are confined to large freshwater lakes, and as a commenter noted, in Lake Saimaa, the only places where snow forms drifts deep enough for lairs is along the shorelines of islands and islets (Sipilä 1990).

Regarding the comments concerning aerial surveys conducted by Frost *et al.* (2004) and Moulton *et al.* (2002a), we have clarified in the preamble to this final rule that the lower densities in very shallow water reported by Frost *et al.* (2004) were for waters estimated to be between 3 and 5 m deep. However, we maintain that the results reported for both studies provide some evidence that ringed seal densities are lower in very shallow water, at least in the Alaskan Beaufort Sea during late May to early June. In particular, Moulton et al. (2002) reported that the lowest ringed seal densities were observed in waters less than 3 m deep in each of the 3 years that surveys were conducted and this was also reported for similar surveys completed in the subsequent 3 years (Moulton *et al.* 2001, Moulton *et al.* 2002b, Moulton *et al.* 2003). As for the effects of climate change on the sea ice habitat of Arctic ringed seals, we are not aware of any available information that would provide a basis to conclude that bottom-fast ice may in the future become an element of sea ice habitat that is essential for birth lairs or for basking and molting.

We recognize that some Arctic ringed seals may use sea ice in very shallow water during the molting and/or whelping and nursing periods, as may have been the case for some tagged ringed seals based on the maps of tagged ringed seal movements in the publication by Martinez-Bakker *et al.* (2013) (*e.g.,* in Elson Lagoon). However, our focus in defining the sea ice features is on the habitat attributes that are essential to the conservation of Arctic ringed seals. As we discuss in the Specific Areas Containing the Essential Features section of this final rule, although the extent of landfast ice that becomes bottom-fast over winter varies along the coast (*e.g.,* Dammann *et al.* 2018), a portion of the landfast ice in very shallow waters becomes bottom-fast over winter, use of such ice by Arctic ringed seals is expected to be low relative to use of ice in waters greater than 2 to 3 m depth, and there is some evidence that Arctic ringed seal densities are lower in waters less than 3 to 5 m deep, at least in the Beaufort Sea during late May to early June. After considering the available information, we have concluded that the sea ice essential features are best described with respect to very shallow waters in terms of minimum water depth, rather than with a specific focus on bottom-fast ice. Specifically, for the purpose of describing the sea ice essential features in this final rule, we selected 3 m as the minimum water depth for the sea ice essential features.

Comment 20: Two commenters stated that the proposed definition of sea ice essential for basking and molting is overly broad, and does not represent a habitat feature that is truly critical to Arctic ringed seals. The commenters stated that the information cited in the revised proposed rule on average ice concentrations used by ringed seals during the molting period provides insufficient evidence for determining that sea ice of 15 percent or more concentration is essential. One commenter also suggested that the proposed definition for this essential feature is inconsistent with the statement in the revised proposed rule that a number of studies have reported an apparent preference for consolidated stable ice (*i.e.,* landfast ice and consolidated pack ice). In addition, another commenter stated that it is unclear why we limited this proposed essential feature to areas containing sea ice of 15 percent or more concentration, as it appears to have no particular significance to the behavior of ringed seals, and noted that in modeling exercises this is the typical threshold for where sea ice is considered present.

Response: As we discussed the revised propose rule, there are limited data available on sea ice concentrations used by Arctic ringed seals for basking and molting. As noted by a commenter, we stated in the revised proposed rule that a number of studies have reported an apparent preference for consolidated stable ice, at least during the initial weeks of the basking period. We also explained that some of these studies have reported observations of Arctic ringed seals hauled out at low densities in unconsolidated ice. However, in identifying the minimum sea ice concentration that is essential for basking and molting, we also considered information on average ice concentrations used by several tagged ringed seals in the Chukchi and Bering seas during the basking period in June reported by Crawford *et al.* (2012a). This information, although limited, provides some evidence of ice concentrations used by ringed seals as annual sea ice melts and recedes north in this region. Our selection of 15 percent minimum ice concentration for this essential feature is consistent with those average ice concentrations when taking into account the standard errors (SEs) of the averages. We have clarified this reasoning in the preamble to this final rule. As we noted in the revised proposed rule, Arctic ringed seals in the Chukchi Sea have been observed basking in high densities on the last remnants of the seasonal sea ice during late June to early July, near the end of the molting period (S. Dahle, NMFS,

personal communication, 2013), which comports with our selection of this minimum ice concentration. The minimum sea ice concentration specified as essential for basking and molting reflects the habitat requirement that some sea ice is present during basking and molting that can be used as a haulout platform. We acknowledge that the sea ice concentration identified for this essential feature is based upon limited information. However, we are not aware of any additional information that would support refinement of the regulatory definition of this essential feature. Therefore, in this final rule, we continue to define sea ice habitat essential for basking and molting as areas containing ice of at least 15 percent concentration, as this is the level of specificity supported by the best scientific data available at this time.

Comment 21: One commenter stated we should identify acoustic conditions that allow for effective communication for predator avoidance and breeding activities as an additional essential feature, and provided information and references concerning ringed seal vocalizations and the potential impacts of noise on ringed seals. The commenter noted that an essential feature addressing acoustic conditions was included in the proposed critical habitat designation for bearded seals because communication plays an important role in that species' reproduction, and suggested that this is also the case for ringed seals. The commenter argued that inclusion of an acoustic essential feature for ringed seals is justified because available evidence indicates that ringed seals increase their vocalizations during the breeding season, rely on quiet and cryptic calls for communication that could be easily masked by anthropogenic noise, and are known to display avoidance behaviors and abandon breathing holes and lairs in response to noise disturbance. Another commenter more generally questioned why we did not discuss the importance of ringed seal vocalizations in social behavior and of their hearing in navigation with respect to the potential for masking by human activities in our evaluation of whether special management considerations or protection may be required.

Response: Although vocalizations may play a role in the reproductive behavior of Arctic ringed seals, in contrast to bearded seals, little is known about the behavioral and ecological contexts of vocalization or the ranges over which the seals communicate. Given the limited scientific understanding, we find that identification of an essential feature addressing acoustic conditions for effective communication by Arctic ringed seals is not warranted at this time. However, in our evaluation of sources of threats to the essential features of Arctic ringed seal critical habitat that may require special management considerations or protection, we identified acoustic effects among the threats to the quantity and/or quality of the essential features. We agree with the commenters that acoustic conditions that allow for effective communication and other uses of sound by Arctic ringed seals are important for the conservation of the species. We will continue to consider and address the effects of anthropogenic noise on Arctic ringed seals in consultations under section 7 of the ESA. The critical habitat designation will result in the additional requirement that Federal agencies evaluate any relevant impacts of noise on the essential features of Arctic ringed seal critical habitat.

Comment 22: One commenter stated that we should identify habitat for seasonal movements of Arctic ringed seals (*i.e.,* dispersal and migration) as an essential feature, given that tracking studies have confirmed that the seals make large-scale seasonal movements that track sea ice conditions and prey resources. The commenter stated that we should overlay information from ringed seal telemetry studies off Alaska with the critical habitat map to ensure that important migratory and dispersal habitat falls within the critical habitat boundaries, and then include such habitat as a separate essential feature.

Response: We recognize that telemetry data for tagged Arctic ringed seals document seasonal movements that for many individuals appear to generally track changes in sea ice conditions, and as the commenter noted, they can make large-scale seasonal movements. However, as we discussed in the proposed rule, the information available on movements and diving behavior of Arctic ringed seals tagged in Alaska indicates that although the seals may forage seasonally in some particular areas, they also make extensive use of a diversity of habitats for foraging across much broader areas in the Bering, Chukchi, and Beaufort seas. Based on the best scientific data available, we are unable to identify physical or biological features that define habitat used for seasonal movements specifically. Therefore, we did not identify such habitat as an essential feature of the species' critical habitat. We note, however, that the late spring to early summer time period during which Arctic ringed seals use sea ice habitat essential for basking and molting coincides with when the sea ice edge retreats northward. Thus, there is some temporal overlap between when this essential feature is used by Arctic ringed seals and seasonal movements of those seals that follow the receding ice edge northward.

Comment 23: Two commenters stated that the essential features and expansive area proposed for designation do not account for the observed flexibility and resilience of Arctic ringed seals regarding lair-site selection and fidelity, their wide-ranging movements, and their broad dietary preferences and behavior, due to widely variable conditions from year to year regardless of climate change. One commenter further stated that ringed seals are not habitat limited, which along with their demonstrated ability to adapt to a variety of conditions, supports the conclusion that there is no single type of habitat used by ringed seals that is essential to their conservation.

Response: We are not aware of available information documenting observed flexibility in selection of breeding habitat relative to natal site fidelity. However, we acknowledge that Arctic ringed seals can make large-scale movements, have diverse diets, inhabit a range of sea ice conditions, and give birth and nurse pups in both landfast and pack ice. Nevertheless, as discussed elsewhere in this final rule, ringed seals require stable sea ice with snowdrifts of sufficient depths for the formation and maintenance of subnivean birth lairs, sea ice that provides a platform for basking and molting, and primary prey resources to support their energetic requirements. We continue to find, based on the best scientific data available, that these physical or biological features are essential to the conservation of the species (see Physical and Biological Features Essential to the Conservation of the Species section), and that each of these essential features may require special management considerations or protection as a result of impacts from four primary sources of threats (see Special Management Considerations or Protection section). We disagree with the assertion that no specific types of habitat should be considered essential because Arctic ringed seals are not ''habitat limited.'' The ESA defines critical habitat within the geographical area occupied by the species in terms of essential physical and biological features, and the associated regulations require us to focus on those features in the designation process. Those habitat features need not be impaired or limiting to be used to designate critical habitat. The relevant considerations are

whether they provide an essential function to the conservation of the listed species and may require special management considerations or protection.

Specific Areas

Comment 24: We received a number of comments that expressed support for the proposed designation, and several commenters including the Marine Mammal Commission, Kawerak, and Maniilaq Association, indicated that they concurred that the proposed critical habitat contains the physical and biological features essential to the conservation of the Arctic ringed seal.

Response: We acknowledge these comments. We note that we made some changes to the revised proposed designation, which are described in the Summary of Changes From the Revised Proposed Designation section of this final rule.

Comment 25: Several commenters stated that the proposed designation is overbroad because it includes most of the geographical area occupied by Arctic ringed seals within the U.S. EEZ. The commenters asserted that as such, the proposed designation is inconsistent with congressional intent and the ESA requirement that critical habitat not include the entire geographical area occupied by the species. The commenters also referred to the Supreme Court ruling in *Weyerhaeuser Co.* v. *U.S. Fish & Wildlife Serv.,* 139 S. Ct. 361, 368 (2018), in which the court stated that critical habitat is a subset of habitat, and stated that this indicates critical habitat must be designated more narrowly to include only those specific areas where the essential elements presently required for survival of the species are located.

In addition, the commenters stated that the revised proposed rule did not provide scientific data demonstrating with any specificity that the entirety of the area proposed for designation actually contains one or more of the identified essential features. ADF&G suggested that in the revised proposed rule, the description of the essential features as dynamic and variable on both temporal and spatial scales, and related language stating that critical habitat was identified based on the expected occurrence of the essential features, indicates that we identified the specific area proposed for designation without supporting data identifying the location of the essential features. They stated that although the designation is to be done at a scale determined by the Secretary, the proposed designation, at a huge scale, stretches the bounds of what is reasonable. They referred to the revised designation of critical habitat for North Atlantic right whales as an example of a designation that is compact and targeted relative to the species' range, even though it expanded the designated critical habitat. They also pointed to the critical habitat designation for North Pacific right whales as an example of a designation that they described as similarly compact and targeted, despite an acknowledged lack of data. They went on to assert that we did not fully analyze the report they provided on Arctic ringed seal movements (Quakenbush *et al.* 2019) as a primary source of spatial data. They stated that we should make the best use of all the available data to delineate the most essential areas within a species' range, and that we instead overcompensated for lack of data or difficulty in determining where essential feature are located by proposing an overly expansive designation. They also contended that based on statutory language, NMFS's goal must be to identify and designate those specific areas that demonstrably contain the highest value physical and biological features for the species. Related comments stated that establishing priority habitat areas for designation would be more manageable and efficient.

Response: Under the ESA, a specific area qualifies as critical habitat if it was occupied by the species at the time of listing and contains one or more of the physical or biological features essential to the conservation of the species and that may require special management considerations or protection. Specific areas are eligible for designation if they meet these criteria. Our regulations clarify that the geographical area occupied by the species 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; 50 CFR 424.02). Further, physical or biological features may include habitat characteristics that support ephemeral or dynamic habitat conditions, and thus, they need not be present throughout critical habitat at all times.

We have long interpreted ''geographical area occupied'' in the definition of critical habitat to mean the entire range of the species at the time it was listed, inclusive of all areas the species uses and moves through seasonally (45 FR 13011, February 27, 1980). Further, in *Arizona Cattle Grower's Assoc.* v. *Salazar,* 606 F.3d 1160 (9th Cir. 2010), the Ninth Circuit affirmed the interpretation of USFWS that ''occupied'' areas means areas that the species uses with sufficient regularity such that it is likely to be present during any reasonable span of time. As we discuss in the Geographical Area Occupied by the Species section of this final rule, based on the best scientific data available, the range of the Arctic ringed seal was identified in the final ESA listing rule (77 FR 76706; December 28, 2012) as the Arctic Ocean and adjacent seas, except west of 157° E long. (the Kamchatka Peninsula), where the Okhotsk subspecies of the ringed seal occurs, or in the Baltic Sea where the Baltic subspecies of the ringed seal is found. We cannot designate areas outside U.S. jurisdiction as critical habitat. Thus, the geographical area that was under consideration for this designation was limited to areas under the jurisdiction of the United States that Arctic ringed seals occupied at the time of listing. This occupied area extends to the outer boundary of the U.S. EEZ in the Chukchi and Beaufort seas, and as far south as Bristol Bay in the Bering Sea.

We acknowledge that critical habitat constitutes a subset of what qualifies as ''habitat'' for a particular species. *See Weyerhaeuser* v. *U.S. Fish and Wildlife Serv.,* 139 S. Ct. 361 (2018). Consistent with the definition of critical habitat under the ESA and based on the best scientific data available, the specific area designated as critical habitat for the Arctic ringed seal in this final rule contains the physical and biological features identified as essential to the conservation of the Arctic ringed seal and that may require special management considerations or protection. This critical habitat is a subset of the habitat occupied and used by Arctic ringed seals in U.S. waters, and it is also a subset of the much larger circumpolar habitat occupied and used by this species. Moreover, because all of the Arctic ringed seal's critical habitat is currently occupied by the species, the Supreme Court's decision in *Weyerhaeuser* v. *U.S. Fish and Wildlife Serv.* (139 S. Ct. 361 (2018))—which held in the context of unoccupied habitat that an area must logically be ''habitat'' in order to meet the narrower category of ''critical habitat'' as defined under the ESA—is not directly relevant to the designation of critical habitat for Arctic ringed seals. Specific areas that are occupied by a species are inherently ''habitat.''

Delineation of specific areas that contain essential features is done at a scale determined by the Secretary (of Commerce) to be appropriate (50 CFR 424.12(b)(1)). In making decisions about the appropriate scale and boundaries for

the specific area we are designating as critical habitat, we considered, among other factors, the life history of the species and the scales at which data are available to inform our analysis. The seasonality of sea ice cover strongly influences the movements, foraging, and reproductive behavior of Arctic ringed seals, and the dynamic variations in sea ice and on-ice snow depths result in individuals distributing broadly and using sea ice habitats within a range of suitable conditions. Therefore, our delineation of critical habitat for the Arctic ringed seal reflects the considerations described elsewhere in this final rule regarding the variability in the spatial and temporal distributions of the essential features, in particular of the sea ice essential features, the overlap in timing of whelping and nursing with basking and molting, the widespread distribution of Arctic ringed seals using the essential features, and the spatial scale of the seals' movements in utilizing their habitat.

In that regard, our approach is similar to the USFWS's designation of critical habitat for polar bears. Recognizing that sea ice is dynamic and highly variable on both temporal and spatial scales, and that polar bear use of specific areas of sea ice habitat varies daily and seasonally, the extent of the continental shelf within the area occupied by the polar bear in the United States was identified as the sea ice critical habitat unit containing the essential sea ice feature (75 FR 76086, December 7, 2010) (this designation was challenged and ultimately upheld by the Ninth Circuit, *see Alaska Oil & Gas Ass'n* v. *Jewell,* 815 F. 3d 544, 555–62 (9th Cir. 2016)). For Arctic ringed seal critical habitat, the essential features are dynamic, and we identified where one or more of these essential features occurs at a coarse scale with as much specificity as the best scientific data available allows (see Specific Areas Containing the Essential Features section).

As stated above, under the ESA, an area qualifies as critical habitat if, based on the best scientific data available, it was occupied by the species at the time of listing and contains one or more of the physical or biological features essential to the conservation of the species and that may require special management considerations or protection. Specific areas are eligible for designation if they meet these criteria. Neither the ESA's definition of critical habitat nor our implementing regulations at 50 CFR part 424 restrict critical habitat to only the most important core habitats of the species. Further, where, as here, one or more essential features are not static, and their location changes both seasonally and annually, a critical habitat designation must be large enough to account for such changes in the locations of essential features and the particular species' habitat requirements throughout their life history, as discussed above. Following thorough consideration of the peer reviewer and public comments and information submitted, we conclude, based on the best scientific data available, including the information reported by Quakenbush *et al.* (2019), that the specific area we are designating as critical habitat most accurately identifies where the physical and biological features essential to the conservation of the Arctic ringed seal occur. We acknowledge that this designation is much larger than the designations for the North Atlantic right whale and the North Pacific right whale. Each critical habitat designation reflects consideration of the best scientific data available at the time of designation regarding the particular species and its habitat characteristics and requirements.

Comment 26: One commenter stated that designating critical habitat on a seasonal basis, or on a dynamic basis that reflects changing conditions seems at odds with the structure and mandates of the ESA, which specifies that critical habitat should include all areas that are essential to the conservation of a listed species and that federal agencies are under a continuing obligation to consult with NMFS if any action they authorize, fund, or carry out may affect critical habitat; thus temporal considerations should be considered during section 7 consultations.

Response: We agree with this comment.

Comment 27: Several commenters stated that critical habitat should be designated on a seasonal basis to reflect the specific times and places in which the essential features are used by Arctic ringed seals for critical life functions. Some commenters contended that the revised proposed rule would ''over-designate'' critical habitat and rely on subsequent section 7 consultations as a means to refine what constitutes critical habitat, which they stated would effectively remove the designation from notice and comment rulemaking and shift the burden of designation decisions to the consultation process. BOEM specifically recommended that we identify continental shelf waters deeper than 3 m as critical habitat used in summer and fall, and shorefast ice in waters deeper than 3 m as critical habitat used in winter and spring. In addition, another commenter suggested that the designation incorporate a dynamic spatial-temporal element that would roll back the boundaries northward as sea ice recedes seasonally or over longer periods to respond to changes in habitat conditions due to climate change.

Response: The ESA focuses on the spatial presence of the essential features within occupied areas, but does not mention the temporal presence of those features. Under the ESA's definition of critical habitat, if an area is occupied by a listed species and one or more essential features can be found in that area, even if the features are present only seasonally, then that area qualifies as critical habitat. The statute does not allow critical habitat designations to fluctuate seasonally, nor does it specify that critical habitat must contain any particular essential feature at all times. In addition, our implementing regulations at 50 CFR 424.12(c) specify that ephemeral reference points cannot be used to clarify or refine the boundaries of critical habitat. A dynamic boundary based on seasonal presence of the essential features would be inconsistent with this requirement. Moreover, even if seasonal designations of critical habitat were authorized under the ESA or the implementing regulations, such designations could potentially miss an important aspect of critical habitat: The protection afforded by designation even when the species may not be present, thus ensuring that Federal actions are not likely to adversely modify or destroy critical habitat that is important to support essential life history functions during particular times of the year.

The size of the critical habitat designation is in no way related to shifting any burdens to the section 7 consultation process. Where, as here, one or more essential features are not static, and their location changes both seasonally and annually, a critical habitat designation must be large enough to account for such changes in the locations of essential features and the particular species' habitat requirements throughout their life history. The potential effects of a proposed Federal action depend on, among other factors, the specific timing and location of the action relative to seasonal presence of essential features or seasonal use of critical habitat by listed species for essential life history functions. It is therefore common practice in consultations under section 7 of the ESA to address spatial-temporal considerations as part of the analysis of how a particular Federal action would impact the conservation value of critical habitat, and these considerations can be effectively addressed for such analyses

involving Arctic ringed seal critical habitat. It is likely that most Federal actions that would occur outside the time periods when the sea ice essential features are present would not adversely affect those features. However, some actions that temporally avoid the presence of non-static essential features such as sea ice may still impact the habitat that Arctic ringed seals use or occupy. For example, the construction of an offshore artificial island when sea ice is not present could still render some Arctic ringed seal habitat unusable after the construction of the project. Thus, during consultation, NMFS considers the particular set of facts relevant to that consultation, such as the nature of the activities being conducted, the location of the action, and the spatial and temporal scale, in order to determine the potential effects of the activity on critical habitat and ultimately, whether the activity is likely to destroy or adversely modify critical habitat.

Regarding BOEM's specific comment pertaining to the shoreward and northern boundaries of Arctic ringed seal critical habitat, also see our responses below to Comments 31 and 37 for further information on the shoreward and northern boundaries of critical habitat identified in this final rule.

Comment 28: One commenter stated that because shorefast ice frequently freezes to thicknesses of 2 to 3 m deep and into the seabed, use of the 3-m isobath as the shoreward limit would be a practical depth to demarcate areas that seals do not use in winter and spring. Another commenter similarly stated that ice-covered waters shallower than 3 m should not be included as critical habitat because ringed seals cannot overwinter there due to ice freezing to the seafloor and poor prey availability caused by the limited amount of ice-free water, as indicated in a 2006 notice of an application for an incidental harassment authorization issued by NMFS (71 FR 9782, February 27, 2006). The commenter also noted that NMFS recently stated in issuing incidental take regulations that habitat is not suitable for ringed seal lairs where water depth is less than 3 m (85 FR 83451, December 22, 2020). In addition, one commenter asserted that for the sea ice essential features, we need to explain how nearshore areas are as important as habitats in deeper waters and provide evidence that demonstrates the nearshore area has conservation value as critical habitat, including those shallow water areas where the ice is predominantly grounded in winter, stating that only a small segment of the ringed seal population uses shallow nearshore ice habitat in the Beaufort Sea for birth lairs.

Response: Regarding sea ice in waters less than 3 m deep, as we stated in the revised proposed rule and in our response to Comment 19, the best information currently available indicates that where bottom-fast ice forms, it is predominantly in waters less than 1.5 to 2 m deep, though the extent of bottom-fast ice along the Alaska coast varies (see Dammann *et al.* 2019). Public comments we received regarding sea ice in shallow nearshore areas led us to re-evaluate the proposed descriptions of the sea ice essential features, under which certain waters may or may not have qualified as critical habitat depending on whether bottom-fast ice was present. As a result, we have concluded that these essential features are best described by specifying a minimum water depth of 3 m, which has the effect of excluding waters likely to contain bottom-fast ice (see our response to Comment 19).

In the revised proposed rule, the shoreward boundary of critical habitat was defined as the line of MLLW, principally based on occurrence of the primary prey resources essential feature, rather than on the sea ice essential features. However, as detailed below in the section Summary of Changes From the Revised Proposed Designation, after revising the proposed definitions of the essential features, and in response to public comments such as these that expressed concerns about our proposed delineation of the boundaries of critical habitat with respect to the primary prey resources essential feature, we re-evaluated the best scientific data available and the approach we used to identify the specific area(s) that contain this feature (see also our response to Comment 31). We now identify a single specific area that contains all of the essential features based on our delineation of the boundaries for the sea ice essential features. Because we have revised the definitions of the sea ice essential features to identify the minimum water depth for both features as 3 m (relative to MLLW), we identify the shoreward boundary of Arctic ringed seal critical habitat as the 3-m isobath (relative to MLLW), consistent with this minimum water depth. As for the comment about the relative conservation value of shallow nearshore areas with respect to the sea ice essential features, any area occupied by the species may be designated as critical habitat if it contains one or more of the physical or biological features essential to the conservation of the species and that may require special management considerations or protection. We determined that all of the essential features occur in waters 3 m or more in depth, and therefore nearshore waters seaward of the 3-m isobath are properly designated as critical habitat.

Comment 29: One commenter stated that critical habitat should be delineated as the specific areas of landfast ice extending from the 3-m isobath to the 20-m isobath, which the commenter suggested provides optimal habitat for ringed seal lairs and pupping. The commenter referenced the observed densities of Arctic ringed seals on landfast ice in the Beaufort Sea (Frost *et al.* 2002, Moulton *et al.* 2002b), in conjunction with studies of landfast ice extent in the western Beaufort Sea (Mahoney *et al.* 2005, Mahoney *et al.* 2007). However, the commenter stated that based on a study in the East Siberian Sea by Morris *et al.* (1999, as summarized in Mahoney *et al.* 2007) a transitional ice zone occurs between landfast and pack ice, which is more variable in depth, consistency, and distribution. The commenter stated that areas of transitional ice should be excluded from critical habitat because it is marginally valuable for ringed seal survival and conservation and as such, it is not essential to the conservation of the species nor does it require special management considerations or protection. The commenter also pointed out that although the revised proposed rule acknowledges little research has been conducted on Arctic ringed seals in offshore pack ice, the northern boundary of critical habitat was nonetheless defined as the outer boundary of the U.S. EEZ. The commenter further stated that as indicated in the revised proposed rule, during summer, most ringed seals spend a majority of their time foraging offshore near pack ice (Frost 1985), and Von Duyke *et al.* (2020) also reported that most ringed seals tagged during a recent study were documented north of the shelf with retreating pack ice.

Response: With regard to sea ice for lairs and pupping, as discussed in more detail in the Physical and Biological Features Essential to the Conservation of the Species section of this final rule, pup production has been reported in both landfast ice and pack ice. Moreover, surveys conducted in the Bering and Chukchi seas have documented ringed seals, including observations of pups, in nearshore and offshore areas. We therefore determined that snow-covered sea ice essential for birth lairs consists of both landfast ice and dense, stable pack ice. We defined the seaward boundaries of critical habitat with respect to the sea ice

essential features based on the occurrence of the features themselves. The commenter did not provide, and we are not aware of, information on Arctic ringed habitat use relative specifically to what the commenter referred to as ''transitional ice.'' Also, regarding the commenter's reference to the 20-m isobath relative to landfast ice, we note that although the stable location of the seaward landfast ice edge in the Beaufort Sea has been reported to coincide with near the 20-m isobath, the seaward landfast ice edge in the Chukchi and northern Bering Seas is closer to shore and the water depth is more variable (Mahoney *et al.* 2014, Jensen *et al.* 2020). As for ringed seal habitat use during the open-water period relative to pack ice, while it is thought that most Arctic ringed seals spend the summer in the pack ice of the northern Chukchi and Beaufort seas, the seals are also dispersed in ice-free areas of the Bering, Chukchi, and Beaufort seas. Tracking data indicate that ringed seals tagged in Alaska made extensive use of nearshore and offshore waters over the continental shelf in the U.S. Chukchi and Beaufort seas during the open-water period.

Comment 30: The Bureau of Land Management (BLM) stated that we should develop more detailed critical habitat maps that identify seasonal presence/absence of each essential feature in both nearshore and offshore waters to provide clarity regarding where each essential feature is found, rather than designating critical habitat as a single large unit. They stated that we should otherwise better explain why the boundary for each essential feature is the same, how the boundary for each essential feature overlaps with other essential features, or why they have all been incorporated into a single mapped unit.

Response: On the basis of the best scientific data available, and consistent with the definition of critical habitat under the ESA, we identified one specific area within the northern Bering, Chukchi, and Beaufort seas to designate as critical habitat for the Arctic ringed seal. The best scientific data available indicates that the specific area is occupied by the species and contains one or more of the identified essential features which may require special management considerations or protection. As we explained in the revised proposed rule, the temporal overlap of Arctic ringed seal molting with whelping and nursing, combined with the dynamic nature of sea ice and on-ice-snow depths makes it impracticable to separately identify specific areas where each of the sea ice essential features occurs. Further, ringed seals forage throughout the year (albeit with reduced feeding during molting), and their primary prey species are spatially dynamic due to the influences of various abiotic and biotic factors. Moreover, there is no requirement that we develop detailed maps depicting where each essential feature occurs.

Comment 31: Several commenters, including Kawerak, recommended that Arctic ringed seal critical habitat include nearshore waters, river mouths, and inshore estuaries/lagoon systems found throughout the Seward Peninsula and Norton Sound, as well as Kotzebue Sound. Commenters stated that well-documented IK indicates that ringed seals, in particular juveniles, use these areas during the ice-free period (*e.g.,* Kawerak 2013, Oceana and Kawerak 2014). Kawerak and another commenter stated that young seals use estuaries as sheltered calmer waters during adverse weather conditions, to escape large-bodied predators like killer whales, and to hone their fishing skills in the shallow waters during the ice-free months. Kawerak also noted that these estuaries have aquatic plants that young seals use as cover when stalking the variety of small-bodied fishes and invertebrates that reside or travel through these waters. In addition, the Marine Mammal Commission commented that they concurred with the proposed shoreward boundary of critical habitat, but recommended that further research be conducted in nearshore and inshore habitats to better assess ringed seal use of these areas.

Response: We recognize that Arctic ringed seal use of river mouths and inshore lagoons during the open-water period has been reported and documented, and we reviewed and considered the references that were cited in these comments, along with information presented in other available reports and peer-reviewed publications (*e.g.,* Nelson 1981, Huntington 2000, Oceana and Kawerak 2014, Gadamus *et al.* 2015, Huntington *et al.* 2015c, Northwest Arctic Borough 2016) regarding this aspect of the seals' habitat use. Regarding nearshore waters that were included in the revised proposed designation, in response to other public comments that questioned the identified boundaries of critical habitat with respect to the primary prey resources essential feature, we re-evaluated the best scientific data available and the approach we used to identify these boundaries to determine whether they were drawn appropriately. In the revised proposed rule, we preliminarily concluded that the seaward boundaries delineated for the sea ice essential features were also appropriate for defining the specific area where the primary prey resources essential feature occurs; but we defined the shoreward boundary as the line of MLLW based principally on occurrence of the primary prey essential feature. However, after review of this information, we recognize that the available data on the distributions of Arctic ringed seal primary prey species indicate that these prey resources are widely distributed across the entire geographic area occupied by these seals, and as such, we concluded it was not possible to delineate the boundaries of critical habitat based on the description of this feature alone. We also have no information that suggests any portion of the species' occupied habitat provides primary prey resources that differ from those found within the specific area we are designating as critical habitat. Given that the movements and habitat use of Arctic ringed seals are strongly influenced by the seasonality of sea ice, we determined that the best approach to identify the appropriate boundaries for critical habitat is to base the delineation on the same boundaries identified for the sea ice essential features. In this final rule, we therefore define the shoreward boundary of Arctic ringed seal critical habitat as the 3-m isobath (relative to MLLW), consistent with the 3-m minimum water depth identified for both sea ice essential features (see our response to Comment 19).

In response to the comments suggesting that river mouths and inshore estuaries/lagoon systems be included in the designation, we specifically examined available information on ringed seal use of such areas, including the information sources identified by the commenters. Although ringed seal occurrence in this habitat has been documented, we concluded that at this time, we lack sufficient data to develop a description of the specific physical or biological features of this habitat that support the species' life history needs, and to assess how those features provide for the life history requirements of the species such that they are essential to the conservation of the Arctic ringed seal. We acknowledge that, as noted by the Marine Mammal Commission, additional research on ringed seal use of nearshore and inshore habitats would help to better assess ringed seal use of these areas. Should additional information become available indicating whether and what essential features occur in these habitats, we can consider revising critical habitat accordingly. We also note that ESA section 7 consultation requirements

apply to any action that may affect Arctic ringed seals, including in river mouths or those shallow inshore estuaries/lagoon systems not identified as critical habitat, and these consultations typically analyze habitat-related effects to the seals such as effects to prey, even in the absence of a critical habitat designation.

Comment 32: Two commenters stated that Arctic ringed seals are most commonly found foraging in deeper offshore waters near pack ice and asserted that shallow nearshore waters should be excluded from critical habitat because we have not demonstrated that ringed seals actively or substantially feed in those waters or that such waters are used to any significant degree, and that ringed seals are instead most abundant and commonly found foraging in offshore waters near pack ice. One of the commenters further stated that although there are some data suggesting that juvenile ringed seals use shallow waters to forage late in the summer, this is marginal habitat not essential to conservation of the species. In addition, BOEM recommended that the designation focus on areas of greatest prey abundance and suggested that to address this that we remove areas which do not support adequate prey resources, such as shallow nearshore areas that have bottom-fast ice or are subject to scour, and/or identify thresholds of minimum prey abundance for ringed seals to persist. They went on to state that many shallow nearshore areas (less than 3 m) are lacking in adequate prey resources because the benthic habitats and communities are subject to disturbance from bottom-fast ice, strudel scouring in spring, and frequent ice gouging throughout the year, which destroy benthos and prevent benthic communities from developing. They also noted that influxes of fresh water where rivers and streams empty into the ocean kill or drive off marine benthic organisms. In addition, BLM and another commenter stated that we should present a more comprehensive analysis of Arctic ringed seal prey resources by providing information on the ranges and distributions of their prey species. BLM's comments emphasized the Beaufort Sea, in particular, and added that we should include an analysis of this information relative to where prey species distributions overlap with the seals' habitats, and where there is greatest prey species abundance, including seasonally. They stated that the revised proposed rule gives the impression that prey species are distributed homogenously throughout the seals' range, although this is most likely not the case.

Response: The ESA does not require that before designating an area as critical habitat we demonstrate that Arctic ringed seals actively or substantially use the area, that they use it to a significant degree, or that we focus on areas of greatest prey abundance. *Alaska Oil & Gas Ass'n* v. *Jewell,* 815 F. 3d 544, 555–56 (9th Cir. 2016) (holding the ESA required USFWS to identify where the features essential to the conservation of a species occur, and does not require evidence a species currently uses those features in any particular area). Rather, the ESA states that an area qualifies as critical habitat if, based on the best scientific data available, it was occupied by the species at the time of listing and has one or more of the physical or biological features essential to the conservation of the species and that may require special management considerations or protection. As we explained in the revised proposed rule, our delineation of a specific area that contains one or more of the physical or biological features essential to the conservation of the Arctic ringed seal reflects the dynamic nature of the essential features, in particular of the sea ice essential features, the overlap in timing of whelping and nursing with basking and molting, the widespread distribution of Arctic ringed seals using the essential features, and the spatial scale of the seals' movements in utilizing their habitat. Ringed seals forage throughout the year (albeit with reduced feeding during molting) and their movements are strongly influenced by the seasonality of sea ice. Satellite tracking data for Arctic ringed seals tagged in Alaska indicate that although individual seals may forage seasonally in some particular areas, they also make extensive use of a diversity of habitats for foraging across much broader areas, including in nearshore and offshore areas. The relative distribution and abundance of ringed seal primary prey species are spatially dynamic due to the influences of a combination of various abiotic (*e.g.,* geographic and temporal extent of sea ice, ocean conditions) and biotic (*e.g.,* prey availability, timing of spawning) factors. Our delineation of critical habitat with respect to the primary prey resources essential feature reflects the aforementioned considerations and is based on the best information available regarding the occurrence of Arctic ringed seal primary prey species, including information regarding their distributions and documented occurrence within the geographical area under consideration. The commenters did not provide any relevant literature or data that would support the identification of specific thresholds of minimum abundance for ringed seal primary prey species, nor of specific areas where concentrations of the primary prey species are found on a recurrent basis within the ringed seals' habitats in Alaska. Habitat selection of ringed seals with respect to prey is also not well understood. While we acknowledge that it is likely that ringed seal primary prey species are distributed unevenly, the limits of the available information on the distribution and abundance of these prey species, and more importantly, the considerations discussed above, make it infeasible to delineate critical habitat more finely than we describe in this final rule.

Although very shallow nearshore areas are especially prone to high levels of disturbance to the benthos, primary prey species of Arctic ringed seals, such as Arctic cod, saffron cod, and rainbow smelt, occur in these areas. We acknowledge that existing information on Arctic ringed seal use of nearshore areas is limited; however, there is evidence that ringed seals use both nearshore and offshore habitats, in particular during the open-water period. As we stated previously, we are not required to establish some threshold level of documented use, but only to find that primary prey species essential to the conservation of Arctic ringed seals occur in the specific area we are designating as critical habitat. Section 4(b)(2) of the ESA requires that we designate critical habitat on the basis of the best scientific data available. Accordingly, we relied on the best information available to determine the specific areas that are eligible for designation, as described in the Specific Areas Containing the Essential Features section of this final rule.

Nevertheless, as we explained above (see our response to Comment 31), in response to public comments such as these, we re-evaluated the best scientific data available and the approach we used to identify the specific area(s) that contain the primary prey resources essential feature. As a result, we now identify as critical habitat the specific area that contains the primary prey resources in addition to the sea ice essential features. Because we have revised the definitions for both sea ice essential features to identify the minimum water depth for these features as 3 m (relative to MLLW) (see our response to Comment 19), the shoreward boundary of the designation is now defined as the 3-m isobath (relative to MLLW).

Comment 33: One commenter suggested that we delineate primary prey resource units that identify presence/absence of each primary prey item to the extent possible within subsets of the larger designation. The commenter stated that this would be useful for future section 7 consultations and would serve as a means to identify priority areas and help support the adaptive management practices necessary for Arctic ringed seal conservation as the Arctic continues to experience changes.

Response: As we explained in our response to Comment 32, data limitations and considerations related to the dynamic nature of the primary prey resources essential feature make it infeasible to delineate critical habitat more finely than we describe in this final rule. Regarding the comment concerning adaptive management, while this is a useful strategy for conservation of listed species and their habitats, under the ESA we designate critical habitat through a regulatory process that requires us to make decisions based on the best scientific data available at the time of designation. If new information becomes available concerning the effects of environmental changes on Arctic ringed seal primary prey resources that indicates revision of critical habitat may be appropriate to effectively provide for the conservation of the species, we can consider using the authority provided under section 4(a)(3)(A)(ii) of the ESA to revise the designation.

Comment 34: One commenter stated we must identify the specific prey species and the specific locations (spatially and temporally) where foraging on those prey species is essential to the conservation of the Arctic ringed seal and in need of special management considerations or protection, and that the revised proposed rule did not provide a sufficiently specific delineation of critical habitat with respect to the proposed primary prey resources essential feature. They referred to the preamble to our 2016 final rule that amended the regulations for designating critical habitat, which said the descriptions of the physical and biological features essential to the conservation of the species would maintain the specificity of the primary constituent elements identified in previous designations (81 FR 7414, 7426; February 11, 2016). They stated that under the prior regulations (which used the term ''primary constituent elements''), we were required to identify ''feeding sites'' to support the designation of critical habitat based on prey species.

Response: We disagree. Neither the ESA's definition of critical habitat nor our implementing regulations at 50 CFR part 424 require that we designate critical habitat with the level of specificity asserted by the commenter, and this was also not required under the prior version of our regulations. The prior regulations listed ''feeding sites'' among examples of what may constitute primary constituent elements (referred to in our current regulations as physical or biological features) that may be defined and described as essential to the conservation of the species. Rather than identify where Arctic ringed seals actually feed on their essential prey, under the ESA we identify what prey are essential to the conservation of the Arctic ringed seal and then identify where those prey occur within the geographical area occupied by the species. Based on the best scientific data available, we determined that the primary prey resources essential to the conservation of Arctic ringed seals occur throughout the specific area we are designating as critical habitat.

Comment 35: One commenter asserted that we improperly relied upon the description of essential fish habitat (EFH) for Arctic cod and saffron cod in delineating proposed critical habitat. They stated that while the EFH features may be necessary for those fish species, the features of that habitat do not support the critical habitat designation because they are not essential to the conservation of Arctic ringed seals.

Response: We considered EFH, which NMFS has described and identified under the Magnuson-Stevens Fishery Conservation and Management Act for certain life stages of Arctic cod and saffron cod, as a part of the best information available to inform our determination of where the primary prey species of Arctic ringed seals occur. We also considered other sources of information that support the delineation of specific areas with respect to the primary prey species of Arctic ringed seals, as discussed in the Specific Areas Containing the Essential Features section of this final rule.

Comment 36: BOEM stated that, although it is clear in the preamble to the revised proposed rule that critical habitat for Arctic ringed seals may contain one or more of the essential features, we should clarify that this is the case in the regulatory language for the designation.

Response: We find the regulatory text contained in the revised proposed rule to be sufficiently clear—an area qualifies as critical habitat if it is occupied by the species and contains one or more physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection (16 U.S.C. 1532(5)(A)).

Comment 37: In reference to the statement in the revised proposed rule that several tagged Arctic ringed seals showed foraging-type movements in deep waters north of the Beaufort Sea shelf, one commenter stated that we did not identify any evidence demonstrating what prey species ringed seals consume there. They stated that to conclude that the primary prey essential feature occurs in those waters, documentation would be needed on the stomach contents of ringed seals foraging there.

Response: We disagree that we need to prove that ringed seals are consuming primary prey species in a particular area or that we would need data on stomach contents that do not currently exist to determine that waters north of the Beaufort Sea shelf contain the primary prey resources essential feature. Rather, in designating critical habitat the focus is on where features essential to the conservation of a species occur within the occupied habitat of a species, not where the species uses those features. We acknowledge that there is no information available on the prey species that tagged Arctic ringed seals were targeting north of the shelf break in the Chukchi and Beaufort seas. However, in determining the northern boundary with respect to primary prey resources, we took into consideration not only the information available on the foraging movements of these seals, but also, in particular, information indicating that the general distribution of Arctic cod—a ringed seal primary prey species—extends north of the continental shelf. In the preamble of this final rule, we have incorporated additional information to clarify this aspect of our determination. Based on the best scientific data available, we continue to find that the northern boundary delineated for the sea ice essential features is also appropriate for defining the specific area where the primary prey resources essential feature occurs (see Specific Areas Containing the Essential Features section). However, we have exercised our discretion under section 4(b)(2) of the ESA to exclude a particular area north of the Beaufort Sea shelf based on consideration of national security impacts (see Exclusion Based on National Security Impacts section).

Special Management Considerations or Protection

Comment 38: BOEM stated that because sea ice is projected to continue

to retreat northward, we should provide data and analysis of how the geography of the critical habitat for Arctic ringed seals would change in the future with substantial sea ice loss. They also stated that we should highlight those areas within critical habitat that are expected to retain suitable sea ice conditions for Arctic ringed seals long into the future, as this would help emphasize the need for further development of geographic solutions for habitat conservation. Another commenter suggested that it would be helpful and relevant to include reference to the loss of suitable habitat for whelping projected to occur this century as a result of decreased snow cover (Hezel *et al.* 2012).

Response: In our evaluation of whether the essential features of Arctic ringed seal critical habitat may require special management considerations or protection, we indicated that the quantity and quality of these essential features, in particular sea ice, may be diminished by the effects of climate change. Although there will continue to be considerable annual variability in the rate and timing of the breakup and retreat of sea ice, trends are toward ice that is more susceptible to melt (Markus *et al.* 2009) and areas of earlier spring ice retreat (Stammerjohn *et al.* 2012, Frey *et al.* 2015). Thus, the earlier retreat of sea ice in the spring supports including the northern portion of the critical habitat in particular, as it retains sea ice suitable for birth lairs and/or basking and molting the longest. As suggested by a commenter, in the *Climate Change* section of this final rule, we have added information regarding projected reductions in on-ice snow depths, although it does not alter our previous identification of climate change as a source of threats to the essential features of Arctic ringed seal critical habitat. As for BOEM's comment that we should explain how the geography of critical habitat may change in the future with substantial sea ice loss, the critical habitat boundaries will not automatically change in areal extent as sea ice distribution and extent diminish; they will remain fixed until such time as NMFS revises them based on new information.

Comment 39: One commenter stated that climate change, driven by anthropogenic emissions of GHGs, poses an existential threat to the Arctic ringed seal, and noted that climate change impacts on the seals include changing temperatures, rapid loss of sea ice, altered precipitation regimes, ocean acidification, extreme weather events, and effects on key prey species. The commenter provided information and references regarding trends in GHG emissions, the relationship between GHG emissions and sea ice loss, and the impacts of climate change in the Arctic. In addition, another commenter stated that we should discuss ocean acidification and its effects on ringed seal prey. Several other commenters also expressed concerns over the impacts of climate change on the species, and one commenter, an Alaska Native hunter, reported their personal observations of sea ice loss and declines in the number of marine mammals.

Response: We appreciate the comments and references provided by the commenters, which we reviewed and considered in developing the final critical habitat designation. As discussed in the revised proposed rule, we identified climate change as one of four primary sources of threats to the identified essential features of Arctic ringed seal critical habitat that may require special management considerations or protection. Although our evaluation does not consider an exhaustive list of threats that could impact the essential features, in response to comments, in the preamble to this final rule we have added ocean warming and acidification to our discussion of impacts on the essential features from climate change.

Comment 40: One commenter requested that we remove the following statement in the revised proposed rule because it was unsupported and unnecessary: ''The best scientific data available do not allow us to identify a causal linkage between any particular single source of GHG emissions and identifiable effects on the physical and biological features essential to the conservation of the Arctic ringed seal.'' The commenter stated that scientific studies have documented continuing severe and rapid reductions in sea ice extent and thickness and increases in ocean acidification resulting from GHG emissions. The commenter further stated that GHG emissions from individual projects cumulatively contribute to habitat degradation and loss for the Arctic ringed seal, and appreciable GHG emissions from large-scale projects can make a measurable difference in the amount of sea ice loss.

Response: We acknowledge that particular point sources, such as a single power plant, contribute incrementally to global indicators like atmospheric concentration of GHGs or global average temperature. In response to this comment, we have omitted the statement in question in the preamble of this final rule because it is not needed to support our identification of climate change as a primary source of threats to each of the essential features of Arctic ringed seal critical habitat.

Comment 41: One commenter provided information concerning regulation of commercial crab fisheries in the Bering Sea and Aleutian Islands and measures taken to minimize impacts of the fishery, noting that not all fisheries pose the same impacts and that they believe commercial crab fisheries do not pose a risk to Arctic ringed seals. The commenter stated that with changing environmental conditions, more commercial densities of crabs could move north into designated critical habitat, but if commercial crab fisheries follow this pattern, they do not believe that it would have substantial impacts on ringed seals.

Response: In determining whether the essential features of Arctic ringed seal critical habitat may require special management considerations or protection, we base our determination on whether such management or protection may be required, rather than whether management is currently in place, or whether that management is adequate. As we discussed in the revised proposed rule, given the potential changes in commercial fishing that may occur with the expected increasing length of the open-water season and range expansion of some commercially valuable species responding to climate change, we concluded that the primary prey resources essential feature may require special management considerations or protection in the future to address potential adverse effects of commercial fishing on this feature.

Comment 42: Several commenters expressed concerns over potential impacts of commercial fisheries on ringed seal prey resources through removal of biomass and/or modification of benthic habitat, in particular from bottom trawling activities. One commenter also expressed concern regarding the risk of incidental mortality of ringed seals if bottom trawlers are allowed further north, and they noted the potential for impacts on ringed seals from hook injuries due to the 2019 arrival of a large-scale Pacific cod longline fleet to northern Bering Sea and Bering Strait region. Another commenter, an Alaska Native hunter, reported past observations of ringed seals feeding on herring south of the proposed critical habitat and expressed concern that commercial fishing activities have reduced herring biomass.

Response: We understand the concern expressed by the commenters that commercial fisheries may impact Arctic ringed seal prey resources. Designation

of critical habitat does not, in and of itself, regulate or restrict any activities. Rather, through the section 7 consultation process, Federal agencies must ensure that their actions are not likely to destroy or adversely modify designated critical habitat. Thus, once the Arctic ringed seal critical habitat designation becomes effective, any section 7 consultations on federally managed fisheries will be required to address the additional requirement that Federal agencies ensure that their actions are not likely to adversely modify or destroy designated critical habitat. We note, however, that we consult on Federal actions and thus not every fishery is subject to section 7 consultation, as there are fisheries with no Federal nexus. Although we acknowledge the concerns regarding the risks posed to ringed seals by direct interactions with commercial fishing gear (*e.g.,* hookings or entanglements), such impacts are considered threats to individual ringed seals themselves and not the habitat. To date, section 7 consultations completed on the effects of Federal groundfish fisheries in the Bering Sea and Aleutian Islands Management Area on ringed seals have concluded that the seals are only occasionally taken in those fisheries, and that the fisheries are not likely to jeopardize the continued existence of the Arctic ringed seal.

Comment 43: Several commenters expressed concerns over the potential impacts of vessel traffic, in particular icebreakers, on Arctic ringed seals, *e.g.,* during the whelping period. One commenter requested that we expand the discussion of special management considerations or protection to include Arctic marine tourism, and stated that we should consider and discuss how marine tourism differs from other types of shipping traffic, as ice-reinforced vessels reportedly under construction may facilitate purposefully seeking out icy waters and areas with wildlife. In addition, several commenters specifically noted concerns over potential impacts from vessel discharges, spills of oil or other hazardous materials, and release of marine debris.

Response: We agree that vessel traffic, in particular icebreaking activities, may affect the essential features of Arctic ringed seal critical habitat, and we addressed those potential effects in our evaluation of whether these features may require special management considerations or protection. As we discuss in the Special Management Considerations or Protection section of this final rule, in addition to the potential effects of icebreaking on the essential features, the most significant threat posed by marine shipping and transportation is considered to be the accidental or illegal discharge of oil or other toxic materials. Regarding marine tourism, in this evaluation we identified cruise ships as part of the maritime traffic along the western and northern Alaska coasts, and in the draft and final versions of the impact analysis reports for this designation (NMFS 2020, 2021), we discussed that a limited but increasing number of cruise ships bring tourists to waters within Arctic ringed seal critical habitat. As previously explained, section 7 consultation requirements apply only when a Federal action is involved (*i.e.,* an action authorized, funded, or carried out by a Federal agency). For icebreaking or other vessel-based activities with a Federal nexus, NMFS and the action agency would evaluate potential effects on a case-by-case basis.

Comment 44: BLM recommended that we provide a more thorough oil spill and oil spill response analysis, specifically for the North Slope of Alaska, to frame the possibility of this impact more accurately with current information. They stated that we need to acknowledge the progress that has occurred since AMAP (2007) to prevent and minimize oil spills in the Arctic and current response mechanisms in place. They specifically requested that we review and incorporate appropriate Alaska Clean Seas policies and protocols, including response and training infrastructure. They also stated that we should update the information on the risk of oil spills, and provide additional context by acknowledging that the most common development of oil fields would most likely be near existing nearshore oil and gas infrastructure in the Beaufort Sea, rather than in remote areas, and that there are offshore producing fields there that have been operating for many years with no major oil spills.

Response: We recognize that there are existing oil spill prevention and response mechanisms in place; however, as we explained in the revised proposed rule, in determining whether the essential features may require special management considerations or protection, we do not base our decisions on whether management is currently in place or whether such management is adequate. We are required to make a determination about whether the essential features *may* require special management considerations or protection either now or in the future, and the existence oil spill prevention and response mechanisms is evidence that the essential features do in fact require special management considerations. Our evaluation of oil and gas activities in the Special Management Considerations or Protection section of this final rule is sufficient to establish that the ''may require'' standard is met or exceeded with respect to the risk posed to the essential features of Arctic ringed seal critical habitat by these activities, primarily through pollution (particularly the possibility of large oil spills), noise, and physical alteration of the species' habitat.

Impacts of Critical Habitat Designation

Comment 45: Two commenters stated that the timeframe used in the Draft Impact Analysis Report was arbitrarily truncated at 10 years, and thus failed to account for costs associated with the designation that will undoubtedly accrue beyond this timeframe. One of the commenters noted that USFWS considered economic impacts of designation of critical habitat for the polar bear over a 30-year timeframe. This commenter also contended that the use of a 10-year timeframe is inherently contradictory and arbitrary given that the listing determination for the Arctic ringed seal was based on ''a 100-year foreseeable future.'' The other commenter stated that the analysis of economic impacts should be revised to use a timeframe coextensive with the anticipated duration of the designation, citing in support of this contention a court decision involving the limited timeframe considered in a particular biological opinion (*Wild Fish Conservancy* v. *Salazar,* 628 F.3d. 513(9th Cir. 2010)).

Response: As discussed in Section 2.4 of both the draft and final versions of the impact analysis reports for this designation, guidance from OMB indicates that ''if a regulation has no predetermined sunset provision, the agency will need to choose the endpoint of its analysis on the basis of a judgment about the foreseeable future'' (OMB 2011). Because rules designating critical habitat have no predetermined sunset, we determined the endpoint for our analysis based on a judgment regarding the foreseeable future economic effects, and in particular, the difficulty in making reliable forecasts of Federal activities and costs beyond this timeframe. The information upon which the analysis of impacts of the designation is based includes NMFS's record of section 7 consultations from 2013 to 2019 on activities that may have affected the essential features of Arctic ringed seal critical habitat (relatively few relevant consultations were identified for the 3 years prior to when

the Arctic ringed seal was listed under the ESA), as well as available information on planned activities that may affect these essential features. We acknowledge that the critical habitat designation for Arctic ringed seals is expected to result in costs that will be incurred more than 10 years into the future, and although we do not quantify the probable economic impacts beyond this 10-year time period, we believe that the estimated impacts of the designation over the next 10 years generally reflect the nature and magnitude of costs beyond this timeframe. This timeframe is also consistent with OMB guidance stating that ''[f]or most agencies, a standard time period of analysis is 10 to 20 years, and rarely exceeds 50 years'' (OMB 2011), and longstanding NMFS practice (*e.g.,* economic analyses of critical habitat designations for the Central America, Mexico, and Western North Pacific distinct population segments (DPSs) of humpback whales, Main Hawaiian Islands insular false killer whales, Northwest Atlantic DPS of loggerhead sea turtles, Cook Inlet belugas, and smalltooth sawfish). Although not relevant to the timeframe used in the economic analysis, we note that in the listing analysis for this species, we did not identify a single specific time as the foreseeable future. Rather, we addressed the foreseeable future based on the available data for each respective threat, and we had sufficient information to establish that threats stemming from climate change were foreseeable through approximately the end of the 21st century (77 FR 76706, December 28, 2012).

Comment 46: Several commenters, including the Alaska Department of Natural Resources (ADNR), stated that the Draft Impact Analysis Report substantially underestimated the impacts of the proposed critical habitat designation because it primarily identified the incremental administrative costs associated with conducting section 7 consultations that include the critical habitat. The commenters stated that the analysis did not sufficiently account for the full range of likely consequences of the designation, including costs that could result under other Federal regulatory programs, threatened and actual lawsuits, delay and impediment of activities, and effects related to increased regulatory uncertainty. Commenters asserted that because these additional costs are likely to occur, can be assessed and calculated, and would have significant impacts on activities that occur on and adjacent to the North Slope, the draft report should be revised to include an analysis of these impacts, both quantitative and qualitative.

Commenters also noted that the U.S. Army Corps of Engineers (USACE) can impose significantly higher mitigation costs for Clean Water Act (CWA) section 404 permits on projects located in critical habitat compared to projects located outside of critical habitat. They added that the CWA's National Pollution Discharge Elimination System (NPDES) permit program mandates special considerations and protections for areas designated as critical habitat. ADNR and another commenter stated this was also the case under the Outer Continental Shelf Lands Act. Additionally, a commenter noted that areas designated as critical habitat have informed the imposition of additional mitigation measures and modifications to proposed activities in authorizations issued under the MMPA. ADNR and another commenter described that areas designated as critical habitat have been expressly excluded from coverage in at least two Alaska-related NPDES permits. In addition, regarding section 404 permits, ADNR described as a specific example that compensatory mitigation for the Point Thomson project involved significantly greater total acreage and therefore greater costs solely because affected wetlands were located in polar bear critical habitat.

Regarding the potential for litigation, commenters stated that oil and gas and other activities on the North Slope and in the Chukchi and Beaufort seas are already frequently the subject of lawsuits intended to delay, impede, and prevent projects from proceeding. ADNR cited as examples lawsuits regarding the polar bear critical habitat designation (*Alaska Oil and Gas Ass'n* v. *Jewell,* Case No. 13–35919 (9th Cir. 2016)), and the Cook Inlet beluga whale critical habitat designation. ADNR stated that time delays and uncertainty could add significant costs (perhaps millions of dollars) to projects requiring Federal permits. ADNR added that because of the limited time window available when construction may occur, depending on the project, delays could have cascading effects on the timing of construction, the start of operations, and the ability to produce oil, gas, or other resources. In addition, ADNR stated that the designation will devalue acquired and future oil and gas leases due to increased risks associated with the developing those leases.

Response: As described in Section 3 of the Final Impact Analysis Report, the analysis of economic impacts of the critical habitat designation considers direct, incremental costs associated with section 7 consultations (*i.e.,* administrative costs of consultations and any project modifications requested by NMFS to avoid or minimize potential destruction or adverse modification of critical habitat), as well as the potential for indirect impacts (*i.e.,* not related to section 7 outcomes), such as time delays or regulatory uncertainty. This analysis considered all relevant incremental costs associated with the designation, and these costs were monetized to the fullest extent that reasonable estimates could be made, and were otherwise treated qualitatively when monetization was not possible. Section 6 of the Draft Impact Analysis report recognized that some potential exists for the designation to result in costs associated with indirect impacts. However, the incremental costs associated with such effects were not quantified in the analysis due to significant uncertainty and information limitations. In response to public comments, the Final Impact Analysis Report (see Section 6.10 of the report) provides an expanded discussion of the concerns expressed by the commenters regarding the potential for indirect incremental impacts, such as the potential for future third-party litigation over specific section 7 consultations, time delays, and other sources of regulatory uncertainty, as we describe in more detail below. We considered both the quantitative and qualitative information presented in that report in developing the final critical habitat designation for the Arctic ringed seal.

The Final Impact Analysis Report acknowledges the concern expressed by commenters that, under certain circumstances, Federal agencies such as USACE (as well as local and State agencies) may choose to manage areas differently after critical habitat is designated. However, we are not aware of plans by any agency to institute future restrictions to provide specific protections for Arctic ringed seal critical habitat. We note that in the specific NPDES general permits cited as examples by commenters, the critical habitat excluded from coverage reflected the U.S. Environmental Protection Agency's consideration of potential effects of permitted discharges to one particular listed species and its critical habitat. Not all designated critical habitat was excluded from coverage in these permits, and there is no basis to assume that the Arctic ringed seal critical habitat designated in this rule would be excluded. With regard to the concern related to requirements for authorizations that NMFS may issue under the MMPA, as discussed in Section 6 of this report, our review of

recent actions in the critical habitat area has not identified a circumstance in which a section 7 consultation would likely result in project modifications solely to avoid impacts to Arctic ringed seal critical habitat. Because it is not possible to predict the timing, frequency, or extent to which this critical habitat designation may trigger specific additional requirements under non-ESA regulatory programs, the report concludes that attempting to forecast such hypothetical outcomes would be speculative.

With regard to comments concerning the potential for the critical habitat to be used in litigation, we note that the specific court case cited by ADNR as an example (*Alaska Oil and Gas Ass'n* v. *Jewell,* Case No. 13–35919 (9th Cir. 2016)) challenged the polar bear critical habitat rule itself. However, when considering the economic impacts of the designation, we do not consider costs of litigation associated with challenging the critical habitat rule. Historical precedent does exist for third-party lawsuits to challenge activities occurring in designated critical habitat. However, these lawsuits typically include claims regarding effects to both listed species and critical habitat, and may include claims under other laws, *e.g.,* the MMPA, the National Environmental Policy Act, etc. Moreover, it is not possible to predict the nature, frequency, timing, or outcome of such lawsuits, and as such, attempting to do so would involve significant speculation. The Final Impact Analysis Report describes the concern and the potential for lawsuits but concludes that determining the outcomes of such third-party litigation would be speculative.

Regarding concerns related to time delays specifically associated with the need to address critical habitat in future section 7 consultations, Federal agencies are already required to consult with NMFS under section 7 for actions that may affect Arctic ringed seals. These consultations typically analyze habitat-related effects to the seals such as effects to prey, even in the absence of a critical habitat designation. While Federal actions that may affect the essential features of the critical habitat will require an analysis to ensure that these actions are not likely to result in the destruction or adverse modification of the critical habitat, which will impose some minor incremental costs to consultations, we do not expect that this will require substantial additional time or resources, especially for new consultations (see also our response to Comment 47). Further, timelines for section 7 consultations are specified in statute and our implementing regulations and the number of listed species or critical habitats considered in any given consultation does not affect these timelines.

Although there is potential for regulatory uncertainty, whether and to what extent projects or associated economic behavior may be affected due to regulatory uncertainty stemming from the critical habitat designation is significantly uncertain. The types of data that would be necessary to quantify costs associated with regulatory uncertainty, such as data linking the designation to changes in industry economic behavior, are unavailable. As for ADNR's concern that the designation will devalue oil and gas leases, we are not aware of any empirical evidence or studies of such effects for the areas included in the designation, and none were identified in these comments. Therefore, the Final Impact Analysis Report describes the commenters' concerns about potential indirect effects stemming from regulatory uncertainty, as well as the concern expressed by ADNR over potential devaluation of oil and gas leases. However, due to the significant uncertainty and information limitations, it concludes that attempting to forecast changes in economic behavior resulting from regulatory uncertainty on the part of industry relative to this critical habitat designation would be speculative.

Comment 47: One commenter stated that the impacts associated with a critical habitat designation cannot be simply dismissed as mere additional administrative costs in the section 7 consultation context. They noted that section 7 consultations typically require, for example, the preparation of biological assessments, consultant services to identify potential effects of the proposed action and potential mitigation or conservation measures, robust engagement with the relevant federal agencies, and frequent litigation regarding the outcome. They stated that the addition of critical habitat to the consultation process creates additional analytical components with additional potential modifications to the proposed action to avoid any destruction or adverse modification of critical habitat, and that these factors increase the duration of project reviews, impose additional regulatory burdens, and create additional legal risks.

Response: As we stated in our response to Comment 46, Federal agencies have an existing obligation to consult with NMFS to ensure that any action authorized, funded, or carried out by them (*i.e.,* Federal action) is not likely to jeopardize the continued existence of the Arctic ringed seal. As discussed in Section 6 of the Final Impact Analysis Report, based on the best information available, the Federal actions projected to occur within the timeframe of the analysis that may trigger a section 7 consultation due to the potential to affect one or more of the essential features of the critical habitat also have the potential to affect Arctic ringed seals. Thus, we expect that none of the activities we identified would trigger a consultation solely on the basis of this critical habitat designation. Public comments did not provide any new information that could be used to revise this analysis. In addition, as discussed in Section 6 of the Final Impact Analysis Report and in the *Economic Impacts* section of this final rule, at this time, we do not anticipate that section 7 consultations would result in additional requests for project modifications to avoid or minimize adverse modification of Arctic ringed seal critical habitat beyond any modifications that may be necessary to address impacts to the seals (*i.e.,* under the jeopardy standard). In particular, this is because section 7 analyses of the effects of proposed Federal actions on listed species, which are triggered by the threatened status of the Arctic ringed seal under the ESA, already consider habitat-related impacts to the seals. Although each proposed Federal action must be reviewed at the time of consultation based on the best scientific and commercial data available at that time, it is unlikely that any project modifications are likely to result from such consultations that would be attributable solely to the critical habitat designation, since any modifications required to avoid jeopardy for this species would likely be identical to measures needed to avoid adverse modification of critical habitat. While we recognize that Federal actions that may affect the essential features of Arctic ringed seal critical habitat will require an analysis to ensure that these actions are not likely to result in the destruction or adverse modification of the critical habitat, which will impose some minor additional costs, we do not expect that this will require substantial additional time or resources. Further, timelines for section 7 consultations are specified in statute and our implementing regulations, and the number of listed species or critical habitats considered in any given consultation does not affect these timelines.

As discussed in Section 3.1 of the Final Impact Analysis Report, the estimates of administrative consultation

costs applied in the economic analysis are based on a review of consultation records from several field offices across the country, and modifications to reflect our experience with consultations in Alaska. These cost estimates take into consideration the anticipated level of effort that would be required to address potential effects on critical habitat in consultations, as well as the complexity of the consultations (*e.g.,* formal versus informal).

With regard to the comment on legal risks and other indirect impacts of the designation, see our response to Comment 46.

Comment 48: Several commenters emphasized that oil and gas exploration, development, and production on the North Slope and in adjacent offshore areas provide very substantial economic benefits, and ADNR and another commenter stressed that these activities are of national strategic significance and provide important energy, economic and national security benefits. ADNR and another commenter expressed that Congress established, and courts have affirmed, that leasing, exploration, and development of these resources are a national priority and in the public interest. They added that the present and future contribution of oil and gas from the North Slope of Alaska and from adjacent state and Federal waters meets a substantial portion of our national energy needs. Further, they stated that development of domestic energy resources, including oil and gas located in, and adjacent to, Alaska, is a well-documented matter of national security and is consistent with the well-established mandates of Federal law.

All of these commenters asserted that the proposed critical habitat designation will result in additional section 7 consultations, project modifications, and likely litigation, and that project delays and increased costs may thus result in impediment of oil and gas activities, less exploration, fewer opportunities to discover economic reserves, and therefore, less development and production of domestic oil and gas resources in these areas, to the detriment of local communities, the State of Alaska, and the United States. ADNR expressed similar concerns regarding potential impacts of the designation on development of critical minerals, citing as an example the Graphite One mine project north of Nome. The North Slope Borough commented that the development of natural resources in and adjacent to the North Slope largely supports the regional economy, allows the Borough to provide essential services and other benefits to its residents, and supports the municipal tax base. The Borough expressed concern that because a significant portion of its revenue is derived from taxes on oil and gas infrastructure, additional impacts to these projects as a result of the designation would be felt by the Borough.

Response: As discussed in the *Economic Impacts* section of this final rule and detailed in the Final Impact Analysis Report, the total incremental costs associated with the critical habitat designation for the Arctic ringed seal within the 10-year post-designation timeframe, in discounted present value terms, were estimated at $714,000 (discounted at 7 percent) to $834,000 (discounted at 3 percent). About 83 percent of the incremental costs attributed to the critical habitat designation are expected to accrue from ESA section 7 consultations associated with oil and gas related activities in the Chukchi and Beaufort seas. To avoid understating the cost estimates, we assumed that a high projected level of oil and gas activity will occur annually, although such a high level of activity is unlikely to occur in each and every year. As detailed in the Final Impact Analysis Report, the costs associated with the designation of critical habitat for the Arctic ringed seal are expected to primarily consist of additional administrative costs to consider the critical habitat as part of future section 7 consultations, with third-party costs primarily borne by the oil and gas sector. Costs to the oil and gas industry are expected to be limited to administrative costs of adding Arctic ringed seal critical habitat to section 7 consultations that are already required to address effects to Arctic ringed seals (and potentially other listed species). At this time, we have no information to suggest incremental project modifications requests are likely to result from these consultations above and beyond any modification requests related to addressing impacts to Arctic ringed seals (*i.e.,* under the jeopardy standard). Including a critical habitat analysis in consultations would slightly increase permitting costs for oil and gas sector activities, but such costs attributable to this designation are not anticipated to change the level of oil and gas sector activities within critical habitat. As discussed in Section 9.2 of the Final Impact Analysis Report, ESA section 7 consultations have occurred for numerous oil and gas projects within the area of the designation (*e.g.,* regarding possible effects on endangered bowhead whales) without adversely affecting energy supply, distribution, or use. The same outcome is expected relative to critical habitat for Arctic ringed seals. This designation is not expected to significantly affect oil and gas production decisions, subsequent oil and gas supply, or the cost of energy production. We have therefore determined that the energy effects of this designation of critical habitat are unlikely to exceed the thresholds in E.O. 13211, and that this rulemaking is not a significant energy action (see *Executive Order 13211, Energy Supply, Distribution, and Use* section). Also, see our responses to Comment 46 regarding potential indirect impacts of the designation, and Comment 47, regarding section 7 consultation costs, generally.

Comment 49: The North Slope Borough stated that we failed to consider impacts on municipal and village activities, such as construction of sea walls, repair and maintenance of roads, water treatment activities, and building and other infrastructure construction. The Borough commented that these activities will likely require a Federal permit or involve Federal funding, and thus will likely require section 7 consultation and mitigation and/or modifications to avoid adverse modification or destruction of the critical habitat. The Borough stated that the additional effort for consultations and implementation of mitigation measures will add possible delays and substantial costs to local projects such that many of them will no longer be affordable.

Response: The Draft Impact Analysis Report projected the occurrence of Federal activities by level of consultation (formal or informal) over the timeframe of the analysis, including for coastal construction projects, as well as for activities involving ports and harbors (see Table 5–16 and Section 6 of this report). The commenter did not provide specific relevant information or examples of planned municipal or village activities with a Federal nexus that could be used to revise this analysis. As summarized in Table 5–16 of the draft and final versions of the impact analysis report (NMFS 2020, 2021), most of the forecasted consultations for these types of activities are expected to conclude informally (*i.e.,* conclude with a letter of concurrence that the action is not likely to adversely affect the critical habitat rather than requiring a biological opinion). Further, it is not likely that section 7 consultations involving these types of activities if needed would result in additional requests for project modifications attributable to the critical habitat designation given the nature of these activities, their potential to affect

the essential features, and the existing need to consider effects on the seals due to the threatened status of the species (which typically includes consideration of habitat-associated threats). With respect to incremental costs of consultations, also see our response to Comment 47.

Comment 50: Several commenters asserted that we failed to fully consider or analyze the economic and other impacts of the critical habitat designation on Alaska Natives, the North Slope Borough, coastal communities in western and northern Alaska, and municipal and village activities in these regions. The commenters stated these impacts would be unreasonably and disproportionately imposed upon Alaska Natives, and in particular, upon residents of the North Slope. The North Slope Borough stated that the development of natural resources in and adjacent to the North Slope largely supports the regional economy, allows for the provision of essential services, supports the municipal tax base, and allows the Borough to provide other benefits to its residents. The Borough stressed that any impact on the development of these natural resources will therefore also impact the Borough and its residents. The Borough added that the revised proposed rule did not address any of the requirements of E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations). The Borough noted that the Draft Impact Analysis Report briefly addressed these requirements, but disagreed with the conclusion in the report that no disproportionate adverse economic impacts are anticipated.

Response: We understand that the potential for impacts of the designation is of significant concern to the commenters. As discussed in the *Economic Analysis* section of this final rule, we have considered and evaluated the potential economic impact of the critical habitat designation under section 4(b)(2) of the ESA, as identified in the Final Impact Analysis Report. Based on this evaluation, we have concluded that the potential economic impacts associated with the critical habitat designation are modest both in absolute terms and relative to the level of economic activity expected to occur in the affected area, which is primarily associated with oil and gas activities that may occur in the Chukchi and Beaufort seas. As indicated in our response to Comment 47, the costs associated with the designation are expected to primarily consist of additional administrative costs to consider the critical habitat as part of future section 7 consultations, with third-party costs primarily borne by the oil and gas sector. The designation is not expected to significantly affect oil and gas production decisions, subsequent oil and gas supply, or the cost of energy production. In addition, as detailed in Section 9.1 of the Final Impact Analysis Report, based on the best information available, the critical habitat designation is expected to result in minimal impacts to small entities. We therefore do not expect the critical habitat designation to have a disproportionately high effect on low income or minority populations and this designation is consistent with the requirements of E.O. 12898. We also underscore here that no restrictions on subsistence hunting by Alaska Natives are associated with the critical habitat designation for the Arctic ringed seal.

Comment 51: ADNR stated that we neglected to identify Alaska as a potentially affected economic sector or group in the Draft Impact Analysis Report. They stressed that there are substantial economic benefits to Alaska and its citizens from mining, oil and gas, and other activities on the North Slope and in the adjacent state and Federal waters of the Chukchi and Beaufort seas, and additionally, that Alaska has interest in access to and transportation in the proposed critical habitat areas. ADNR and ADF&G expressed concerns that the critical habitat designation will place disproportionate regulatory burdens and economic costs on Alaskans and may result in less mining, oil, gas, and other activities, to the detriment of Alaska.

Response: The draft and final versions of the impact analysis report (NMFS 2020, 2021) analyze in detail the incremental and other relevant impacts of the proposed Arctic ringed seal critical habitat designation. Section 5.4 of these reports describes the economic and social activities within, and in the vicinity of, the critical habitat designation, including Arctic North Slope oil and gas exploration, development and production, mining, ports and coastal construction, commercial fisheries, Alaska Native subsistence, recreation and tourism, commercial shipping and transportation, military activities, and education and scientific activities. These reports considered all relevant economic impacts, and developed cost (and benefit) estimates at an appropriate scale based on the best data available. As discussed in the *Economic Impacts* section of the revised proposed rule and this final rule, the direct incremental costs of this critical habitat designation are expected to be limited to the additional administrative costs of considering Arctic ringed seal critical habitat in future section 7 consultations. We conclude in the final rule that the potential economic impacts associated with the designation of critical habitat for the Arctic ringed seal are modest both in absolute terms and relative to the level of economic activity expected to occur in the affected areas. This conclusion has not changed from the revised proposed rule.

Comment 52: Several commenters indicated that they appreciated that we clearly stated in the revised proposed rule that no restrictions on subsistence hunting are associated with the critical habitat designation. Still, the Marine Mammal Commission recommended that we discuss and highlight in the final rule and in other appropriate outreach materials and fora that the critical habitat designation is not expected to have any adverse impact on Alaska Native subsistence activities. The Commission commented that there is a widely held perception that designating critical habitat has adverse consequences for Alaska Natives who hunt marine mammals, but that is not the case.

Response: As indicated by the commenters and stated in this final rule, although this critical habitat designation overlaps with areas used by Alaska Natives for subsistence, cultural, and other purposes, no restrictions are associated with the designation. We have emphasized this point in public venues, such as the public hearings on the proposed designation, and in our communications with the Ice Seal Committee, the Alaska Native organization with which we co-manage the subsistence use of ice-associated seals under section 119 of the MMPA. We have also conveyed this message in letters sent to tribes and Alaska Native corporations concerning the critical habitat designation. We agree with the Marine Mammal Commission that it is important to continue to highlight this information in appropriate outreach materials and fora.

Comment 53: One commenter found it unclear in the discussion of economic aspects of the proposed critical habitat designation who would specifically be responsible for ''third-party'' costs of section 7 consultations and suggested clarifying this. The commenter also noted that the range of estimated annual costs associated with the proposed critical habitat designation is very wide. The commenter stated that although the Draft Impact Analysis Report provided sufficient detail regarding why this is the case, the related text in the revised

proposed rule was confusing and ambiguous.

Response: Parties involved in a section 7 consultation include NMFS, a Federal action agency, and in some cases, a third party participant. A third party having an interest in a consultation may be a private entity (*e.g.,* applicant for a Federal permit), local or state government, or some other entity. We have clarified this in the Final Impact Analysis Report. The results of this analysis indicate that third parties bear an estimated 58 percent of the total costs of the critical habitat designation within the timeframe of the analysis (10 years), the majority of which are associated with oil and gas activities. The cost model used a retrospective assessment of recent section 7 consultations and available information on planned activities to inform the cost estimates, including third-party costs, of future consultations over the next 10 years. The cost estimate values are discounted as required by regulatory guidance (OMB Circular A4).

Benefits of Critical Habitat Designation

Comment 54: Several commenters, including the State of Alaska (ADNR and ADF&G), stated that Arctic ringed seals are already sufficiently protected from adverse impacts by the MMPA, CWA, Clean Air Act, Outer Continental Shelf Lands Act, National Environmental Policy Act, Oil Pollution Act of 1990; and other Federal, state, and local regulations. Commenters emphasized that activities such as oil and gas exploration and development are regulated pursuant to the MMPA to ensure that they have no more than a negligible impact on ringed seals, and referred to the record of incidental take authorizations issued for Arctic oil and gas activities. One commenter stated that USFWS has already determined, and courts have agreed, that the provisions of the MMPA provide a greater level of protection to marine mammals than the ESA. In addition, ADNR stated that the oil and gas industry has coexisted with bowhead whales under MMPA protections for decades, and there has been no attempt to designate critical habitat for this species. ADF&G and another commenter stated that moreover, the proposed designation is redundant with existing habitat protections for polar bears, notwithstanding differences in habitat use between the two species, as there is substantial overlap between the area proposed for designation and the area already designated for polar bears.

Response: We recognize that certain laws and regulatory regimes already protect, to different degrees and for various purposes, U.S. waters occupied by the Arctic ringed seal, and therefore, to a certain extent, the essential features. However, the existing laws and regulations do not ensure that current and proposed Federal actions are not likely to adversely modify or destroy Arctic ringed seal critical habitat. For example, regulations under the MMPA provide specific protections for Arctic ringed seals but they do not specifically protect the essential features and conservation value of Arctic ringed seal critical habitat. Moreover, critical habitat must be designated regardless of whether other laws or measures already provide protection. *See Natural Res. Def. Council* v. *U.S. Dep't of the Interior,* 113 F.3d 1121, 1127 (9th Cir. 1997) (''Neither the Act nor the implementing regulations sanctions [sic] nondesignation of habitat when designation would be merely *less* beneficial to the species than another type of protection.'').

Regarding the comment that the critical habitat designation is redundant with existing habitat protections for polar bears, we disagree. Arctic ringed seals may use some of the same habitat in the northern Bering, Chukchi, and Beaufort seas used by polar bears, but the critical habitat designation and listing protections for polar bears are established to promote the conservation and recovery of that species specifically. Further, polar bear critical habitat does not explicitly protect the physical and biological features essential to the conservation of the Arctic ringed seal. Section 7 consultations involving polar bear critical habitat therefore would not address impacts to Arctic ringed seals' habitat.

Comment 55: ADF&G asserted that designating very large areas as critical habitat dilutes or undermines the conservation benefits it supplies compared with targeting designations toward areas with higher documented conservation value, and results in designations with little or no benefits to listed species. They stated that this is because the evaluation of whether a proposed Federal action is likely to destroy or adversely modify critical habitat under section 7 of the ESA is based on impacts to the whole of the designated critical habitat. They argued that as a result, when evaluating the impacts of a Federal action on a large critical habitat designation in a section 7 consultation, negative impacts to a ''genuinely critical'' area within a species' range are ''swamped'' by the sheer size of the designated critical habitat. They stated that therefore, the proposed designation for Arctic ringed seals would simply add a regulatory layer under section 7 of the ESA, while providing little or no educational or other benefits. They added that their analysis provided to NMFS to inform the designation of critical habitat for listed DPSs of humpback whales demonstrates that designating very large areas will likely provide no conservation benefits to these populations while adding unnecessary regulatory burdens to oil and gas operations, transportation, and other uses. Two commenters also stated that because we do not anticipate that additional requests for project modifications will result specifically from designation of critical habitat for the Arctic ringed seal, the designation would provide little or no conservation benefit to the species beyond what is already afforded by virtue of its listing under the ESA.

Response: The ESA requires us to designate critical habitat to the maximum extent prudent and determinable. Critical habitat within the geographical area occupied by the species as defined in section 3 of the ESA includes areas on which are found those physical or biological features that are essential to the conservation of the listed species and may require special management considerations or protection (16 U.S.C. 1532(5)(A)). The term ''conservation'' is further defined in section 3 of the ESA as the use of all methods and procedures necessary to bring any endangered or threatened species to the point at which their protection under the ESA is no longer necessary (16 U.S.C. 1532(3)). Therefore, a critical habitat designation must be determined based on consideration of the nature of the habitat features that support the life history and conservation needs of the particular listed species. As we discussed in the revised proposed rule and our response to Comment 25, Arctic ringed seals have a widespread distribution, their movements and habitat use are strongly influenced by the seasonality of sea ice cover, and they can range widely. Moreover, the habitat features they rely upon, in particular the sea ice essential features, are dynamic and variable on both spatial and temporal scales. As such, we identified where the essential features occur at a coarse scale, because this is as much specificity as the best scientific data available allow.

Our critical habitat determination for the Arctic ringed seal reflects these factors, and our analysis is appropriate and sufficient to designate critical habitat as defined by the ESA. Although we reviewed the analysis ADF&G provided to NMFS to inform the

designation of critical habitat for listed DPSs of humpback whales, as we discussed in detail in the preamble to the final rule for that designation (75 FR 21082, April 21, 2021), the ESA, implementing regulations at 50 CFR 424.12, and case law guide us in our evaluation of areas that meet the definition of critical habitat, and none of these sources provide support for the analytical approach advocated by the commenter.

We also disagree with the assumption that the conservation benefits of critical habitat are strictly limited to any changes to Federal actions that are made to avoid destruction or adverse modification of critical habitat. Once designated, critical habitat provides specific notice to Federal agencies and the public of the geographic areas and physical and biological features essential to the conservation of the species, as well as information about the types of activities that may reduce the conservation value of that habitat. Thus, designation of critical habitat can inform Federal agencies of the habitat needs of the species, which may facilitate using their authorities to support the conservation of the species pursuant to section 7(a)(1) of the ESA, including to design proposed projects in ways that avoid, minimize, and/or mitigate adverse effects to critical habitat from the outset. As discussed in the *Benefits of Designation* section of this final rule and in more detail in the Final Impact Analysis report, in addition, other benefits are recognized, such as public awareness of the status of the species and its habitat needs, which can stimulate research, as well as outreach and education activities.

Comment 56: One commenter expressed concern that because we indicated that the critical habitat designation is not likely to result in additional requests for project modifications, we have made a preemptive determination that no changes to projects will be necessary in any future section 7 consultation to avoid adverse modification or destruction of the critical habitat. The commenter stated that this also conveys the impression that NMFS will not meaningfully evaluate the effects of proposed Federal action on the critical habitat in future consultations. The commenter added that given the way that NMFS conducts consultations on a case-by-case basis with an extremely restrictive definition of cumulative effects, and that there have been very few consultations in which NMFS has issued an adverse modification finding, it is unlikely that the designation will provide additional protection to the ecosystem upon which Arctic ringed seals depend.

Response: We disagree with these comments. We are making no preemptive determinations about future section 7 consultations in this critical habitat designation. While we cannot predict the outcome of future consultations with certainty, on the basis of the best scientific and commercial data available, we have not identified a circumstance in which this critical habitat designation would be likely to result in additional requests for project modifications in section 7 consultations. This does not mean that Federal actions will not undergo meaningful and rigorous review through the section 7 consultation process or that project modifications specifically designed to avoid impacts to critical habitat could never occur. Rather, it means only that we have no basis to conclude such modifications are likely to occur and that therefore incremental impacts of this critical habitat designation should be forecasted in our impacts analysis. Based on the best information available regarding potential future Federal actions, and given the high level of existing baseline protections for the seals under the MMPA and due to their listing under the ESA, project modifications made to lessen impacts to ringed seals or to avoid jeopardy would likely encompass measures needed to reduce impacts to (and potentially avoid adverse modification of) critical habitat. That is, while section 7 consultations may result in project modifications, such modifications would likely be necessary to protect ringed seals in addition to protecting the essential features on which the species relies.

In addition, as we explained in our response to Comment 55, the benefits of critical habitat designation cannot simply be measured by the outcome of section 7 consultations, as there are other benefits of critical habitat that extend beyond the direct benefits through section 7 consultations. Regarding consideration of cumulative effects, in formulating our biological opinion as to whether or not a particular proposed Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat, our regulations at 50 CFR 424.14 require that we assess the status of the species and the critical habitat (including threats and trends), the environmental baseline of the action area, and cumulative effects, which in this context are defined to be the effects of any unrelated future non-Federal activities that are reasonably certain to occur within the action area. The summary of the status of the critical habitat considers the historical and past impacts of activities across time and space. The effects of any particular action are thus evaluated in the context of this assessment, which incorporates the effects of all current and previous actions. This avoids situations where each individual action is viewed as causing only relatively minor adverse effects but, over time, the aggregated effects of these actions would erode the conservation value of the critical habitat (81 FR 7214, February 11, 2016; 84 FR 44976, August 27, 2019).

Comment 57: A number of commenters stated that critical habitat is important to supporting the conservation of the Arctic ringed seals. Some commenters noted the greater protective standard afforded to critical habitat under section 7 of the ESA will help address threats associated with activities such as oil and gas development, which can help increase the species' resilience to climate change. Some commenters also stated that critical habitat provides important public outreach and education opportunities that enhance conservation, including furthering awareness of the impacts of climate change, the plight of listed species, and the conservation value of critical habitat areas. In addition, some commenters suggested that benefits resulting from the designation could extend to other species that rely on the habitat, such as polar bears and bearded seals.

Response: We agree with these comments.

Comment 58: One commenter stated that the proposed designation would provide no meaningful public education benefits because Alaska Native communities and regulated industries that undertake activities within the potentially designated areas are already fully familiar with the species and have implemented protective measures pursuant to the MMPA for decades, and these areas are otherwise largely devoid of human activity. Another commenter also questioned how non-regulatory benefits discussed in the revised proposed rule, such as enhanced conservation or indirect benefits to subsistence users, would actually materialize, and stated that the overlap of critical habitat and its protections for Arctic ringed seals, bearded seals, and polar bears seems purely redundant and without the benefit of any additional protection.

Response: As discussed in the *Benefits of Designation* section of this final rule, and in more detail in the Final Impact Analysis Report, we

conclude that designation of critical habitat for Arctic ringed seals can have a number of indirect benefits. We recognize that Alaska Native subsistence hunting communities adjacent to the Beaufort, Chukchi, and northern Bering seas are very familiar with the species and its habitat, as are certain other entities operating within Arctic ringed seal critical habitat. Still, it is our experience that after critical habitat has been designated for listed species, increased awareness of the habitat needs of listed species on the part of the public as well as planners, government entities, and others, has promoted the conservation of the species. For example, the designation provides specific notice of the habitat features essential to the conservation of Arctic ringed seals, which can facilitate the design of proposed projects by Federal agencies in ways that minimize or avoid effects to critical habitat. However, we also note that the ESA requires designation of critical habitat for listed species to the maximum extent prudent and determinable, regardless of protections afforded by other environmental laws or increased public awareness of the habitat needs of listed species associated with critical habitat designations.

Comments Concerning Exclusions

Comment 59: Several commenters expressed opposition to the proposed exclusion of an area north of the Beaufort Sea shelf from critical habitat based on national security impacts and requested that we reduce or better justify this exclusion. The commenters stated that we did not make clear how the Navy's activities would be disrupted by critical habitat in ways that could negatively affect national security. A couple commenters stated that the large size of the exclusion and the limited description of the Navy's activities gives the impression that those activities may not be consistent with our description of them as localized or small in scale. One commenter also stated that in in weighing the national security impacts against conservation benefits of potential designation we relied on the relative lack of data, while downplaying that the excluded area includes about 41 percent of the habitat north of the Beaufort Sea shelf. In addition, a couple commenters stated that we failed to discuss that as sea ice diminishes, the area proposed for exclusion will become an increasingly greater portion of usable habitat for Arctic ringed seals. One commenter also stated that we should address whether and to what extent the Navy's experience with North Atlantic right whale critical habitat is relevant. Additionally, one commenter requested that, at a minimum, NMFS commit to collecting the data needed to fully analyze the impacts the exclusion will have on Arctic ringed seals and revisiting our determination regarding the requested exclusion at a later date.

Response: As we explained in the revised proposed rule, to weigh the national security impacts against conservation benefits of a potential critical habitat designation, we considered the size of the requested exclusion and the amount of overlap with the specific area meeting the definition of critical habitat for the Arctic ringed seal; the relative conservation value for Arctic ringed seals of the area requested for exclusion; the likelihood that the Navy's activities would trigger section 7 consultation; the likelihood that Navy activities would need to be modified to avoid adverse modification or destruction of critical habitat; and the likelihood that other Federal actions may occur that would no longer be subject to section 7 consultation over impacts to critical habitat if the particular area were excluded from the designation.

In developing this final rule, we followed up with the Navy regarding the location of the area it requested be excluded from the critical habitat designation. The Navy clarified that the spatial data it previously provided to NMFS to map the requested exclusion inadvertently contained outdated information that did not reflect the full southern extent of the particular area they intended to request be excluded from the designation, which includes waters about 50 nm south of the southern boundary of the proposed exclusion area east of 150° W longitude. In addition, the Navy requested that the western boundary of the proposed exclusion be extended one degree west to account for Office of Naval Research activities within this area. We therefore evaluated whether there was a reasonably specific justification indicating that designating the area requested for exclusion as critical habitat, with revision of the southern and western boundaries of the proposed exclusion, would have a probable incremental impact on national security.

In the Navy's written communications in support of their request for exclusion of this particular area, they pointed to the national security implications of the trend toward the Arctic Ocean becoming increasingly accessible and navigable, and stated that they are planning to address future Arctic region security concerns through implementation of the Navy's 2019 Strategic Outlook for the Arctic, and as described in its subsequent Strategic Blueprint for the Arctic released in 2021. As we discussed in the revised proposed rule, the Navy indicated that it currently conducts training and testing exercises on and below the sea ice within the area requested for exclusion (which the Navy refers to as Ice Exercises (ICEXs)) that support the Navy's national security mission. The Navy explained that due to the need for stable ice, flights are conducted over the area requested for exclusion to find a prospective location for a given ICEX camp, and then on-ice surveys are performed to determine the final location immediately prior to buildup of the camp (for additional details, see *National Security Impacts* section). The Navy explained that, given the variable nature of sea ice suitable to support the establishment of ice camps, the Navy's ICEX program has routinely required flexibility for location of the area within which an ice camp may be established. The Navy further stated that the Navy Special Warfare Command (NSWC) units conduct training activities in the same geographic region, and although current training is outside of the proposed critical habitat, as NSWC training is expanding, the Navy has concerns that the designation could affect its ability to conduct activities in certain locations. The Navy also noted that the Office of Naval Research conducts research testing activities in the deep waters of the Beaufort Sea with acoustic sources, most of which operate autonomously for periods of days to months under the ice, and the use of icebreaking ships to deploy and retrieve these sources, and expressed concern that the designation could impact the ability to deploy and retrieve equipment, or to utilize acoustic sources in the manner necessary to fulfill research objectives. The Navy indicated that additional training and testing activities are expected in the Arctic region, which may occur during or independent of an ICEX. The Navy stated that such activities can include the surfacing of a submarine through the ice, the set-up of expeditionary tent encampments, creation of holes in the ice to deploy equipment, and the establishment of an expeditionary runway. These activities are also likely to include vessel movements, icebreaking, and transport of logistics by air and sea in support of future military readiness activities. Testing activities may include air platform/vehicle tests, missile testing, gunnery testing, and anti-submarine warfare tracking testing.

In response to the concerns expressed by commenters we followed up with the Navy and requested additional

information regarding the size of the area the Navy requested be excluded and how the Navy's activities would be impacted by the critical habitat designation. As discussed in the *Exclusion Based on National Security Impacts* section of this final rule, the Navy provided further details on the specific criteria it requires to conduct ICEX activities and the ways in which its training activities could affect the sea ice essential features in the future, possibly resulting in requests for project modifications. The Navy also reiterated that if any activities were curtailed or modified to avoid impacts to critical habitat, it could not relocate those activities to another suitable location outside critical habitat. In addition, with regard to Office of Naval Research activities, the Navy explained that these research activities include the deployment of moored acoustic sources, which may involve the use of an icebreaking vessel for the deployment or recovery of equipment. The Navy stated that because locations to deploy and recover equipment are pre-selected and there is little flexibility, there is similarly little to no flexibility in conducting icebreaking. The Navy discussed that for this reason, if NMFS required modifications to these research activities in a future section 7 consultation to avoid impacts to the critical habitat—such as seasonal or spatial avoidance areas or not breaking ice which has certain conditions—it would have significant impact on these activities. The Navy stated that understanding changing Arctic conditions is critical for maintaining U.S. naval effectiveness and ensuring national security capabilities.

We recognize that, as discussed in the revised proposed rule, data currently available on Arctic ringed seal use of the area requested for exclusion (particularly for the northernmost portion) are limited. Thus, although the area requested for exclusion contains one or more of the essential features of the Arctic ringed seal's critical habitat, data are limited to inform our assessment of the relative value of this area to the conservation of the species. Nevertheless, we must make a determination regarding the requested exclusion based on the best scientific data available. We disagree with the comment suggesting that we downplayed the size of the requested exclusion area, as we provided clear information regarding the location and size of this particular area in the revised proposed rule and fully considered this information in weighing conservation benefits of potential designation against national security impacts. In addition, in this final rule, we have updated the information regarding the size of the revised exclusion area (see above), which now includes about 60 percent of the habitat north of the Beaufort Sea shelf. Although we recognize that as sea ice diminishes the excluded area will become an increasingly greater portion of usable habitat for Arctic ringed seals, and we considered this in our assessment of the benefit of designating this area as critical habitat (and have clarified this in the Exclusion Based on National Security Impacts section), commenters did not provide, and we are not aware of, any new information that would further inform our assessment. Because the requested exclusion comprises a deep area of marine habitat north of the continental shelf, few if any other Federal actions are expected to occur there that would no longer be subject to ESA section 7 consultations if the area were excluded from designation. The Navy and all other Federal agencies have an existing obligation to consult with NMFS under section 7 of the ESA to ensure that Federal actions are not likely to jeopardize the continued existing of the Arctic ringed seal.

We continue to find that the Navy has provided a reasonably specific justification to support the requested exclusion (with revision of the southern and western boundaries). Consistent with our Section 4(b)(2) Policy (81 FR 7226, February 11, 2016), we gave great weight to the Navy's concerns in analyzing the benefits of exclusion. Given the Navy's specific concern regarding potential impacts of the critical habitat designation on its military readiness activities that occur within the area requested for exclusion, we continue to find that the benefits of excluding this particular area due to national security impacts outweigh the benefits of designating this area as critical habitat for the Arctic ringed seal. Though we have not identified any specific circumstances in which this critical habitat designation would be likely to result in requests for project modifications, we acknowledge such modification requests could occur in the future and defer to the Navy's assessment that any possibility of modifications to its activities in this particular area could have adverse impacts on activities of great importance to national security. Regarding the comment requesting that we address the extent to which the Navy's experience with North Atlantic right whale critical habitat (which we noted in the revised proposed rule) is relevant in the context of the Arctic ringed seal critical habitat designation, although we considered all of the information provided by the Navy in support of its exclusion request, this was not a significant aspect of our evaluation of the Navy's request. We independently consider all requests for national security exclusions under 4(b)(2) based on the specifics of the particular area being proposed for exclusion and the importance of that area to the conservation of the relevant listed species.

Failure to designate the excluded area as critical habitat is not expected to result in the extinction of the species because the area is small in comparison to the entirety of the critical habitat, and importantly, because Federal actions in this area—which are expected to be few aside from the Navy's—are still be subject to the requirements of section 7(a)(2) of the ESA to assess threats to Arctic ringed seals (including habitat related threats). We will continue to work with the Navy through the section 7 consultation process to minimize the impacts of the Navy's testing and training activities on Arctic ringed seals. Should additional information become available that indicates revision of the designation may be warranted, we may consider revising the designation accordingly. However, we cannot commit to collecting additional data and revisiting our determination regarding the exclusion request at a later date, as we cannot predict when such information may become available. Further, although we agree generally that additional research and monitoring are needed to fill in knowledge gaps, as well as to continue to monitor the status of the species, the ESA requires us to designate critical habitat based on the best data available, and we have done so in this final rule.

Comment 60: The Marine Mammal Commission stated that it was unclear whether we determined that the area under consideration for exclusion is not subject to ESA section 4(a)(3)(B)(i) because it is not owned, controlled, or designated for use by the Navy, or for some other reason. They recommended that we clarify whether an INRMP or similar plan is in place that addresses potential impacts on ringed seals or other ESA-listed species in the area proposed to be excluded.

Response: We proposed to exclude the particular area north of the Beaufort Sea shelf on the basis of national security impacts and did not rely on a determination that the area was ineligible for designation under section 4(a)(3)(B)(i) of the ESA, which provides that certain areas cannot meet the definition of ''critical habitat'' if they are

covered by a relevant INRMP that has been determined in writing to provide a benefit to the species (16 U.S.C. 1533(a)(3)(B)(i)). Thus, the status of an INRMP is not relevant to this exclusion determination.

Comment 61: A group of oil and gas trade associations stated that all critical habitat proposed for designation should be excluded, or alternatively, at least all areas in which human activities occur, or will foreseeably occur, should be excluded from designation because of the importance to the Alaska economy and national energy needs of oil and gas exploration and development, and the strong potential for the designation to impose unnecessary costs and litigation risks on the oil and gas industry, Alaska Native communities, and state and local governments. They asserted that the economic impacts of designation substantially outweigh any very marginal benefits of designation, and stated that: (1) Oil and gas activities, as well as Alaska Native subsistence harvest of ringed seals, are not expected to threaten the species or its habitat in the foreseeable future, as evidenced in the final rule listing the Arctic ringed seal as threatened; (2) oil and gas activities, as well as other activities, are regulated pursuant to the MMPA and other Federal and state laws to ensure that they have no more than a negligible impact on ringed seals; and (3) the designation will result in no benefits to the species under section 7 of the ESA in that there are no measures or protections necessary for conservation of ringed seals that are not already imposed by the MMPA, and NMFS does not anticipate that the designation will result in additional project modifications.

Response: Section 4(b)(2) of the ESA provides that the Secretary shall designate critical habitat on the basis of the best scientific data available after taking into consideration the economic impact, impact on national security, and any other relevant impacts of specifying any particular area as critical habitat. The economic analysis included in the Final Impact Analysis Report was developed to address the potential economic impacts of the critical habitat designation. As discussed in the *Economic Impacts* section of this final rule and detailed in the Final Impact Analysis Report, the total incremental costs associated with the critical habitat designation for the Arctic ringed seal within the 10-year post-designation timeframe, in discounted present value terms, were estimated at $714,000 (discounted at 7 percent) to $834,000 (discounted at 3 percent). About 83 percent of the incremental costs attributed to the critical habitat designation are expected to accrue from ESA section 7 consultations associated with oil and gas related activities in the Chukchi and Beaufort seas. To avoid understating the cost estimates, we assumed that a high projected level of oil and gas activity will occur annually, although such a high level of activity is unlikely to occur in each and every year. After thoroughly considering the available information, we have concluded that the potential economic impacts associated with this designation are modest both in absolute terms and relative to the level of economic activity expected to occur in the affected area. This has not changed from the proposed rule.

We disagree with the characterization of the benefits of the critical habitat designation as ''very marginal.'' The designation of critical habitat and identification of essential features will provide substantive benefits to the conservation of Arctic ringed seals. At a minimum, the designation ensures that Federal agencies, through the consultation process under section 7 of the ESA, consider the impacts of their projects and activities on Arctic ringed seal critical habitat, and will focus such future consultations on the essential features of the critical habitat. Designation of critical habitat thus provides clarity and consistency to Federal action agencies regarding specific areas and habitat features that should be considered and addressed during these consultations. Designation of critical habitat can also inform Federal agencies of the habitat needs of the species, which may facilitate using their authorities to support the conservation of the species pursuant to section 7(a)(1) of the ESA, including to design proposed projects in ways that avoid, minimize, and/or mitigate adverse effects to critical habitat. Other benefits of the designation include enhanced public awareness of the habitat needs of the species, which can help focus conservation efforts (for additional details, see *Benefits of Designation* section, as well as the Final Impact Analysis Report). We have therefore not exercised the discretion delegated to us by the Secretary to conduct an exclusion analysis to further consider and weigh the benefits of designation and exclusion of any particular area based on economic impacts.

Comment 62: A group of oil and gas trade associations stated that we should clarify that the proposed regulatory language indicating that permanent manmade structures such as boat ramps, docks, and pilings that were in existence by the effective date of the rule are not part of critical habitat also applies to existing infrastructure associated with North Slope and adjacent Outer Continental Shelf (OCS) oil and gas activities. In addition, they stated that we should exclude from designation the infrastructure, ice roads, trails, pads, and surrounding waters necessary to maintain safe access to the facilities identified and described in their comments, including Milne Point Unit F-Pad, Oliktok Point and Spy Island Drill Site, Oooguruk Drill Site, and Northstar Unit Seal Island). They stated that the benefits of excluding these areas from designation far outweigh any benefits of designation, and are justified because they are fundamental to continuity and safety of oil and gas operations and: (1) The identified areas are not essential to the conservation of ringed seals, nor do they require special management considerations or protection; (2) the areas are extremely small relative to the amount of habitat available to ringed seals; and (3) these types of facilities have been constructed and maintained for decades without any indication that these exclusions would impede recovery or have any population level impacts on ringed seals.

Response: With regard to the proposed regulatory language indicating that permanent manmade structures in existence are not a part of the designation, we find that this language provides sufficient clarity, as it applies to any such permanent manmade structures, including those in existence that are associated with oil and gas activities, and this final rule includes that same language. While activities such as dredging and screeding occur in association with the areas requested for exclusion, this does not necessarily indicate that there are likely to be significant additional costs or other indirect impacts from including these areas in the designation. Where there is a Federal nexus for an activity occurring in these areas, we expect that there will in most, if not all cases, be an existing need to address the impacts of these activities on Arctic ringed seals themselves. In other words, for activities such as ice road construction and maintenance, the requirement to consult under section 7 of the ESA would be triggered even in the absence of Arctic ringed seal critical habitat. These consultations typically analyze habitat-related effects to the seals, even in the absence of a critical habitat designation. While Federal actions that may affect the essential features of Arctic ringed seal critical habitat will require an

analysis to ensure that these actions are not likely to result in the destruction or adverse modification of the critical habitat, we do not expect that this will require substantial additional time or resources, especially for new consultations. We have therefore not exercised the discretion delegated to us by the Secretary to conduct an exclusion analysis to further consider and weigh the benefits of designation and exclusion of the identified areas based on economic impacts. Further, under the ESA, the relevant question is whether the identified areas contain physical or biological features essential to the conservation of Arctic ringed seals, not whether use of these areas is essential to conservation of ringed seals or whether these areas (as opposed to the features within them) require special protection. Because we find that one or more essential features occur in all parts of the specific area designated as critical habitat, to the extent these comments are suggesting the identified areas do not meet the definition of critical habitat, we disagree. We note that as we explained previously, the shoreward boundary of the critical habitat designation is now identified as the 3-m isobath (relative to MLLW). Thus a portion of the areas the commenter requested be excluded are not included in the final designation.

Comment 63: The North Slope Borough stated that we should exclude from designation 10-mile buffer zones around all North Slope villages and all lands conveyed to the North Slope Borough or Alaska Native corporations in order to prevent detrimental economic impacts and possible delays in municipal-type projects or other developments that require Federal approval or rely on Federal funding. They indicated that such activities include, but are not limited to, erosion protection, road construction, water treatment activities, port infrastructure, and municipal expansion. They stated that although these activities may not rise to the level of adverse modification, Borough communities and residents should not be forced to bear the additional section 7 consultation costs or possible delays in development of projects associated with maintaining basic services. In addition, they stated that we should exclude from designation similar areas around locations that are currently being developed for oil and gas, as a significant portion of the Borough's revenue is derived from taxes on oil and gas infrastructure. They also commented that without the collaboration of seal hunters and Alaska Native communities who live in those areas, NMFS would be unable to adequately monitor Arctic ringed seals. They suggested that designating critical habitat adjacent to coastal villages could alienate residents of subsistence communities, and thus there is a real collaborative benefit to such exclusions. The Ice Seal Committee similarly stated that we must exclude from designation aquatic areas around villages, Alaska Native corporation lands, and other lands where development and infrastructure-related activities are occurring in consideration of the harmful effects of the designation on Alaska Native communities. Additionally, ADF&G requested that a distance of 20 miles around communities and the Beaufort Sea coast be excluded from designation to avoid unnecessary disproportionate regulatory burdens to those areas that are not balanced by the limited conservation benefits provided to Arctic ringed seals.

Response: While we recognize that the proximity of a number of coastal communities and certain other developed sites to Arctic ringed seal critical habitat raises concerns about potential impacts on human activities, our final economic analysis did not indicate any disproportionate or significant economic impacts are likely to result from the designation. The critical habitat designation includes no regulatory restrictions on human activities, and where no Federal authorization, permit, or funding is involved, activities are not subject to section 7 consultation. For the types of actions we expect to occur in coastal villages or on Alaska Native lands that have a Federal nexus, based on our experience consulting on such activities, we do not expect that the additional need to consult on the critical habitat would result in any additional or novel project modifications beyond those that result from consultations that are already required due to the threatened status of the species and the MMPA (see our response to Comment 49). We have therefore not exercised the discretion delegated to us by the Secretary to conduct an exclusion analysis to further consider and weigh the benefits of designation and exclusion of buffers around the requested areas based on economic or any other relevant impacts. In addition, as we explained previously, the shoreward boundary of the critical habitat designation is now identified as the 3-m isobath (relative to MLLW), rather than as the line of MLLW identified in the revised proposed rule. Thus, waters adjacent to coastal villages within the 10-mile and 20-mile distances requested for exclusion by the commenters overlap to lesser extent with the final designation.

With regard to the comment concerning the effect of the critical habitat designation on NMFS's working relationships with seal hunters and Alaska Native communities, we recognize that the Alaska Natives make important contributions to the conservation and management of Arctic ringed seals. NMFS works closely with the North Slope Borough and other partners to implement co-management and conserve marine mammals. We understand that a number of parties have concerns about ESA listings and critical habitat designations, but we are optimistic that such concerns will not impair our working relationships with co-management partners and other stakeholders over the long term, especially given our continued efforts to provide accurate information regarding the effects of this designation.

Regarding exclusions from critical habitat of buffers around locations where oil and gas development is occurring, we do not consider exclusion from critical habitat to be appropriate in this case. The primary industrial activities occurring within Arctic ringed seal critical habitat are associated with the oil and gas industry. Areas of importance to the oil and gas industry within the critical habitat include the physical and biological features essential to the conservation of Arctic ringed seals, and there are conservation benefits to Arctic ringed seals if the areas requested for exclusion remain in the designation. Moreover, the presence of designated critical habitat for other marine mammal species has not resulted in the inability of the oil and gas industry to engage in exploration, development, and production activities. Regarding benefits of the designation, also see our response to Comment 15.

Comment 64: Two commenters stated that we should exclude from designation areas that are ice-free at certain times of the year and that support activities that are vital and necessary for residents in northern coastal communities, such as shipping lanes used by vessels to transport the vast majority of goods and services, to ensure that there are no impacts on such activities. One commenter stated that from approximately mid-June in some regions through September this shipping not only transports goods, but also serves as a cultural link among coastal Alaska Native communities.

Response: The critical habitat designation would not preclude or restrict shipping activities. Section 7

consultation requirements apply only when a Federal action is involved (*i.e.,* an action authorized, funded, or carried out by a Federal agency). We are not aware of a Federal nexus for the vessel traffic referred to by the commenters such that this activity would be subject to section 7 consultation. As summarized in the *Economic Impacts* section of this final rule, and discussed in more detail in the Final Impact Analysis Report, we anticipate that the impacts of the designation will be limited to incremental administrative effort to consider potential adverse modification of Arctic ringed seal critical habitat as part of future section 7 consultations, and that most of these consultations will be associated with oil and gas activities. Therefore, we find that there is not a clear basis to exercise the discretion delegated to us by the Secretary to conduct an exclusion analysis to further consider and weigh the benefits of designation and exclusion of shipping lanes.

Legal and Procedural Comments

Comment 65: Several commenters cited our regulations at 50 CFR 424.12(a)(1)(ii) in stating that we should determine that designation of critical habitat is not prudent for the Arctic ringed seal, in particular, because the primary threats to the species stem solely from climate change, and therefore, they cannot be addressed through management actions resulting from section 7 consultations. Commenters also referred to the preamble to the 2019 final rule that revised portions of the regulations at 50 CFR part 424, which discussed this newly added provision relative to listed species experiencing threats stemming from climate change. Additionally, one commenter pointed to our statement in the revised proposed critical habitat rule regarding our inability to draw a causal linkage between any particular single source of GHG emissions and identifiable effects on the proposed essential features. Commenters added that there is a strong basis for determining that designation would not be prudent because: (1) The Arctic ringed seal is sufficiently protected under existing laws and regulations, including the MMPA; (2) the species is not threatened or otherwise negatively impacted by any of the regulated activities that occur within its range; (3) NMFS anticipates that the designation will not result in additional project modifications through section 7 consultations; and (4) there are insufficient data available to support the identification of critical habitat. ADF&G also contended that critical habitat is not determinable, citing some similar considerations. The Ice Seal Committee likewise indicated that they believe designation of critical habitat for the Arctic ringed seal is not necessary or prudent at this time.

Response: Section 4(a)(3)(A) of the ESA requires that we designate critical habitat to the maximum extent prudent and determinable at the time a species is listed. Finding that critical habitat is not determinable at the time of listing allows NMFS to extend the deadline for finalizing a critical habitat designation by one year under section 4(b)(6)(C)(ii) of the ESA (16 U.S.C. 1533(b)(6)(C)(ii)). At the end of the 1-year extension, NMFS must use the best scientific data available to make the critical habitat determination. When we listed the Arctic ringed seal as threatened in December 2012, critical habitat was not determinable. Subsequently, we researched, reviewed, and compiled the best scientific data available to develop a critical habitat designation for Arctic ringed seals. Critical habitat is now determinable.

With regard to making a ''not prudent'' determination, our regulations at 50 CFR 424.12(a)(1) provide a non-exhaustive list of circumstances in which we may, but are not required to, find that it would not be prudent designate critical habitat. In 2019, several revisions to this regulatory provision were finalized, including the addition of the following circumstance, cited by commenters, in § 424.12(a)(1)(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 ESA (84 FR 45020, August 27, 2019). Here, the Arctic ringed seal is threatened throughout all of its range by ongoing and projected reductions in sea ice habitat (77 FR 76706, December 28, 2012). Further, the threats to the essential features of Arctic ringed seal critical habitat do not stem solely from causes that cannot be addressed through management actions from consultations under section 7(a)(2) of the ESA. Rather, as we discussed in the revised proposed rule, we identified four primary sources of threats to the essential features of Arctic ringed seal critical habitat—climate change, oil and gas activity, marine shipping and transportation, and commercial fisheries—that may require special management considerations or protection for the essential features. The situation for the Arctic ringed seal thus differs from the scenarios discussed in the preamble to the 2019 revisions to the ESA regulations in which threats to the listed species' habitat stem solely from climate change. Additionally, if a listed species does fall into that category, a not prudent finding is not mandatory, as we may determine that designating critical habitat could still contribute to the conservation of the species. Moreover, the other reasons given by commenters in support of making a ''not prudent'' determination (*e.g.,* whether existing protections are sufficient and whether project modifications in section 7 consultations result from the designation) do not provide any basis for determining that the Arctic ringed seal falls within any of the other circumstances identified in our regulations at 50 CFR 424.12(a)(1) in which we may determine a designation would not be prudent. The identification of critical habitat is not expected to increase the degree of threat to the species, areas within U.S. jurisdiction provide more than negligible conservation value for this circumpolar species, and a specific area meets the definition of critical habitat.

Comment 66: Several commenters stated that critical habitat is unnecessary to conserve Arctic ringed seals because the species is healthy and abundant, widely distributed throughout its historical range, and has not shown any indication of a decline in population. They stated that moreover, the Arctic ringed seal was listed as threatened under the ESA based on impacts to habitat from climate change projected to occur decades into the future. They questioned expending resources on developing a critical habitat designation in this circumstance.

Response: As we indicated in our response to Comment 65, the ESA requires that we designate critical habitat to the maximum extent prudent and determinable at the time a species is listed under the ESA, or within one year of listing if critical habitat is not determinable at that time. The comments regarding abundance, distribution, and population trend are relevant to ESA listing decisions (and were addressed in the final rule listing the Arctic ringed seal as threatened; see 77 FR 76706, December 28, 2012), but they do not have any bearing on whether critical habitat should be designated. Habitat is a fundamental aspect of conserving any species, and as discussed above, we are required to designate critical habitat for listed species except in the very limited circumstances in which it is determined not to be prudent.

Comment 67: One commenter stated that we should delay designation of

critical habitat until after completing the ongoing 5-year review of the species under the ESA. In addition, two commenters expressed concern that the designation is being driven by litigation and suggested that further research be conducted before designating critical habitat.

Response: The ESA requires us to designate critical habitat, to the maximum extent prudent and determinable, at the time species are listed (16 U.S.C. 1533(a)(3)(A)(i)). If designation is not then determinable, we may extend this deadline by not more than one additional year. A lawsuit was filed in Federal court alleging we did not meet the statutory deadline to designate critical habitat, and under a court-approved stipulated settlement agreement, we must complete a final critical habitat determination by March 15, 2022 (see Background section). We cannot further delay the statutory requirement to designate critical habitat in order to complete the 5-year review.

Comment 68: One commenter stated that because the recent amendments to our joint NMFS/USFWS regulations implementing section 4 of the ESA (84 FR 45020, August 27, 2019; 85 FR 81411, December 16, 2020) are currently the subject of several lawsuits and are included in a list of regulatory actions that are being reviewed by the current administration, we should not rely on those regulatory amendments in designating critical habitat for the Arctic ringed seal.

Response: In designating critical habitat, we are required to adhere to the ESA implementing regulations that are currently in effect. The regulatory amendments published on August 27, 2019, became effective and applicable for proposed critical habitat rules published after September 26, 2019. However, those recent revisions did not materially change our determination of critical habitat for Arctic ringed seals because they involve the procedures and criteria used for designating unoccupied areas and making discretionary determinations that designating critical habitat would not be prudent. A regulatory amendment published on December 16, 2020, which added a definition of ''habitat'' to our ESA implementing regulations, became effective on January 15, 2021, and is applicable to critical habitat rulemakings for which a proposed critical habitat rule is published after that date. As a result, that rule does not apply to the critical habitat rulemaking for Arctic ringed seals. We note, however, that the new regulatory definition of ''habitat'' is consistent with our consideration of habitat in designating critical habitat for Arctic ringed seals.

Comment 69: The North Slope Borough and the Ice Seal Committee expressed concern that we did not adequately inform or consult with the Ice Seal Committee during preparation of the revised proposed rule, and stated that the Ice Seal Committee membership has a significant amount of IK and experience that is directly relevant to various elements of the designation. They requested that we consult with the Ice Seal Committee and provide the opportunity to provide recommendations concerning the critical habitat designation prior to proceeding further with the designation. The Ice Seal Committee further commented that given that ringed seals are essential for subsistence and the continuation of traditional ways of life, this consultation and any subsequent regulatory actions must be based on IK of threats to the species and the conservation actions considered necessary. In addition, another commenter urged us to conduct additional meaningful outreach that engages local Alaska Native hunters and other experts and consider their input in developing the critical habitat designation. In addition, one commenter stated that it appeared that no Alaska Native indigenous experts provided review and input on the proposed designation prior to its publication.

Response: We understand the concerns expressed by the Ice Seal Committee about coordination and input on the designation of critical habitat for Arctic ringed seals, and recognize that Alaska Native subsistence hunting communities have unique knowledge of ringed seals, which are an essential traditional subsistence resource. We gave presentations and updates to the Ice Seal Committee on the designation of critical habitat for Arctic ringed seals and sought their input beginning in 2013. Prior to developing a revised proposed critical habitat designation, we discussed the process for developing the proposal during the Ice Seal Committee co-management meeting in January 2020, where we reviewed a list of relevant questions regarding the identification of critical habitat for the Ice Seal Committee's consideration and input. At that meeting, we also distributed an informational flyer that addressed the designation process and related topics. In September 2020, we provided an update to the Ice Seal Committee by email about the schedule for issuing the revised proposed designation and related information. In January 2021, we notified the Ice Seal Committee by email in advance of the scheduled publication of the revised proposed rule, and we subsequently followed up by letter regarding the revised proposed designation and the comment period on the proposal. During the Ice Seal Committee co-management meeting in February 2021, we presented information regarding the revised proposed designation, the comment period, and the schedule for hearings, and we highlighted the types of data and information we were particularly seeking to inform development of the final designation. We also provided information to the Ice Seal Committee regarding the public hearings by email. In response to their requests to do more to publicize the proposed designation and the scheduled hearings, we provided a flyer to the Ice Seal Committee to share and we arranged to run public service announcements on the radio to inform people about the upcoming hearings. During the Ice Seal Committee meeting in September 2021, we provided an update on the status of development of the final critical habitat designation and sought input about our efforts to coordinate with, and gain input from, the Ice Seal Committee regarding the designation. We will continue to make efforts to improve our communications with the Ice Seal Committee on matters pertaining to the conservation and management of ice seals in Alaska. With regard to the comments concerning our consideration of IK, also see our response to Comment 72.

Regarding the comment concerning review of the revised proposed designation by Alaska Native indigenous experts prior to publication, we sought such input from Alaska Native hunters, including some elders with considerable IK, during Ice Seal Committee meetings as discussed in the preceding paragraph. In developing the final critical habitat designation, we fully considered all of the comments received on the revised proposed rule, including from the Ice Seal Committee, some Ice Seal Committee partner organizations, Alaska Native hunters, and residents of western and northern coastal communities.

Comment 70: The Ice Seal Committee expressed concern that NMFS is not sufficiently providing notice of regulatory actions or engaging with Alaska Native ice seal hunters. To promote outreach and engagement with the Alaska Native community, the Ice Seal Committee suggested that we prepare and distribute handouts that summarize proposed and final regulatory measures that clearly identify

implications and requirements for affected Alaska Native hunters. The Ice Seal Committee committed to assisting NMFS in these efforts. Another commenter similarly urged NMFS to work with Alaska Native organizations to develop improved processes to ensure meaningful outreach and consultation. In addition, another commenter urged NMFS to engage in consultation with Tribes and Alaska Native corporations going forward before drafting and publishing proposed rules, so the proposed rules can incorporate and reflect the expertise of indigenous Alaskans from the start.

Response: We understand and welcome the Ice Seal Committee's interest in furthering our communications and engagement with Alaska Native communities and ice seal hunters, and we will continue to work closely with them regarding conservation and management issues related to ice seals. We note that the primary regulatory impact of critical habitat designation is that actions authorized, funded, or carried out by Federal agencies, and that may affect critical habitat, must undergo consultation under section 7 of the ESA to assess the effects of such actions on critical habitat, and must ensure that their actions are not likely to destroy or adversely modify critical habitat. We do not expect this critical habitat designation to have any adverse impact on Alaska Native subsistence activities. We also do not expect the critical habitat designation to result in any new reporting, sampling, or other procedural requirements for Alaska Native subsistence harvests. Regarding the comment about consultations with Tribes and Alaska Native Corporations, we contacted potentially affected tribes and Alaska Native Corporation by mail and offered them the opportunity to consult on the designation of critical habitat for the Arctic ringed seal and discuss any concerns they may have. We received no requests for consultation in response to that mailing.

Comment 71: One commenter stated that navigating the NMFS website was challenging and made it more difficult to review all the relevant information and submit written comments on the revised proposed critical habitat designation.

Response: The commenter may be referring to the eRulemaking Portal where we accepted electronic comments on the revised proposed rule and the documents associated with the proposal could be accessed. This website transitioned to a new interface during the comment period on the revised proposed rule, which may have complicated use by the commenter. Although electronic comments on the revised proposal were accepted during the comment period via the eRulemaking Portal, we also provided links to the documents associated with this rulemaking on our website, and we accepted written comments by mail.

Other Comments

Comment 72: A number of commenters, including the Ice Seal Committee and the North Slope Borough, indicated that we should further utilize IK in our determination of critical habitat for the Arctic ringed seal. The North Slope Borough stated that due to the amount of existing scientific uncertainty concerning ringed seal habitat requirements, IK constitutes the best scientific data available and should be used in developing and designating any critical habitat for the species. They further stated that we should solicit and collect IK about ice conditions used by Arctic ringed seals for basking and molting, and how flexible they are in the types of habitat they use for these activities, and we should use this information to modify the proposed designation.

Response: In developing this final rule, we considered the best scientific data available, including comments submitted from individuals who provided IK about Arctic ringed seal habitat use, and available publications and reports that documented IK for coastal communities located in western and northern Alaska. We also attempted to incorporate additional information from Alaska Native hunters into the determination of critical habitat by soliciting input from the Ice Seal Committee regarding the essential features of Arctic ringed seal critical habitat and specifically offering to consult with Alaska Native tribes and organizations regarding the development of the designation. Although we received some input in response, we recognize that additional IK exists that we have been unable to incorporate. However, the ESA does not allow us to defer the designation of critical habitat in order to collect additional data. Under a court-approved stipulated settlement agreement, we must complete a final critical habitat determination by March 15, 2022 (see Background section).

Comment 73: The Marine Mammal Commission and two others commenters noted that as sea ice extent continues to decline substantially Arctic-wide, and the timing, rate, and extent of seasonal sea ice loss and formation in the Bering and Chukchi seas continue to shift, areas currently considered to be critical habitat may change. They recommended that we therefore review the critical habitat designation for Arctic ringed seals every 5 years, or as substantial new information becomes available, to evaluate whether there is a need to revise the designation.

Response: We anticipate that future research will add to our knowledge of the habitat needs of the Arctic ringed seal and how changing sea ice and ocean conditions are affecting the seals and the habitat features essential to their conservation. If additional data become available that support a revision to this critical habitat designation, we can consider using the authority provided under section 4(a)(3)(A)(ii) of the ESA to revise the designation, as appropriate.

Comment 69: The Marine Mammal Commission stated that finding an effective way of addressing the risks posed by climate change is likely the only way to fulfill the ESA's mandate to conserve Arctic ringed seals and the ecosystem on which they depend. The Commission recommended that we work with key Federal agencies on a coordinated strategy to address the broader underlying problem—the need to reduce GHG emissions, thereby mitigating the negative impacts of climate change on Arctic marine mammals, including ringed seals, and their habitat. They noted that this strategy should be supported by work with Federal and state agencies, co-management partners, and local communities via existing research partnerships to foster routine inclusion of IK along with conventional science in assessing and predicting habitat transformation in the Arctic. In addition, other commenters stated that addressing loss of sea ice habitat would require international collaboration.

Response: We agree that addressing the effects of climate change on Arctic ringed seals and their habitat will require continued monitoring and research, and we look forward to working with our partners and stakeholders in furthering the conservation of this species. In addition to ongoing research on Arctic ringed seals conducted by NOAA's Marine Mammal Laboratory, NOAA provides climate analyses, sea ice forecasts, and other information to help other agencies and the public understand changes in the Earth's atmosphere and climate. These types of information products are used by a variety of state, Federal, and international bodies to inform decisions related to the root causes of climate change. NOAA also provides funding to and works cooperatively with other agencies on these efforts.

Comment 75: ADF&G requested that we review and incorporate into the final rule relevant information and literature cited in their submission of information for the 5-year status review of four subspecies of the ringed seal, including the Arctic ringed seal.

Response: We appreciate the information and references submitted for the 5-year status review of ringed seals. We reviewed and evaluated this information as part of our critical habitat determination, which is incorporated into the preamble to this final rule as appropriate, and is included in the decision record for this designation.

Summary of Changes From the Revised Proposed Designation

Based on our consideration of comments and information received from peer reviewers and the public on our January 9, 2021, revised proposed rule (86 FR 1452), and additional information we reviewed as part of our reconsideration of issues discussed in the revised proposed rule, we made several changes from the proposed critical habitat designation. These changes are briefly summarized below and discussed in further detail in the relevant responses to comments and other sections of the preamble of this final rule.

(1) *Revised primary prey resources essential feature.* In the revised proposed rule, we identified primary prey resources to support Arctic ringed seals as an essential feature, which we defined to be Arctic cod (*Boreogadus saida*), saffron cod (*Eleginus gracilis*), shrimps, and amphipods. In response to peer reviewer and public comments requesting we identify additional prey species in the regulatory definition of this essential feature, we re-evaluated the information used to support the proposed definition of the essential feature, along with new information provided in a recent report cited in a peer reviewer's comments (Quakenbush *et al.* 2020), to determine if revision of the proposed definition of this essential feature may be appropriate.

In the revised proposed rule, we considered information on ringed seal diet in the central Beaufort Sea reported by Lowry *et al.* (1980b). However, we later identified a subsequent publication by Frost and Lowry (1984) that incorporated additional samples from the Beaufort Sea not included in that previous publication. Because the ringed seal diet information reported in the latter publication represents additional locations and greater seasonal sample sizes, we considered this information in place of Lowry *et al.* (1980b) for the Beaufort Sea, although it does not present significant new findings.

After thorough consideration of the best information currently available, we have concluded that it is appropriate to identify rainbow smelt as a primary prey species of Arctic ringed seals. Our review of this information also reconfirmed that Arctic cod, saffron cod, shrimps, and amphipods are prominent prey species for Arctic ringed seals in Alaska and we therefore continue to identify them as primary prey species. However, diet composition and the relative prominence of certain prey species vary both geographically and seasonally, and differences in diet between age classes (pups and non-pup seals), as well as a temporal shift in diet in the Bering and Chukchi seas have been reported. In addition, ringed seal diet information for the Beaufort Sea is relatively limited. We have therefore revised the definition of the primary prey resources essential feature in this final rule to include a description of the seals' most common types of prey, which are small, often schooling fishes, and small crustaceans, and to identify for those types of prey, the predominant prey species in the seals' diets (*i.e.,* Arctic cod, saffron cod, rainbow smelt, shrimps, and amphipods), which we conclude are essential to the conservation of the Arctic ringed seal. The revised primary prey resources essential feature that we identify and adopt in this final rule is as follows: Primary prey resources to support Arctic ringed seals, which are defined to be small, often schooling, fishes, in particular, Arctic cod, saffron cod, and rainbow smelt; and small crustaceans, in particular, shrimps and amphipods. We find that this level of specificity, naming species known to be prominent in Arctic ringed seals' diet but not limiting the definition to only those species, is most appropriate for defining this essential feature based on the best scientific data available.

(2) *Revised sea ice essential features.* In the revised proposed rule, our definitions of the sea ice essential features excluded any bottom-fast ice extending seaward from the coastline (typically in waters less than 2 m deep). Some public comments received objected to the exclusion of bottom-fast ice, while others argued that very shallow ice-covered waters are not essential to Arctic ringed seal conservation, in part because of the occurrence of bottom-fast ice in such areas. These comments led us to re-evaluate how the sea ice essential features may be best described relative to very shallow nearshore areas. After thorough review of the best scientific data available, we have concluded that sea ice habitat essential for birth lairs, as well as for basking and molting, is best described with respect to very shallow waters in terms of minimum water depth. Based on our assessment of available information regarding Arctic ringed seal use of shallow ice-covered areas and the water depths in which sea ice may become bottom-fast, in this final rule we identify 3 m as the minimum water depth for the sea ice essential features. We have therefore omitted the phrase ''excluding any bottom-fast ice extending seaward from the coastline (typically in waters less than 2 m deep)'' from the definitions of these essential features and instead specify that they are found in ''waters 3 m or more in depth (relative to MLLW).'' This delineates a clear shoreward boundary and avoids the implication that some shallow waters may or may not qualify as critical habitat depending on whether bottom-fast ice is present. We have also made minor wording changes in the definition of sea ice essential for the formation and maintenance of birth lairs for clarity. We further explain and clarify our reasoning for this change in the Physical and Biological Features Essential to the Conservation of the Species section of this final rule.

(3) *Revised shoreward boundary of critical habitat.* In the revised proposed rule, we identified one specific area in the Bering, Chukchi and Beaufort seas containing the proposed essential features. Although the same seaward boundaries were identified for this specific area with respect to both the primary prey resources essential feature and the sea ice essential features, the shoreward boundary was identified as the line of MLLW based principally on occurrence of the proposed primary prey resources essential feature. We expressed in the revised proposed rule that data to determine the specific area containing the essential features are limited, and we specifically requested data and comments on our proposed delineation of these boundaries. In response to public comments that raised concerns about our proposed delineation of the boundaries of critical habitat with respect to the primary prey resources essential feature (as well as to peer reviewer and public comments related to ringed seal use of habitat for foraging), and after revising the proposed definitions of the essential features (as described above), we re-evaluated the best scientific data available and the approach we had used to identify the proposed boundaries to

ensure that they were drawn appropriately.

In reviewing these comments and considering the available data, we recognized that the available information on the distributions of Arctic ringed seal primary prey species indicate that these prey resources are widely distributed across the geographic area occupied by these seals. We have no information that suggests any portions of the species' occupied habitat contains prey species that are of greater importance or otherwise differ from those found within the specific area defined by the sea ice essential features. We concluded it was not possible to delineate the boundaries of critical habitat based solely on the description of the primary prey essential feature without implying the species' entire occupied range qualifies as critical habitat. The best information available indicates that although Arctic ringed seals may forage seasonally in some particular areas, such as Barrow Canyon, the seals also make extensive use of a diversity of habitats for foraging across much broader areas in the Bering, Chukchi, and Beaufort seas. Most importantly, the movements and habitat use of Arctic ringed seals are strongly influenced by the seasonality of sea ice and they forage throughout the year (albeit with reduced feeding during molting). Given this and our consideration of the best scientific data available, we concluded that the best approach to determine the appropriate boundaries for critical habitat is to identify the specific area(s) in which both the primary prey essential feature and the sea ice essential features occur, and that this specific area contains sufficient primary prey resources to support the conservation of Arctic ringed seals. As discussed previously, in this final rule we identify 3 m (relative to MLLW) as the minimum water depth for the sea ice essential features, and we therefore define the shoreward boundary of the specific area containing one or more of the essential features as the 3-m isobath (relative to MLLW), rather than the line of MLLW, as identified in the revised proposed rule. The boundaries are otherwise unchanged from the revised proposed rule.

(4) *Revised exclusion based on national security impacts.* As a result of clarifications provided by the Navy regarding the boundaries of the particular area north of the Beaufort Sea shelf that the Navy requests be excluded from the critical habitat designation for national security reasons, we have revised the southern and western boundaries of the area excluded from designation in this final rule.

(5) *Final Impact Analysis Report.* In response to peer reviewer and public comments, we revised and updated the Draft Impact Analysis Report to further explain and clarify our analysis of the economic costs and benefits of the designation, and to correct typographical and other minor errors. The timeframe, wage schedule, and dollar year of the analysis were also updated to reflect the implementation schedule of the final rule. We also revised the analysis of the incremental administrative costs of section 7 consultations associated with the critical habitat designation to reflect the revised delineation of the shoreward boundary of the designation explained above.

(6) *New information.* In this final rule, we have made minor updates and incorporated additional information and references as appropriate, including information from IK documented for coastal communities located in western and northern Alaska, based on peer reviewer and public comments, new information we received or reviewed after publication of the revised proposed rule, and our internal review of the revised proposed rule.

References Cited

A complete list of all references cited in this final rule can be found on the NMFS website at *www.fisheries.noaa.gov/species/ringed-seal#conservation-management,* the Federal eRulemaking Portal at *www.regulations.gov/docket/NOAA-NMFS-2013-0114,* and is available upon request from the NMFS office in Juneau, Alaska (see **FOR FURTHER INFORMATION CONTACT**).

Classifications

National Environmental Policy Act

We have determined that an environmental assessment as provided for under the National Environmental Policy Act is not required for critical habitat designations made pursuant to the ESA. *See Douglas Cnty.* v. *Babbitt,* 48 F.3d 1495, 1502–08 (9th Cir. 1995), *cert. denied,* 116 S. Ct. 698 (1996).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency publishes 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 not-for-profit organizations, and small government jurisdictions). We have prepared a final regulatory flexibility act analysis (FRFA), which is included as part of the Final Impact Analysis Report for this final rule. The FRFA estimates the potential number of small businesses that may be directly regulated by this rule, and the impact (incremental costs) per small entity for a given activity type. Specifically, based on an examination of the North American Industry Classification System (NAICS), this analysis classifies the economic activities potentially directly regulated by this action into industry sectors and provides an estimate of their number in each sector, based on the applicable NAICS codes. A summary of the FRFA follows.

A description of the action (*i.e.,* designation of critical habitat), why it is being considered, and its legal basis are included in the preamble of this final rule. This action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with this action. Existing Federal laws and regulations overlap with this rule only to the extent that they provide protection to natural resources within the area designated as critical habitat generally. However, no existing regulations specifically prohibit destruction or adverse modification of critical habitat for the Arctic ringed seal.

This critical habitat designation rule does not directly apply to any particular entity, small or large. The regulatory mechanism through which critical habitat protections are enforced is section 7 of the ESA, which directly regulates only those activities carried out, funded, or permitted by a Federal agency. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. In some cases, small entities may participate as third parties (*e.g.,* permittees, applicants, grantees) during ESA section 7 consultations (the primary parties being the Federal action agency and NMFS) and thus they may be indirectly affected by the critical habitat designation.

Based on the best information currently available, the Federal actions projected to occur within the timeframe of the analysis (*i.e.,* the next 10 years) that may trigger an ESA section 7 consultation due to the potential to affect one or more of the essential habitat features also have the potential to affect Arctic ringed seals. Thus, as discussed above, we expect that none of

the activities we identified would trigger a consultation solely on the basis of this critical habitat designation; in addition, we have no information to suggest that additional requests for project modifications are likely to result specifically from this designation of critical habitat. Therefore, the direct incremental costs of this critical habitat designation are expected to be limited to the additional administrative costs of considering Arctic ringed seal critical habitat in future section 7 consultations that would occur regardless, based on the listing of Arctic ringed seals.

As detailed in the Final Impact Analysis Report, the oil and gas exploration, development, and production industries participate in activities that are likely to require consideration of critical habitat in ESA section 7 consultations. The Small Business Administration size standards used to define small businesses in these cases are: (1) An average of no more than 1,250 employees (crude petroleum and natural gas extraction industry); or (2) average annual receipts of no more than $41.5 million (support activities for oil and gas operations industry). Only two of the parties identified in the oil and gas category appear to qualify as small businesses based on these criteria. Based on past ESA section 7 consultations, the additional third-party administrative costs in future consultations involving Arctic ringed seal critical habitat over the next 10 years are expected to be borne principally by large oil and gas operations. The estimated range of annual third-party costs over this 10 year period is $29,900 to $54,900 (discounted at 7 percent), virtually all of which is expected to be associated with oil and gas activities. It is possible that a limited portion of these administrative costs may be borne by small entities (based on past consultations, an estimated maximum of two entities). Two government jurisdictions with ports appear to qualify as small government jurisdictions (serving populations of fewer than 50,000). The total third-party costs that may be borne by these small government jurisdictions over 10 years are estimated to be less than $1,000 (discounted at 7 percent) for the additional administrative effort to consider Arctic ringed seal critical habitat as part of a future ESA section 7 consultation involving one port. In addition, the analysis anticipates three section 7 consultations on coastal construction activities over 10 years that may include third parties. It is not known whether the third parties are likely to be large or small entities. The total administrative costs associated with these three consultations that may be borne by third parties over 10 years are estimated to be $2,000 (discounted at 7 percent).

As required by the RFA (as amended by the SBREFA), we considered alternatives to the proposed critical habitat designation for the Arctic ringed seal. We considered and rejected the alternative of designating as critical habitat the entire specific area that contains at least one identified essential feature (*i.e.,* no areas excluded), because the alternative does not allow the agency to take into account circumstances in which the benefits of exclusion for national security impacts outweigh the benefits of critical habitat designation. However, through the ESA 4(b)(2) exclusion analysis process, we identified and selected an alternative under which a particular area is excluded from designation based on national security impacts after determining that the benefits of exclusion outweigh the conservation benefits to the species. We selected this alternative because it results in a critical habitat designation that provides for the conservation of the species and is consistent with the ESA and joint NMFS and USFWS regulations concerning critical habitat at 50 CFR part 424 while potentially reducing national security impacts. Based on the best information currently available, we concluded that this alternative would result in minimal impacts to small entities and the economic impacts associated with the critical habitat designation would be modest.

Paperwork Reduction Act

This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

This rule will not produce a Federal mandate.

Information Quality Act and Peer Review

The data and analyses supporting this action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (Section 515 of Pub. L. 106–554).

On December 16, 2004, the OMB issued its Final Information Quality Bulletin for Peer Review (Bulletin) establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The primary purpose of the Bulletin, which was implemented under the Information Quality Act, is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of ''influential scientific information'' and ''highly influential scientific information'' prior to public dissemination. Influential scientific information is defined as information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. Stricter standards were established for the peer review of ''highly influential scientific assessments,'' defined as information whose dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the information is novel, controversial, or precedent-setting, or has significant interagency interest.

The evaluation of critical habitat presented in this final rule and the information presented in the supporting Final Impact Analysis Report are considered influential scientific information subject to peer review. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the critical habitat analysis contained in our 2014 proposed rule (79 FR 73010, December 9, 2014) from five reviewers, and of the information used to prepare the associated draft impact analysis report from three reviewers. We reviewed the comments received from these reviewers for substantive issues and new information regarding critical habitat for the Arctic ringed seal, and we used this information as applicable in the development of the 2021 revised proposed rule (86 FR 1452, January 8, 2021) and the associated Draft Impact Analysis Report. We obtained three additional independent peer reviews of our evaluation of available data, and our use and interpretation of this information, in making conclusions regarding what areas meet the definition of critical habitat in the revised proposed rule, and three independent peer reviews of the Draft Impact Analysis Report for the revised proposed rule. The peer reviewer comments are addressed in this final rule and in the Final Impact Analysis

Report, and were compiled into two reports that are available at: *www.noaa.gov/organization/information-technology/peer-review-plans.*

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, E.O.s, judicial decisions, and co-management agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175 on Consultation and Coordination with Indian Tribal Governments outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

As the entire critical habitat area is located seaward of the 3-m isobath, no tribal-owned lands overlap with the designation. Although this designation overlaps with areas used by Alaska Natives for subsistence, cultural, and other purposes, no restrictions on subsistence hunting are associated with the critical habitat designation. We coordinate with Alaska Native hunters regarding management issues related to Arctic ringed seals through the Ice Seal Committee, a co-management organization under section 119 of the MMPA. We discussed the designation of critical habitat for Arctic ringed seals with the Ice Seal Committee and provided updates regarding the timeline for publication of this rule. We also contacted potentially affected tribes and Alaska Native corporations by mail and offered them the opportunity to consult on the revised proposed designation of critical habitat for the Arctic ringed seal and discuss any concerns they may have. We did not receive any requests from potentially affected tribes or Alaska Native corporations in response to the revised proposed rule.

Executive Order 12898, Environmental Justice

The designation of critical habitat is not expected to have a disproportionately high effect on minority populations or low-income populations.

Executive Order 12630, Takings

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this rule does not have significant takings implications. The designation of critical habitat directly affects only Federal agency actions (*i.e.,* those actions authorized, funded, or carried out by Federal agencies). Further, no areas of private property exist within the critical habitat and hence none would be affected by this action. Therefore, a takings implication assessment is not required.

Executive Order 12866, Regulatory Planning and Review

OMB has determined that this rule is significant for purposes of E.O. 12866 review. A Final Impact Analysis Report has been prepared that considers the economic costs and benefits of this critical habitat designation and alternatives to this rulemaking as required under E.O. 12866. To review this report, see the **ADDRESSES** section above.

Based on the Final Impact Analysis Report, the total estimated present value of the incremental impacts of the critical habitat designation is approximately $714,000 over the next 10 years (discounted at 7 percent) for an annualized cost of $95,000. Overall, economic impacts are expected to be small and Federal agencies are anticipated to bear at least 42 percent of these costs. While there are expected beneficial economic impacts of designating critical habitat for the Arctic ringed seal, there are insufficient data available to monetize those impacts (see *Benefits of Designation* section).

Executive Order 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations in which a regulation may preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Pursuant to E.O. 13132, we determined that this rule does not have significant federalism effects and that a federalism assessment is not required. The designation of critical habitat directly affects only the responsibilities of Federal agencies. As a result, this rule 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 the Order. State or local governments may be indirectly affected by this critical habitat designation if they require Federal funds or formal approval or authorization from a Federal agency as a prerequisite to conducting an action. In these cases, the State or local government agency may participate in the ESA section 7 consultation as a third party. One of the key conclusions of the economic impact analysis is that the incremental impacts of the critical habitat designation will likely be limited to additional administrative costs to NMFS, Federal agencies, and to third parties stemming from the need to consider impacts to critical habitat as part of the forecasted section 7 consultations. The designation of critical habitat is not expected to have substantial indirect impacts on State or local governments.

Executive Order 13211, Energy Supply, Distribution, and Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking a significant energy action. Under E.O. 13211, a significant energy action means any action by an agency that is expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. We have considered the potential impacts of this critical habitat designation on the supply, distribution, or use of energy (see Final Impact Analysis Report for this rule). This critical habitat designation overlaps with five BOEM planning areas for Outer Continental Shelf oil and gas leasing; however, the Beaufort and Chukchi Sea planning areas are the only areas with existing or planned leases.

Currently, the majority of oil and gas production occurs on land adjacent to the Beaufort Sea and the critical habitat area. Any proposed offshore oil and gas projects would likely undergo an ESA section 7 consultation to ensure that the project would not likely destroy or adversely modify designated critical habitat. However, as discussed in the

Final Impact Analysis Report for this rule, such consultations will not result in any new and significant effects on energy supply, distribution, or use. ESA section 7 consultations have occurred for numerous oil and gas projects within the area of the critical habitat designation (*e.g.,* regarding possible effects on endangered bowhead whales, a species without designated critical habitat) without adversely affecting energy supply, distribution, or use, and we would expect the same relative to critical habitat for Arctic ringed seals. We have, therefore, determined that the energy effects of this rule are unlikely to exceed the impact thresholds identified in E.O. 13211, and that this rulemaking is not a significant energy action.

List of Subjects

50 CFR Part 223

Endangered and threatened species.

50 CFR Part 226

Endangered and threatened species.

Dated: March 18, 2022.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 226 are amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, in the table in paragraph (e), under Marine Mammals, revise the entry for ''Seal, ringed (Arctic subspecies)'' to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
MARINE MAMMALS					
*	*	*	*	*	*
Seal, ringed (Arctic subspecies).	*Phoca (=Pusa) hispida hispida.*	Entire subspecies	77 FR 76706, Dec. 28, 2012.	226.228	NA
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722; February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612; November 20, 1991).

* * * * *

PART 226—DESIGNATED CRITICAL HABITAT

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 4. Add § 226.228 to read as follows:

§ 226.228 Critical Habitat for the Arctic Subspecies (*Pusa hispida hispida*) of the Ringed Seal.

Critical habitat is designated for the Arctic subspecies of the ringed seal as described in this section. The map and textual descriptions in this section are the definitive source for determining the critical habitat boundaries.

(a) *Critical habitat boundaries.* Critical habitat for the Arctic subspecies of the ringed seal includes marine waters within one specific area in the Bering, Chukchi, and Beaufort seas, extending from the nearshore boundary, defined by the 3-m isobath relative to mean lower low water (MLLW), to an offshore limit within the U.S. Exclusive Economic Zone (EEZ). The boundary extends offshore from the northern limit of the United States-Canada border approximately 90 km to 70°26′19″ N/140°11′21″ W, and from this point runs generally westward along the line connecting the following points: 70°55′35″ N/142°33′51″ W, 70°53′25″ N/144°37′19″ W, 71°1′22″ N/146°36′55″ W, 71°17′21″ N/148°34′58″ W, and 71°20′8″ N/150° W. From this point (71°20′8″ N/150° W) the boundary follows longitude 150° W northward to 72°20′4″ N/150° W, then extends westward to 72°20′4″ N/153° W, then follows longitude 153° W northward to the seaward limit of the U.S. EEZ, and then follows the limit of the U.S. EEZ northwestward; then southwestward and south to the intersection of the southern boundary of the critical habitat in the Bering Sea at 61°18′15″ N/177°45′56″ W. The southern boundary extends southeastward from this intersection point to 60°7″ N/172°1″ W, then northeastward along a line extending to near Cape Romanzof at 61°48′42″ N/166°6′5″ W, with the nearshore boundary defined by the 3-m isobath. This includes waters off the coasts of the Kusilvak, and Nome Census Areas, and the Northwest Arctic and North Slope Boroughs, Alaska. Critical habitat does not include permanent manmade structures such as boat ramps, docks, and pilings that were in existence within the legal boundaries as of May 2, 2022.

(b) *Essential features.* The essential features for the conservation of the Arctic subspecies of the ringed seal are:

(1) Snow-covered sea ice habitat suitable for the formation and maintenance of subnivean birth lairs used for sheltering pups during whelping and nursing, which is defined as waters 3 m or more in depth (relative to MLLW) containing areas of seasonal landfast (shorefast) ice or dense, stable pack ice, that have undergone deformation and contain snowdrifts of sufficient depth to form and maintain birth lairs (typically at least 54 cm deep).

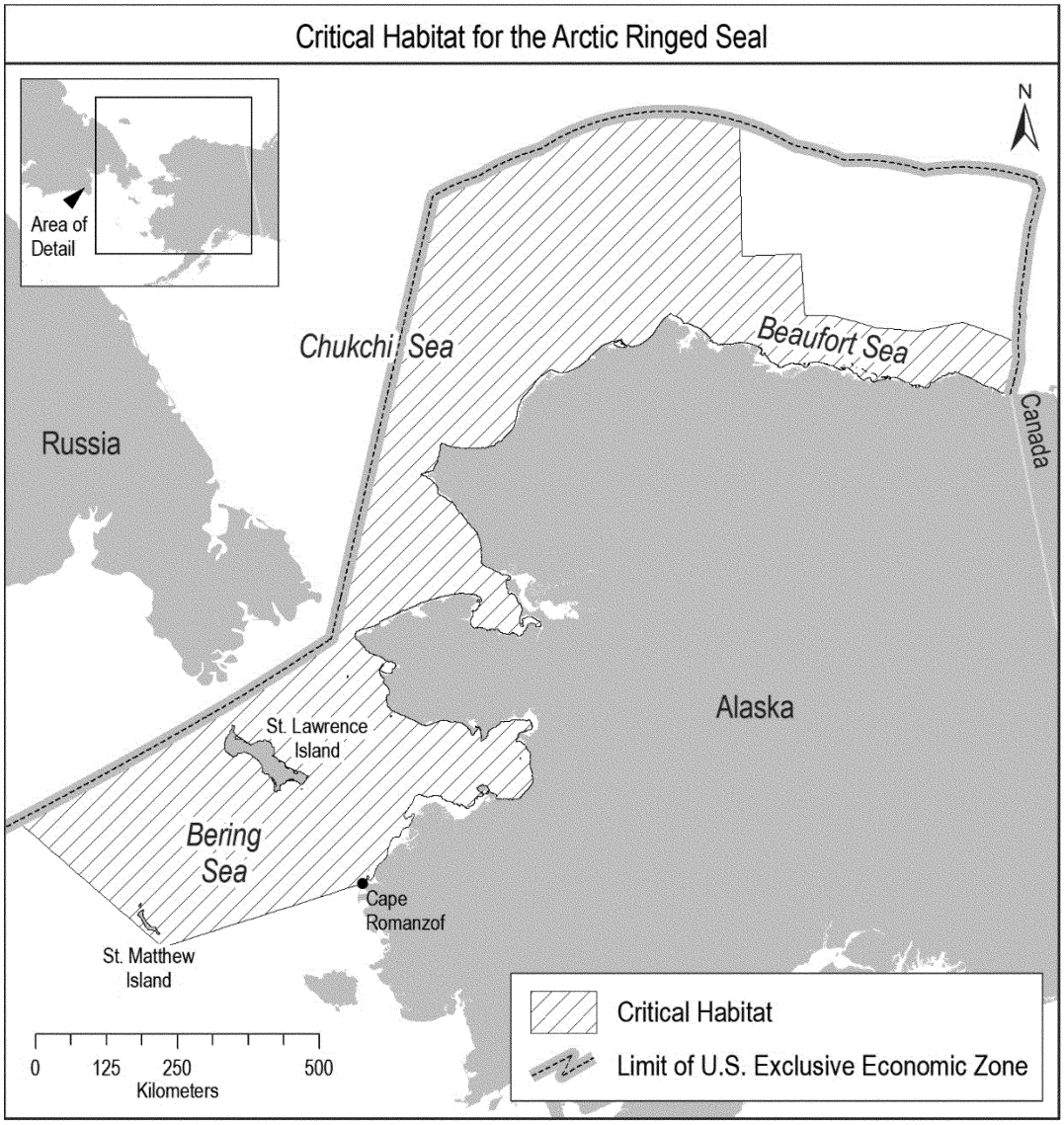
(2) Sea ice habitat suitable as a platform for basking and molting, which is defined as areas containing sea ice of 15 percent or more concentration in waters 3 m or more in depth (relative to MLLW).

(3) Primary prey resources to support Arctic ringed seals, which are defined to be small, often schooling, fishes, in particular, Arctic cod (*Boreogadus saida*), saffron cod (*Eleginus gracilis*), and rainbow smelt (*Osmerus dentex*); and small crustaceans, in particular, shrimps and amphipods.

(c) *Map of Arctic ringed seal critical habitat* follows.

Figure 1 to paragraph (c)

Figure 1 to paragraph (c)



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Part IV

Environmental Protection Agency

40 CFR Parts 260, 261, 262, et al.

Integrating e-Manifest With Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments and Technical Corrections; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 267, 271, and 761

[EPA–HQ–OLEM–2021–0609; FRL–7308–01–OLEM]

RIN 2050–AH12

Integrating e-Manifest With Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments and Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes certain amendments to the electronic manifest (e-Manifest) regulations concerning the e-Manifest program and system. Specifically, EPA is proposing changes to manifest regulations for shipments of hazardous waste that are exported for treatment, storage, and disposal. These proposed changes follow EPA's e-Manifest User Fee final rule, promulgated in January 2018, which stated that the scope of the e-Manifest requirements and system would not extend to U.S. export shipments of hazardous wastes until the Agency determined, through separate rulemaking, which entity in the export process would be responsible for submitting export manifests to the e-Manifest system and paying the associated user fees. EPA is also proposing regulatory changes to the RCRA hazardous waste export and import shipment international movement document-related requirements to more closely link the manifest data with the international movement document data. In addition, EPA is proposing regulatory amendments to three manifest-related reports (*i.e.,* discrepancy, exception, and unmanifested waste reports) and is requesting public comment on changes to the manifest form. EPA is also requesting public comment with respect to how the Agency can begin to integrate biennial reporting requirements with e-Manifest data. Additionally, EPA is proposing conforming regulatory changes to the Toxic Substances Control Act (TSCA) manifest regulations for polychlorinated biphenyls (PCB) wastes. Finally, the Agency is proposing to make technical corrections to fix typographical errors in the e-Manifest and movement document regulations.

DATES: Comments must be received on or before May 31, 2022. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before May 31, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2021–0609, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Proprietary Business Information (PBI) or other information whose disclosure is restricted by statute. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

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

FOR FURTHER INFORMATION CONTACT: For further information regarding specific aspects of this document, contact Bryan Groce, Program Implementation and Information Division, Office of Resource Conservation and Recovery, (202) 566–0339; email address: *groce.bryan@epa.gov* or Tess Fields, Program Implementation and Information Division, Office of Resource Conservation and Recovery, (202) 566–0328; email address: *fields.tess@epa.gov.* In addition, please refer to EPA's e-Manifest web page for further information, *www.epa.gov/e-manifest.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

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List of Subjects

I. General Information

A. List of Acronyms Used in This Action

Acronym	Meaning
ACH	Automated Clearinghouse
AES	Automated Export System
AOC	Acknowledgment of Consent (issued by EPA)

API Application Programming Interface
BR Biennial Report
CBI Confidential Business Information
CBP United States Customs and Border Protection
CFR Code of Federal Regulations
CROMERR Cross-Media Electronic Reporting Rule
CRT Cathode Ray Tube
DOT U.S. Department of Transportation
EEI Electronic Export Information
EPA United States Environmental Protection Agency
FR Federal Register
GM EPA's Waste Generation and Management Form
ICR Information Collection Request
IT Information Technology
ITDS International Trade Data System
JSON JavaScript Object Notation
LQG Large Quantity Generator
MTN Manifest Tracking Number
NAICS North American Industrial Classification System
NTTAA National Technology Transfer and Advancement Act
OI EPA's Off-Site Identification Form
OLEM Office of Land and Emergency Management
O&M Operation and Maintenance
OMB Office of Management and Budget
PCB Polychlorinated biphenyl
PPC EPA's Paper Processing Center
QA Quality Assurance
RCRA Resource Conservation and Recovery Act
RCRAInfo Resource Conservation and Recovery Act Information System
RFA Regulatory Flexibility Act
SLAB Spent Lead-Acid Battery
SQG Small Quantity Generator
TSCA Toxic Substances Control Act
TSDF Treatment, Storage, and Disposal Facility
UMRA Unfunded Mandates Reform Act
WC Waste Characteristic
WIETS Waste Import Export Tracking System
WR EPA's Waste Received from Off-Site Form

B. Does this action apply to me?

The hazardous waste manifest program affects approximately 100,319 federally regulated entities and an equal or greater number of entities handling state-only regulated wastes in at least 750 industries. These industries are involved in the off-site shipping, transporting, and receiving of several million tons of wastes that are required under either federal or state regulation to use the RCRA hazardous waste manifest. EPA estimates that these entities currently use between 1,785,405 hazardous waste manifests (EPA Form 8700–22) and continuation sheets (EPA Form 8700–22A) annually to track RCRA hazardous wastes, TSCA polychlorinated biphenyls (PCB) wastes, and state-only regulated wastes from generation sites to destination facilities designated on a manifest for treatment, storage, or disposal. The affected entities include hazardous waste generators, hazardous waste transporters, owners or operators of treatment, storage, and disposal facilities (TSDFs), as well as the corresponding entities that handle state-only regulated wastes and PCB wastes subject to tracking with the RCRA manifest.

Additionally, this proposed rule would affect entities (including exporter, importer, disposal facility owner/operator, or recovery facility owner/operator) who are involved in transboundary movements of hazardous waste for recovery or disposal that are subject to the manifest regulations to track their import or export shipments in the United States, or to the international movement document requirements to track their import or export shipments both inside and outside of the United States.

Finally, this proposed rule would affect entities who would be required to complete any of the following manifest-related reports: (1) An Exception Report when the generator has not received a final manifest from the receiving facility; (2) a Discrepancy Report when the materials received do not match with the quantities or types of materials indicated as being shipped by generators; or (3) an Unmanifested Waste Report when wastes that should have been manifested arrive at a facility without a manifest.

Potential affected entities include, but are not limited to:

Industrial sector	NAICS code(s)
Agriculture, Forestry, Fishing, and Hunting	11
Mining	21
Utilities	22
Construction	23
Manufacturing	31–33
Wholesale Trade	42
Retail Trade	44–45
Transportation and Warehousing	48–49
Information	51
Waste Management & Remediation Services	562
Public Administration	92

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in the title 40 of the Code of Federal Regulations (CFR) parts 262, 263, 264, 265, and 761. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. What action is the Agency taking?

EPA is proposing regulatory amendments to the manifest regulations to require waste handlers who export manifested hazardous waste shipments out of the U.S. to submit the export manifests to EPA and pay the requisite user fee to process them. If the proposed regulations are finalized, export manifests would be collected in the e-Manifest system and the exporters who submit these manifests would be invoiced for those submissions. With respect to the international movement document requirements, EPA is proposing changes to allow international movement document confirmations to link to RCRA manifest tracking for export and import shipments. EPA is also proposing regulatory changes to integrate existing Discrepancy Reports, Exception Reports, and Unmanifested Waste Reports into the e-Manifest system. The proposed changes would allow entities to leverage the e-Manifest system to complete these reports electronically. The Agency is also proposing conforming changes to the TSCA manifest regulations for PCB wastes to align with the RCRA manifest regulations and the e-Manifest program, including the adoption of the e-Manifest rules for PCB wastes required to be tracked via a manifest.

Finally, EPA is requesting additional comment on certain manifest forms changes proposed in the February 2019 e-Manifest Information Collection Request (ICR) public notice (84 FR 2854, February 8, 2019). EPA proposed modifications to the manifest form and continuation sheet to enhance the quality of shipment data reported on the manifest (both paper and electronic), including shipment data for import and export waste shipments. However, commenters in response to the February 2019 public notice raised issues, including those related to biennial reports, that require further inquiry and additional public comment through this notice as the Agency makes decisions concerning the e-Manifest system.

D. What is the Agency's authority for taking this action?

The authority to propose this rule is found in sections 1002, 2002(a), 3001–3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901, 6906 *et seq.*, 6912, 6921–6925, 6937, and 6938, and further amended by the Hazardous

Waste Electronic Manifest Establishment Act, Public Law 112–195, section 6939g, and in sections 6, 8, 12, 15, and 17 of the Toxic Substances Control Act, 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

E. What are the incremental costs and benefits of this action?

EPA prepared an economic analysis of the potential costs and benefits associated with this proposed action. The *Regulatory Impact Analysis for EPA's Proposed Rule Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections* (RIA), is available in the docket for this rulemaking. EPA estimates that the proposed regulatory changes will decrease the aggregate burden across all entities manifesting waste by $7.50 million, annually. However, this rulemaking consists of a series of provisions that affect a series of overlapping regulated universes differently (see Chapter 2 of the RIA). This figure is net of the increase in costs expected among importers and exporters of approximately $221,000. For entities manifesting waste domestically, the proposed revisions are expected to create a cost savings of approximately $7.73 million, based on transitions to automated systems for exception and discrepancy reporting and the removal of the requirement for receiving facilities to mail manifests to unregistered generators. In contrast, exporters and importers would face an increase in aggregate costs primarily driven by manifest fees that would be assessed on export shipments. See RIA Exhibit 3–10 for a summary of annual costs across all regulatory changes.

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2021–0609, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID–19.

III. Background

A. e-Manifest Act and System Launch

With the enactment of the Hazardous Waste Electronic Manifest Establishment Act in 2012, Congress provided EPA authority to establish the national electronic hazardous waste manifest system to track hazardous waste shipments electronically. The Act also provided EPA authority to adopt regulations that (1) allow the Agency to accept electronic manifests originated in the e-Manifest system as the legal equivalent to paper manifests; (2) require manifest users to submit paper copies of the manifest to the system for data processing; (3) collect manifests in the e-Manifest system for waste shipments required to be shipped using a RCRA manifest under federal or state law; and (4) set up user fees to offset the costs of developing and operating the e-Manifest system.

The goal of the Act was for EPA to provide manifest users a more modern, efficient electronic manifest process option as compared to the traditionally paper-intensive process to track federally regulated or state-only regulated waste shipments requiring a RCRA manifest for transportation. Pursuant to the Act, EPA launched the national system on June 30, 2018, as a module component of the existing Resource Conservation and Recovery Act Information System (RCRAInfo).[1] Through the e-Manifest system, manifest users can create, edit, retrieve, sign, and store manifests electronically as well as retrieve status information on manifests.

B. 2014 One Year Rule

EPA published the first e-Manifest final rule, also known as the One Year Rule, on February 7, 2014 (79 FR 7518). The One Year Rule established the legal and policy framework for the use of electronic manifests. First, that rule explained that electronic manifests obtained, completed, transmitted, and signed in the national e-Manifest system in accordance with the electronic formats announced in the rule are considered the legal equivalent of paper manifests signed with conventional ink signatures. Further, wherever the existing federal and state regulations require a RCRA paper manifest to be supplied, signed, used or carried with a hazardous waste shipment, the execution of an electronic manifest in the national e-Manifest system is deemed to comply with the requirements to obtain, sign, carry, or otherwise use the hazardous waste manifest.[2]

Second, the One Year Rule explained that if RCRA-manifested shipments are tracked using paper manifest forms, then the receiving facilities must submit the top copies of those manifests to EPA. The rule explained that receiving facilities have a few options for submitting the top manifest copy of the RCRA manifest to EPA: Electronically submitting manifests directly in the e-Manifest system, uploading manifest data plus a digital image of a paper manifest from an industry system, submitting a digital image of a paper manifest, and mailing in a hard, top copy of the paper manifest.[3]

[1] The RCRAInfo Industry Application provides the mechanism by which a site that generates and/or manages RCRA Subtitle C hazardous waste may submit information to their regulator (typically a state environmental Agency).

[2] Although electronic manifests will satisfy the U.S. Department of Transportation's hazardous materials regulations on retention of shipping paper records, DOT's regulations continue to require a printed copy of the electronic manifest on the transport vehicle. Therefore, e-Manifest users must for the foreseeable future produce one paper copy of the manifest to carry on the transport vehicle.

[3] The One Year offered three options for submitting the top copy of paper manifests to the system. These options included submitting hardcopies, image files, and data uploads plus image files at system launch. However, the current manifest submission requirement at 40 CFR parts 264.71(a)(2)(v)(B) and 265.71(a)(2)(v)(B) will eliminate the option to submit a hard copy of the information contained in the top copy (Page 1) of a paper manifest (EPA Form 8700–22) and continuation sheet (EPA Form 8700–22A) to EPA

Third, the One Year Rule explained that the submission of electronic manifests using the national e-Manifest system is currently governed by the provisions of EPA's Cross-Media Electronic Reporting Rule (CROMERR), which addresses direct reporting of environmental information to EPA. Compliance with CROMERR requirements for direct electronic reporting is a condition that must be met to obtain and execute a valid electronic manifest. Finally, the One Year Rule announced the types of electronic documents that can be completed and submitted electronically to the e-Manifest system. These document types are limited to the standard electronic formats created by EPA as the authorized substitute for EPA Form 8700–22 (Manifest) and EPA Form 8700–22A (Continuation Sheet). The rule, however, did not address which entity should submit the manifest to EPA and did not address how the Agency would establish and collect user fees, leaving those issues to be considered in EPA's second rulemaking effort, which the Agency completed in 2018.

C. 2018 User Fee Rule

Section 2(c) of the e-Manifest Act authorizes EPA to impose and collect reasonable service fees necessary to pay the costs of implementing the e-Manifest system, including any costs incurred in collecting and processing data from paper manifests submitted to the system. While the One Year Rule addressed the fundamental scope and policy issues related to the use of electronic manifests, the rule did not address user fees to any significant extent. EPA explained in the One Year Rule, that the development of an e-Manifest user fee methodology and fee schedules would be undertaken as a separate rulemaking. EPA published this separate rule, the User Fee final rule, on January 3, 2018 (83 FR 420). This final rule established the user fees and other actions necessary to implement the system.

First, pursuant to the e-Manifest Act, the final rule established the methodology that EPA uses to set and revise user fees to recover the full costs of an electronic manifest system. This includes costs incurred in developing, operating, maintaining, and upgrading the national e-Manifest system.

Second, the final rule also implemented a process that allows for hybrid manifests to assist the generators in transitioning to fully electronic manifests. A hybrid manifest begins as a paper manifest at the generator site and transitions to an electronic manifest with the initial transporter and through to the receiving facility.

Third, because the user fees are required to reach full cost recovery, the rule explained that some manifests have greater processing costs than others and as a result, fees will differ depending upon the type of manifest submitted. Thus, EPA published multiple user fees tailored to the type of manifest submission (*i.e.,* fully electronic/hybrid, image upload plus data file, image only upload, and mailed paper submission). Fully electronic and hybrid manifests necessitate the least amount of processing and Quality Assurance (QA) related costs, while paper manifests require greater processing costs for data key entry and QA activities, depending upon the mode of submission (*i.e.,* mail, data file upload, or image file) to the system.

Fourth, the rule announced EPA's decision to charge user fees on a per manifest basis. The billable event is the submission of the information contained in the final, top copy of the manifest to the system by the receiving facility. EPA decided to collect user fees from receiving facilities rather than from generators. Collecting user fees from generators would entail the establishment of more than 100,000 payment accounts for the federal waste and state-only regulated waste generators, which would have significantly increased costs for invoicing and collection activities. By contrast, collecting user fees from several hundred receiving facilities results in far greater administrative efficiency.

Finally, the rule announced the date—June 30, 2018—on which EPA would launch the e-Manifest system, begin receiving electronic manifests and paper manifest copies, and begin collecting user fees for receipt of the manifest information. The rule also clarified that the implementation date was limited to the collection of domestic and import shipments that are required to be shipped under a manifest under either federal or state law. At that time, EPA had not provided an opportunity for public comment regarding how exporters or other handlers involved with export shipments would meet obligations under the e-Manifest system and intended to leave that issue to this separate rulemaking.

D. 2019 ICR

In compliance with the Paperwork Reduction Act of 1995, EPA developed an information collection request (ICR), titled ''*Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System (EPA ICR No. 2050–0039),*'' for the e-Manifest rules and e-Manifest system. This ICR provides an overview of the collection for information required under the e-Manifest system and estimates the cost and time for manifest users to respond to the requirements. EPA solicited public comments on this ICR through an announcement in the **Federal Register** on February 8, 2019 (84 FR 2854). To further reduce the administrative burden of the e-Manifest rule and system on manifest users, EPA proposed changes to the manifest forms. Specifically, EPA proposed and solicited comments and information to: (1) Improve the precision of waste quantities and units of measure reported in Items 11 and 12 of the hazardous waste manifest (both paper and electronic), respectively; (2) enhance the quality of international shipment data reported on the manifest; and (3) assist EPA with integrating e-Manifest and Biennial Report (BR) requirements. EPA received no comments on the ICR's draft hourly burden or cost estimates. However, EPA received ten comments from industry and state stakeholders regarding the proposed manifest form changes detailed in the notice. A few issues raised by commenters in response to the February 2019 public notice prompted the Agency to pursue further engagement with stakeholders before making final decisions concerning the RCRA hazardous waste manifest form and e-Manifest system. Therefore, under today's action EPA is soliciting additional comment on the proposal regarding enhancing the quality of international shipment data on the manifest. EPA is also requesting additional comment on the proposal to improve the precision of waste quantities and units of measure reported in Items 11 and 12 of the hazardous waste manifest (both paper and electronic) as well as to add new data fields on the manifest to integrate e-Manifest and the waste receipt form for the hazardous waste BR (EPA form 8700–13A/B).

E. June 2019 Advisory Board Meeting

EPA convened the e-Manifest Advisory Board to hold a public meeting, entitled ''*Increasing Adoption of the e-Manifest system,*'' on June 18–

beginning June 30, 2021. On that date, the top copy of manifest forms is limited to uploading manifest data and a digital image of a paper manifest or a digital image of a paper manifest.

20, 2019.[4] The primary goals of the Advisory Board meeting were to: (1) Identify the main challenges generators and other waste handlers face when using fully electronic manifests; and (2) obtain advice from the Board on ways to increase adoption of electronic manifests. EPA requested input from the Board on identifying the main challenges generators, transporters, and receiving facilities face with using fully electronic manifests and possible solutions to the challenges. To incentivize greater e-Manifest adoption by waste handlers, the Board recommended EPA integrate the Biennial Reports, Discrepancy Reports, Exception Reports, and Unmanifested Waste Reports into the e-Manifest system.

IV. Detailed Discussion of Proposed Rule

A. What is EPA proposing for international shipments of hazardous waste?

This action considers regulatory amendments to the manifest regulations for hazardous waste export shipments. The proposed amendments would require export manifests to be collected in the e-Manifest system. If finalized, the following entities involved in export shipments would be responsible for the submission of the manifest to EPA's e-Manifest system and the payment of user fees: (1) An exporter who is required to originate the manifest for a shipment of hazardous waste; or (2) any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import. The proposed amendments are discussed below in greater detail under preamble section IV.A.3.

This action also addresses comments on several proposed changes to the manifest form and continuation sheet for transboundary shipments and requests additional comment on certain manifest form changes proposed in the **Federal Register** on February 8, 2019 (84 FR 2854). EPA considered changes to the manifest forms as part of the renewal of the Information Collection Request (ICR) for the form (OMB Control Number 2050–0039) and solicited public comment on this ICR through that FR notice. The proposed changes would require exporters and importers to record the hazardous waste stream consent numbers for export and import shipments in new, distinct fields on the continuation sheet. In addition, the proposed changes would require the exporter's EPA ID number to be recorded in a designated field on the continuation sheet, if the exporter is a recognized trader located separate from the site initiating the export shipment. Currently, there is no space on the manifest for an exporter that is not the site initiating the export shipment to record this information. The proposed manifest form changes related to hazardous waste export and import shipments are discussed below in greater detail under preamble section IV.A.4. Finally, this action proposes changes under 40 CFR part 262 subpart H for the manifest and movement document requirements, and details technical corrections and conforming amendments to requirements for transboundary shipments. The proposed changes to the manifest and movement requirements are discussed below in greater detail under preamble sections IV.A.5 and IV.A.6, respectively.

1. Background on Current Manifest and Movement Document Requirements for International Shipments

Current RCRA regulations require exporters and importers of hazardous waste shipments to comply with the manifest and movement document regulations under 40 CFR part 262, subpart H. For the hazardous waste manifest, current export and import regulations at §§ 262.83(c) and 262.84(c) require exporters and importers, respectively, to record export or import data on the manifest. For hazardous waste shipments departing the U.S., the exporter of the hazardous waste shipment must comply with the manifest requirements of 40 CFR 262.20 through 262.23 except that in lieu of the name, site address, and EPA ID number of the designated facility, the exporter must: Enter the name and site address of the foreign receiving facility; check the export box and enter the U.S. port of exit (city and state) from the United States in Item 16; and record the waste stream consent number for each waste listed on the manifest. If the exporter is the generator or the site from where the export manifest is initiated, the exporter's information will be listed in Item 1 and Item 5. However, if the exporter is a recognized trader whose physical location is separate or different than the site initiating the export shipment, then the exporter information is not required to be entered on the manifest.

For hazardous waste shipments entering the U.S., the manifest regulations for importers are similar to the requirements for exporters. The importer must also comply with manifest requirements at 40 CFR 262.20 through 262.23, and the importer is considered the RCRA generator whose EPA ID number will be entered in Item 1. Additionally, the importer's information must be entered in Item 5 except that the importer must enter the name and site address of the foreign facility on the right side of Item 5 of the manifest in lieu of entering its physical site address, and the importer must also enter the name, site address, and EPA ID number of the domestic designated facility in Item 8 of the manifest. If the domestic designated facility is also the importer, its information will be entered in both locations on the manifest. Finally, the importer must check the import box and enter the U.S. port of entry (city and state) into the United States in Item 16.

Both hazardous waste export and import regulations require that consent numbers be entered on the manifest. For export shipments, current export regulations at 40 CFR 262.83(c)(3) require the exporter to record the consent numbers on the manifest for each waste stream listed in Item 9b of the manifest when it initiates the manifest. Similarly, import-related regulations at 40 CFR 264.71(a)(3)(i) require U.S. facilities receiving hazardous waste subject to 40 CFR part 262, subpart H from a foreign entity to record the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest. Currently, EPA recommends listing the consent numbers in Item 14, ''Special Handling Instructions and Additional Information,'' on the paper manifest form due to the lack of dedicated fields for listing such numbers.

In addition, the RCRA hazardous waste regulations at 40 CFR parts 264.71(a)(2)(v)(B) and 265.71(a)(2)(v)(B) require domestic destination facilities receiving import shipments to submit the import manifests to the e-Manifest system and pay the requisite fees for their processing and data capture in the e-Manifest system. The current hazardous waste regulation at 40 CFR 263.20(g)(4)(i) also requires transporters who transport hazardous waste out of the U.S. to send copies of paper manifests for export shipments to the e-Manifest system. Currently, however, the manifest data from export manifests is not captured in the e-Manifest system.[5]

[4] EPA's background paper, related supporting materials, Final e-Manifest Advisory Report/Meeting Minutes for the June 2019 FAC meeting (*i.e.,* the Board's recommendations), and EPA's responses to them are available in the public docket (*www.regulations.gov,* Docket no. EPA–HQ–OLEM–2019–0194).

[5] EPA promulgated the Export Import Revisions Final rule on November 4, 2016, which established

The current export and import regulations at §§ 262.83(d) and 262.84(d) require exporters and importers, respectively to record export or import data on the international movement document for all exported or imported hazardous wastes that are required to be manifested or managed under the alternate management standards of 40 CFR parts 266 (*e.g.,* spent lead-acid batteries (SLABs)) or 273 (*i.e.,* universal wastes). For export hazardous waste shipments, the exporter must: Enter the information listed in 40 CFR 262.83(d)(2)(i)–(xii) when initiating the international movement document; ensure through use of contract terms that the international movement document accompanies the shipment from the site in the U.S. where the export shipment is initiated to the foreign receiving facility; and ensure that appropriate signatures are entered for each custody transfer from shipment initiation to the foreign receiving facility per 40 CFR 262.83(d)(2)(xiii)–(xiv). The foreign receiving facility must send a copy of the signed international movement document within three days of shipment delivery to: The exporter, the importing country's competent authority, and any transit country(ies)'s competent authority(ies) to confirm receipt of the shipment per 40 CFR 262.83(d)(2)(xv). For shipments made after the electronic import-export reporting compliance date that EPA will establish in a future **Federal Register** notice [6], the exporter must have contract terms requiring the foreign facility to send an electronic copy of the signed international movement document at the same time to EPA using the Waste Import-Export Tracking System (WIETS) or its successor system.

Lastly, the exporter must have contract terms requiring the foreign receiving facility to send a copy of the signed and dated confirmation of recovery or disposal as soon as possible, but no later than thirty days after completing recovery or disposal of the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter and to the competent authority of the country of import per 40 CFR 262.83(f)(5). If the initial foreign receiving facility performed interim operations on the waste shipment, the contract terms must also require that the initial foreign receiving facility obtain a copy of the signed and dated confirmation of recovery or disposal from the subsequent foreign facility that performed the final operation on the waste shipment and promptly forward the copy to the exporter and to the country of import, per 40 CFR 262.83(f)(6). For shipments made after the electronic import-export reporting compliance date that EPA will establish in a future **Federal Register** document, the exporter must have contract terms requiring the foreign facility to send an electronic copy of each signed and dated confirmation of recovery or disposal at the same time to EPA using WIETS or its successor system.

For import waste shipments being shipped to U.S. receiving facilities, the importer must similarly ensure through contract terms that the information listed in 40 CFR 262.84(d)(2)(i)–(xii) is included on the international movement document when the foreign exporter initiates the movement document. Additionally, the contract must require that the movement document accompanies the shipment from the foreign site where the import shipment is initiated to the U.S. receiving facility, with appropriate signatures entered for each custody transfer per 40 CFR 262.84(d)(2)(xiii)–(iv). Finally, the U.S. receiving facility must send a copy of the signed movement document within three days of shipment delivery to the foreign exporter, to the exporting country's competent authority, and to any transit country(ies)'s competent authority(ies) to confirm receipt of the shipment per 40 CFR 262.84(d)(2)(xv). For shipments made after the electronic import-export reporting compliance date that EPA will establish in a future **Federal Register** document, the U.S. receiving facility must send an electronic copy of the signed movement document at the same time to EPA using WIETS or its successor system. Lastly, the U.S. receiving facility must send a copy of the signed and dated confirmation of recovery or disposal as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following the receipt of the waste, to the foreign exporter and to the competent authority of the country of export per 40 CFR 262.84(g)(1). If the initial U.S. receiving facility performed interim operations on the waste shipment, the U.S. receiving facility must obtain a copy of the signed and dated confirmation of recovery or disposal from the subsequent U.S. facility that performed the final operation on the waste shipment and promptly forward the copy to the foreign exporter and to the country of export per 40 CFR 262.84(g)(2). Just as with the copy of the signed movement document, for shipments made after the electronic import-export reporting compliance date that EPA will establish in a future **Federal Register** notice, the U.S. facility must send an electronic copy of each signed and dated confirmation of recovery or disposal at the same time to EPA using WIETS or its successor system.

2. Potential Manifest Changes Discussed in February 8, 2019, ICR Proposal for Export and Import Shipments

EPA proposed and requested comment on several changes to the hazardous waste manifest form and continuation sheet as part of the renewal of the Information Collection Request (ICR) for the form (OMB Control Number 2050–0039). First, to enhance the quality of data recorded on the manifest and continuation sheet (both paper and electronic), EPA proposed new form data fields to allow: (1) The hazardous waste stream consent numbers for export and import shipments to be recorded in a separate, distinct field on a manifest (See 84 FR 2854 and 2855); and (2) the exporter's EPA ID Number to be captured on the manifest, if the exporter is a recognized trader located separate from the site initiating the export shipment (See 84 FR 2854 and 2856). EPA explained in the proposal that the addition of a separate data field to the paper and electronic manifest for consent numbers would facilitate the electronic upload or manual entry of data from paper export and import manifests as the manifest would more clearly list the consent number for each waste stream. Further, the addition of this field would also facilitate the retrieval of export and import manifest data from the e-Manifest system for all manifested export and import shipments. The February 2019 **Federal Register** notice (84 FR 2854) also explained that the addition of the exporter's EPA ID

the current requirement for the transporter to send paper copies of export manifests to the e-Manifest system. While transporters are currently submitting export manifests to EPA, the paper processing center is not entering the data from them into the e-Manifest system. EPA did not establish a regulation in the June 2018 User Fee Final rule requiring transporters, nor any other entity involved in the export shipment, to pay the requisite user fee for processing of the export manifests. EPA is pursuing a new regulatory change under today's proposed rule to address which entity involved in the export supply chain is best suited to submit export manifests to EPA and pay the requisite user fee for the processing of export manifests.

[6] As part of the November 28, 2016, import-export revisions final rule (81 FR 85696), EPA defined two dates that would be established and announced via future **Federal Register** notices. One was the AES filing compliance date, which was established in the **Federal Register** on August 29, 2017 (82 FR 41015) to be December 31, 2017. The other is the electronic import-export reporting compliance date that has yet to be established.

number would be necessary, if EPA decided that the exporter is the party best suited to be billed for export manifests collected in the e-Manifest system; the current manifest does not provide adequate information to invoice exporters.

Specifically, EPA requested comment on whether: (1) Space should be added to Item 16 (*i.e.,* the International Shipments field) of the manifest to accommodate consent numbers corresponding to each of the waste streams listed in Item 9 of the manifest; or (2) the continuation sheet should be revised to accommodate consent numbers, the primary exporter's EPA ID number, if necessary, and other international shipment information currently recorded in Item 16 of the manifest.

Finally, in addition to the revisions to the continuation sheet discussed above, EPA also requested comment on whether the continuation sheet should be expanded to capture all international shipment data recorded on the manifest and movement document and ultimately captured in the e-Manifest system.

3. What is EPA proposing with respect to submitting export manifests to EPA's e-Manifest system?

EPA intends to collect export manifests in the e-Manifest system. Like user fees for domestic manifests, the fees for export manifest submissions would be assessed on a per manifest basis. User fees would be assessed upon the submission of the final manifest containing the signature of the transporter who transported the waste shipment out of the United States. The regulatory amendments discussed in this section of the preamble would require the exporter to submit the top copies of both the manifest and continuation sheet to EPA and pay the requisite processing fee for the submissions.

Although the transporter, under current regulations, closes out the export manifest, EPA believes the exporter is better suited to submit the manifest and continuation sheet to the system for several reasons. First, the exporter is primarily responsible for the arrangement of the shipment exiting the U.S. and therefore has firsthand knowledge of the export shipment. Besides submitting the electronic notifications of intent to export to EPA in WIETS, the exporter: Receives an acknowledgement of consent (AOC) from EPA documenting consent from the foreign country to receive the export shipment, prepares the manifest for the export shipment if required, prepares the movement document, submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) operated by U.S. Customs and Border Protection (CBP), receives copies of the signed movement documents and confirmations of recovery or disposal from the foreign receiving facility, submits exceptions reports to EPA as needed, and submits an export annual report listing details concerning all export shipments made during the previous calendar year.

There are fewer exporters than transporters in the hazardous waste management industry and they are required to be domiciled in the United States. In contrast, a foreign transporter that has obtained an EPA ID number to carry manifested hazardous waste in the U.S. may not be domiciled in the United States. As a result, EPA believes it would be more practical and efficient administratively to focus fee collections and payments in the system on the several hundred exporters rather than working to allow foreign transporters access to the system. Traditionally in other EPA programs, foreign entities have posed regulatory challenges including requirements to post bonds, provide foreign immunity waivers, and special registration procedures. There are also additional challenges verifying the identity of foreign users for electronic signatures as the current EPA methods are designed to be used in the United States. Therefore, under this proposed rule, exporters would submit the manifest to EPA's e-Manifest system and pay the appropriate per manifest fee to EPA for each export manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF (Fees for the Electronic Hazardous Waste Manifest Program) of part 265.

Accordingly, EPA is proposing several regulatory amendments to the manifest provisions under 40 CFR 262.83 and 263.20 for hazardous waste exports to allow hazardous waste or other regulated waste handlers who must use the manifest for tracking export shipments to electronically complete, provide, sign, transmit, and store EPA Form 8700–22 (manifest) and EPA Form 8700–22A (continuation sheet) in the e-Manifest system in accordance with the authorized electronic formats announced in the February 2014 One Year Rule.

First, EPA's proposal revises 40 CFR 262.83(c) by adopting the existing manifest provisions at §§ 262.20(a)(3) and 262.24 for electronic manifest use and the electronic signature requirements at § 262.25 for export manifests. If these provisions are finalized as proposed, a person exporting a shipment out of the U.S. (*i.e.,* a generator or a recognized trader located separate from the site initiating the shipment) may, in lieu of using a paper manifest form, use an electronic manifest to track the export shipment within the United States. These electronic manifests would be considered the legal equivalent of paper manifests signed with conventional ink signatures. EPA notes that use of electronic manifests is voluntary and therefore exporters could continue to track export shipments using the existing paper forms under the proposal. If an export shipment was initiated by the initial transporter under a hybrid manifest in accordance with § 262.24(c), then an exporter would also be required to complete and sign that manifest electronically in the system.

Second, EPA is proposing the addition of new provisions under § 262.83. These would require an exporter to submit the top copy of a manifest form and continuation sheet (whether paper or electronic) to EPA for processing, in accordance with the proposal for export shipments described in this section of the preamble. The new provisions would also require the exporter to pay the requisite processing fee for the submission using the existing fee provisions under 40 CFR part 265 subpart FF. Under today's rule, EPA is proposing new paragraphs (c)(4) through (c)(8) under § 262.83(c). If finalized, an exporter who elects to use an electronic manifest and continuation sheet for an export shipment, would be required to complete, sign, and submit the manifest and continuation sheet electronically in the e-Manifest system for the waste shipment within 30 days of receipt of the electronic manifest signed by the last transporter who carried the export shipment to a U.S. seaport for loading onto an international carrier or to a U.S. road or rail port of exit.

If the waste shipment was transported within and then exited the U.S. under a paper manifest and continuation sheet, the exporter would submit images of the paper forms, or uploaded data plus images of the paper forms, to EPA. Upon receipt of image files of a paper manifest and continuation sheet, EPA's paper processing center (PPC) would process the manifests, and the manifest data for the export shipment would be captured in the e-Manifest system.

New § 262.83(c)(4) would generally provide an exporter the same options as a U.S. receiving facility to submit the original paper manifests to the system,

with one exception. Exporters will not be afforded an option to mail in paper manifests to EPA's e-Manifest system. Prior to June 30, 2021, EPA had accepted manifest data from final manifest copies submitted by U.S. receiving facilities using several modes of delivery. These options included submission of a paper hard copy; image upload of the manifest copy; manifest data upload (*e.g.,* JSON file) plus image upload of the manifest copy; or an electronic manifest (*i.e.,* fully electronic or hybrid manifest). However, per current regulation at 40 CFR parts 264.71(a)(2)(v)(B) and 265.71(a)(2)(v)(B), beginning June 30, 2021, U.S. receiving facilities, and therefore exporters, will be limited to submitting paper manifests and continuation sheets via image upload or data plus image upload to EPA. Both U.S. receiving facilities and exporters would also have the option to submit electronic manifests to the system.

Third, EPA is proposing to adopt the fee provisions of the electronic hazardous waste manifest program under 40 CFR part 265 subpart FF (40 CFR 265.1300, 265.1311, 265.1312, 265.1313, 265.1314, 265.1315, and 265.1316) for hazardous waste export shipments. EPA finalized these provisions in the User Fee Final Rule (83 FR 420, January 3, 2018) and utilizes them for domestic receiving facilities of hazardous waste and other federal or state regulated wastes. If finalized, exporters of a waste shipment subject to the manifest requirements would be expected to make payments to EPA for manifest activities conducted during the prior month per § 265.1314. Per § 265.1311, EPA would impose a per manifest fee for each manifest submitted to the system based on the type (paper or electronic) and mode of submission (data upload, image file upload, or electronic). EPA would use the fee formula and methodology and fee revisions described at §§ 265.1312 and 265.1313, respectively, to calculate the manifest fees based on exporters' manifest activities in the system. The mathematical expression of the Marginal Cost Differentiated Fee Option (§§ 264.1312(a) and 265.1312(a)), as revised per Section V.C.2 of the preamble, is as follows:

$$Fee_i = \left(\frac{System\ Setup\ Cost}{Years\ \times N_t}\right) + \left(Marginal\ Cost_i + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M\ Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ eManifest\ System\ Related\ Services$$

Where:

System Setup Cost = Procurement Cost + EPA Program CostO&M Cost = Electronic System O&M Cost + Paper Center O&M Cost + Help Desk Cost + EPA Program Cost + CROMERR Cost + LifeCycle Cost to Modify or Upgrade e−Manifest System Related Services

Fee_i represents the per manifest fee for each manifest submission type ''i'' and N_t refers to the total number of manifests completed in a year.

User fees are refreshed for each of the two years following the issuance of a new fee schedule. The table below lists the user fees for fiscal years 2022 and 2023 (October 1, 2021, through September 30, 2023) for the e-Manifest system. The FY 2022/2023 user fees for scanned image uploads and data plus image uploads for paper manifests are set at $20 and $13, respectively. The FY2022/2023 user fees for electronic manifest submissions (including hybrid manifests) are set at $8:

Manifest submission type	Fee per manifest
Scanned Image Upload	$20.00
Data + Image Upload	13.00
Electronic Manifest (Fully Electronic & Hybrid)	8.00

These user fees are set based on the manifest usage and processing costs for each manifest type. As mentioned in today's preamble at V.C, as of June 30, 2021, EPA no longer accepts mailed paper manifests for manifest processing and data entry into the e-Manifest system. Instead, receiving facilities must submit paper manifests as either a scanned image upload or data plus image upload. EPA reiterates there are no user fees for mailed paper manifests since the e-Manifest PPC will no longer accept them for processing into the e-Manifest system.

EPA notes since fee schedules are announced for each of the two years following the issuance of the new fee schedule, the Agency has also included two adjusters to the fee formula methodology. The first fee adjuster, known as the ''inflation'' adjuster, accounts for inflationary effects between the first and second years of each fee schedule. Per §§ 264.1313(b) and 265.1313(b), the inflation adjuster formula is as follows:

$$Fee_{iYear\ 2} = Fee_{iYear1} \times (CPI_{Year2-2}/CPI_{Year2-1})$$

Where Fee_{iYear2} is the Fee for each type of manifest submission ''*i*'' in Year 2 of the fee cycle; Fee_{iYear1} is the Fee for each type of manifest submission ''*i*'' in Year 1 of the fee cycle; and $CPI_{Year2-2}/CPI_{Year2-1}$ is the ratio of the CPI published for the year two years prior to Year 2 to the CPI for the year one year prior to Year 2 of the cycle.

The second fee adjuster, known as the ''revenue recapture'' adjuster, targets recapturing revenue that was lost on account of imprecision in estimating the numbers and types of manifest submissions that would be processed by the e-Manifest system. Unlike the inflation adjuster, which operates to adjust fees between the first and second years of each two-year fee cycle, the revenue recapture adjuster looks back to the previous two-year fee cycle and attempts to recover revenue losses from that previous cycle through adjustments to the fee schedules for the new cycle. The revenue recaptured through this adjuster is added to the O&M Costs in

the above fee calculation formula, so that this recaptured revenue is re-allocated like other program operation costs to the fees charged on a per-manifest basis. Per §§ 264.1313(c) and 265.1313(c), the revenue recovery recapture formula is as follows:

$$\text{Revenue Recapture}_i = [(N_{iYear1} + N_{iYear2})_{Actual} - (Ni_{Year1} + N_{iYear2})_{Est}] \times Fee_{i(Ave)}$$

Where Revenue Recapture_i is the amount of fee revenue recaptured for each type of manifest submission ''*i;*'' $(N_{iYear1} + N_{iYear2})_{Actual} - (N_{iYear1} + N_{iYear2})_{Est}$ is the difference between actual manifest numbers submitted to the system for each manifest type during the previous 2-year cycle, and the numbers estimated when we developed the previous cycle's fee schedule; and $Fee_{i(Ave)}$ is the average fee charged per manifest type over the previous two-year cycle.

Per § 265.1314, exporters would receive an electronic invoice or bill displaying their manifest activity during the prior month and would be expected to make payments in full within 30 days from the date of the invoice. Exporters would be expected to submit electronic payments to the U.S. Department of Treasury through the e-Manifest system using one of the acceptable electronic payment options, which include commercial credit cards, commercial debit cards, and Automated Clearinghouse (ACH) debits.

Per the late fee and collection provisions at §§ 265.1315 and 265.1315, exporters who do not pay their invoices in full and on time would be charged late fees. Late fees begin to accrue for bills not paid in full within 30 days from the date of the invoice. The fees include a penalty (currently 1% annualized of the billable invoice total) and a $15 handling charge for each month the bill is unpaid. A one-time increase of this penalty to 6% is charged if a bill is not paid four months after the invoice has been issued. After four months, the unpaid invoice is forwarded to the U.S. Treasury Department for collection and further action.

Per § 265.1316, exporters would be able to dispute an invoice using the informal dispute process, if they believe an invoice to be in error (*e.g.,* the invoice does not accurately describe the numbers of manifests submitted in the prior billing period, the types of manifests (paper vs. electronic) submitted in the prior billing period, or, because the invoice appears to have made a mathematical error in generating the amount of fees due under the invoice).

If finalized, the proposed amendments would require any party acting as the U.S. exporter that originated the manifest for an export shipment of hazardous waste in accordance with the manifest requirements under 40 CFR part 262 subpart B and § 262.83(c), whether they be a generator, receiving facility, or recognized trader, to submit the export manifests to the system and pay the requisite fees.

Finally, EPA is proposing to revise § 263.20(g)(3) and remove § 263.20(g)(4)(i). Section 263.20(g)(3) currently requires the transporter to provide a copy of the export manifest to the generator. Today's proposal would allow the collection of manifest data in the e-Manifest system, making the current requirement unnecessary. Employees of a generator site registered in the RCRAInfo Industry Application for access to the e-Manifest system could view export manifests for their site in the system. Generators that elect not to register for e-Manifest, could obtain the export manifest via a system-generated email, using the generator's email address, which EPA is proposing to add to the manifest form. For further details regarding the addition of the generator's email address on the paper manifest, please refer to Section IV.C.3. of today's proposed rule. Therefore, EPA is proposing to modify § 263.20(g)(3) to require the transporter who transports the hazardous waste export shipment out of the U.S. via road or rail border crossing or delivers the export shipment to a seaport for loading onto an international carrier to send paper copies of the manifest and continuation sheet (or images of the paper copies) to the exporter instead of to the generator, or transmit the export manifest and continuation sheet electronically in the system in accordance with the existing manifest requirement for electronic manifest use at § 263.20(a)(4).

EPA is proposing the removal of the current transporter requirement in § 263.20(g)(4)(i). EPA has determined that transporters are not best suited for submitting the export manifest to the system and paying the requisite processing fee based on the above modification to § 263.20(g)(3). EPA notes that transporters would be able to use electronic manifests in lieu of paper manifests to transport RCRA-manifested waste shipments out of the U.S. in accordance with § 263.20(a)(4). Transporters would need to obtain a RCRAInfo Industry Application account to access and use the e-Manifest system. Additionally, EPA is proposing to remove 40 CFR 263.20(g)(4)(ii), which lists the ''AES filing compliance date'' promulgated in the hazardous waste import/export final rule dated November 28, 2016 (81 FR 85696). The AES filing compliance date was specified as December 31, 2017, in a **Federal Register** notice dated August 28, 2017 (82 FR 41015). That compliance date has passed, and as such the requirement for the transporter to provide a paper copy of the manifest to a U.S. customs official at the point of departure for shipments initiated prior to the AES filing is now obsolete.

EPA requests comment on all the proposed changes discussed above. In addition, EPA requests information regarding whether the proposed changes would work for foreign transporters who transport export shipments to and across the U.S. border. In addition, EPA requests information regarding how many foreign transporters currently transport such shipments within the United States.

4. What is EPA proposing with respect to manifest form changes related to export and import hazardous waste shipments?

EPA received minimal comments on the February 2019 **Federal Register** notice for the proposed ICR which included adding new data fields on the manifest for consent numbers and EPA ID numbers for exporters (To view these comments, refer to Docket ID No. EPA–HQ–OLEM–2018–0756, *www.regulations.gov*). While comments from state agencies and industry organizations supported adding these new data fields, comments from hazardous waste TSDFs and their trade organizations expressed concern about the proposed additions to the International Shipments field (Item 16) on the manifest or inclusion of this field on the continuation sheet for the proposed data fields. One commenter argued modifications to the form for international shipments as well as other form changes detailed in the February 2019 public notice will have substantial implications, increase burdens on industry and result in significant costs to have facilities redesign and reprogram their IT systems. Two commenters suggested that before changing the manifest form, EPA should consider how best to upgrade the Waste Import Export Tracking System (WIETS) and ultimately integrate it with the e-Manifest system. These commenters also stressed that if the Agency continues to require AOC numbers on the manifest, Agency information about an international shipment, including an exporter's EPA ID, are available via WIETS. All commenters opposed to the February 2019 proposal for international

shipment form changes also suggested EPA develop a separate international shipment manifest form that would contain information from both the manifest and movement document.

For the following reasons, EPA has decided against considering expansion of Item 16 on the manifest to accommodate these new fields and is not considering merging the manifest and international movement documents or creating a separate, international manifest to capture all international shipment data on one paper form. First, as mentioned in the February 2019 **Federal Register** notice (84 FR 2854 at 2856), the one-page paper manifest already contains many data elements and does not have much space left for new additions. Second, EPA assessed merging the international movement document shipment tracking with the manifest requirements to capture both manifest and international movement document data in the e-Manifest system. However, the potential reduction in burden from eliminating duplicative data that are currently required to be listed on both the manifest and the international movement document would not offset the increase in e-Manifest program costs due to the increased need for data entry by EPA's PPC to accommodate the additional data fields currently required by the international movement document. Additionally, merging the manifest and international movement document tracking would increase burden by requiring the use of manifests and payment of manifest fees for export and import shipments that are currently exempted from manifesting requirements but subject to international movement document requirements (*e.g.,* universal waste, SLABs). EPA's proposal therefore keeps manifest requirements separate from the international movement document requirements for both export and import shipments. EPA, however, intends to address the electronic international movement document-related data as part of EPA's WIETS, as it is integrated as a module in the RCRAInfo Industry Application. See Section IV.A.6. for further discussion of the proposed international movement document-related changes EPA is proposing.

At this time, EPA is proposing to: (1) Move the International Shipments field (*i.e.,* Item 16) from the manifest to the continuation sheet, and (2) add new fields for consent numbers and the exporter's EPA Identification number and email address to the International Shipments field. EPA is seeking comment on a proposed revised version of the continuation sheet (EPA Form 8700–22A) reflecting EPA's proposed move of international shipment information to EPA Form 8700–22A, which is available in the docket for this rulemaking. If finalized, EPA would remove the International Shipments field from the manifest and re-designate it as Items 33a and 33b on the continuation sheet as shown on the draft form. EPA would also revise the current manifest instructions for completing the International Shipments field to reflect these new changes.

For Item 33a, the exporter would be required to check the export box and enter the port of exit (city and state) from the U.S. in this new field. In addition, if located separate from the site initiating the shipment, the exporter would be required to enter its EPA ID number and email address in this field. The final domestic transporter of the export shipment would be required to date the manifest in Item 33a to indicate the day the shipment left the U.S. via a road or rail border crossing or the date the shipment was delivered to a seaport of exit for loading onto an international carrier. EPA notes that the requirement under the existing manifest instruction for the final domestic transporter to sign the manifest on the date the waste departs the country has been removed. For import shipments, the importer would be required to check the import box and enter the port of entry (city and state) into the United States in new Item 33a of the continuation sheet. For Item 33b, destination facilities of import shipments and exporters would be required to record the consent numbers on the manifest for each waste stream listed in Items 9b and 27b of the manifest and continuation sheet, respectively, in this new section.

EPA understands the one commenter's concerns regarding the increased costs they would incur to upgrade their systems to accommodate the new fields. EPA also agrees with other commenters' suggestion that the international shipment information such as the exporter's EPA ID number can be retrieved via WIETS using the waste stream consent numbers currently captured in Item 14 of the manifest. EPA, however, believes the addition of data fields for international shipment information is needed for several reasons. First, EPA continues to believe the addition of separate data fields to the paper and electronic manifest for consent numbers would facilitate the electronic upload or manual data entry of data from paper export and import manifests as the manifest would more clearly list the consent number for each waste stream. Second, as discussed in Section IV.A.3. of this rule, EPA is proposing to require exporters to submit the top copy of manifests to EPA and pay the requisite processing fee for those submissions. An exporter's site ID number is needed to ensure that the exporter can use electronic manifests, upload paper manifests to its site account in the system, track its manifest activity (for both electronic and paper manifests) in the system, and receive accurate invoices for each billing cycle. If the responsible exporter is separate from the site initiating the export shipment, relying on consent numbers to retrieve an exporter's ID number from WIETS in lieu of obtaining that number directly from the e-Manifest system or the paper form would require the system or the PPC to obtain reference data on the exporter EPA ID number for each waste stream consent number from WIETS. This process is less efficient than obtaining the exporter's EPA ID number directly from the system or the paper form. The addition of a new data field for the exporter's EPA ID number would enable the e-Manifest system to access the EPA ID number directly or enable the EPA PPC to more efficiently obtain and key that number directly into the system from the paper forms. This efficiency would reduce EPA's administrative costs for processing export manifests.

As an alternative to creating a new, separate field on the continuation sheet for the exporter's ID number, an exporter could use the existing Generator ID Number (Item 1) to record its ID number on the manifest, if the exporter is the generator or initiated the export shipment. EPA discussed and requested comments on this alternative option in the February 2019 **Federal Register** notice (See 84 FR 2854 at 2856, February 8, 2019) and is now seeking further input. As part of this option, the exporter would record its ID number in the Generator ID Number field and its name and site address in Item 5 of the manifest. If, however, the exporter is not the generator or did not initiate the export shipment, then the exporter would enter its name and site address on the left side of Item 5 and supply the generator's information (*i.e.,* generator site's name and address), including the generator's site ID on the right side of Item 5. Additionally, as discussed in Section IV.C.3. of this proposed rule, EPA is proposing to add a new field in Item 5 of the manifest for the generator's email address. Currently, ''email address'' is an optional field in the e-Manifest system. An exporter would be expected to provide its email address in this new field. If the exporter is not the generator, the exporter would be

expected to supply the generator's email address on the right side of the form. EPA requests comment on all of these proposed changes to the manifest form and continuation sheet.

5. What is EPA proposing in today's action that only impacts import shipments?

EPA is proposing to delete the requirement in 40 CFR 262.84(c)(4) that the importer provide an additional copy of the manifest to the transporter to be submitted by the receiving facility to EPA per §§ 264.71(a)(3) and 265.71(a)(3). This additional copy of the manifest is no longer necessary because the receiving facility is now required to always submit the top copy of the paper manifest and any continuation sheets to the e-Manifest system.

6. Additional Proposed Changes to International Shipment Requirements

EPA's proposal includes revisions to the export and import shipment international movement document-related requirements to more closely link the manifest data with the international movement document data. Doing so will enable linking the manifest data with the eventual confirmation of receipt and confirmation of recovery or disposal sent by the U.S. receiving facility to WIETS for an import shipment, or sent by the foreign receiving facility for an export shipment for submittal by the exporter to WIETS. As mentioned in Section IV.A.3, EPA intends to redesign WIETS to a module integrated within the RCRAInfo Industry Application that will allow more efficient data sharing between WIETS and the other modules and improved access by state agencies and the public to export and import final data. WIETS currently includes industry-created and submitted export notices, import notices, and export annual reports; EPA review and processing of such submittals; and EPA node-based electronic exchanges of notice and response (*e.g.,* consent) data with Canada and Mexico. The redesign is planned to occur in two stages. The initial stage would make export notices, import notices and export annual reports, and related Agency processing more efficient and automated through integration with the RCRAInfo Industry Application and through use of an Application Programing Interface-based electronic exchange of notice and response data with Mexico and eventually Canada. The second stage of the redesign intends to add functionality to enable the establishment of the electronic import-export reporting compliance date discussed in the November 28, 2016, final rule revising hazardous waste import and export requirements (81 FR 85700). Once both stages are fully completed, EPA intends the redesigned WIETS to include the additional electronic documents such as: Export confirmations of receipt, export Exception Reports, export confirmations of recovery or disposal, import confirmations of receipt, receiving facility notifications of the need to arrange alternate management or the return of an import shipment, and import confirmations of recovery or disposal. Lastly, EPA's proposal reflects potential future electronic data exchange of international movement document data, confirmation of receipt data, and confirmation of recovery or disposal data between the U.S. and another country such as Canada. Should such an electronic data exchange agreement be established, facilities in both countries could utilize the exchange to transmit required data more efficiently.

EPA is therefore proposing revisions to 40 CFR 262.83(d)(2)(i) and 262.84(d)(2)(i) to require the international movement document to list the RCRA manifest tracking number from Item 4 if the shipment is required to be manifested while being transported in the United States. Additionally, since Canadian movement documents have unique tracking numbers similar to manifest tracking numbers, EPA is proposing revisions to 40 CFR 262.83(d)(2)(ii) and 262.84(d)(2)(ii) to add the unique international movement document tracking number as an acceptable alternative to listing the shipment number and total number of shipments from the EPA AOC or the foreign export permit on the generic international movement document available at *http://www.basel.int/Portals/4/Basel%20Convention/docs/techmatters/forms-notif-mov/vCOP8.doc.*

Parallel to the manifest submittal requirements, EPA is proposing revisions to 40 CFR 262.83(d)(2)(xv) and 262.84(d)(2)(xv) to require the exporter and U.S. receiving facility to submit a copy of the signed international movement document to WIETS. Exporters would be required to submit the copy to WIETS within three days of receiving the copy from the foreign facility, and U.S. receiving facilities would be required to submit the copy to WIETS within three days of shipment delivery to confirm receipt of the shipment for shipments occurring on or after the electronic import-export reporting compliance date. The proposed new 40 CFR 262.83(d)(2)(xvi) requires exporters to submit a copy of the signed confirmations of recovery or disposal that it receives from the foreign receiving facility to WIETS within three days of the exporter's receiving the copy of the signed confirmation of recovery or disposal for shipments occurring on or after the electronic import-export reporting compliance date. To reflect the possible establishment of an electronic exchange of shipment tracking data with another country like Canada, EPA is proposing revisions to 40 CFR 262.83(f)(4)–(5), 262.83(f)(6)(ii), 262.84(d)(2)(xv), 262.84(g)(1)–(2), and new 40 CFR 262.83(d)(2)(xvii) to allow an established data exchange to be used to comply with the transmittal of shipment confirmations for export and import shipments between the exporter or receiving facility and the foreign receiving facility or foreign exporter, respectively, and between the receiving facility and the competent authority for the country of export for import shipments. Similarly, EPA is proposing new 40 CFR 262.83(f)(3)(iii) and 262.84(f)(4)(iii) to allow the use of an established data exchange to comply with the transmittal across borders of notifications of the need to arrange for the alternate management or return of an individual shipment for export and import shipments per 40 CFR 262.83(f)(3)(i) and 262.84(f)(4)(i).

Lastly, EPA is proposing the following technical corrections and conforming amendment to import and export requirements. First, EPA is proposing revisions to 40 CFR 261.39(a)(5)(v)(B), 261.39(a)(5)(xi), 262.83(a)(6), and 262.83(g) to reflect that the AES compliance date of December 31, 2017 (which was specified in an announcement in a **Federal Register** notice dated August 28, 2017 (82 FR 41015)) has passed and requirements concerning shipments made prior to that date can no longer apply and are thus obsolete. Next, EPA is proposing revisions to 40 CFR 262.84(b)(1) to reflect that all import notices are submitted electronically using WIETS at this time. Electronic import notices have made EPA's processing more efficient and allow importers and receiving facilities to store and download EPA AOC letters and import consent documentation within WIETS rather than keeping paper copies for recordkeeping on site. Additionally, EPA is proposing revisions to the text in 40 CFR 261.6(a)(3)(i)(A)–(B) and 262.20(a)(2) to reflect that 40 CFR part 262 subparts E and F no longer exist as of December 31, 2016, and 40 CFR part 262 subpart H applies. EPA is also proposing revisions to

§§ 262.83(d)(2)(xv), 262.83(f)(4)–(5) and (6)(ii), 262.84(d)(2)(xv), and 262.84(g)(1)–(2) to clarify that confirmations of receipt and confirmations of recovery or disposal for export and import shipments are only required to be sent to the competent authorities of the countries that control such shipments as exports, transits, or imports of hazardous wastes, consistent with existing text in 40 CFR 264.12(a)(2), 264.12(a)(4), 265.12(a)(2), and 265.12(a)(4). EPA is additionally proposing revisions to §§ 261.4(a)(25)(i)(A), 261.4(a)(25)(i)(H), 261.39(a)(5)(i)(A), 261.39(a)(5)(i)(F), 262.83(b)(1)(i)–(iv), 262.83(b)(3), 262.83(d)(2)(iii)–(v), 262.83(d)(2)(iii)–(v), 262.83(d)(2)(viii)–(ix), 262.84(b)(1)(i)–(iv), 262.84(b)(2), 262.84(c)(1)(i), 262.84(d)(2)(iii)–(v), 262.84(d)(2)(viii)–(ix), to specify the listing of the site address in notices, manifests and international movement documents in place of the existing requirement to list ''address,'' to facilitate country review of the documents. EPA is also proposing revisions to 40 CFR 260.2(d)(1)–(2) and 261.4(a)(25)(v) to make hazardous secondary material export documents prepared, used and submitted under 40 CFR 261.4(a)(25) available to the public when these electronic documents are considered by EPA to be final documents on March 1 of the calendar year after the related hazardous secondary material exports occur. EPA is proposing this conforming change to make hazardous secondary material exports, reinstated as part of EPA's response to vacatur of certain provisions of the definition of solid waste rule effective May 30, 2018 (83 FR 24664), consistent with EPA's earlier rule regarding confidentiality determinations related to all exports, imports or transits of hazardous waste and exports of conditionally excluded materials (*i.e.,* cathode ray tubes) subject to export, import, or transit requirements (82 FR 60894) when the final rule was published on December 26, 2017.

B. What is EPA proposing with respect to Exception, Discrepancy, and Unmanifested Waste Reports?

While the manifest system is often regarded as consisting only of the actual manifest form and any necessary continuation sheets, the complete manifest system extends to several related written reports that are required under the existing regulations when there are specific unresolved problems or irregularities related to a waste shipment that is subject to manifesting. There are currently three additional reports under the RCRA Subtitle C regulations that complete the manifest tracking system: Exception Reports, Discrepancy Reports, and Unmanifested Waste Reports. These reports address issues that arise when return manifests from receivers are late (Exceptions), when the materials received do not match with the quantities or types of materials indicated as being shipped by generators (Discrepancies), and instances when wastes that should have been manifested arrive at a facility without a manifest (Unmanifested Wastes).

This action proposes and solicits public comment on revisions to the manifest requirements applicable to Exception Reports, Discrepancy Reports, and Unmanifested Waste Reports at 40 CFR 262.42, 264.72, and 264.76 respectively. During past Advisory Board meetings, the e-Manifest Advisory Board recommended that EPA integrate these written reports into the e-Manifest system. Below, EPA describes each report in greater detail, and the Agency's proposal on how to leverage e-Manifest to satisfy each requirement.

1. Exception Reporting

Exception Reporting applies to generators, and these reports are required in the federal regulations at 40 CFR 262.42 (Hazardous Waste) and 40 CFR 761.217 (PCBs). Exception reports are intended to address the situation in which the generator does not receive timely confirmation that their hazardous or PCB wastes, tracked with a manifest, arrived at the facility designated by the generator to receive its waste. For large quantity generators or LQGs (those generating 1 kg or greater of acute hazardous waste or 1,000 kg or greater of non-acute hazardous waste per month) and all PCB waste generators, Exception Reporting is a two-step process. In the first step, if the generator has not received the signed, return copy of the manifest from the designated facility within 35 days from the date the transport of the waste shipment began, the generator must contact the transporter and/or the designated facility to determine the status of the generator's waste. In the second step, if the status of that waste is not resolved within 45 days (from the start of transport), the generator must file an Exception Report with their EPA Regional Administrator (or State Director in authorized states). The Exception Report, as currently implemented by regulation, is a separate written report that consists of: (1) A legible copy of the manifest for which the generator does not have confirmation of delivery; and (2) a cover letter signed by the generator explaining its efforts to locate the waste and the results of those efforts. There is a similar Exception Reporting requirement applicable to small quantity generators (SQGs) at § 262.42(b), except that SQGs have an additional 15 days (60 days total) to reconcile the status of their waste with the other handlers, and the separate cover letter is not required as a part of their report.[7]

1.1. What is EPA proposing for Exception Reports?

The Agency is proposing two changes related to Exception Reports: (1) Allow generators using electronic or hybrid manifests to use the e-Manifest system to satisfy exception reporting requirements; and (2) adjust exception reporting timeframes to better align with timeframes required for submission and processing of paper manifests in the e-Manifest system.

The primary goal of EPA is to transition manifest users from a paper-intensive, burdensome system to the more efficient e-Manifest system to track and manage hazardous waste shipments. At present, electronic manifests (both fully electronic and hybrid manifests) represent an extremely small portion of manifests managed in the system and most generators continue to track their waste shipments under the paper-based system. During the e-Manifest system Advisory Board meeting in June 2019, entitled ''Increasing Adoption of the e-Manifest system,'' the Advisory Board recommended that EPA integrate Exception Reports into the e-Manifest system. EPA accepts the Board's recommendation and believes integration of Exception Reports in the e-Manifest system could add to the incentives for generators to use electronic manifests. Therefore, EPA is proposing regulatory amendments to the existing Exception Report requirements at § 262.42 by adding new paragraph (d) and (e) and amending § 761.217 by adding new paragraphs (c) and (d). EPA notes these proposed regulatory amendments do not apply to exporters of waste shipments subject to the manifest requirements. Exporters must file export Exception Reports, in lieu of the requirements of § 262.42, according to the existing requirements specified at

[7] The current Exception Report requirements for SQGs require such generators to submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the relevant EPA Regional Administrator. The submission to EPA need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

§ 262.83(h). Electronic export Exception Reports under § 262.83(h) will be developed as part of WIETS.

Proposed paragraphs at §§ 262.42(d) and 761.217(c) establish the legal and policy framework for the use of electronic Exception Reports for hazardous waste and PCB waste, respectively. If finalized, Exception Reports originated in the e-Manifest system would be considered the legal equivalent of paper Exception Reports signed with conventional ink signatures. Further, wherever the existing regulations require an Exception Report to be completed, signed, provided, and sent to the EPA Regional Administrator (or the State Director in authorized states), the execution of an electronic Exception Report would be deemed to comply with the requirements to complete, sign, provide, send, or otherwise use the Exception Report.

Under paragraphs §§ 262.42(e) and 761.217(d), EPA is proposing to restrict electronic exception reporting to manifested shipments using electronic manifests (hybrid or fully electronic) pursuant to § 262.24(c). This is because to leverage the e-Manifest system to assist with exception reporting, the system must ''know'' the date of shipment from the generator. When electronic manifests are used, this information is readily available. Conversely, paper manifests are not submitted to the e-Manifest system until after the signed, final manifest is submitted by the receiving facility, rendering it impossible for the system to identify paper manifests initiated by the generator but not yet completed by the receiving facility. For hybrid manifests, a generator would be required to register in the RCRAInfo Industry Application for an account to take advantage of electronic exception reporting in the e-Manifest system.[8] (Relatedly, EPA is also requesting comment in today's proposal regarding whether all generators should be required to register for access to the e-Manifest system (See Section IV.C.3).)

The hybrid or mixed paper/electronic manifest is a manifest approach that EPA adopted in the User Fee Final rule to assist generators who are not able to fully participate in electronic manifesting. Under the hybrid manifest approach, generators are not required to obtain e-Manifest system accounts nor are they required to electronically track their wastes. The hybrid manifest approach allows the initial transporter and subsequent waste handlers to use fully electronic manifests with their non-participating generator customers. The initial transporter may print a copy of the electronic manifest for the generator, and the generator may sign the paper copy, obtain the initial transporter's ink signature on the paper copy, and then retain the paper copy on-site as the generator's initial manifest copy as is done under traditional manifest requirements. From then on, the initial transporter and subsequent waste handlers complete the remainder of the tracking of the shipment electronically in the e-Manifest system with electronic signatures and electronic transmissions to the system. As discussed above, generators using the hybrid manifest approach must still register for an account in the RCRAInfo Industry Application in order to utilize electronic Exception Reporting under this proposed rule, even if they do not track their wastes electronically.

Under today's proposed electronic exception reporting approach, EPA would upgrade the e-Manifest system's functionality to alert large quantity generators and small quantity generators based off of their notified federal generator status, as well as PCB waste generators, if receiving facilities designated on their manifests have not submitted final, signed manifests to the system for confirmation of delivery within the required timeframes at §§ 262.42(a)(1), 262.42(b), or 761.217(a)(1), respectively. Additionally, the system could alert the respective receiving facility on the manifest.

First, the system would monitor the verification timeframe beginning at the custody exchange from the generator to the initial transporter by way of the generator's electronic signature for the fully electronic manifest or the initial transporter's electronic signature for the hybrid manifest. Second, the system would provide an alert to generators when exception reporting requirements may be triggered; and if needed, allow generators to submit required Exception Report information electronically, and disseminate the Exception Report to the relevant EPA Region or the authorized state Agency. LQGs and PCB waste generators would still be required to contact the transporter and/or the owner or designated facility per §§ 262.42(a) or 761.217(a) to determine the status of the hazardous or PCB waste and provide an explanation of their efforts to locate the hazardous or PCB waste and the results of those efforts. Such generators, however, would not be required to manually submit the report to EPA or the states.

EPA may design the system to provide a drop-down list of explanations that an LQG or PCB generator could select from to explain its efforts to locate and reconcile their unverified shipment. The explanation from the drop-down list or text string would be used to complete the Exception Report. For example, a text string could say, ''The initial transporter and/or designated facility were contacted via telephone regarding the delivery date of the waste(s) identified in 9b to the designated facility. To date, no information has been provided confirming shipment receipt by the designated facility.'' The drop-down list could also include an explanation of ''other'' which a user would select, if the options available did not accurately explain the set of circumstances or reasons why they are unable to confirm delivery by the designated facility. If a user selected this option, the system could provide a text field/pop-up box and prompt the user to enter a ''text string'' explaining the site's efforts to locate the shipment and reconcile the problem. Following completion of the Exception Report, the e-Manifest system would then transmit the report to the relevant EPA Region or authorized state Agency. For SQGs, the drop-down menu would not be necessary as SQGs are not required to provide a detailed explanation regarding the inability to verify delivery of their manifested shipment to the destination facility. Instead, under the proposal, the system would provide a copy of the manifest for which the SQG does not have confirmation of delivery along with a statement saying, ''The return manifest copy was not received.''

Although this action considers regulatory amendments to the existing Exception Report regulations to allow for electronic exception reporting, EPA is not proposing to collect and upload written, paper-copies of Exception Reports in the e-Manifest system. EPA believes maintaining paper Exception Report submissions would be costlier to maintain and thus would result in the need for EPA to contemplate a distinct or additional fee premium related to entering Exception Reports to ensure related costs are recovered. Therefore, to avoid incurring costs related to paper processing and data entry activities necessary to enter the Exception Report

[8] Instructions for user registration for the RCRAInfo Industry Application are available at EPA's e-Manifest web page (*www.epa.gov/e-manifest*). Each user of the e-Manifest system must obtain a RCRAInfo Industry Application account for access to the e-Manifest system. EPA recommends each site register at least two site employees as Site Managers before registering for any other permission levels. A Site Manager is a special permission afforded to users of a module in the RCRAInfo Industry Application. In addition to having permission to view, create, and sign manifests electronically in the e-Manifest system, Site Managers also manage and approve permissions for other users at their organizational site.

information into the e-Manifest system, EPA would require LQGs and SQGs who opt out of tracking their waste shipments electronically in the system to comply with the existing exception reporting requirements at §§ 262.42(a) and (b) respectively for written, hard-copy Exception Reports.

EPA requests comment on the proposed approach to adopt electronic Exception Reports only for registered generators using fully electronic or hybrid manifests. This approach would allow generators who initiate shipments under electronic or hybrid manifests to use the system to trigger alerts regarding manifest exceptions and allow for electronic submission of the Exception Report.

In addition to the above proposed changes, EPA is also proposing to revise the current 35/45-day timeframes in § 262.42(a), and (c)(2), and § 761.217(a) and (b) to better conform to timeframes for submittal and processing of paper manifests in the e-Manifest system. For example, for entities using paper manifests, receiving facilities have 30 days from receipt of a generator's shipment to submit the final, signed paper manifest to EPA. In addition, EPA's PPC needs time to enter data, *e.g.,* from image copies of paper manifests, especially if the paper manifests contain incorrect, illegible, or incomplete data. Thus, the Agency realizes that LQGs may not be able to access the final, signed paper manifest in e-Manifest until past the first 35-day exception reporting timeframe in the regulations.

Therefore, EPA believes adjustments to the current 35/45-day timeframes for an LQG generator to verify shipment receipt by the receiving facility are needed to conform to changes related to e-Manifest submissions. To align with timeframes related to submitting and processing paper manifests in the e-Manifest system, EPA is proposing that all LQGs have five additional days to verify receipt of the shipment, reconcile the late manifests with the transporter and/or destination facility, and complete and submit Exception Reports to the EPA Regional Administrator (or state Agency in authorized state). LQGs and PCB waste generators would have up to 40 days to verify that their waste was received by the facility designated on the manifest. The 40-day timeframe would begin from the date the manifest was accepted by the initial transporter for off-site transportation to the receiving facility. If an LQG does not receive notification from the e-Manifest system that the final, signed manifest was received within this 40-day timeframe, the LQG must contact the transporter and/or the designated facility to determine the status of the generator's waste. If the status of the shipment is not resolved within 50 days (from the start of transport), the LQG must file an Exception Report with the EPA Regional Administrator (or state Agency in authorized states). EPA requests comment on the proposed 40/50-day timeframes of exception reporting for LQGs. EPA is not proposing additional time for SQGs to verify receipt of their shipments by the destination facility. The current SQG timeframe for verification of shipment delivery is 60 days (§ 262.42(b)). EPA believes the proposed timeframes triggering exception reporting for LQGs aligns adequately with the e-Manifest system.

2. Discrepancy Reporting

The manifest form enables the receiving facility to flag several types of ''discrepancy'' events on the manifest. Under the current regulations and manifest forms, there are boxes to be checked in the manifest's discrepancy field (Item 18) when the designated facility finds or produces one of, but not limited to, these shipment irregularities:

- Significant differences in the quantity of waste shown on the manifest as having been shipped, and what the designated facility determines to have been received. By regulation, significant quantity discrepancies occur when there is any variation in piece count (*e.g.,* four drums received instead of five), as well as when there is a variance of 10% or more by weight for any bulk or batch wastes shipped on a manifest; and
- Significant differences between the type of waste shown as shipped and what the designated facility received. Significant type discrepancies are defined as obvious differences which can be discovered by inspection or waste analysis, such as a solvent substituted for an acid, or toxic constituents that were not listed on the manifest.

While five types of discrepancies can be checked off on the manifest form, only significant discrepancies in quantity and type are treated as major irregularities requiring additional, separate reporting requirements. The RCRA regulations refer to these reporting requirements as Discrepancy Reports. Under the existing federal regulation, §§ 264.72, 265.72, and 761.215, provide a two-step process for handling significant quantity and type discrepancies in hazardous and PCB waste shipments, respectively. First, upon discovering a significant quantity or type discrepancy, the facility must attempt to reconcile the discrepancy with the generator or transporter. Second, if the significant discrepancy remains unresolved on the date 15 days after receipt of the waste, the facility must immediately send a letter to the EPA Regional Administrator or to the authorized state describing the discrepancy and attempts to reconcile it. This letter report must also include a copy of the manifest at issue.

2.1. What is EPA proposing for Discrepancy Reports?

During the June 2019 Advisory Board meeting, the Board recommended that EPA integrate Discrepancy Reports into the e-Manifest system. EPA accepts the Board's recommendation and believes integration of Discrepancy Reports in the e-Manifest system would reduce paperwork burden and may incentivize users to transition to fully electronic or hybrid manifests by increasing the value of the system. Therefore, EPA is proposing two changes related to Discrepancy Reports: (1) Allow receiving facilities to use the e-Manifest system to satisfy discrepancy reporting requirements; and (2) adjust the discrepancy reporting timeframe to better align with timeframes required for submission and processing of manifests in the e-Manifest system. EPA is proposing changes to integrate the system with Discrepancy Reports by adding new requirements under §§ 264.72(c) and 265.72(c) (Hazardous Waste) and 761.215(c) (PCBs) that would address the legal equivalency of the electronic reports to the written, paper reports and allow for electronic discrepancy reporting for wastes shipped on electronic or hybrid and paper manifests.

EPA is proposing new paragraphs (c)(1) through (c)(4) of §§ 264.72, 265.72, and 761.215 to establish the legal and policy framework for the use of electronic Discrepancy Reports. If finalized, Discrepancy Reports originated in the e-Manifest system would be considered the legal equivalent to paper Discrepancy Reports signed with conventional ink signatures. Further, wherever the existing regulations require a Discrepancy Report to be completed, signed, and sent to the EPA Regional Administrator (or the regulating Agency in authorized states), the execution of an electronic Discrepancy Report in the national e-Manifest system would be deemed to comply with the requirements to complete, sign, provide, send, or otherwise use the discrepancy report.

However, unlike our proposed restriction to limit electronic exception reporting to electronic manifests, EPA is proposing to extend electronic reporting of Discrepancy Reports to all manifest

submission types, including paper (*i.e.,* image only and image plus data). EPA believes this approach is more appropriate for discrepancy reporting because, unlike exception reports, which must be completed by generators, discrepancy reports must be completed by receiving facilities, and receiving facilities already are registered in the e-Manifest system, *e.g.,* for billing purposes. In addition, discrepancy reporting is not limited by the use of paper manifests, because, unlike exception reporting, the system does not need to ''know'' the date of shipment from the generator in order to generate a Discrepancy Report.

The e-Manifest regulations currently allow receiving facilities to submit final, signed manifests to EPA within 30 days after a shipment is received. In addition, time is needed for EPA's PPC to process paper manifests, which, as mentioned previously, can be delayed due to the data quality. Consequently, facilities may not be able to submit the final, signed paper manifests to the e-Manifest system until past the 15-day discrepancy reporting timeframe in the regulations.[9] Therefore, EPA believes adjustments to the current 15-day timeframe of significant discrepancies (*i.e.,* waste shipments having significant differences between the quantity or type of waste shown as shipped by the generator and what the designated facility received) are needed. To this end, EPA is proposing revisions to §§ 264.72(c) 265.72(c), and 761.215 to allow receiving facilities up to 20 days to reconcile a shipment with the generator and/or transporter for such discrepancies. This proposed timeframe is also consistent with the conceivable number of days passed before receiving facilities upload copies of paper manifests to the e-Manifest system.[10] The proposed timeframe would begin at the custody exchange from the delivering transporter to the receiving facility by way of the receiving facility's signature on a manifest. The proposed 20-day timeframe would also apply to users of fully electronic and hybrid manifests. EPA describes the proposals for electronic discrepancy reporting and the reconciliation timeframe below in greater detail.

Receiving facilities would still be expected to reconcile the discrepancy with the generator or transporter (*e.g.,* with telephone conversations) within the proposed 20-day timeframe. After receiving facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, the receiving facility can resolve significant discrepancies in waste quantity or type either on the manifest prior to submission to EPA or, post-receipt by EPA, through the corrections process in e-Manifest adopted in the User Fee Final Rule. As explained in that final rule, a post-receipt correction operates as a change to the data records in the e-Manifest system but does not require the original manifest to be altered or re-signed by a receiving facility. Note that any waste handler shown on the manifest, including waste handlers who tracked their waste using paper manifests, can submit post-receipt corrections in e-Manifest. However, such waste handlers would need to register and obtain a RCRAInfo account to be able to make post-receipt corrections in e-Manifest. Under the proposed approach, the system would monitor the 20-day reconciliation timeframe and generate the electronic Discrepancy Report, if significant discrepancies were identified but the generator, transporter, or receiving facility did not submit the correction to the system within the 20 days.

The approach for integrating the e-Manifest system and the Discrepancy Report for paper and electronic manifest involves four elements: (1) A copy of the manifest at issue; (2) the significant discrepancy type (*i.e.,* significant difference in quantity or type); (3) date of signature of the receiving facility; and (4) a description explaining the discrepancy and attempts to reconcile it. Since paper manifests are not submitted to the e-Manifest system until after a receiving facility signs them, a receiving facility may need to document the significant discrepancy information and the attempts to reconcile it in Item 18a of the manifest at the time of submission of the manifest to ensure that the system can monitor the discrepancy and alert the user, if post-receipt corrections are not made before the 20-day timeframe is triggered.

EPA believes that immediately upon inspection, a receiving facility should be able to discover variations in container piece count as well as when there is a variance of 10% or more by weight for any bulk or batch wastes shipped on a manifest. As such, receiving facilities should be able to check the corresponding discrepancy box in Item 18a of a manifest and submit the manifest to the e-Manifest system rather quickly. The system would begin monitoring the 20-day discrepancy timeframe once the manifest is loaded into the system, and if necessary, generate a Discrepancy Report. Similarly, for most shipments, a receiving facility should be able to immediately discover upon inspection significant differences between the type of waste shown as shipped and what the receiving facility received; occasionally significant discrepancies are not discovered immediately and may require waste analysis for identification.

Our proposed approach discusses discrepancy reporting procedures for submitting copies of paper manifests (image only or data + image) and electronic manifests (fully electronic or hybrid). Currently, image files of paper manifests are submitted to the e-Manifest system via EPA's Application Programming Interface (API) services or directly in the e-Manifest system by accessing a user's account dashboard and selecting the ''Upload Paper Manifest'' option. Regardless of the paper submission method chosen for the image file, the PPC would enter all data recorded on a manifest into the system, including the significant discrepancy type from Item 18a and the waste shipment receipt date recorded in Item 20 of the designated facility block of the manifest. A receiving facility would record the attempts to reconcile the discrepancy at the time of a manifest submission or after the manifest was uploaded into the system.

If discovery of a discrepancy is immediate, a receiving facility may elect to document the attempts to reconcile the discrepancy in Item 18a of the manifest. If, however, discovery of a discrepancy is delayed or a receiving facility delays submission of a manifest to the system and reconciliation of the discrepancy is approaching the 20-day reporting timeframe, the receiving facility would document its attempts to reconcile a significant discrepancy at the time of documenting the discrepancy in quantity or type in Item 18a and submit the manifest to the system. This information would be used as part of a Discrepancy Report, if the discrepancy was not resolved within the 20-day discrepancy timeframe. The

[9] 40 CFR 264.71(a)(2) and 264.72(a)(2) require a designated facility to sign and date a manifest, and immediately give the delivering transporter a copy of the signed manifest. 40 CFR 264.72(c) and 265.72(c) require TSDFs to report the discrepancy 15 days after receiving the waste.

[10] Based on consultations with receiving facilities, EPA has learned facilities typically take up to 20 days to load digital copies of paper manifests to the e-Manifest system. Prior to uploading digital copies of paper manifests to the e-Manifest system, receiving facilities confirm whether the wastes having been shipped and reflected on a manifest by the generator match what the designated facility determines to have been received. Upon receipt of a waste shipment, a receiving facility compares the manifest to its generator customer's waste profile (WP) and identifies any discrepancies. A receiving facility may also conduct waste testing to confirm the WP which could lead to discrepancies. The timeframe for manifest uploads may be shorter if a receiving facility prepares the manifest on behalf of the generator because the manifest is based on the WP at the facility.

system may be designed in a manner that would provide a textbox field/pop-up box that would prompt the PPC staff to enter the discrepancy description from Item 18a in the pop-up box. Once the paper manifests are loaded into the e-Manifest system, the system would flag the discrepancy and monitor its status. If the 20-day discrepancy timeframe is triggered, the system would immediately alert the facility that the discrepancy status is unchanged and, if necessary, generate the Discrepancy Report. At that time, the system would instruct a receiving facility to enter a description of its attempts to reconcile the discrepancy, if it had not provided such information in the image file, and instruct the facility to transmit the report to the relevant EPA Region or state. A receiving facility would use the drop-down list (as described above in Section IV.B.1.1 for Exception Reports) to record a description of the discrepancy event on the manifest. The drop-down list would provide possible descriptions detailing the discrepancy and the attempts the receiving facility made to reconcile it. For example, a text string description for a significant discrepancy regarding a variation in piece count could say, ''The number of drums as having been shipped for the waste shown in line #1 of Item 9b does not match the number of drums actually received. The generator and/or initial transporter were contacted via telephone regarding the discrepancy. The discrepancy has not been resolved at this time.''

If a receiving facility submitted an image plus data manifest via API services, the receiving facility would follow the above discrepancy reporting procedures. If the receiving facility submitted the manifest near the 20-day reporting timeframe, at the time of manifest submission it would have to report both the discrepancy type and its attempts to reconcile the discrepancy. The description of the discrepancy and efforts to resolve the discrepancy would have to be included in the data file. Similarly, if a facility submitted the image plus data manifest from its dashboard using the ''Upload Paper Manifest'' option, then the facility would enter all manifest data from the image file, including the discrepancy description and attempts to resolve it, using the drop-down list described above. If the system prepared a draft Discrepancy Report, the system would instruct the receiving facility to add a description of the discrepancy to the report and its attempts to reconcile the discrepancy, if the facility had not documented such information in the data file, and instruct the facility to transmit the report to the relevant EPA Region or state.

The e-Manifest system would leverage data for hybrid and fully electronic manifests to flag, monitor, and generate the Discrepancy Reports. A drop-down list may be used to describe efforts to reconcile a discrepancy. Regardless of the manifest submission type chosen for electronic manifests, a description of the discrepancy and attempts to reconcile it, and a copy of the manifest at issue would complete the Discrepancy Report, and the receiving facility would be prompted to transmit the report to the relevant EPA Regional Administrator or state.

For reasons similar to those explained above for electronic exception reporting, EPA believes allowing electronic discrepancy reporting serves to increase use and value of the e-Manifest system while reducing costs related to collecting and processing paper-based Discrepancy Reports, which may necessitate a distinct or additional fee premium to recover such costs. While the manifest containing the significant discrepancy comprises most of the Discrepancy Report and is already captured in the system, other aspects of the Discrepancy Report are not, and would require the PPC to process the data from paper Discrepancy Reports and enter them into the e-Manifest system. Thus, manual processing of these written reports would require additional time and perhaps some separate, distinct fee to recover the processing costs. EPA prefers not to allocate its existing or future resources to process any paper documents other than paper manifests and believes the proposed option is the best approach. EPA requests comment on its proposed approach to adopt electronic Discrepancy Reports for fully electronic and hybrid manifests, as described above.

EPA notes that although it is not impossible to implement electronic discrepancy reporting for manifests that do not originate in the e-Manifest system, implementation of our proposal may be challenging given that data quality issues may delay the loading of image files and the data contained in them into the e-Manifest system. After image-only files are received by EPA, the PPC requires time to process them. The PPC may also need additional time to process image files that were submitted with the corresponding data via API services or the ''Upload Paper Manifest'' option. Consequently, if data from these manifests are not keyed into the e-Manifest system before the discrepancy timeframe is reached, the system could not monitor, flag, or alert receiving facilities of a manifest discrepancy, nor could it generate a Discrepancy Report. Additionally, with image only and data plus image submissions, a receiving facility will have up to 30 days from delivery to submit its final copy to EPA. To leverage the e-Manifest system to assist the receiving facility with discrepancy monitoring, alert the receiving facility of the 20-day discrepancy timeframe, and generate a Discrepancy Report, a receiving facility would need to submit the final manifest several days prior to the 20-day discrepancy timeframe, which may not always be practicable. If the manifests are not loaded in the system before the 20-day timeframe and/or the system cannot generate a Discrepancy Report, then a receiving facility would be required to submit a written report to the EPA or state. For these reasons, EPA can see how electronic reporting of Discrepancy Reports may be better suited for manifests that originated in the e-Manifest system. Therefore, EPA requests comment on whether there should be a limit on our discrepancy reporting proposal to manifests that originated electronically (*i.e.,* fully electronic or hybrid) in the e-Manifest system. EPA also requests comment on other approaches that should be considered for electronic discrepancy reporting associated with digital copies of paper manifests.

Finally, EPA is considering an alternate approach that would eliminate the requirement for Discrepancy Reports altogether, and instead, address discrepancy events through the e-Manifest corrections process. Under this approach, receiving facilities or EPA's PPC would upload/enter discrepancies identified under Item 18. Generators who had e-Manifest system access would receive email alerts regarding Item 18 discrepancies, review the final manifest in e-Manifest, and submit post-receipt manifest corrections. Thus, disagreements would be worked out by handlers via the current corrections process. In lieu of a formal Discrepancy Report to federal or state regulators, the e-Manifest system would make available, as it does currently, all manifest corrections to regulators. In addition, the system would produce a report for regulators highlighting Item 18 discrepancies not corrected by the generator within a certain timeframe (*e.g.,* 15 days). EPA requests comment on this alternate approach to discontinue separate Discrepancy Reports, and instead rely on the e-Manifest corrections process. EPA also

requests comments on whether this approach to eliminate Discrepancy Reports would require the Agency to also adopt a requirement that all generators register for access to e-Manifest so as to ensure generators have a means to resolve discrepancies in the system. Additionally, this approach would not require receiving facilities to submit a letter to regulators describing the discrepancy and attempts to reconcile it and, instead, would rely on regulators reviewing system reports and following up with receiving facilities as desired.

3. Unmanifested Waste Reporting

As mentioned previously, the Advisory Board made recommendations for improving electronic manifest adoption by manifest users. Besides the Board's recommendations to integrate Discrepancy and Exception Reports into the e-Manifest system, the Board recommended EPA also integrate Unmanifested Waste Reports into the e-Manifest system. EPA agrees with the Board's recommendation. The Discrepancy, Exception, and Unmanifested Waste Reports generally serve similar purposes and are all required when specific, unresolved problems or irregularities occur to waste shipments that are subject to manifesting. However, electronic reporting in the e-Manifest system for unmanifested waste shipment presents unique implementation issues that do not arise with the other reports.

Unlike manifested shipments that require Discrepancy or Exception Reports, there is no existing manifest in the system when an unmanifested report is required. The system can readily accommodate electronic Discrepancy and Exception Reports, if finalized, because existing manifest data captured in the e-Manifest system can support flagging, tracking, and follow-up actions related to exception and discrepancy events. This is not the case with unmanifested waste shipments, because manifest data for unmanifested shipments do not exist in the system. Therefore, information for the unmanifested waste shipment would need to be incorporated into e-Manifest, requiring administrative costs and requiring user fees to recover those costs.

3.1. What is EPA proposing for Unmanifested Waste Reports?

EPA is proposing to accept only electronic submissions of Unmanifested Waste Reports to the system by the receiving facility. EPA would not accept Unmanifested Waste Reports through a written, hard copy report. EPA would revise the reporting content specified in §§ 264.76 and 265.76 for hazardous waste and § 761.216 for PCB wastes. These revisions would require an electronic reporting format that would be very similar to the current electronic form for manifests, except that the receiving facility would not be expected to complete all the fields currently required on the manifest. For the electronic Unmanifested Waste Report, a receiving facility would be expected to provide information similar to the generator information currently required on manifests (*i.e.,* Items 1, 5, and 10 thru 13), if available; the transporter information (*i.e.,* Items 6 and 7 (if available)); and the receiving facility information (*i.e.,* Items 8 and 19) in the e-Manifest system. In addition, a receiving facility would be required to provide the density or specific gravity information for a waste, if it is reporting volumetric measures (gallons, liters, or cubic yards). Finally, the receiving facility would be expected to provide a brief explanation of why the waste was unmanifested, if known.

Receiving facilities would not be expected to obtain generator signatures (Item 15 of the manifest) or transporter signatures (Item 17 of the manifest), nor would they be expected to provide the DOT shipping description of the waste, which would normally appear in Items 9a and 9b (*i.e.,* the identification number, the proper shipping name, the hazard class or division number, and the packing group). Upon completion of the electronic Unmanifested Waste Report, the e-Manifest system would distribute the electronic report to the EPA Regional Administrator (or authorized state). Thus, submission of written reports to federal or state regulatory agencies would no longer be required.

Since receiving facilities should already have access to the e-Manifest system to submit manifests and pay fees, they would readily be able to submit Unmanifested Waste Reports to the system. Notably, generators would not need to participate in these report submissions, so their lack of electronic access is not as important as with today's proposed changes to exceptions. However, such generators could still receive a system-generated email as described in section IV.C.3 of this preamble alerting them of their unmanifested hazardous waste shipment. At that time, the generators would be asked to register and obtain a RCRAInfo account for e-Manifest system access.

Unlike electronic discrepancy and exception reporting, EPA proposes to impose a user fee, equivalent to the user fees for electronic manifests, on receiving facilities for each submission of an Unmanifested Waste Report. Specifically, EPA is proposing to modify §§ 264.76, 265.76, and 761.216 by adding new paragraph (b) to assess a user fee on a per Unmanifested Waste Report basis for the submission of each electronic Unmanifested Waste Report that is electronically signed and submitted to the e-Manifest system by receiving facilities. The fee would be assessed at the applicable rate for electronic manifest submissions. Under this proposed option, unmanifested waste reports would be collected electronically in the system and thus share marginal costs like those for electronic manifests. Additionally, the Agency notes that unmanifested waste shipments would have incurred a user fee had the shipment used a manifest in compliance with the RCRA regulations and thus imposing a user fee for unmanifested wastes would not impose any new burden. Receiving facilities' monthly invoices would reflect both manifest and unmanifested waste reporting activities for the prior month's activities. EPA requests comment on its proposed approach to integrate Unmanifested Waste Reports into the e-Manifest system and charge the electronic manifest fee rate for these submissions. EPA also requests comment on whether a separate, distinct user fee should be imposed for these reports.

C. What other regulatory changes is EPA addressing in today's this action?

This action proposes changes or regulatory amendments to the manifest requirements under 40 CFR parts 262, 264, 265, and 761. First, this section details technical corrections and conforming changes to certain RCRA and TSCA PCB regulations under 40 CFR parts 262, 264, 265, and 761. These corrections and conforming changes are necessary to remove obsolete requirements, correct typographical errors, and/or improve alignment with the e-Manifest program. The proposed changes to the TSCA PCB regulations are discussed in greater detail below in preamble section IV.C.1. Conforming changes and technical corrections to the RCRA regulations are discussed in greater detail below in Section IV.C.2.

Second, this action considers certain aspects of the e-Manifest Advisory Board's recommendations about final paper manifest copies returned to generators who do not have access to view copies of completed manifests in the system. Specifically, this section proposes and solicits public comment on adding an email address field to Item

5 of the generator block of the paper manifest so that the e-Manifest system can email copies of completed paper manifests to the generator's email address recorded in that field in lieu of receiving facilities having to mail copies to the generators' postal mail address. Under the proposal, the e-Manifest system would also send notifications to unregistered generators via the email address requesting that they register and obtain an account in e-Manifest for their site. This section also requests comment on mandating that generators register and obtain e-Manifest accounts for access to the e-Manifest system to view their copies of completed manifests. Detailed discussions about the addition of the generator's email address to the manifest form and generator access to final copies of manifests stored in the system are discussed under preamble section IV.C.3.

Third, this action requests additional comment on proposals detailed in the February 2019 **Federal Register** ICR renewal notice regarding modification of the manifest form and instructions to improve the accuracy and precision of waste data reported in the manifest fields at Items 11 (Total Quantity) and 12 (Units of Measure) of the manifest. These proposed form changes would facilitate receiving facilities leveraging the e-Manifest system to populate the corresponding fields of the Waste Received from Off-site (WR) Form as part of the biennial report.

Finally, this action considers a conceptual approach for e-Manifest integration with the biennial report and requests comment on it. The conceptual approach discussion detailed below considers public comments on the February 2019 **Federal Register** ICR notice dated February 8, 2019 (84 FR 2854) regarding data accuracy and precision as well as the addition of certain BR data fields (*e.g.,* form codes) of the WR Form to the manifest form. The e-Manifest Advisory Board also recommended that EPA integrate the e-Manifest system with the BR. Detailed discussions about the accuracy and precision of data reported in Items 11 and 12 of the manifest as well as EPA's conceptual approach for BR integration are discussed under preamble section IV.C.4.

1. What is EPA proposing for the TSCA PCB regulations?

The PCB regulations at 40 CFR part 761 subpart K require the use of the manifest, EPA Form 8700–22. EPA is proposing several conforming changes to the TSCA PCB regulations at 40 CFR part 761 to clarify the ability to use electronic manifests and the e-Manifest system to fulfill waste tracking and recordkeeping requirements. EPA is proposing to clarify the regulatory text to make it clear that electronic manifests, when used in accordance with 40 CFR part 262 subpart B and the PCB regulations, are legally equivalent to paper manifests. The proposed changes to Exception, Discrepancy, and Unmanifested Waste Reporting outlined in Section B would also apply to the PCB regulations.

First, EPA is proposing to add the Hazardous Waste Electronic Manifest Establishment Act to the Authority section for 40 CFR part 761. The e-Manifest Act was signed into law in 2012 and authorizes the EPA to implement a national electronic manifest system and requires that the costs of developing and operating the new e-Manifest system be recovered from user fees charged to those who use hazardous waste manifests to track off-site shipments of their wastes. Through the Hazardous Waste Electronic Manifest Establishment Act, EPA became responsible for developing an electronic manifest system and publishing regulations to allow for the use of electronic manifests. The e-Manifest Act and current manifest regulations have always applied to all hazardous waste manifests as well as manifests for PCB waste, but the PCB regulations had not been updated to reflect this. EPA is proposing this conforming change in the regulation as a clarification that the e-Manifest Act applies to manifests for PCB waste.

Second, EPA is proposing to add a definition for ''electronic manifest'' to § 761.3. The proposed definition is similar to the existing definition of ''manifest.'' In addition to being used in accordance with the instructions included with the manifest form and Subpart K, the electronic manifest must also be used in a manner that complies with §§ 262.20, 262.24, and 262.25. Establishing a definition for electronic manifest is consistent with the structure of the PCB regulations and allows for more streamlined regulatory text in Subpart K.

Third, EPA is proposing to remove some phrases to clarify that electronic signatures are acceptable. EPA proposes to strike several instances of the words ''written,'' ''handwritten,'' and ''by hand'' from the PCB regulations at 40 CFR part 761 subpart K that could be interpreted to require the use of paper manifests. See revised language at §§ 761.210(a)(1), 761.210(a)(2), 761.211(d)(1), 761.211(e)(3), 761.211(f)(3)(i), 761.211(f)(4)(i), 761.213(a)(2), and 761.217(a)(1).

Fourth, EPA is proposing to add a brief overview of the electronic manifest requirements to § 761.207. While the proposed revisions largely incorporate parts of Part 262 subpart B, EPA felt it would improve the clarity and readability of Part 761 subpart K to include two of the most directly applicable subsections, adapted for the PCB context. New § 761.207(g) consists of two subparagraphs. The first subparagraph [§ 761.207(g)(1)] is adapted from § 262.20(a)(3) and clarifies that any person required to prepare a manifest may use an electronic manifest as long as the electronic manifest complies with specific EPA requirements. The second subparagraph [§ 761.207(g)(2)] is adapted from § 262.24(a) and establishes the legal equivalence of electronic manifests to paper manifests. The proposed approach is in line with the other text of Subpart K.

Fifth, in § 761.209, EPA is proposing to clarify how the requirement to provide copies of the manifest to each of the regulated parties is fulfilled by EPA's e-Manifest system. The proposed language was adapted from § 262.24(a)(2). The final sentence in proposed § 761.209 incorporates the electronic manifest regulations at §§ 262.20, 262.24, and 262.25.

Sixth, EPA is proposing to add two new paragraphs in § 761.213. The first paragraph [§ 761.213(d)] is adapted from § 265.71(h) and clarifies that a commercial storage or disposal facility must follow certain manifest tracking procedures using paper manifests as replacements for the electronic manifest, if the electronic manifest becomes unavailable and cannot be completed. From the point at which the electronic manifest is no longer available for tracking the PCB shipment, the paper replacement manifest would be completed and managed just as it would be completed and managed with the standard paper manifest form.

Second, EPA is proposing to add new paragraphs to § 761.211 for transporters and § 761.213 for commercial storage or disposal facilities to clarify that they must follow special manifest tracking procedures for manifests that are initiated electronically, but, for whatever reason, cannot be completed electronically. New paragraph (d) [§ 761.211] is adapted from § 263.20(a)(6) of the transporter regulations, ''Special procedures when electronic manifest is not available.'' In such cases, the transporter in possession of the waste must reproduce sufficient copies of the paper copy that is carried on the transport vehicle (which copy becomes the ''replacement'' manifest)

and complete all further tracking requirements with the replacement manifest. This transporter should produce enough copies so that the transporter in possession of the waste and all subsequent handlers named on the manifest will be able to keep a paper copy for their records. The transporter must also produce two additional copies that will be delivered with the waste to the receiving facility.

The new paragraph (d) [§ 761.213] is adapted from § 265.71(h), of the designated facility regulations ''Special procedures applicable to replacement manifests.'' When the electronic manifest is not available, the designated facility must likewise sign the remaining printed copies at the time the waste shipment is ultimately delivered to the designated facility. Upon signing the remaining copies to acknowledge the receipt of the waste (or to note discrepancies), the designated facility must provide one copy to the delivering transporter, must keep one copy for its records, and must, within 30 days of receipt of the waste, send one copy to the generator and submit an additional copy to the e-Manifest system for data processing.

Finally, EPA is proposing to add text in § 761.180(b)(3) to allow for the future use of an approved electronic system, such as the RCRAInfo industry application, for the submission of Forms 7710–53 and 6200–025, Certificates of Disposal, and One-year Exception Reports. Form 7710–53, the Notification of PCB Activity form, as described in § 761.205, is required for all commercial storers, transporters, and disposers of PCB waste and generators with PCB waste subject to the waste storage requirements of § 761.65(b) or (c)(7). Form 6200–025 is required by § 761.180(b)(3) for submission of annual reports by commercial storers and disposers of PCB waste. Certificates of disposal, as described in § 761.218, are required to be sent by the disposer to the generator for every shipment of waste disposed. The certificate of disposal serves as confirmation to the generator that their waste was disposed of within the one-year time frame required by § 761.65(a) and uses information required by the manifest under § 761.218(a)(1)–(2). One-year Exception Reports, as described in § 761.219, flag waste shipments that were not disposed of within the one-year time frame required by § 761.65(a). EPA is proposing to allow the submission of these documents in the future through an EPA-approved electronic system, such as the RCRAInfo Industry Application. This change would not add burden to any regulated parties and, in fact, would serve to reduce burden, as it would simply provide an electronic method of submitting information already required by the PCB regulations.

2. What technical corrections and other regulatory amendments is EPA proposing under today's action?

With today's action, EPA is revising certain regulatory requirements that will be obsolete before promulgation of this rule, are now obsolete, or have typographical errors in them. Specifically, EPA is removing paragraph (a)(2)(v)(A) and revising paragraph (a)(2)(v)(B) of 40 CFR 264.71 and 265.71. EPA is also revising the definition of ''Paper manifest submissions'' of 40 CFR 264.1310 and 265.1310 and the ''Manifest transactions subject to fees'' regulations of 40 CFR 264.1311 and 265.1311. Beginning June 30, 2021, EPA will no longer accept paper manifest submissions to the PPC via postal mail and will remove the current PPC mailing address from our e-Manifest web page (*www.epa.gov/e-manifest*) prior to that sunset date to avoid receipt of paper manifests at that time. Therefore, these regulatory amendments are necessary to reflect the forthcoming ban on postal mail submissions for paper manifests.

EPA is also revising § 262.20 by removing paragraph (a)(2) from that section. This current regulation is obsolete as it provides the delayed compliance date for use of the old 6-copy manifest form and continuation sheet. EPA standardized the manifest forms in the March 2005 final rule and delayed requiring use of them until September 6, 2005 (70 FR 10815, Mar. 4, 2005).

EPA is revising minor typographical misspelling errors found in paragraphs (a) and (b) of §§ 264.1312 and 265.1312. These sections provide the user fee calculation methodology for determining the fees that receiving facilities are assessed based on their usage of manifests in the system. Existing paragraph (a) contains a typographical misspelling error in the Operations and Maintenance (O&M) Cost formula. Existing paragraph (b) contains typographical misspelling errors in both the O&M Cost formulas for fully electronic manifest usage and all other manifest usage. Specifically, ''e-Manifest'' is misspelled as ''eManfiest'' in the O&M Cost formula in paragraphs (a) of Parts 264 and 265 and is also similarly misspelled in both the $O\&M_{fully\ electronic}$Cost and $O\&M_{all\ other}$Cost formulas in paragraphs (b) of Parts 264 and 265.

EPA is also revising a typographical error found in paragraph (e) of § 761.60. Paragraph (e) accurately refers to ''an incinerator approved under § 761.70 or a high-efficiency boiler operating in compliance with § 761.71'' twice in the first sentence. However, the fifth sentence uses incorrect citations in a similar reference to ''a § 761.60 incinerator or a § 761.61 high-efficiency boiler.'' EPA is proposing to correct the regulatory citations in the fifth sentence to read ''a § 761.70 incinerator or a § 761.71 high efficiency boiler.''

3. What is EPA proposing regarding generator access to final copies of manifest?

During the June 2019 Advisory Board meeting, the Advisory Board addressed several issues limiting generator's use of fully electronic manifests in the e-Manifest system. One issue addressed by the Board and reaffirmed by one public commenter was generators' inability or reluctance to register in the e-Manifest system so that they have access to fully electronic manifest tracking. In addition, the public commenter asserted that the low number of generators registered in the e-Manifest system has caused continued burden to receiving facilities, because they must continue to mail paper manifest copies to generators who do not have access to view their manifests in the system. Thus, receiving facilities continue to incur the cost of mailing paper manifest copies to generators, in addition to submitting copies to EPA's e-Manifest system. The commenter suggested that this burden could be eliminated, if (1) EPA mandated generators to register for access to the e-Manifest system, and (2) the Agency designed the system to generate automated email that could notify generators that their completed manifests are available for viewing. The Board agreed automated email notifications could eliminate the need of receiving facilities to mail paper copies of manifests to generators and could incentivize generators to register in the e-Manifest system for access to initiate fully electronic manifests or to view uploaded images of their paper manifests if they continue to track their shipments using paper. The Board also recommended EPA mandate generator registration. The Board reaffirmed this position in its recommendations following the April 2020 Board meeting.[11]

[11] EPA's background paper and related supporting materials, Final e-Manifest Advisory Report/Meeting Minutes for the April 2020 FAC meeting (*i.e.,* the Board's recommendations), and

EPA acknowledges that generators' reluctance or inability to adopt fully electronic manifests or register in the system for access to uploaded images has burdened receiving facilities by requiring them to physically mail manifest copies to generators who do not have access to the e-Manifest system. However, as explained in the e-Manifest One Year Rule, the e-Manifest Act did not mandate generators and other waste handlers to use electronic manifests in the e-Manifest system. Therefore, waste handlers may elect not to track their shipments electronically (*i.e.,* continue to use paper manifests). Consequently, EPA deliberately undertook a phased approach to e-Manifest system implementation so that the Agency could accomplish the Act's objectives to both allow the continued use of paper manifests, while still facilitating the adoption of electronic manifesting. For example, EPA established a methodology to tailor user fees based on how manifests are submitted to EPA, with electronic manifests incurring the lowest user fees. EPA also included in the User Fee Final rule a phase-out by June 30, 2021, of mailed paper manifest submissions by receiving facilities. EPA also explained in the User Fee Final Rule, its goal to phase out all paper manifest use after five years, but a decision to do this will await a fuller evaluation of manifest use trends in several years, and possible consultation with the e-Manifest Advisory Board on appropriate steps to facilitate more electronic manifest use.

While EPA continues to explore ways to improve waste handler adoption of e-Manifest, the Agency is proposing an alternative solution to the public commenter's and Board's recommendation. EPA accepts the Advisory Board's recommendation to enhance ability of generators to receive final manifest copies from the e-Manifest system, rather than from receiving facilities. EPA also accepts the Board's recommendation to add space on the manifest form to collect the generator's email address and therefore is proposing to add space in Block 5 of the manifest (*i.e.,* the Generator's Name and Mailing Address block) and require generators to provide an email address in that space. Collecting generators' email addresses on the manifest form would, in turn, allow the e-Manifest system to generate email providing final copies of the manifest to generators, regardless of whether the generator is ultimately registered in e-Manifest. To ensure that the automated email is not undelivered or left unnoticed or unopened, EPA proposes to require the generator to enter an email address associated with the company site and shared with site employees who are directly, or indirectly, involved with arranging the waste shipment for off-site transportation, or who have day-to-day responsibilities of the site's operations.

For generators who track their wastes using a paper manifest or a hybrid manifest but are not registered in the system, an automated email would alert generators that their manifests have been completed and are available in the system for viewing. In addition, the automated email would alert generators about return manifests from receivers that are late (Exceptions), and when materials received by the facility designated on the manifest do not match with the quantities or types of materials indicated as being shipped by generators (Discrepancies). Specifically, the email would ask a generator to verify the email addresses recorded on the paper manifest before providing them the site's manifest activity tracked in the system. Following email verification, the system would transmit digital copies of a generator's manifests via the verified email address. The email would also provide a link to EPA's e-Manifest user registration web page and encourage the generator to register at least two Site Managers in RCRAInfo to access their manifests in the e-Manifest system (EPA recommends each site register two Site Managers so a back-up Site Manager is available). For manifests containing wastes that are also listed by the Department of Homeland Security as ''chemicals of interest,'' the generators will only be sent a notification that the manifest was uploaded and will need to register to see the manifests. EPA notes that once a generator registers in e-Manifest, the site would receive a notification email regarding the recent manifest activity tracked in the system on a weekly basis. Under this proposed approach, receiving facilities would no longer be required to mail paper copies of manifests to generators, even if those generators did not yet have e-Manifest access to view their final manifests. Thus, receiving facilities would not incur the cost of mailing paper manifest copies to generators. Therefore, today's proposed rule revises 40 CFR 264.71(a)(2)(iv) and 264.71(b)(4), and 265.71(a)(2)(iv) and 265.71(b)(4) by removing the existing requirement that receiving facilities mail paper manifests to the generators and clarifying that they submit the top copies (Page 1) to the e-Manifest system only.

In addition, EPA is proposing to revise the current 5-copy form to conform with the proposed distribution requirement. Currently, the manifest form printing specification and the distribution notation at the bottom of the second copy (Page 2) of the five-copy set of forms require this copy be sent by the designated facility to the generator. Under today's proposal, this copy (Page 2) would no longer be needed and thus would be removed from the five-copy set of forms. This proposed rule creates a new four-copy form and eliminates the copy, previously denoted as ''Page 2: Designated facility to generator.'' The printing specification requirements at § 262.21(f)(5), (6), and (7) are revised to align with the proposed four-copy form. Thus, the copies of the form would be distributed as follows:

Page 1 (top copy): ''Designated facility to EPA's e-Manifest system'';
Page 2: ''Designated facility copy'';
Page 3: ''Transporter copy''; and,
Page 4 (bottom copy): ''Generator's initial copy.''

The submission of the top copy to the system by the receiving facilities will enable destination states and certain generators (*i.e.,* generators who are registered and can access their final manifest in the system) to receive the manifest final copies from the e-Manifest system. EPA reiterates that, under this proposal, generators who are not registered (and thus cannot access their final manifest in the system) for the e-Manifest system would receive their manifest final copies via email. EPA requests comment on its proposed approach.

EPA also requests comment on whether the Agency should eliminate the designated facility copy (Page 3) from the five-copy form. Under existing federal manifest regulations, all manifest users can use e-Manifest to meet their recordkeeping requirements with respect to the image file copy of the final manifest and can also discard any corresponding paper copy of the manifest, once the image file of the final manifest is available in their account. Thus, designated facilities currently retain Page 3 of the mailed paper manifest for their records but discard it once the corresponding top copy of the completed manifest is available in the system. However, as of June 30, 2021, a designated facility can only submit a paper manifest via an image file of Page 1 of the manifest, and any continuation sheet, or both a data file and the image file corresponding to Page 1 of the

EPA's responses to them are available in the public docket (*www.regulations.gov,* Docket no. EPA–HQ–OLEM–2020–0075).

manifest, and any continuation sheet, to the e-Manifest system. (As mentioned above in Section IV.C.2 of this preamble, this action makes regulatory amendments to 40 CFR 264.71 and 265.71 to reflect the ban on postal mail submissions for paper manifests beginning on June 30, 2021.) In view of the fact that submission of paper manifests to the e-Manifest system via postal mail are no longer permissible and thus options available to receiving facilities for submission of paper manifests are limited to either a scanned image upload or a data plus image upload, EPA believes Page 3 of the existing manifest forms could no longer be needed and thus, the copies of the form could be distributed as follows:

Page 1 (top copy): ''Designated facility to EPA's e-Manifest system'';

Page 2: ''Transporter facility copy'' and;

Page 3: (bottom copy): ''Generator's initial copy''

EPA requests comment on removing Page 3 (Designated facility copy) from the manifest form and continuation sheet.

EPA recognizes some generators may not have email addresses associated with the company site and thus use personal email addresses for their businesses. EPA requests comment on whether such sites should record their site manager's or site contact's email address in the proposed email entry field since site managers and site contacts should be familiar with the general circumstances of a waste shipment and the accompanying manifest. Thus, the site manager or site contact would be available to respond promptly to EPA's or the relevant state regulating Agency's requests regarding the manifest. EPA also requests comment on the cost savings to receiving facilities under this approach since they would no longer be expected to mail hardcopies of manifests to unregistered generators. In addition, EPA requests comment on whether notification emails should be sent to unregistered generators on a periodic basis, *e.g.,* should the notification email be sent daily, weekly, or bi-weekly?

EPA also acknowledges there may be internet connectivity problems in some regional areas of the U.S. that may cause difficulty for generators to receive the signed and dated manifests via email. Further, some generators may not have email accounts to receive the completed manifests. EPA, however, believes the universe of such generators is very small and thus, if generators have unreliable internet connection or do not have emails, these generators should make arrangements with their receiving facilities to supply them with paper copies of completed manifests. EPA requests comment on this approach.

In addition, EPA acknowledges today's proposal regarding unregistered generators receiving digital copies of completed manifests from the e-Manifest system rather than receiving paper copies from the receiving facilities via postal mail may not incentivize such generators to register in the e-Manifest system for electronic manifest use. Therefore, EPA requests comment on an alternative option to mandate that generators register for access to the e-Manifest system. Specifically, each generator site would be required to register at least one Site Manager in RCRAInfo for e-Manifest system access (EPA recommends each site register at least two Site Managers). At the time of registration, the user would be required to provide a company email address associated with the company site and shared with site employees who are directly, or indirectly, involved with arranging the waste shipment for off-site transportation, or who have day-to-day responsibilities for the site's operations. This option would require EPA or the states to register the initial Site Manager for a generator site, as is done currently. Once a Site Manager is registered and approved, however, that individual would be responsible for the user registration of future e-Manifest system users at the company site. Under this approach, EPA would not need to collect generator email addresses on the manifest form. In addition, EPA would not email digital copies of manifests to generators as they would be expected to access their accounts to view their manifests. EPA, however, would send notification email to generators regarding their sites' recent manifest activity tracked in the system. Finally, under this alternate approach, as with the proposed approach, receiving facilities would not be required to mail hardcopies of manifests to generators as all generators would be required to register in the system and have access to their manifests.

4. What is EPA proposing or requesting comment on regarding the Manifest Form and Biennial Report Integration with the e-Manifest?

4.1 Background

EPA explained in the February 8, 2019, **Federal Register** notice to renew the Information Collection Request for the manifest form (EPA form 8700–22/22A) that the Hazardous Waste Electronic Manifest Establishment Act mandates that EPA build the e-Manifest system to provide users the ability to report hazardous waste receipt data applicable to the biennial hazardous waste report in e-Manifest (See 84 FR 2854 at 2857). Besides recommending that EPA integrate manifested-related reports with the e-Manifest system, as discussed in section IV.B of today's notice, the e-Manifest Advisory Board also recommended that EPA focus its efforts to integrate the e-Manifest system with the Biennial Report (also known as BR or the Hazardous Waste Report). The Board believes such integration would encourage users to transition to fully electronic or hybrid manifests, thereby increasing the value of the e-Manifest system and perhaps reducing regulatory recordkeeping and reporting burden of the BR program. The BR is a set of forms (EPA form 8700–13) and instructions for sites to report to EPA and states about their hazardous waste generation, management and final disposition. Specifically, certain sites must submit a report covering each odd-numbered year (called the ''collection year'' or ''reporting year'') by March 1 of every even-numbered year (''submission year''). The report may be submitted by paper or electronically to the state or EPA Region. Electronic submissions can be made using the Biennial Report Module in the RCRAInfo Industry Application or the state's own choice of BR software.

Sites must submit a BR if they meet its applicability requirements. In general, sites must submit if they meet the definition of a large quantity generator during the collection year or if they treated, stored, recycled or disposed of RCRA hazardous wastes on-site or shipped hazardous waste offsite to a RCRA permitted treatment, storage, recycling, and disposal facility, or received hazardous wastes from off-site hazardous waste generators without storing the wastes before recycling during the reporting year. Sites that do not meet these criteria are not required to file a report under the federal regulations, *e.g.,* under the federal program, most small and very small quantity generators do not need to file a biennial report. However, state regulations may be more stringent, for example, in requiring more sites to report or more frequent reporting, *e.g.,* on an annual basis.

The BR consists of a number of forms: the RCRA Subtitle C Site Identification Form (Site ID Form), completed by all reporting sites; the Waste Generation and Management Form (GM Form), completed by generators; the Waste Received from Off-site Form (WR Form), completed by facilities that received hazardous waste shipments from off-site

and managed the waste onsite (including subsequent transfer off-site) during the reporting year; and the Off-site Identification Form(s) (OI Forms), completed by sites that received hazardous waste from off-site or sent hazardous waste off-site during the reporting year; however, the OI Form is completed only if required by the state.

In the February 8, 2019, notice, EPA noted that the manifest and BR forms collect several of the same data elements. For example, a WR Form is divided into three identical parts (*i.e.,* waste blocks), labeled Waste 1, Waste 2, and Waste 3 that collect information on the quantities, characteristics, and management of each hazardous waste. A waste block has ten fields to capture this information. EPA compared the WR Form's waste block to the manifest and concluded that the manifest collects most of the waste block's data. The three fields of a waste block not addressed by the manifest are the waste description (Item A in a waste block of the WR Form), form code (Item E in a waste block of the WR Form) and waste density (Item G in a waste block of the WR Form). Form codes describe the general physical and chemical characteristics of a hazardous waste and, although the manifest captures waste quantity, waste density is not mandatory for wastes whose quantity is reported by volume.[12]

The GM Form collects information on the quantities and characteristics of hazardous waste generated on-site and shipped off-site. The GM Form is divided primarily into three blocks labeled: (1) Waste Characteristics, (2) On-site Generation and Management of Hazardous Waste, and (3) Off-site Shipment of Hazardous Waste. EPA compared the GM Form's information to the manifest and concluded the manifest contains all the data required for Item B of the Off-site Shipment of Hazardous waste block of the GM Form (*i.e.,* EPA ID Number of TSDF, off-site management method code, and total quantities of waste shipped) and some of the data elements captured in the Waste Characteristics (WC) Block. The manifest does not address the three data fields required for the WC Block as described above for the WR Form [waste description (Item A in a WC block of the GM Form), form code (Item E in a WC block of the GM Form) and waste density (Item H in a WC block of the GM Form)]; nor does it capture the source code (Item D in a WC block of the GM Form), management method code for a source code G25 (Item D in a WC block of the GM Form), foreign country code for source code G62 (Item D in a WC block of the GM Form), waste minimization code (Item F in a WC block of the GM Form), and the radioactive mix field (Item G in a WC block of the GM Form). Source codes describe the type of process or activity (*i.e.,* source) from which a hazardous waste was generated. This code may also be useful to formulate the waste description of a waste for both the GM and WR Forms. In addition, the manifest does not address the BR data required for the On-site Generation and Management of Hazardous Waste block of the GM Form.

To satisfy the objectives of the e-Manifest Act, EPA proposed and requested public comment to modify the paper manifest to include form codes and waste density as well as source codes which are collected on the GM Form (Item D of the GM Form). Comments on EPA's proposed form additions, as an initial step towards full integration of e-Manifest with BR, however, were mixed. While most commenters supported BR integration with the e-Manifest system, some commenters did not support adding the three new BR fields to the manifest form. These commenters asserted their companies would incur significant costs to re-program their IT systems for the proposed form revisions, and the FR notice did not provide adequate information regarding how BR integration would take place.

One commenter asked where the new additions would be placed on the manifest form and how EPA would use the e-Manifest system to streamline BR requirements. Other commenters stated the proposed BR additions are insufficient and data gaps exist (*e.g.,* density reported in lbs/gal or specific gravity (sg)) between the proposed additional fields and what is expected in a BR. Additionally, these commenters indicated other data elements expected in a BR do not match data currently collected on the manifest. For example, the waste description reported in BR does not match the DOT shipping description reported on the manifest, the quantities of waste reported on manifests are typically estimates and not the actual waste amounts, the units of measure reported on the manifest are different than those required for biennial reporting, and the restriction of the number of waste codes reported on the manifest is insufficient for BR. To populate the BR with manifest data, these inconsistencies would have to be reconciled. Most commenters opposed the proposal and suggested EPA develop a plan and schedule so that their companies could determine the burden reduction and cost savings for full integration of e-Manifest with BR. One state commenter who supported the proposal also acknowledged data gaps exist between the manifest and what is expected in a BR beyond the proposed collection of source codes, form codes, and density information. This commenter also reiterated the sentiments of other commenters regarding the incompatibility of the DOT descriptions recorded on the manifest and the waste descriptions reported for the BR. This commenter indicated that the DOT descriptions on manifests are not a good substitute for a waste description on a BR, because they are generally too generic and do not provide the detail needed for regulatory purposes under the RCRA hazardous waste program. This commenter also suggested these gaps and other data quality issues regarding manifest data collection must be addressed before manifest data can be utilized to populate biennial reporting.

EPA acknowledges the proposed BR additions on the manifest are insufficient to fully integrate with BR and appreciates the commenters' suggestions. Regarding generators reporting estimates of waste quantities on the manifest instead of actual weights, EPA explained in the March 2005 Manifest Forms Revision rule, that the e-Manifest regulations have always required generators to enter actual quantities of waste shipped and not merely the capacity of the containers selected for shipment. At that time, EPA clarified this point by amending the manifest instructions to Item 11 of the form with additional language emphasizing the generators' responsibility to report quantities shipped and not simply container capacities (See 70 *FR* 10776 at 10819). Further, the March 2005 rule also explained that the manifest regulations have always placed the responsibility for verifying the actual quantities received on the designated facilities. These facilities are required to acknowledge that the quantities of wastes indicated as shipped were received, or otherwise report a significant discrepancy on the manifest if the quantities received do not closely match the generator's ''as shipped'' quantities. EPA, however, acknowledges that DOT allows shippers (*e.g.,* generators) to enter either net weights or gross weights on shipping papers

[12] For some wastes, the manifest also does not capture all applicable federal or state waste codes. Instructions indicate that up to six federal and state waste codes must be entered to describe each waste. Some wastes carry more than six waste codes. However, for biennial reporting, TSDFs must report all waste codes that apply to the waste reported.

depending on the mode of transportation (*e.g.,* public highway transportation) for the shipment, and therefore some generators often record net or gross weights in Item 11 of the manifest. Thus, data entries recorded in this field are often inconsistent and consequently are not aligned with the reportable quantities reported for BR purposes.

Regarding a commenter's claim about the inability to list all waste codes on the manifest for biennial reporting, EPA expanded Item 13 of the form so that up to six waste codes could be entered in that field as part of the standardization of the manifest form in the March 2005 rule. EPA decided to limit the number of waste codes for a few reasons. EPA received comments stating that six waste codes normally would be more than adequate to describe hazardous wastes commonly shipped under the manifest. Second, at that time the Agency believed, and continues to believe, that requiring the listing of all waste codes on the manifest creates an unnecessary burden in completing the manifest without improving appreciably the quality of the hazardous waste data (See 70 *FR* 10776 at 10788). Finally, space on the manifest limits our ability to allocate additional space for this purpose. The recent addition of electronic manifests as an acceptable manifest type offers further flexibility. While space limitations on the paper manifest prevent the allocation of new waste codes on the paper manifest form, manifests in the e-Manifest system do not have this problem. Therefore, if a receiving facility believes the waste codes recorded on the paper manifest are insufficient, it can report an additional list of waste codes for each waste stream in the e-Manifest system along with its submission of a manifest hardcopy plus data upload or add them after-the-fact as part of the corrections process.

Regarding the commenter's assertion that the units of measure reported on the manifest are different than those required for the BR, EPA proposed in the February 8, 2019, **Federal Register** notice to improve the precision or accuracy of the waste data reported on the manifest by amending the current units of measure (*i.e.,* use of decimals or fractions, or smaller units of measure) required to be reported in the ''Total Quantity'' field of the manifest (*i.e.,* Item 11 of the manifest and Item 29 of the continuation sheet) (See 84 FR 2584 at 2855). EPA requested comment on the proposed changes but did not propose to reconcile them with the current units of measure required for biennial reporting. Therefore, in today's notice, EPA is requesting additional comment on whether the Agency should revise the manifest instructions to allow reporting of decimals or fractions in Item 11 of the manifest or smaller units of measure in Item 12 as detailed in the February 2019 notice. Additionally, EPA is requesting comment on whether EPA should also amend the units of measure currently required for biennial reporting so that they match those for manifests and thus would enable manifest data to be used for quantity reporting in the BR.

Regarding one commenter's question about placement of the proposed additions on the form, EPA requested comment in the February 2019 notice on whether EPA should expand Item 19 of the manifest to include source code, form code, and density information, or create separate new data fields for each. In addition, EPA mentioned in the notice that EPA could add a BR data field in Item 16 of the manifest (EPA Form 8700–22) if EPA removed the current International Shipment field to the continuation sheet.

4.2 Conceptual Approach

Based on the public's comments on the February 2019 notice, as well as further examination of possible integration options, EPA has decided to move forward with early steps towards integrating the e-Manifest with biennial reporting, specifically with respect to the WR form. (EPA may consider integrating the e-Manifest with the GM Form at a later time.) Although EPA is still in the early stages of this integration effort, the Agency is presenting a conceptual approach in today's notice as an initial step toward encouraging greater conversation and collaboration with the public and ensuring their input is incorporated into our initial plans.

EPA is taking public comment on the approach and the questions and challenges raised below in this preamble. After the close of the comment period, EPA will review the comments to identify areas of support, opposition, concerns, and suggestions; and determine the next steps. EPA will publish periodic updates on our work status and seek further opportunities for collaboration. In addition, EPA will consult with the e-Manifest Advisory Board on a final approach for BR integration.

EPA believes a gradual process for developing the approach is appropriate given that the e-Manifest system is still relatively new and evolving, having begun operation in June 2018. As the system matures, some challenges could be abated through routine system upgrades and increased use of the electronic manifest, which is expected to result in better data quality than the paper form.

The Hazardous Waste e-Manifest Establishment Act mandates that the system provide waste receipt data for the biennial reports that facilities must submit. EPA designed the system to serve as the facilities' primary data source for completing the WR form and were guided by the following additional considerations.

(a) *Data Quality.* The manifest and WR Form have different purposes, uses and reporting procedures, which result in differences in their data. The manifest's primary purpose is to serve as a chain-of-custody document, ensuring that the shipment arrives at the designated facility intact. It provides essential information for emergency responders (*e.g.,* in case of a spill) and waste handlers. It is initially prepared by the generator or another person acting on its behalf (*e.g.,* broker, transporter, or designated facility). During transit, the manifest is transferred among waste handlers who take custody of the shipment. It is closed out by the designated facility and uploaded to the national system. After upload, the manifest remains largely untouched, except for corrections by the EPA PPC or persons involved in the shipment (*i.e.,* post-receipt data corrections by the designated facility).

The WR Form's primary purpose is for facilities to share information with the public about their waste receipts (*e.g.,* waste characteristics, management). States may use the information for additional purposes. In addition, facilities maintain data systems about their wastes, which are used for a variety of purposes (*e.g.,* customer accounts/billing, waste management, reporting). Facilities may continually update, edit, and correct their in-house data even after the manifest has been submitted to the national system.

These and other differences between the manifest and WR Form lead to challenges that must be resolved in our integration approach. Examples of such challenges include the following:

1. Data in e-Manifest may be out of sync with a facility's in-house data. As discussed later in this preamble, facilities continually update their in-house data when they find errors or obsolete data. For example, after a manifest is closed out and submitted to the national system, a facility may weigh or test the waste, which can result in information different from what is on the manifest (*e.g.,* revised waste quantity or EPA waste codes).

Although EPA has established procedures for facilities to address discrepancies and corrections in the e-Manifest system, it is not clear that all facilities are conducting these procedures in all cases. If they fail to do so, this causes data in the e-Manifest system to be obsolete or incorrect. As such, the manifest data would need to be corrected before it can be used to populate the waste block of the WR Form. Otherwise, BR data quality and its usefulness to the public and regulators would be adversely impacted.

2. Data in the manifest may have errors. Generators and others occasionally make errors (*e.g.,* typographical mistakes, incorrect ID numbers) when completing the manifest form. If an error is unnoticed, the manifest may be uploaded to the national system without the error being resolved.

3. The manifest is designed to describe a specific waste shipment and provide information to particular types of personnel (*e.g.,* spill responders, waste handlers). Some of the manifest's information, such as the DOT shipping description, can require regulatory or other expertise to understand. On the other hand, the WR Form is designed to be readily understood by the general public. For example, the WR Form gives facilities discretion to consolidate and summarize multiple, similar waste receipts into a single WR Form. This enables facilities to provide a clear and understandable summary-level description of its annual waste receipts in comparison with the per-shipment data offered by the manifests.

(b) Burden reduction and ease of use. EPA believes Congress's intent under the Act is for the Agency to develop an approach that minimizes burden and causes minimal disruption to facilities' and states' existing reporting practices and systems. This is consistent with the overall goal of the e-Manifest, *i.e.,* to streamline facility reporting activities by leveraging electronic technology. Further, the Act states that facilities should have the ability to report e-Manifest data in the BR. This mandate suggests that Congress was contemplating an approach that streamlines reporting activities by eliminating redundancies between the manifest and WR Form.

In designing the approach, EPA began with the premise that the most streamlined approach for facilities would be enabling the direct and seamless transfer of data from e-Manifest to the waste blocks of the WR Form. Because of the data quality challenges discussed above, however, a process of direct and seamless transfer may not be possible. It is evident that facilities would need to review, edit, and correct e-Manifest data before it can be transferred to the WR Form.

To this end, our conceptual approach would establish an intermediate step for the facility to perform these activities before transferring the data to the WR Form. EPA recognizes this step would impose some facility burden, some of which would be offset through automated assistance to facilities in completing the waste description field of the WR Form.

(c) Transparency. Currently there is limited transparency in how facilities review, edit, correct, consolidate and report their waste receipts in the WR Form. Facility in-house data are not generally shared with regulators or the public; as such, it is difficult to confirm the accuracy and completeness of the reported data.

In response to the February 8, 2019, notice, a state commenter asked for the ability to cross check data between the e-Manifest system and WR Form to verify the WR Form data. EPA agrees with this commenter on the importance of having e-Manifest data available as a cross-check tool. In addition, EPA believes regulators should be able to examine how the facility edited, corrected, consolidated, and otherwise modified the e-Manifest data in preparing the WR Form. These capabilities are provided in this approach.

The approach involves three elements, as discussed below. EPA requests comment on the overall approach and any aspects of it. In addition, throughout the discussion, EPA raises questions about specific issues for public comments.

4.2.1 Manifest Form Changes

BR Codes

In our February 2019 notice, EPA compared the data collected on the manifest and BR forms (*i.e.,* GM Form and WR Form) and requested comment on whether BR source codes and form codes should be added to the manifest. Since then, EPA decided to defer integration of the e-Manifest and GM Form and thus would defer adding source codes to the manifest. However, EPA has continued to evaluate form codes.

This approach would be to add form codes to the DESIGNATED FACILITY field of the manifest, such as in Item 19. Item 19 has four boxes for entering a BR management method code for each waste described in Item 9b. EPA could divide each box in two, allowing a form code and management method code for each waste. The designated facility would choose the code that best corresponds to the physical form or chemical composition of the waste.

EPA believes that collecting form codes on each manifest could make it easier for TSDFs to complete the WR Form. The form code plays an important role in the completion of the WR Form for many facilities. The BR instructions require that a separate waste block of the WR Form be completed for each waste received from each off-site generator. However, as described in the BR Instructions, hazardous waste from the same off-site handler may be aggregated as long as a single form code describes the physical form or chemical composition and all of the waste is managed in a single process system (*i.e.,* same management method code). In other words, multiple wastes may be aggregated in the same waste block of a WR Form as specified, reducing the overall number of WR Form blocks that must be completed and submitted. This is discussed further in Section IV.C.4.2.2 of this preamble.

Under this approach, facilities would record form codes on every manifest. By contrast, a facility's BR is submitted every other year under the federal program. For example, a facility's 2017 BR submission describes activities that occurred in 2017 (odd-numbered years are ''reporting years'' or ''collection years'') and was due by March 2018 (even-numbered years are ''submission years''). The next reporting year under the federal program was 2019. Under this approach, form codes recorded on manifests in reporting years would be captured in the BR, but codes recorded in submission (non-reporting) years would not.

EPA requests comment on whether form codes should be added to the manifest. Would facilities experience significant burden or inconvenience completing them? If they are added to the form, should receiving facilities be required to record them in both reporting and submission years or should the codes be required only in reporting years? In this latter option, manifests received by the receiving facility from January 1 through December 31 of each reporting year would require form codes. During submission years, form codes would be optional. Alternatively, EPA could make form codes completely optional and then only facilities that opt to use this approach described today would record them during the reporting year.

Waste Quantity

Instructions to Item 11 of the manifest directs the generator to enter the total

quantity of waste. A generator may enter waste quantity based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Further, the DOT regulations allow shippers (*e.g.,* generators) to enter either net weights or gross weights (*i.e.,* gross weight is the weight of the waste and container) on shipping papers depending on the mode of transportation (*e.g.,* public highway transportation) for the shipment. Therefore, some generators may record net or gross weights in Item 11.

Although it has been routine for generators to record gross weights in Item 11 of the manifest and as a result some designated facilities submit the affected manifests to the e-Manifest system without correcting the inaccurate quantity amount, EPA is considering whether this is appropriate for purposes of manifest completion. For some wastes, the container is intended only as a device in which the waste is stored and transported before being emptied fully and used again. Such containers are not waste and should not be reflected in the reported weight.

EPA is requesting comment on whether a clarification should be added to the manifest's instructions that designated facilities must report all waste quantities in Item 11 of the manifest by net weight. Should this clarification also be extended to generators when they complete the manifest form?

4.2.2 Integration of e-Manifest Data With Biennial Report Module in RCRAInfo Industry Application

As mentioned earlier, the RCRAInfo Industry Application provides the mechanism by which a site may submit information to their state regulator. The application contains the following modules:

- myRCRAid pertains to Site Identification submissions (EPA Form 8700–12)
- Biennial Report pertains to BR submissions (EPA Form 8700–13A/B)
- e-Manifest pertains to manifest submissions (EPA Form 8700–22/22A)

For several reasons, EPA believes the RCRAInfo Industry Application is the appropriate mechanism for sharing e-Manifest data with receiving facilities for completion of WR Forms. As an initial point, a number of designated facilities are using both the Biennial Report and e-Manifest modules for their reporting responsibilities and are therefore already set up and familiar with their functions. For example, all receiving facilities are required to register with the e-Manifest system to receive and pay invoices. Further, EPA is encouraging BR users to prepare and submit reports electronically, such as via the Biennial Report module.[13] More than 60% of receiving facilities are in states that allow registration with the module.

In addition, the Biennial Report module would be a useful interface for users to review, sort and transfer manifest data from the e-Manifest module for completion of WR Forms. Users obtain permission to use the Biennial Report module, and various types of permission are granted based on each person's role and level of responsibility over the report (*e.g.,* preparer, certifier, site manager).[14] Receiving facilities can select their desired form to complete (*e.g.,* GM Form, WR Form), and the module offers various system tools and controls to assist users with completing them. For example, users have the option of reviewing tables of previously reported data to compare how their current waste quantities compare to previous cycles. They also have the option of retrieving and copying GM Form data from their most recent submission (excluding quantity) into their new GM Form submission.

Similarly, under the approach described today, a receiving facility in the BR module would be given the option of accessing its manifest data from e-Manifest for completing its WR Forms. The information would be retrieved in a tabular format (called the ''e-Manifest Data Transfer Table''). The table would present all the wastes received by the receiving facility during the biennial reporting year. Each waste would be presented in a row of the table. The rows would be organized by off-site shipper EPA ID number.

For example, if a receiving facility received 20 manifests from Off-site Shipper 1 and 10 manifests from Off-Site Shipper 2 during the year and each manifest contained four wastes in Item 9b, the table would have 120 rows of wastes. The 80 rows of Off-Site Shipper 1 waste would be presented in the ''Off-Site Shipper 1 EPA ID #'' field of the table and the 40 rows of Off-Site Shipper 2 waste would be presented in the ''Off-Site Shipper 2 EPA ID #'' field.

The table would have 11 columns of data about the wastes. Of these, nine would contain data needed to complete a waste block of the WR Form. This includes EPA hazardous waste codes, state hazardous waste codes, EPA ID number of the off-site shipper, form code, management method code, waste quantity, unit of measure, waste density, and density description (*i.e.,* ''lbs/gal'' or ''specific gravity''). There also would be columns for the DOT shipping description and manifest tracking number (MTN).

As such, each row would have 11 data fields. The nine fields described above would be mapped electronically to their corresponding fields of the waste block of a WR Form, enabling data to transfer automatically when prompted by the receiving facility. The two other data fields of the row—DOT shipping description and MTN—are not requested in the waste block and therefore would not be mapped or transferred. However, both fields would be available as a reference. In addition, the table would maintain records (*e.g.,* an audit trail) enabling a person (*e.g.,* a facility or regulator) to determine the MTN of the waste entered into each waste block of a WR Form.

[13] The Biennial Report Module is optional. Regulators may choose to use it to collect BR data for sites in their state or may opt to use other software or mechanisms. For a site to submit their BR in the module, its state regulator must indicate that they will accept BR data from the module.

[14] Permission to use a module is granted on a module-by-module basis, except as otherwise specified.

Transfer row contents

	e-Manifest Data Transfer Table										
	Manifest Tracking Number	Off-Site Shipper EPA ID	U.S. DOT Shipping Description	EPA Hazardous Waste Codes	State Hazardous Waste Codes	Form Code	Management Code	Qty	UOM	Density	lbs/gal or sp gravity
Off-Site Shipper 1 Name (TXD000000000)											
●	000000000 JJK	TXD000000000	UN3123 Wastes containing ...nos..Hazard Class...	D001		W200	H020	1	Tons		
●	000000001 FLE	TXD000000000	UN3123 Wastes containing corrosives... Hazard Class..	D002		W200	H020	2	Tons		
○	000000002 GRB	TXD000000000	UN2210 Wastes containing corrosives..nos. Hazard Class..	D002		W202	H040	3	Tons		
○	000000003 JJK	TXD000000000	UN2210 Waste containing explosives... Hazard Class..	D002, D003		W202	H040	4	Gal	7	lbs/gal
○	000000000 GRB	TXD000000000	UN543 Wastes containing corrosives... Hazard Class..	D002, D010		W202	H132	100	Tons		
○	000000002 JJK	TXD000000000	UN5133 Waste containing corrosives... Hazard Class..	D002		W202	H132	3	Tons		
Off-Site Shipper 2 Name (MAD000000000)											

Above is an illustration of the e-Manifest Data Transfer Table. Please note, EPA has considered that this could be done via a system-to-system approach as well. Under our conceptual approach, a receiving facility would transfer the table to one block of a WR Form. To transfer the nine data fields to the corresponding fields of a WR Form, a receiving facility would click on the ''Transfer row contents'' button. To use the table, a receiving facility would log in to the RCRAInfo Industry Application, access the Biennial Report module, and select the WR Form tab. The facility would then have the option of retrieving the table for completion of its current WR Forms.[15] The facility would be able to add to, delete and otherwise modify the table's contents so that the data are suitable for the BR. This includes, for example, reviewing the table's contents for omissions and performing data quality reviews and corrections to eliminate errors. See the discussion later in this section on data reviews and corrections.

In addition, EPA expects the facility to supplement the manifest data, as needed, to ensure all of the information requested on a WR Form is provided. As pointed out by several commenters on the 2019 notice, some manifests do not contain sufficient information on a waste's EPA and state waste codes and density. These issues and the approach for addressing them are as follows:

• *Waste Codes.* The manifest instructions require that, *for each waste in Item 9b,* preparers provide up to six EPA and state waste codes in Item 13. State waste codes that are not redundant with federal codes also must be entered. The BR, on the other hand, does not limit the number of EPA waste codes reported on a WR Form.[16] State waste codes must be reported as specified. As such, a manifest may not include all of a waste's federal and state waste codes required for biennial reporting (*e.g.,* a waste with seven or more EPA waste codes). Under this approach, the table would have sufficient space for the facility to add EPA and state waste codes to meet the requirements of the BR.

• *Waste Density.* For each waste in Item 9b of the manifest, preparers must provide the waste quantity in Item 11 and the unit weight or volume in Item 12. If the quantity is reported by volume, the preparer may enter additional descriptive information, such as the waste's specific gravity, in Item 14 ''Special Handling Instructions and Additional Information.'' However, the specific gravity is not mandatory, and some manifests lack this information. Item G of a WR Form waste block requires a waste's quantity and unit of measure to be provided. For a waste reported by volume, its density in lbs/gal or specific gravity must be entered in all cases. As such, a manifest may not include the waste density data needed to complete Item G of a WR Form for wastes reported by volume. Under this approach, the table would include columns for waste density in lbs/gal or specific gravity, allowing the facility to enter this information if missing from the manifest. Currently, density is an optional field in e-Manifest, so it could be entered in advance of this process or when the manifest is entered in the system. In addition, the table could offer a drop-down list for densities. As an initial step, the facility would set up the drop-down list by pre-populating it with generic densities applicable to specific waste types commonly reported by volume. Then, when the facility discovers a waste's density is missing, it could use the drop-down list to make the appropriate selection. The list could be saved for future biennial reporting cycles.

When the facility decides that a row is complete and free of errors, it would select the row and transfer its data to a WR Form waste block. After transfer, all fields of the block would be complete, except for Item A, waste description. The facility would have to complete Item A subsequently. (See Section IV.C.4.2.3 of this preamble for a discussion of waste descriptions.) The facility would conduct a comprehensive review of all WR Forms as usual before submittal.

EPA notes that a receiving facility might receive multiple shipments of the same or similar wastes from the same off-site shipper during the reporting year. As discussed earlier, the facility could transfer these wastes to the same WR Form waste block if they have the same form code and management method code and if it is otherwise appropriate to do. To this end, the table could offer tools to sort the rows in an off-site shipper's field based on specified criteria (*e.g.,* BR codes), making it easier to identify and group rows with similar wastes. The receiving facility would select the relevant rows and consolidate their data into a single waste block. The table would prevent consolidating dissimilar wastes (*e.g.,*

[15] The table could be used in the Biennial Report module or downloaded as a flat file. The discussion in this preamble describes how the table would be used in the module.

[16] A WR Form waste block has 12 boxes for EPA waste codes and six boxes for state waste codes. Additional codes can be entered in a ''Comments'' box.

wastes with different form codes or wastes from two or more off-site shippers).

The above paragraphs describe our general conceptual approach for using manifest data to pre-populate WR Form waste blocks. As part of this approach, EPA envisions a process for reviewing and correcting errors in the manifest data before the data are transferred to the waste blocks. EPA understands that completing the manifest can be a complex and fluid process and errors cannot always be avoided. Data requested on the manifest may not be known with full certainty when it is entered. In addition, clerical and other errors inevitably occur, particularly in completing the paper manifest.

The following are the manifest data review and correction activities that would take place after the manifest is submitted to the national system, but before the data are transferred to a WR Form.[17] [18] The first two activities are currently taking place:

1. Corrections by the EPA PPC. 40 CFR 264.71 requires designated facilities to submit the top copy of each paper-based manifest and continuation sheet to the e-Manifest system. For image only submissions, the PPC enters the manifest data into the e-Manifest system. As part of this process, the PPC may identify and resolve basic errors in the data (*e.g.,* invalid generator or transporter EPA ID number). The PPC follows procedures to contact the designated facility via email, then a phone call. In some cases, the PPC also may contact the generator if the designated facility could not answer the questions.

The e-Manifest system validates uploads for missing and invalid image plus data manifest entries. For example, the system will compare a site's address and EPA ID Number on the manifest to the site's corresponding information in RCRAInfo. If an error is found (*e.g.,* a state-issued ID number that is not included in RCRAInfo's Handler module), EPA will follow up with the site to request correct information.

2. Post-Receipt Manifest Data Corrections. Section 264/265.71(l) establishes procedures for facilities and others to correct manifest data after the manifest has been closed out. Post-receipt data corrections may be submitted at any time. Each correction submission must be electronic and describe the correction in sufficient detail. Other interested persons will be notified and given an opportunity to comment before the correction is finalized.

3. Corrections by the Facility within the e-Manifest Data Transfer Table. Under EPA's conceptual approach, after the facility enters the Biennial Report module and pulls up the table to complete its WR Forms, the facility would be expected to conduct two types of data review and correction activities:

- Review and correct errors identified by the table. EPA envisions that the table would offer basic data validation tools and flag fields containing possible errors. For example, specific fields of the table could be compared to EPA's official data sources to find errors. This could include comparing EPA and state hazardous waste codes in the table to EPA's official list of waste codes. If a code in the table does not match any code in the list, its field would be flagged. The same could be done for EPA ID numbers and BR codes. The table could also include cross-checks within the same row (*e.g.,* between a waste's form code and management method code). Both fields would be flagged if the management method is not compatible with the form code. Fields with missing data also would be flagged.
- Review and correct all other errors. EPA expects that many errors would remain in the table notwithstanding the above activities. Facilities would be expected to conduct a thorough review based on their in-house knowledge and information (*e.g.,* waste profiles, waste analysis results, in-house data systems).

The facility is responsible for ensuring full compliance with the BR requirements and instructions, regardless of the data and user tools provided.

4.2.3 Issues for Public Comment Regarding Biennial Report Integration

EPA is requesting comment on the following issues:

(a) EPA realizes that the data in the e-Manifest system may contain numerous errors and other issues that must be resolved before the data can be used for BR purposes. Examples include data omissions, invalid EPA ID numbers, state-issued ID numbers that do not show up in EPA's data system, incorrect generator addresses, and typographical errors such as transposed digits in an EPA ID number or BR code. How can EPA improve the conceptual approach to resolve these issues more effectively? How can EPA ensure that the facility has actually reviewed and corrected the data thoroughly before pre-populating the waste block of the WR Form? Should a facility be prevented from pre-populating the waste block until all flagged errors have been addressed?

(b) Closely related to this, some facilities may not have up-to-date information in the e-Manifest system. For example, after a manifest is closed out and submitted to the national system, a facility may perform weighing, testing or treatment that results in information different from what is on the manifest (*e.g.,* revised EPA waste codes, different management method code). The facility may update its in-house systems but not enter these updates in e-Manifest using the post-receipt data correction procedures at § 264/265.71(l). How extensive is this issue in e-Manifest (*i.e.,* outdated, inaccurate data)? How should EPA revise the conceptual approach to better integrate facility workflows and data management to minimize differences between facility in-house systems and the e-Manifest system?

EPA notes that the post-receipt data correction procedures do not mandate that facilities update the e-Manifest system whenever they find an error. Rather, the regulations state that post-receipt data corrections ''may'' be submitted at any time by any interested person shown on the manifest. Should EPA revise this language to make post-receipt data corrections mandatory and, if so, for what types of errors? EPA believes the manifest discrepancy procedures at §§ 264/265.71 and 264/265.72 help to clarify this issue. If a designated facility discovers significant differences between the quantity or type of hazardous waste designated on the manifest or shipping paper and the quantity and type of hazardous waste it actually receives, it must note the discrepancy on the manifest and attempt to resolve it. For bulk wastes, significant differences in quantity are variations greater than 10 percent in weight. For batch waste, significant differences in quantity are any variation in piece count (*e.g.,* one drum in a truckload). Significant differences in type are obvious differences which can be discovered by inspection or waste analysis (*e.g.,* toxic constituents not reported on the manifest).

Since the facility must record these differences on the manifest if they are discovered during waste receipt, it is worth considering whether they should be recorded in the e-Manifest system if they are discovered any time after

[17] In addition to these activities, §§ 264/265.71 and 264/265.72 require facilities to address manifest discrepancies. This includes, for example, noting on the manifest and attempting to resolve significant differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives. If the discrepancy is not resolved within 15 days after receiving the waste, the facility must immediately submit a letter to EPA describing the discrepancy and attempts to reconcile it and a copy of the manifest or shipping paper at issue.

[18] States have access to e-Manifest and may also make corrections.

receipt? If so, should they be subject to mandatory data correction procedures? Should other types of errors be brought under mandatory correction procedures, such as missing or invalid EPA ID numbers? If not, how can EPA more effectively encourage facilities to correct them? More broadly, is it necessary for data in the e-Manifest system to be up to date if not used to complete the BR? Or should data in the e-Manifest system generally be viewed as a snapshot of a shipment received by the facility without an expectation that it be current?

(c) Under EPA's approach, the facility would be able to add to, delete and otherwise modify the transfer table's data before pre-populating a WR Form. The data in the table and ultimately reported in the BR should correspond closely to the data stored in e-Manifest. The post-receipt data correction process was established to ensure that e-Manifest data remain accurate and up to date. However, the approach does not extend the data correction process to the transfer table after it has been retrieved in the Biennial Report module at the end of the reporting year.

Essentially, EPA sees a trade-off between closely guarding the table's manifest data against undocumented edits versus creating a system that encourages facilities to make all necessary corrections. EPA does not want to establish an onerous correction process that discourages facilities from making all corrections. Should the transfer table allow the facility to add to, delete and otherwise modify all of the table's contents, or should the table protect some or all of the data from such modifications? Should the table create an audit trail of all of the facility's data modifications? What other user controls and data validations should the table provide?

(d) Aside from the data issues discussed above, would the table provide a relatively straightforward way of completing the waste blocks of the WR Form? Is it reasonable to expect a facility to review, edit, correct, and transfer potentially thousands of rows of wastes to the waste blocks as described in this approach?

4.2.4 Waste Descriptions on WR Form

The instructions for the waste description (Item A) of the WR Form recommend that a short narrative description of the waste be provided, such as general type; source; type of hazard; and generic chemical name or primary hazardous constituents. Several commenters on the February 2019 notice stated that the waste description is burdensome. We also reviewed data from past WR Form submittals and noticed a wide variation in the information provided. Some forms include a one- or two-word description (*e.g.,* ''aerosols,'' ''hypochlorite solutions''), whereas others include the DOT shipping description. These descriptions are not acceptable because they do not respond to the instructions fully.

EPA has begun considering options for assisting receiving facilities in preparing waste descriptions in the Biennial Report module. Our objective is to improve the quality of the descriptions while streamlining receiving facility activities where possible. To this end, a possible option is to provide automated assistance to receiving facilities in completing the waste description comparable to the ''e-Manifest'' module's assistance for preparers of the electronic manifest.

The e-Manifest module offers several types of assistance to preparers of the electronic manifest, such as completing the DOT shipping description in Item 9b of the form. Completion of a DOT shipping description requires knowledge of the DOT regulations, and therefore, assistance may be warranted for some preparers. For example, in the e-Manifest module, if a user wants to enter a DOT ID and proper shipping name into the manifest, the user begins typing this information and a drop-down list will display the proper shipping names that contain the values the user provided. If the user types ''fireworks,'' the drop-down list will show ''UN0333/Fireworks,'' ''UN0334/Fireworks,'' ''UN0335/Fireworks,'' ''UN0336/Fireworks,'' and ''UN0337/Fireworks.'' The user can select the appropriate ID and name. The Hazard Class and Packing Group will be pre-populated based on the user's selection.

A similar approach could be used for the waste description field of a WR Form waste block in the Biennial Report module. If form codes are added to the manifest, EPA would like to take comment on whether sufficient data would be available to build satisfactory waste descriptions using automated methods. For example, suppose EPA programmed the waste description field to build waste descriptions based on form code, management method code and EPA hazardous waste codes. If a waste were entered into a WR Form waste block with form code W103 (''Spent concentrated acid (5% or more)''), management method code H070 (''Chemical treatment'') and EPA hazardous waste codes D002 and D007, Item A could be pre-populated with ''Spent concentrated acid (5% or more) managed by chemical treatment; RCRA characteristic for corrosivity and toxicity.'' If a waste were entered with form code W203 (''Concentrated non-halogenated (*e.g.,* non-chlorinated) solvent''), management method code H061 (''Fuel blending prior to energy recovery at another site'') and EPA hazardous waste codes D001 and F003, Item A could be pre-populated with ''Concentrated non-halogenated solvent managed by fuel blending prior to energy recovery at another site; RCRA characteristic for ignitability and listed spent solvent waste.''

The receiving facility could reject the system's suggestion and develop its own description. Alternatively, the facility could edit the suggestion as desired. For example, a pop-up box could prompt the facility to indicate the source of the waste, if known, or chemical names. The receiving facility is ultimately responsible for ensuring a full and accurate waste description regardless of the assistance provided.

A number of issues, however, would need to be resolved for this approach to work. For example, some BR code descriptions are too long to be added to a waste description and need to be shortened to a few words. In addition, some wastes have too many EPA and state waste codes to fit in the waste description field. For these wastes, the system could describe the codes by category (''listed spent solvent waste'' for EPA waste codes F001 to F005, ''listed wood preserving waste'' for EPA waste codes F032, F034 and F035, etc.). For P- and U-listed wastes, the module could give the chemical's name in addition to the category. For example, the module could say ''acute hazardous waste: Fluorine'' for waste code P056. If a waste code represents multiple chemicals, the module could present them in a drop-down list and the facility could select the correct one. Finally, this approach does not tell us all the relevant information about the waste and thus EPA would like to take comment on how to improve this option to meet the needs of the Biennial Report waste description field. For example, D001 ignitable waste for H040 incineration, from W001 lab packs do not describe the ignitable waste that is being incinerated. The waste could be gasoline, ethanol, or something else. EPA is requesting comment on ways to improve data quality in the waste description field.

There are two additional options EPA would like to take comment on for generating waste descriptions, but these were not expounded previously by the Agency due to the perceived complexity of them. The first is comparing the previous BR cycle's submission of the

submitting receiving facility to the manifest data it signed for in the system. The other is adding the waste description to the manifest.

In terms of comparing the waste descriptions to the previous BR submission, the system would compare the previous cycle to the waste codes, form codes, management method codes, and Generators IDs against what was submitted in e-Manifest during the previous year and any additional manifests brought in due to when the waste was generated. If the fields match, then the waste description would be provided with a dropdown or an array of possible waste descriptions (if requested over e-Manifest web services). The receiving facility would choose the appropriate waste description and if necessary, edit it, and submit it with their BR submission. If there is not a match, then the waste description would need to be provided.

There are several issues with this approach. First is how to properly identify CESQGs/VSQGs and slight variations in how their addresses were entered into the system. Other issues revolve around the number of WR forms submitted by receiving facilities. Receiving facilities would still need to analyze each waste stream to determine the appropriate waste description. Further, from a systems approach, compiling this list based on the criteria provided over the entire universe of WR Forms would require a significant computational effort.

The other option for comment is adding the waste description to the manifest form either on the form itself or in the system as an optional field. This option would provide automation at the time of report compilation for the waste description field, but it would also add another element to the manifest form and if the receiving facility was inconsistent in describing the waste, such inconsistencies could cause confusion when the receiving facility completed its biennial report.

4.2.5 Final BR Integration Questions for Commenters

EPA requests comments on the following:

(a) Earlier in this preamble, it was explained that our conceptual approach for e-Manifest integration with the biennial report does not fully account for the fact that facilities may revise their in-house waste-related data after the manifest has been submitted to the national system, but they may not reflect the revisions in the e-Manifest system. For example, facilities periodically update, and correct data based on waste testing, weighing, management and disposal. Facilities normally reflect these changes in their in-house systems but might not follow the post-receipt data correction procedures to enter them in the e-Manifest system. EPA also discussed that the e-Manifest system contains other data errors and problems, such as missing data, invalid EPA ID numbers, and incorrect management method codes, which must be resolved before the data can be reported in the WR Form. EPA asked for comments on how this approach could address these problems more effectively.

EPA is now raising these challenges again in the larger context of evaluating whether they can be overcome in developing an approach that is beneficial to facilities and states. In other words, can the data problems in e-Manifest be addressed effectively (*e.g.,* through mandatory post-receipt data corrections, additional data reviews) without placing unnecessary burden on facilities and states and discouraging them from adopting the overall approach?

(b) Currently, facilities preparing the WR Form at the end of a reporting year may evaluate, consolidate, and summarize a year's worth of shipment-level data, to thereby report it in a consistent, uniform manner. Should EPA enhance the approach to provide a better ability for facilities to evaluate, consolidate and summarize e-Manifest data when pre-populating the WR Form? What additional capabilities do facilities' in-house systems provide for reviewing, correcting, consolidating, and summarizing data that should be offered by the table in this approach?

(c) Would BR data quality and usefulness be impacted under this approach, and if so, how?

(d) Would this approach increase burden and complexity to facilities or regulators under the manifest or BR program? For example, some facilities could experience significant incremental burden in reviewing, editing, correcting, and transferring manifest data to the waste blocks of the WR Form. However, would their incremental burden be offset if the module pre-populates the waste description field of each block?

(e) After a facility's WR Forms are submitted to the state or EPA Region, the module could offer these completed forms (without waste quantity) to the facility for the next BR cycle. The facility would have the option of completing these pre-populated forms or preparing new ones. Would these pre-populated forms streamline the facility's activities without compromising data quality?

(f) As discussed earlier in this preamble, the PPC has experienced difficulty in entering image files and hardcopies of paper copies of manifests into the e-Manifest system due to incorrect, illegible or incomplete data. This has slowed the PPC's data entry, resulting in tens of thousands of paper manifests not being entered into the system in a timely manner. If a form is not entered into the system, it would not be included in the e-Manifest Data Transfer Table in this approach. How should these forms be addressed under the approach? At the end of the reporting year, should facilities receive a list of manifests that have not been entered into e-Manifest so they can incorporate the wastes into WR Forms using other data?

(g) As stated previously in this preamble, EPA may consider integrating the e-Manifest system with the GM Form at a later time. EPA, however, believes the Agency could also establish an approach to integrate the e-Manifest system with the GM Form that is analogous to our conceptual approach for e-Manifest integration with the WR Form. For instance, EPA could: (1) Use eight of the nine data fields described above (*i.e.,* EPA hazardous waste codes, state hazardous waste codes, form code, management method code for off-site shipments, waste quantity shipped off-site, unit of measure, waste density, and density description (*i.e.,* ''lbs/gal'' or ''specific gravity'')); (2) use the EPA ID number of the designated facility receiving the off-site shipment; and (3) add the source code and waste minimization code to the manifest to map these manifest data electronically to their corresponding blocks of the GM Form for e-Manifest integration. These manifest data could be transferred automatically from a table to the WC block and the Off-site Shipment of Hazardous Waste block of the GM Form when prompted by the LQG. EPA requests comment on whether the Agency should establish a similar conceptual approach for e-Manifest integration with the GM Form. Would such an approach work for the GM Form? Please consider the relevant issues and questions addressed above in this section of the preamble as well as other issues and questions detailed throughout section IV.C.4 to provide comment.

(h) As stated in section IV.C.4.2.1, EPA would require the receiving facility to report the form code on the manifest for each waste stream reported in Item 9b. Given that both the GM Form and the WR Form require the form code, would LQGs be amenable to EPA requiring the receiving facility to report

the form code on the manifest on their behalf and ultimately using it for the GM Form? Would receiving facilities be amenable to reporting the form code on the manifest in lieu of the LQG reporting it?

D. Summary of Requests for Public Comment

EPA requests comments on various aspects of this proposed rule throughout the preamble. This section summarizes each request at a high level. Please refer to the relevant sections for more in-depth discussion of the relevant issues for public comment.

Regarding submitting export manifests to EPA's e-Manifest system (discussed in preamble section IV.A.3), EPA requests comment on the following:

- EPA's proposal to revise 40 CFR 262.83(c) by adopting the existing manifest provisions at §§ 262.20(a)(3) and 262.24 for electronic manifest use and the electronic signature requirements at § 262.25 for export manifests. If these provisions are finalized as proposed, a person exporting a shipment out of the U.S. (*i.e.,* a generator or a recognized trader located separate from the site initiating the shipment) may, in lieu of using a paper manifest form, use an electronic manifest to track the export shipment within the United States.
- EPA's proposal to add new provisions under § 262.83. These would require an exporter to submit the top copy of a manifest form and continuation sheet (whether paper or electronic) to EPA for processing, in accordance with the proposal for export shipments described in this section of the preamble. The new provisions would also require the exporter to pay the requisite processing fee for the submission using the existing fee provisions under 40 CFR part 265 subpart FF. EPA is proposing new paragraphs (c)(4) through (c)(8) under § 262.83(c). If finalized, an exporter who elects to use an electronic manifest and continuation sheet for an export shipment, would be required to complete, sign, and submit the manifest and continuation sheet electronically in the e-Manifest system for the waste shipment within 30 days of receipt of the electronic manifest signed by the last transporter who carried the export shipment to a U.S. seaport for loading onto an international carrier or to a U.S. road or rail port of exit.
- EPA's proposal to adopt the fee provisions of the electronic hazardous waste manifest program under 40 CFR part 265 subpart FF (40 CFR 265.1300, 265.1311, 265.1312, 265.1313, 265.1314, 265.1315, and 265.1316) for hazardous waste export shipments. If finalized, exporters of a waste shipment subject to the manifest requirements would be expected to make payments to EPA for manifest activities conducted during the prior month per § 265.1314. Additionally, the proposed amendments would require any party acting as the U.S. exporter that originated the manifest for an export shipment of hazardous waste in accordance with the manifest requirements under 40 CFR part 262 subpart B and § 262.83(c), whether they be a generator, receiving facility, or recognized trader, to submit the export manifests to the system and pay the requisite fees.
- EPA's proposal to revise § 263.20(g)(3), which currently requires the transporter to provide a copy of the export manifest to the generator. Today's proposal would allow the collection of manifest data in the e-Manifest system, making the current requirement unnecessary.
- EPA's proposal to remove the current transporter requirement in § 263.20(g)(4)(i). EPA has determined that transporters are not best suited for submitting the export manifest to the system and paying the requisite processing fee based on the above modification to § 263.20(g)(3).
- EPA's proposal to remove 40 CFR 263.20(g)(4)(ii), which lists the ''AES filing compliance date'' promulgated in the hazardous waste import/export final rule dated November 28, 2016 (81 FR 85696). The AES filing compliance date was specified as December 31, 2017, in a **Federal Register** notice dated August 28, 2017 (82 FR 41015). That compliance date has passed, and as such the requirement for the transporter to provide a paper copy of the manifest to a U.S. customs official at the point of departure for shipments initiated prior to the AES filing is now obsolete.

In addition, EPA requests information regarding whether the proposed changes would work for foreign transporters who transport export shipments to and across the U.S. border. EPA also requests information regarding how many foreign transporters currently transport such shipments within the United States.

Regarding manifest form changes related to export and import hazardous waste shipments (discussed in preamble section IV.A.4), EPA requests comment on the following:

- EPA's proposal to move the International Shipments field (*i.e.,* Item 16) from the manifest to the continuation sheet and add new fields for consent numbers and the exporter's EPA Identification number and email address to the International Shipments field. If finalized, EPA would remove the International Shipments field from the manifest and re-designate it as Items 33a and 33b on the continuation sheet as shown on the draft form. EPA would also revise the current manifest instructions for completing the International Shipments field to reflect these new changes. A proposed revised version of the continuation sheet (EPA Form 8700–22A) reflecting these proposed changes is available in the docket for this rulemaking.

Regarding proposals that only impact import shipments (discussed in preamble section IV.A.5), EPA requests comment on the following:

- EPA's proposal to delete the requirement in 40 CFR 262.84(c)(4) that the importer provide an additional copy of the manifest to the transporter to be submitted by the receiving facility to EPA per §§ 264.71(a)(3) and 265.71(a)(3). This additional copy of the manifest is no longer necessary because the receiving facility is now required to always submit the top copy of the paper manifest and any continuation sheets to the e-Manifest system.

Regarding additional proposed changes to international shipment requirements (discussed in preamble section IV.A.6), EPA requests comment on the following:

- EPA's proposal to revise the export and import shipment international movement document-related requirements to more closely link the manifest data with the international movement document data.

Regarding proposals to revise manifest requirements applicable to Exception Reports, Discrepancy Reports, and Unmanifested Waste Reports (discussed in preamble section IV.B.1–3), EPA requests comment on the following:

- EPA's proposal to allow generators using electronic or hybrid manifests to use the e-Manifest system to satisfy exception reporting requirements. EPA is proposing to restrict electronic exception reporting to manifested shipments using electronic manifests (hybrid or fully electronic) pursuant to § 262.24(c).
- EPA's proposal to revise the current 35/45-day LQG exception reporting timeframes in § 262.42(a) and (c)(2), and § 761.217(a) and (b) to better conform to timeframes for submittal and processing of paper manifests in the e-Manifest system, thus adjusting it to a 40/50-day timeframe. EPA is not proposing additional time for SQGs to verify receipt of their shipments by the destination facility. The current SQG

timeframe for verification of shipment delivery is 60 days (§ 262.42(b)).

• EPA's proposal to integrate Discrepancy Reports into the e-Manifest system, which includes four elements: (1) A copy of the manifest at issue; (2) the significant discrepancy type (*i.e.,* significant difference in quantity or type); (3) date of signature of the receiving facility; and (4) a description explaining the discrepancy and attempts to reconcile it.

• EPA's proposal to allow receiving facilities to use the e-Manifest system to satisfy discrepancy reporting requirements and its proposal to adjust the discrepancy reporting timeframe to allow receiving facilities up to 20 days to reconcile a shipment with the generator and/or transporter for such discrepancies. Unlike our proposed restriction to limit electronic exception reporting to electronic manifests, EPA is proposing to extend electronic reporting of Discrepancy Reports to all manifest submission types, including paper.

• Whether or not there should be a limit on our discrepancy reporting proposal to manifests that originated electronically (*i.e.,* fully electronic or hybrid) in the e-Manifest system, as well as if there are other approaches EPA should consider for electronic discrepancy reporting associated with digital copies of paper manifests.

• EPA's consideration of an alternate approach that would eliminate the requirement for Discrepancy Reports altogether, and instead, address discrepancy events through the e-Manifest corrections process. Under this approach, receiving facilities or EPA's PPC would upload/enter discrepancies identified under Item 18. Generators who had e-Manifest system access would receive email alerts regarding Item 18 discrepancies, review the final manifest in e-Manifest, and submit post-receipt manifest corrections.

• EPA's proposal to accept only electronic submissions of Unmanifested Waste Reports to the system by the receiving facility, with the goal of integrating Unmanifested Waste Reports into the e-Manifest system. EPA would not accept Unmanifested Waste Reports through a written, hard copy report. EPA would revise the reporting content specified in §§ 264.76 and 265.76 for hazardous waste and § 761.216 for PCB wastes. Unlike electronic discrepancy and exception reporting, EPA proposes to impose a user fee, equivalent to the user fees for electronic manifests, on receiving facilities for each submission of an Unmanifested Waste Report.

• EPA's proposed approach to integrate Unmanifested Waste Reports into the e-Manifest system (by only accepting electronic submissions of Unmanifested Waste Reports to the system by the receiving facility and revising the reporting content specified in §§ 264.76 and 265.76 for hazardous waste and § 761.216 for PCB wastes) and charge the electronic manifest fee rate for these submissions. EPA also requests comment on whether a separate, distinct user fee should be imposed for these reports.

Regarding other proposals (discussed in preamble section IV.C), EPA requests comment on the following:

• Technical corrections and conforming changes to certain RCRA and TSCA PCB regulations under 40 CFR parts 262, 264, 265, and 761. These corrections and conforming changes are necessary to remove obsolete requirements, correct typographical errors, and/or improve alignment with the e-Manifest program.

• EPA's proposal to add an email address field to Item 5 of the generator block of the paper manifest so that the e-Manifest system can email copies of completed paper manifests to the generator's email address in lieu of receiving facilities having to mail copies to the generators' postal mail address. Under the proposal, the e-Manifest system would also send notifications to unregistered generators via the email address requesting that they register and obtain an account in e-Manifest for their site.

• EPA's request for comment on whether to mandate that generators register and obtain e-Manifest accounts for access to the e-Manifest system to view their copies of completed manifests.

• Proposals detailed in the February 2019 **Federal Register** ICR renewal notice regarding modification of the manifest form and instructions to improve the accuracy and precision of waste data reported in the manifest fields at Items 11 (Total Quantity) and 12 (Units of Measure) of the manifest. These proposed form changes would facilitate receiving facilities leveraging the e-Manifest system to populate the corresponding fields of the Waste Received from Off-site (WR) Form as part of the biennial report.

• EPA's consideration of a conceptual approach for e-Manifest integration with the biennial report, particularly regarding data accuracy and precision as well as the addition of certain BR data fields (*e.g.,* form codes) of the WR Form to the manifest form. There are specific questions raised in preamble section IV.C.4.2.3 and IV.C.4.2.5.

• Potential ways to improve data quality in the waste description field (see preamble section IV.C.4.2.4).

• EPA's proposal to compare the previous BR cycle's submission of the submitting receiving facility to the manifest data it signed for in the system.

• EPA's proposal to add the waste description to the manifest.

• Whether or not EPA should establish a similar conceptual approach for e-Manifest integration with the GM Form. Would such an approach work for the GM Form?

V. State Implementation

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to the enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) and of the Hazardous Waste Electronic Manifest Establishment Act, a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to administer the program and issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, with the adoption of RCRA section 3006(g), which was added by HSWA, new requirements and prohibitions imposed under the HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by section 3006(g) to implement HSWA-based requirements and prohibitions in authorized states until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

The e-Manifest Act contains similar authority to HSWA with respect to

federal and state implementation responsibilities in RCRA authorized states. Section 2(g)(3) of the e-Manifest Act, entitled Administration, provides that EPA shall carry out regulations promulgated under the Act in each state unless the state program is fully authorized to carry out such regulations in lieu of EPA. Also, section 2(g)(2) of the Act provides that any regulation promulgated by EPA under the e-Manifest Act shall take effect in each state (under federal authority) on the same effective date that EPA specifies in its promulgating regulation. Thus, the result is that regulations promulgated by EPA under the e-Manifest Act, like HSWA-based regulations, are implemented and enforced by EPA until the states are authorized to carry them out.

Authorized states generally are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. However, as EPA explained previously when adopting manifest form revisions to fully standardize the RCRA manifest, the hazardous waste manifest is not governed by this authorization policy. Rather, the RCRA manifest requires strict consistency in its implementation, so that EPA changes to federal manifest form requirements must be implemented consistently in the states. See 70 FR 10776 at 10810 (March 4, 2005). This is so, whether the manifest program change is based on base RCRA or on e-Manifest Act authority.

TSCA does not grant EPA authority to authorize states to administer the program. EPA directly implements the federal PCB regulations in all states and territories.

B. Legal Authority for This Rule's Regulatory Changes and Implications

Several of the provisions in this proposed rule are based on the authority of the e-Manifest Act and are listed in the table below. These provisions (if finalized) would be implemented and enforced by EPA in all states consistently on the effective date of the final rule. States must adopt the authorizable e-Manifest Act-based provisions of this final rule in order to enforce them under state law, and to maintain manifest program consistency. However, EPA will continue to implement and enforce these provisions until such time as the state modifies its authorized program to adopt these provisions and receives authorization from EPA for the program modification.

Regulation	Subject
§ 262.42(d)–(e)	Submission of Electronic Exception Reports to the e-Manifest system.
§ 262.83(c)(4)	Exporters required electronic or paper manifest to the system.
§ 262.83(c)(5)	Imposition of fees on exporters for their manifest submission.
§ 262.83(c)(7)	Exporters' replacement manifests.
§ 262.83(c)(8)	Exporters' post receipt data corrections.
§ 264.72(c)(1)–(4), § 265.72(c)(1)–(c)(4)	Submission of Electronic Discrepancy Reports to the e-Manifest System.
§ 264.76(a), § 265.76(a)	Submission of Electronic Unmanifested Waste Reports to the e-Manifest system.
§ 264.76(b), § 265.76(b)	Imposition of fees to receiving facilities for their Electronic Unmanifested Waste Report submission.

In contrast, the manifest-related report provisions at 40 CFR 262.42 (a)(1)–(2), 262.42(c)(2), 264.72(c), and 265.72(c) are based on the base RCRA statutory authority. Because these provisions would be finalized under RCRA base program authority, these regulatory changes would not become effective in authorized states until the regulatory changes are adopted under state law and EPA authorizes the state program modification. States must adopt the regulatory changes in their authorized programs to maintain manifest program consistency. In unauthorized states, these regulations would become effective on the effective date of this final rule. Because TSCA is not administered by state programs, all proposed changes to 40 CFR part 761 would become effective in all states and territories on the effective date of the rule.

C. Conforming Changes to 40 CFR 271.10 and 271.12

This proposed rule also includes conforming changes to 40 CFR 271.10 and 271.12, addressing the requirements for hazardous waste generators and exporters, and receiving facilities, respectively, that must be included in authorized state programs to maintain consistency with the federal program. Other conforming changes to § 271.10 regarding regulatory amendments to the hazardous waste export and import regulations are discussed in preamble section V.D. The first change at § 271.10(j)(i) clarifies that authorized state programs must include requirements for electronic Exception Reports in the EPA's e-Manifest system, in lieu of sending signed copies to the EPA Regional Administrator or the states. The second change at § 271.10(j)(ii) clarifies that authorized state programs must include a requirement that hazardous waste exporters submit a signed copy of each paper manifest and continuation sheet (or the data from paper manifests) to the EPA's e-Manifest system, in lieu of providing additional copies of the manifest to the hazardous waste transporters. These modifications are necessary to effectuate the intent of Congress that under the e-Manifest Act, the e-Manifest system will operate as a national, one-stop reporting hub for manifests and data. When electronic Exception Reports are implemented in the e-Manifest system, EPA expects that the states with such tracking programs will obtain their manifest copies (and data) and electronic Exception Reports from e-Manifest, rather than requiring regulated entities to mail their manifests or exception reports to these states.

Finally, the e-Manifest-related amendments at § 271.12(i) and (k) must be included in authorized state programs for electronic Discrepancy Reports and Unmanifested Waste Reports to maintain consistency with the federal program. The amendments to § 271.12(i) clarify that authorized programs must include requirements that designated or receiving facilities submit electronic Discrepancy Reports and Unmanifested Waste Reports in the EPA's e-Manifest system, in lieu of sending signed copies to the states. The amendment at § 271.12(k) clarifies that authorized state programs must include requirements for hazardous waste management facilities and facilities submitting electronic Unmanifested Waste Reports in the e-Manifest system to pay user fees to EPA to recover all

costs related to the development and operation of an electronic hazardous waste manifest system (e-Manifest system).

Several of these states with manifest tracking programs assess their own fees to offset the costs of administering their state manifest tracking programs, or they may assess waste generation or management fees to support state programs, based on manifest data in their state tracking systems. It is likely that many of these state manifest tracking programs and related fees may continue to operate for the foreseeable future. EPA emphasizes that the federal user fees that are proposed in this regulation are solely to offset EPA's costs in developing and operating the e-Manifest system. It is not the purpose of this regulation to suspend, reduce, or otherwise impact the existing state fees that support states' manifest tracking programs, or the fees levied by state programs on waste generation or management. EPA is not now in a position to predict what, if any, impact this federal user fee regulation may have on any such state fee collection programs.

D. Provisions of the Proposed Rule That Are Not Authorizable

There are some provisions in this proposed rule that can be administered and enforced only by EPA, and not by authorized states. First, the group of non-authorizable requirements included in this proposed rule are § 262.21(f)(5), (6), and (7). These provisions together announce the revised printing specification for the proposed four-copy paper manifest and continuation sheet paper forms, the revised copy distribution requirements to be printed on each copy of the form, and the revised specification for printing the appropriate manifest instructions on the back of the form copies. If finalized, state programs are not required to take any action respecting these regulatory changes to the printing specifications, and they will take effect in all states on the effective date of this rule. The RCRA manifest requires strict consistency in its implementation, so that an EPA change to federal manifest form requirements must be implemented consistently in the states. See generally 70 FR 10776 at 10810 (March 4, 2005).

The second group of non-authorizable requirements in this proposed rule are regulatory amendments to certain fee methodology and related fee implementation provisions set forth in subpart FF of 40 CFR parts 264 and 265. These requirements include definitions relevant to the program's fee calculations (§§ 264.1311, 265.1311), and the user fee calculation methodology (§§ 264.1312, 265.1312). These user fee provisions in subpart FF are based on the authority of the e-Manifest Act, and (if finalized) would be implemented and enforced by EPA on the effective date of the final rule and perpetually thereafter. The user fee provisions of subpart FF describe the methods and processes that EPA alone will use in setting fees to recover its program costs, and in administering and enforcing the user fee requirements. Therefore, states cannot be authorized to implement or enforce any of the subpart FF provisions.

Although states cannot receive authorization to administer or enforce the federal government's e-Manifest program user fees, authorized state programs must still include the content of or references to the subpart FF requirements. This is necessary to ensure that members of their regulated communities will be on notice of their responsibilities to pay user fees to the EPA e-Manifest system when they utilize the system. Authorized state programs must either adopt or reference appropriately the user fee requirements of this final rule.13 However, when a state adopts the user fee provisions of this rule, the state must not replace federal or EPA references with state references or terms that would suggest the collection or implementation of these user fees by the state.

The last group of non-authorizable provisions in this proposed rule are regulatory amendments to certain export and import regulations detailed in preamble sections IV.A.4, IV.A.5, and IV.A.6 are not authorizable. Because of the federal government's special role in matters of foreign policy, EPA does not authorize states to administer federal import/export functions in the regulations discussed in those preamble sections. This approach of having federal, rather than state, administering of the import/export functions promotes national coordination, uniformity, and the expeditious transmission of information between the United States and foreign countries.

Although states do not receive authorization to administer the federal government's import/export functions in 40 CFR part 262 subpart H, or the import/export relation functions in certain other RCRA hazardous waste regulations, state programs are still required to adopt the provisions in this rule to maintain their equivalency with the federal program (see 40 CFR 271.10(a) and (d) which will also be amended in this rule).

This rule contains many amendments to the export and import shipment international movement document-related requirements under 40 CFR part 262 subpart H to more closely link the manifest data with the international movement document data. The rule also contains conforming import and export-related amendments to 40 CFR parts 260, 261, 262, 263, 264, 265, 267, and 271, almost all of which are more stringent.

The states that have already adopted 40 CFR part 262 subparts H, 40 CFR part 263, 40 CFR part 264, 40 CFR part 265, and any other import/export related regulations discussed in this rule must adopt the revisions to those provisions in this final rule. When a state adopts the import/export provisions in this rule (if final), they must not replace federal or international references or terms with state references or terms.

VI. Statutory and Executive Orders Reviews

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

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it: (1) Materially alters the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (2) may raise novel legal or policy issues. Budgetary impacts of the e-Manifest user fee program may be altered by this rulemaking as it establishes fees for hazardous waste exporters. Any changes made in response to OMB recommendations have been documented in the docket for this action. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis (titled ''The Regulatory Impact Analysis for EPA's Proposed Rule Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections'') is available in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2712.01. You can find a copy of

the ICR in the docket for this rule, and it is briefly summarized here.

Implementation of this e-Manifest rule will impose new information collection requirements on the regulated community who must use the manifest for tracking hazardous waste export shipments, and who must prepare manifest-related reports such as exception, discrepancy, and unmanifested waste reports to address specific problems that arise in the use of the manifest. The rule also consists of a series of clarifications to the manifest regulations under RCRA and TSCA that are not expected to result in behavior changes by the regulated community, and therefore do not have associated costs.

Generally, the generators, transporters, designated facilities, and emergency response teams (in the case of accidents) are the primary users of manifests. However, EPA may review these documents during a facility inspection to make sure proper records are being kept and regulations are complied with. EPA also reviews and responds to exception reports, discrepancy reports, and un-manifested waste reports. The public will also have access to data in the e-Manifest system.

Although the primary effect of this proposed rule will be to replace current paper-based information requirements with electronic-based requirements to submit or retain the same shipment information, there could be minor additions or changes to the information collection requirements, such as information that may be provided to establish user accounts and fee payment accounts, information submitted for identity management, as well as waste profile or other information that may be useful for the creation and submission of electronic manifests and manifest-related reports.

Respondents/affected entities: Business or other for-profit.

Respondent's obligation to respond: The recordkeeping and notification requirements are required for parties performing relevant manifest activities (*e.g.,* submitting export manifests). These requirements are described in detail in the ICR Supporting Statement.

Estimated number of respondents: 203,936.

Frequency of response: Per Shipment.

Total estimated burden: 2,458,568 hours.

Total estimated cost: $121,690,615, includes $27,400,688 annualized capital costs or O&M costs.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than May 31, 2022.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities, and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves burden on the small entities subject to the rule. All entities that manifest waste domestically are expected to benefit from cost savings. However, the proposed rule does result in net costs for hazardous waste exporters. In section 4.2 of the *Regulatory Impact Analysis for EPA's Proposed Rule Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections,* EPA considers two ''worst-case'' scenarios to analyze the upper bounds of net costs to 111 small exporter entities. Under both scenarios, the proposed rule would not result in significant economic impact on a substantial number of small entities with respect to exporter small entities because the upper bound of costs for the regulation per entity does not exceed one percent or three percent of annual revenues for 20 percent of small entities in a sector, or 100 small entities total.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. As documented in the *Regulatory Impact Analysis for EPA's Proposed Rule Integrating e-Manifest with Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections* found in the docket, EPA finds that the rule would not result in annual expenditures exceeding $100 million annually and therefore would not be subject to requirements of section 202 of UMRA as listed above.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not impose any new requirements on tribal officials, nor will it impose substantial direct compliance costs on them. This action will not create a mandate for tribal governments, *i.e.,* there are no authorized tribal programs that will require revision and reauthorization on account of the e-Manifest system and regulatory program requirements. Nor do we believe that the e-Manifest system will impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, because the rule would not increase risk related to exposure to hazardous materials, the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' under Executive Order 13211, ''Actions Concerning Regulations that Affect Energy Supply, Distribution, or Use'' (May 18, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The proposed rule would not directly regulate energy production or

consumption and is expected to result in net cost savings.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes that this action does not have disproportionately high and adverse health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). Findings are documented in the *Regulatory Impact Analysis for EPA's Proposed Rule Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-related Reports, PCB Manifest Amendments and Technical Corrections* found in the docket. Proposed changes in this proposed rule, however, will serve to increase public transparency of hazardous waste activity in communities, including greater access to information regarding hazardous waste shipments exported out of the U.S. and information regarding irregularities in the manifest process, *e.g.,* manifest exception, discrepancy, and unmanifested waste reporting.

List of Subjects

40 CFR Part 260

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Electronic reporting requirements, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Electronic reporting requirements, Exports, Hazardous materials transportation, Hazardous waste, Imports.

40 CFR Part 264

Environmental protection, Electronic reporting requirements, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements, Security measures.

40 CFR Part 265

Environmental protection, Electronic reporting requirements, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 267

Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Electronic reporting requirements, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 761

Environmental protection, Manifest, Polychlorinated biphenyls.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR parts 260, 261, 262, 263, 264, 265, 267, 271, and 761 as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, 6939g and 6974.

■ 2. Section 260.2 amends paragraphs (d)(1) and (2) by adding a sentence at the end of each paragraph to read as follows:

§ 260.2 Availability of information; confidentiality of information

* * * * *

(d)(1) * * * After [Effective Date of the Final Rule], no claim of business confidentiality may be asserted by any person with respect to information contained in hazardous secondary material export documents prepared, used and submitted under § 261.4(a)(25), whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format.

(2) * * * After [Effective Date of the Final Rule], EPA will make available to the public under this section any hazardous secondary material export documents prepared, used and submitted under § 261.4(a)(25) on March 1 of the calendar year after the related hazardous secondary material exports occur, when these documents are considered by EPA to be final documents.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

■ 4. Section 261.4 is amended by revising paragraphs (a)(25)(i)(A), (H), and (v) to read as follows:

§ 261.4 Exclusions

(a) * * *

(25) * * *

(i) * * *

(A) Name, site address, telephone number and EPA ID number (if applicable) of the hazardous secondary material generator;

* * * * *

(H) The name and site address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

* * * * *

(v) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(25)(i) of this section.

* * * * *

■ 5. Section 261.6 is amended by revising paragraphs (a)(3)(i)(A) and (B) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(3) * * *

(i) * * *

(A) The person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to an exporter in § 262.83 with the exception of § 262.83(c);

(B) Transporters transporting a shipment for export or import must comply with the movement document requirements listed in § 263.20(a)(2) and (c).

* * * * *

■ 6. Section 261.39 is amended by revising paragraphs (a)(5)(i)(A), (F), (a)(5)(v)(B) is amended by revising the language before the colon in the first sentence; and revising paragraph (a)(5)(xi).

The revisions to read as follows:

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

(a) * * *

(5) * * *

(i) * * *

(A) Name, site address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

* * * * *

(F) The name and site address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

* * * * *

(v) * * *

(B) The exporter or a U.S. authorized agent must: * * *

* * * * *

(xi) Annual reports must be submitted to EPA using the allowable methods specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted annual reports in the CRT exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that a copy is readily available for viewing and production if requested by any EPA or authorized state inspector. No CRT exporter may be held liable for the inability to produce an annual report for inspection under this section if the CRT exporter can demonstrate that the inability to produce the annual report is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the CRT exporter bears no responsibility.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 7. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6912, 6922–6925, 6937, 6938 and 6939g.

§ 262.20 [Amended]

■ 8. Section 262.20 is amended by removing and reserving paragraph (a)(2).

■ 9. Section 262.21 is amended by revising paragraphs (f)(5), (6), and (7) to read as follows:

§ 262.21 Manifest tracking numbers, manifest printing, and obtaining manifests.

* * * * *

(f) * * *

(5) The manifest and continuation sheet must be printed as four-copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all four copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

(i) Page 1 (top copy): ''Designated facility to EPA's e-Manifest system'';

(ii) Page 2: ''Designated facility copy'';

(iii) Page 3: ''Transporter copy''; and

(iv) Page 4 (bottom copy): ''Generator's initial copy.''

(7) The instructions for the manifest form (EPA Form 8700–22) and the manifest continuation sheet (EPA Form 8700–22A) shall be printed in accordance with the content that is currently approved under OMB Control Number 2050–0039 and published to the e-Manifest program's website. The instructions must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

(i) Manifest Form 8700–22.

(A) The ''Instructions for Generators'' on Copy 4;

(B) The ''Instructions for Transporters'' on Copy 3; and

(C) The ''Instructions for Treatment, Storage, and Disposal Facilities'' on Copy 2.

(ii) Manifest Form 8700–22A.

(A) The ''Instructions for Generators'' on Copy 4;

(B) The ''Instructions for International Shipment Block'' and ''Instructions for Transporters'' on Copy 3; and

(C) The ''Instructions for Treatment, Storage, and Disposal Facilities'' on Copy 2.

* * * * *

■ 10. Section 262.42 is amended revising paragraphs (a), (b), and (c)(2), and adding paragraphs (d) and (e) to read as follows:

§ 262.42 Exception reporting.

(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31 or 261.33(e) in a calendar month, who does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 40 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31or § 261.33(e) in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if the generator has not received a copy of the manifest with the signature of the owner or operator of the designated facility within 50 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the generator is located.

* * * * *

(c) * * *

(2) The 40/50/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

(d) Legal equivalence to paper Exception Reports. Electronic Exception Reports that are prepared in accordance with § 262.42(a)(2) for large quantity generators or § 262.42(b) for small quantity generators and used in accordance with this section in lieu of paper Exception Reports are the legal equivalent of paper Exception Reports bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to complete, sign, provide, and retain an exception report.

(1) Any requirement in these regulations to sign an Exception Report certification by hand is satisfied by signing with a valid and enforceable electronic signature within the meaning of § 262.25.

(2) Any requirement in these regulations to give, provide or send an

Exception Report to the EPA Regional Administrator is satisfied when an electronic Exception Report is distributed to the EPA Regional Administrator by submission to the e-Manifest system.

(3) Any requirement in these regulations for a generator to keep or retain a copy of an Exception Report is satisfied by retention of a signed electronic Exception Report in the generator's account on the national e-Manifest system, provided that the Exception Report is readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No generator may be held liable for the inability to produce an electronic Exception Report for inspection under this section if the generator can demonstrate that the inability to produce the electronic Exception Report is due exclusively to a technical difficulty with the e-Manifest system for which the generator bears no responsibility.

(e) Restriction on use of electronic exception reporting. A generator may participate in electronic exception reporting if:

(1) The manifest at issue is an electronic manifest or a hybrid manifest (mixed paper and electronic manifest) in accordance with §§ 262.24(c) and 262.25 of this part; and

(2) For mixed paper and electronic manifests (*i.e.,* hybrid manifests), the generator has registered with EPA and has access to the electronic manifests for the site.

■ 11. Section 262.83 is amended by:

■ a. Revising paragraphs (a)(6), (b)(1)(i) through (iv), (b)(3), (c), (d)(2)(i) through (v), (viii), (ix), and (xv);

■ b. Adding paragraph (d)(2)(xvi),

■ c. Revising paragraphs (f)(4), (5), (6)(ii), (g), (i)(1)(v) and

■ d. Adding paragraph (i)(1)(vi).

The revisions and additions read as follows:

§ 262.83 Exports of hazardous waste.

(a) * * *

(6) The exporter or a U.S. authorized agent submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

* * * * *

(b) * * *

(1) * * *

(i) Exporter name and EPA identification number, site address, telephone, fax numbers, and email address;

(ii) Foreign receiving facility name, site address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(iii) Foreign importer name (if not the owner or operator of the foreign receiving facility), site address, telephone, fax numbers, and email address;

(iv) Intended transporter(s) and/or their agent(s); site address, telephone, fax, and email address;

* * * * *

(3) Notifications listing interim recycling operations or interim disposal operations. If the foreign receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, or in the case of transboundary movements with Canada, any of the interim recovery operations R12, R13, or RC3, or interim disposal operations D13 to D14, or D15, the notification submitted according to paragraph (b)(1) of this section must also include the final foreign recovery or disposal facility name, site address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, or in the case of transboundary movements with Canada, which of the applicable recovery or disposal operations R1 through R11, RC1 to RC2, D1 through D12, and DC1 to DC2 will be employed at the final foreign recovery or disposal facility. The recovery and disposal operations in this paragraph are defined in § 262.81.

* * * * *

(c) *RCRA manifest instructions for export shipments.* The exporter must comply with the manifest requirements of §§ 262.20 through 262.25 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the exporter must enter the name and site address of the foreign receiving facility;

(2) In the International Shipments block on the Continuation Sheet (EPA Form 8700–22A), the exporter must:

(i) Check the export box;

(ii) enter the exporter's EPA ID number and email address;

(iii) enter the U.S. port of exit (city and state) from the United States; and

(iv) list the waste stream consent number from the AOC for each hazardous waste listed on the manifest, matched to the relevant list number for the hazardous waste from block 9b. If additional space is needed, the exporter should use an additional Continuation Sheet(s) (EPA Form 8700–22A).

(3) The exporter may obtain the manifest from any source so long as the source of the printed form has received approval from EPA to print the manifest in accordance with § 262.21(g)(1) of this part.

(4) Within 30 days of receiving an export manifest from the final domestic transporter to carry the export shipment to or across the U.S. port of exit, the exporter must submit the top copy (Page 1) of the signed and dated manifest (both and electronic and paper) and all continuation sheets (both electronic and paper) to the e-Manifest system. The exporter must submit the paper manifest and all paper continuation sheets to the e-Manifest system for purposes of data entry and processing by transmitting to the EPA system an image file of Page 1 of the manifest and all continuation sheets, or by transmitting to the e-Manifest system both a data file and the image file corresponding to Page 1 of the manifest and all continuation sheets.

(5) Imposition of user fee for manifest submission. (i) As prescribed in § 265.1311, and determined in § 265.1312, an exporter who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in § 265.1313.

(ii) An exporter subject to user fees under this section shall make user fee payments in accordance with the requirements of § 265.1314, subject to the informal fee dispute resolution process of § 265.1316, and subject to the sanctions for delinquent payments under § 265.1315.

(6) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in § 262.25 of this chapter.

(7) Special procedures applicable to replacement manifests. Within 30 days of receiving a paper replacement manifest from the last transporter carrying the shipment to or across the U.S. border for a manifest that was originated electronically, the exporter must send a signed and dated copy of the paper replacement manifest to the e-Manifest system,

(8) Post-receipt manifest data corrections. After foreign facilities have certified to the receipt of hazardous wastes by sending a copy of the movement document to the exporter per paragraph (d)(2)(xvii) of this section, any post-receipt data corrections may be submitted at any time by any interested

person (*e.g.,* domestic waste handler) shown on the manifest.

(i) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web-based service provided in e-Manifest system for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(ii) Each correction submission must include the following information:

(A) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(B) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(C) For each Item Number with corrected data, the data previously entered, and the corresponding data as corrected by the correction submission.

(iii) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete.

(A) The certification statement must be executed with a valid electronic signature under CROMERR section 3.10; and

(B) A batch upload of data corrections may be submitted under one certification statement.

(iv) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(v) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the e-Manifest system, certified by the respondent as specified in paragraph (c)(7)(iii) of this section, and with notice of the corrections to other interested persons shown on the manifest.

(d) * * *

(2) * * *

(i) The corresponding consent number(s) and hazardous waste number(s) for the listed hazardous waste from the relevant EPA AOC(s) and if required to be accompanied by a RCRA Uniform Hazardous Waste Manifest within the United States, the manifest tracking number from block 4;

(ii) The shipment number and the total number of shipments from the EPA AOC or the movement tracking number;

(iii) Exporter name and EPA identification number, site address, telephone, fax numbers, and email address;

(iv) Foreign receiving facility name, site address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(v) Foreign importer name (if not the owner or operator of the foreign receiving facility), site address, telephone, fax numbers, and email address;

* * * * *

(viii) Name (if not exporter), site address, telephone, fax numbers, and email of company originating the shipment;

(ix) Company name, EPA ID number, site address, telephone, fax, and email address of all transporters;

* * * * *

(xv) As part of the contract requirements per paragraph (f) of this section, the exporter must require that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, and to the competent authorities of the countries of import and transit that control the shipment as an import and transit of hazardous waste respectively. For shipments occurring on or after the electronic import-export reporting compliance date, the exporter must

(A) Initiate the movement document using the allowable methods listed in paragraph (b)(1) of this section; and

(B) Close out the movement document within three working days of receiving a copy of the signed movement document sent from the foreign receiving facility to confirm receipt using the allowable methods listed in paragraph (b)(1) of this section;

(xvi) As part of the contract requirements per paragraph (f) of this section, the exporter must require that the foreign receiving facility send a copy of the confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter and to the competent authority of the country of import. If the movement includes shipment to a foreign interim receiving facility, the exporter must additionally require that the interim receiving facility promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1, or one of disposal operations D1 through D12, DC1 or DC2 as defined in § 262.81 to the competent authority of the country of import and to the exporter. For shipments occurring on or after the electronic import-export reporting compliance date, the exporter must submit each confirmation of recovery or disposal to EPA within three working days of receiving the confirmation of recovery or disposal from the foreign receiving facility using the allowable methods listed in paragraph (b)(1) of this section; and

(xvii) for shipments sent to a country with which EPA has established an electronic exchange of movement document tracking data, foreign receiving facility transmittal to the exporter of the confirmation of receipt and the confirmation of recovery or disposal may be sent via the electronic exchange.

* * * * *

(f) * * *

(3) * * *

(iii) Transmittals made by the transporter or foreign receiving facility under paragraph (i) of this section being sent to the exporter or EPA from a country with which EPA has established an electronic exchange of movement document tracking data may be sent via the electronic exchange.

* * * * *

(4) Contracts must specify that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter and to the competent authorities of the countries of import and transit that control the shipment as an import and transit of hazardous waste respectively. For shipments sent to a country with which EPA has established an electronic exchange of movement document tracking data, foreign receiving facility transmittal to the exporter of the confirmation of receipt may be sent via the electronic exchange.

(5) Contracts must specify that the foreign receiving facility shall send a copy of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter and to the competent authority of the country of import that controls the shipment as an import of hazardous waste. For shipments sent to a country

with which EPA has established an electronic exchange of movement document tracking data, foreign receiving facility transmittal to the exporter of the confirmation of recovery or disposal may be sent via the electronic exchange.

(6) * * *

(ii) Promptly send copies of the confirmation of recovery or disposal that it receives from the final foreign recovery or disposal facility within one year of shipment delivery to the final foreign recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1, or one of disposal operations D1 through D12, DC1 or DC2 to the competent authority of the country of import that controls the shipment as an import of hazardous waste and to the exporter. For shipments sent to a country with which EPA has established an electronic exchange of movement document tracking data, foreign receiving facility transmittal to the exporter of the confirmation of recovery or disposal may be sent via the electronic exchange.

* * * * *

(g) *Annual reports.* The exporter shall file an annual report with EPA no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. The exporter must submit annual reports to EPA using the allowable methods specified in paragraph (b)(1) of this section. The annual report must include all of the following paragraphs (g)(1) through (6) of this section specified as follows:

* * * * *

(i) * * *

(1) The exporter shall keep the following records in paragraphs (i)(1)(i) through (vi) of this section and provide them to EPA or authorized state personnel upon request:

* * * * *

(v) A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(vi) A copy of each manifest sent by the last transporter in the United States per § 263.20(g).

* * * * *

■ 12. Amend § 262.84 by:

■ a. Revising paragraphs (b)(1)(i) through (iv), (b)(2), (c)(1)(i) and (c)(3);

■ b. Removing paragraph (c)(4);

■ c. Redesignating paragraph (c)(5) as new paragraph (c)(4);

■ d. Revising paragraphs (d)(2)(i), (ii) through (v), (viii) through (ix), (xv),

■ e. Adding paragraph (f)(4)(iii), and

■ f. Revising paragraphs (g)(1), and (2).

The revisions and additions to read as follows:

§ 262.84 Imports of hazardous waste.

* * * * *

(b) * * *

(1) * * *

(i) Foreign exporter name, site address, telephone, fax numbers, and email address;

(ii) Receiving facility name, EPA ID number, site address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(iii) Importer name (if not the owner or operator of the receiving facility), EPA ID number, site address, telephone, fax numbers, and email address;

(iv) Intended transporter(s) and/or their agent(s); site address, telephone, fax, and email address;

* * * * *

(2) Notifications listing interim recycling operations or interim disposal operations. If the receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12, R13 or RC3 or interim disposal operations D13 through D15, the notification submitted according to paragraph (b)(1) of this section must also include the final recovery or disposal facility name, site address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11, RC1, and D1 through D12, will be employed at the final recovery or disposal facility. The recovery and disposal operations in this paragraph are defined in § 262.81.

* * * * *

(c) * * *

(1) * * *

(i) In place of the generator's name, mailing and site addresses and EPA identification number, the name and site address of the foreign generator and the importer's name, mailing address and EPA identification number must be used.

* * * * *

(3) In the International Shipments block on the Continuation Sheet (EPA Form 8700–22A), the importer must check the import box and enter the port of entry (city and State) into the United States.

(4) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the receiving facility, the importer must instruct the transporter in writing via fax, email or mail to:

(i) Return the hazardous waste to the foreign exporter or designate another facility within the United States; and

(ii) Revise the manifest in accordance with the importer's instructions.

* * * * *

(d) * * *

(2) * * *

(i) The corresponding AOC number(s) and waste number(s) for the listed waste and if required to be accompanied by a RCRA uniform hazardous waste manifest within the United States, the manifest tracking number from block 4;(ii) The shipment number and the total number of shipments under the AOC number or the movement tracking number;

(iii) Foreign exporter name, site address, telephone, fax numbers, and email address;

(iv) Receiving facility name, EPA ID number, site address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(v) Importer name (if not the owner or operator of the receiving facility), EPA ID number, site address, telephone, fax numbers, and email address;

* * * * *

(viii) Name (if not the foreign exporter), site address, telephone, fax numbers, and email of the foreign company originating the shipment;

(ix) Company name, EPA ID number, site address, telephone, fax, and email address of all transporters;

* * * * *

(ix) Company name, EPA ID number (for transporters carrying RCRA manifested hazardous waste within the U.S. only), address, telephone, fax, and email address of all transporters;

* * * * *

(xv) The receiving facility must send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to

send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export.

(f) * * *

(4) * * *

(iii) Transmittals made by the transporter or receiving facility under paragraph (i) of this section being sent to a competent authority or foreign exporter in a country with which EPA has established an electronic exchange of movement document tracking data may be sent via the electronic exchange.

* * * * *

(g) *Confirmation of recovery or disposal.* The receiving facility must do the following:

(1) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's WIETS, or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the foreign exporter and the country of export.

(2) If the receiving facility performed any of recovery operations R12, R13, or RC3, or disposal operations D13 through D15, the receiving facility shall promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1 to RC2, or one of disposal operations D1 through D12, or DC1 to DC2, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for confirmations received on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's WIETS, or its successor system. The recovery and disposal operations in this paragraph are defined in § 262.81. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the country of export.

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 13. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922—6925, 6937, 6938, and 6939g.

■ 14. Section 263.20 is amended by revising paragraphs (a)(2), (c), (g)(1), (3), and removing paragraph (g)(4) toread as follows.

§ 263.20 The manifest system.

(a) * * *

(2) *Exports.* For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with this section, as appropriate, and a movement document that includes all information required by 40 CFR 262.83(d).

* * * * *

(c) The transporter must ensure that the manifest accompanies the hazardous waste. For exports, the transporter must ensure that a movement document that includes all information required by 40 CFR 262.83(d) also accompanies the hazardous waste. For imports, the transporter must ensure that a movement document that includes all information required by 40 CFR 262.84(d) also accompanies the hazardous waste.

* * * * *

(g) * * *

(1) Date the manifest in the International Shipments block on the Continuation Sheet(s) to indicate the date that the shipment left the United States or has been delivered to a seaport of exit for loading onto an international carrier;

* * * * *

(3) Return signed, top copies of the manifest and continuation sheet to the exporter.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 15. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6939g.

■ 16. Section 264.12 is amended by revising paragraphs (a)(2), (a)(4)(i) and (ii) to read as follows:

§ 264.12 Required notices.

(a) * * *

(2) As per 40 CFR 262.84(d)(2)(xv), a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original of the signed movement document must be maintained at the facility for at least three (3) years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with WIETS, or its successor system for which the owner or operator of a facility bears no responsibility.

* * * * *

(4) * * *

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for shipments recycled or disposed of on or after the electronic import-export reporting

compliance date, to EPA electronically using WIETS, or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the foreign exporter and the country of export.

(ii) If the facility performed any of recovery operations R12, R13, or RC3, or disposal operations D13 through D15, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1, or one of disposal operations D1 through D12, or DC1 to DC2, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using WIETS, or its successor system. The recovery and disposal operations in this paragraph are defined in 40 CFR 262.81. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the country of export.

* * * * *

■ 17. Section 264.71 is amended by revising paragraphs (a)(2)(iv), and (v), (a)(3)(i) and (ii), (b)(4) and (d) to read as follows:

§ 264.71 Use of manifest system.

(a) * * *

(2) * * *

(iv) Within 30 days of delivery, send a copy (Page 1) of the signed and dated manifest to the e-Manifest system;

(v) Paper manifest submission requirements are:

(A) [Reserved]

(B) *Options for compliance on June 30, 2021.* Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the e-Manifest system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the e-Manifest system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date; of delivery; and

* * * * *

(3) * * *

(i) Additionally, list the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest in the International Shipments block on the Continuation Sheet (EPA Form 8700–22A), matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use an additional Continuation Sheet(s) (EPA Form 8700–22A); and

(ii) Send a copy of the manifest within thirty (30) days of delivery to the e-Manifest system per paragraph (a)(2)(v) of this section.

(b) * * *

(4) Within 30 days of delivery, send a copy (Page 1) of the signed and dated manifest to the e-Manifest system; and

* * * * *

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with WIETS, or its successor system, for which the owner or operator of a facility bears no responsibility.

* * * * *

■ 18. Section 264.72 is amended by revising paragraph (c) to read as follows:

§ 264.72 Manifest discrepancies.

* * * * *

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.,* with telephone conversations). If the discrepancy is not resolved within 20 days after receiving the waste, the owner or operator must immediately submit to the EPA Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(1) Legal equivalence to paper Discrepancy Reports. Electronic Discrepancy Reports that are completed, transmitted, and used in accordance with this section in lieu of the paper Discrepancy Report are the legal equivalent of paper Discrepancy Reports and satisfy for all purposes any requirement in these regulations to complete, provide, use, or retain a Discrepancy Report.

(2) Any requirement in these regulations to give, provide, or submit a copy of the Discrepancy Report to the EPA Regional Administrator is satisfied when an electronic Discrepancy Report is distributed to the EPA Regional Administrator by submission to the e-Manifest system.

(3) Any requirement in these regulations for an owner or operator to keep or retain a copy of a Discrepancy Report is satisfied by the retention of the facility's electronic Discrepancy Report in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No owner or operator may be held liable for the inability to produce an electronic Discrepancy Report for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic Discrepancy Report is due exclusively to a technical difficulty with the e-Manifest system for which the owner or operator bears no responsibility.

* * * * *

■ 19. Section 264.76 is revised to read as follows:

§ 264.76 Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by § 263.20(e) of this chapter, and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare an electronic Unmanifested Waste Report in the e-Manifest system for submission to the EPA within 15 days after receiving the waste. The Unmanifested Waste Report must contain the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the terminal [or final] transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and,

(7) A brief explanation of why the waste was unmanifested, if known.

(b) Per Unmanifested Waste Report fee. Fees shall be assessed on a per Unmanifested Waste Report basis for the submission of each electronic Unmanifested Waste Report that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate for electronic manifest submissions.

■ 20. Section 264.1310 is amended by revising the definition of ''Paper manifest submissions'' to read as follows:

§ 264.1310 Definitions applicable to the subpart.

* * * * *

Paper manifest submissions mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700–22, or a paper Continuation Sheet, EPA Form 8700–22A. Such submissions may be made by submitting image files from paper manifests or continuation sheets in accordance with § 264.1311(b), or by submitting both an image file and data file in accordance with the procedures of § 264.1311(c).

* * * * *

■ 21. Section 264.1311 is amended by revising paragraph (a)(2), adding paragraph (4), revising paragraph (b) introductory text, and (c) introductory text to read as follows:

§ 264.1311 Manifest transactions subject to fees.

(a) * * *

(2) The submission of each paper manifest submission to the paper processing center signed by owners or operators of receiving facilities, with the fee assessed according to whether the manifest is submitted to the system by the upload of an image file or by the upload of a data file representation of the paper manifest; and

* * * * *

(4) The submission of unmanifested waste reports per § 264.76.

(b) *Image file uploads from paper manifests.* Receiving facilities may submit image file uploads of completed, ink-signed manifests to the e-Manifest system. Such image file upload submissions may be made for individual manifests received by a facility or as a batch upload of image files from multiple paper manifests received at the facility:

* * * * *

(c) *Data file uploads from paper manifests.* Receiving facilities may submit data file representations of completed, ink-signed manifests in lieu of submitting image files to the e-Manifest system. Such data file submissions from paper manifests may be made for individual manifests received by a facility or as a batch upload of data files from multiple paper manifests received at the facility.

* * * * *

■ 22. Section 264.1312 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 264.1312 User fee calculation methodology.

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M\ Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ e-Manifest\ System\ Related\ Services$$

Where Fee_i represents the per manifest fee for each manifest submission type ''i'' and N_t refers to the total number of manifests completed in a year.

(b)(1) If after four years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years\ \times\ N_t} + \frac{O\&M_i\ Cost}{N_i}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M_{fully\ electronic} Cost = Electronic\ System\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ e - Manifest\ System\ Related\ Services$$

$$O\&M_{all\ other} Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ e - Manifest\ System\ Related\ Services$$

Where N_i refers to the total number of one of the four manifest submission types ''*i*'' completed in a year and $O\&M_i$ *Cost* refers to the differential O&M Cost for each manifest submission type ''*i*.''

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 23. The authority citation for part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, 6937, and 6939g.

■ 24. Section 265.12 is amended by revising paragraphs (a)(2), (a)(4)(i) and (ii), to read as follows:

§ 265.12 Required notices.

(a) * * *

(2) As per 40 CFR 262.84(d)(2)(xv), a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original of the signed movement document must be maintained at the facility for at least three (3) years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with WIETS, or its successor system, for which the owner or operator of a facility bears no responsibility.

* * * * *

(4) * * *

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using WIETS, or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the foreign exporter and the country of export.

(ii) If the facility performed any of recovery operations R12, R13, or RC3, or disposal operations D13 through D15, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC1, or one of disposal operations D1 through D12, or DC1 to DC2, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using WIETS, or its successor system. The recovery and disposal operations in this paragraph are defined in 40 CFR 262.81. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send confirmation of recovery or disposal data back through the electronic exchange to the country of export.

* * * * *

■ 25. Amend § 265.71 by:
■ a. Revising paragraphs (a)(2)(iv), (v);
■ b. Adding (a)(2)(vi); and
■ c. Revising paragraphs (a)(3)(i), (ii), (b)(4), and (d).

The revisions and additions read as follows:

§ 265.71 Use of manifest system.

(a) * * *

(2) * * *

(iv) Within 30 days of delivery, send a copy (Page 1) of the signed and dated manifest to the e-Manifest system;

(v) Paper manifest submission requirements are:

(A) [Reserved]

(B) *Options for compliance on June 30, 2021.* Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the e-Manifest system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the e-Manifest system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery.; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) * * *

(i) Additionally, list the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest in the International Shipments block on the Continuation Sheet (EPA Form 8700–22A), matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use an additional Continuation Sheet(s) (EPA Form 8700–22A); and

(ii) Send a copy of the manifest to the e-Manifest system per paragraph (a)(2)(v) of this section.

(b) * * *

(4) Within 30 days of delivery, send a copy (Page 1) of the signed and dated manifest to the e-Manifest system.

* * * * *

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using WIETS, or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS or its successor system to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

* * * * *

■ 26. Section 265.72 is amended by revising paragraph (c) to read as follows:

§ 265.72 Manifest discrepancies.

* * * * *

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.,* with telephone conversations). If the discrepancy is not resolved within 20 days after receiving the waste, the owner or operator must immediately submit to the EPA Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(1) Legal equivalence to paper Discrepancy Reports. Electronic Discrepancy Reports that are completed, transmitted, and used in accordance with this section in lieu of the paper Discrepancy Report are the legal equivalent of paper Discrepancy Reports and satisfy for all purposes any requirement in these regulations to complete, provide, use, or retain a Discrepancy Report.

(2) Any requirement in these regulations to give, provide, or submit a copy of the Discrepancy Report to the EPA Regional Administrator is satisfied when an electronic Discrepancy Report is distributed to the EPA Regional Administrator by submission to the e-Manifest system.

(3) Any requirement in these regulations for an owner or operator to keep or retain a copy of a Discrepancy Report is satisfied by the retention of the facility's electronic Discrepancy Report in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No owner or operator may be held liable for the inability to produce an electronic Discrepancy Report for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic discrepancy re is due exclusively to a technical difficulty with the e-Manifest system for which the owner or operator bears no responsibility.

* * * * *

■ 27. Section 265.76 is revised to read as follows:

§ 265.76 Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by § 263.20(e) of this chapter, and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare an electronic Unmanifested Waste Report in the e-Manifest system for submission to the EPA within 15 days after receiving the waste. The Unmanifested Waste Report must contain the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the terminal [or final] transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and,

(7) A brief explanation of why the waste was unmanifested, if known.

(b) Per Unmanifested Waste Report fee. Fees shall be assessed on a per Unmanifested Waste Report basis for the submission of each electronic Unmanifested Waste Report that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate for electronic manifest submissions.

■ 28. Section 265.1310 is amended by revising the definition of ''Paper manifest submissions'' to read as follows:

§ 265.1310 Definitions applicable to the subpart.

* * * * *

Paper manifest submissions mean submissions to the paper processing center of the e-Manifest system by facility owners or operators, of the data from the designated facility copy of a paper manifest, EPA Form 8700–22, or a paper Continuation Sheet, EPA Form 8700–22A. Such submissions may be made by submitting image files from paper manifests or continuation sheets in accordance with § 264.1311(b) of this title, or by submitting both an image file and data file in accordance with the procedures of § 264.1311(c) of this title.

* * * * *

■ 29. Section 265.1311 is amended by revising paragraph (a)(2), adding paragraph (4), revising (b) introductory text, and (c) introductory text to read as follows:

§ 265.1311 Manifest transactions subject to fees.

(a) * * *

(2) The submission of each paper manifest submission to the paper processing center signed by owners or operators of receiving facilities, with the fee assessed according to whether the manifest is submitted to the system by the upload of an image file or by the upload of a data file representation of the paper manifest; and

* * * * *

(4) Unmanifested waste reports per § 265.76.

(b) *Image file uploads from paper manifests.* Receiving facilities may submit image file uploads of completed, ink-signed manifests to the e-Manifest system. Such image file upload submissions may be made for individual manifests received by a facility or as a batch upload of image files from multiple paper manifests received at the facility:

* * * * *

(c) *Data file uploads from paper manifests.* Receiving facilities may submit data file representations of completed, ink-signed manifests in lieu of submitting image files to the e-Manifest system. Such data file submissions from paper manifests may be made for individual manifests received by a facility or as a batch upload of data files from multiple paper manifests received at the facility.

* * * * *

■ 30. Section 265.1312 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 265.1312 User fee calculation methodology.

(a) The fee calculation formula or methodology that EPA will use initially to determine per manifest fees is as follows:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M\ Cost}{N_t}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M\ Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ e-Manifest\ System\ Related\ Services$$

Where Fee_i represents the per manifest fee for each manifest submission type ''i'' and N_t refers to the total number of manifests completed in a year.

(b)(1) If after four years of system operations, electronic manifest usage does not equal or exceed 75% of total manifest usage, EPA may transition to the following formula or methodology to determine per manifest fees:

$$Fee_i = \left(Marginal\ Cost_i + \frac{System\ Setup\ Cost}{Years \times N_t} + \frac{O\&M_i\ Cost}{N_i}\right) \times (1 + Indirect\ Cost\ Factor)$$

$$System\ Setup\ Cost = Procurement\ Cost + EPA\ Program\ Cost$$

$$O\&M_{fully\ electronic} Cost = Electronic\ System\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ e-Manifest\ System\ Related\ Services$$

$$O\&M_{all\ other} Cost = Electronic\ System\ O\&M\ Cost + Paper\ Center\ O\&M\ Cost + Help\ Desk\ Cost + EPA\ Program\ Cost + CROMERR\ Cost + LifeCycle\ Cost\ to\ Modify\ or\ Upgrade\ e-Manifest\ System\ Related\ Services$$

Where N_i refers to the total number of one of the four manifest submission types ''*i*'' completed in a year and $O\&M_i$ *Cost* refers to the differential O&M Cost for each manifest submission type ''*i*.''

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

■ 31. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

■ 32. Section 267.71 is amended by revising paragraphs (a)(6)(i), (ii), and (d) to read as follows:

§ 267.71 Use of the manifest system.

(a) * * *

(6) * * *

(i) Additionally, list the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest in the International Shipments block on the Continuation Sheet (EPA Form 8700–22A), matched to the relevant list number for the waste from block 9b. If additional space is needed, the receiving facility should use an additional Continuation Sheet(s) (EPA Form 8700–22A); and

(ii) submit a copy of the manifest to the e-Manifest system per 40 CFR 264.71(a)(2)(v) or 265.71(a)(2)(v).

* * * * *

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter and to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively. For shipments received on or after the electronic import-export reporting compliance date, the receiving facility must close out the movement document to confirm receipt within three working days of shipment delivery using EPA's Waste Import Export Tracking System (WIETS), or its successor system. For shipments sent from a country with which EPA has established an electronic exchange of movement document tracking data, the receiving facility may use WIETS, or its successor system, to send movement document confirmation data back through the electronic exchange to the foreign exporter and the country of export. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 33. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

■ 34. Section 271.1 paragraph (j)(2) is amended by adding an entry to Table 1 in chronological order by ''Promulgation date'' and adding an entry to Table 2 in chronological order by ''Effective date''.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

(2) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
* *	* *	*	* *
[*Date of publication of final rule in the* ***Federal Register*** *(FR)*].	E-manifest user fees for hazardous waste exporters, and related export/import revisions.	[*FR page numbers*]	[*Date of X months from date of publication of final rule*].

* * * * *

TABLE 2—SELF–IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	**Federal Register** reference
* *	* *	*	* *
[*Date X days after of publication of final rule in the* ***Federal Register*** *(FR)*].	E-manifest user fees for hazardous waste exporters, and related export/import revisions.	3017	[***Federal Register*** *citation*].

* * * * *

■ 35. Section 271.10 is amended by adding paragraph (j) to read as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(j) The State shall have standards for hazardous generators and exporters which are equivalent to 40 CFR part 262. These standards shall include:

(1) Compliance with the manifest system including the requirements that the:

(i) Generator submits electronic Exception Reports to the e-Manifest system; and

(ii) exporter submits a signed copy of the manifest and continuation sheet to the EPA's e-Manifest system.

(A) After listing the relevant consent number from consent documentation supplied by EPA to the exporter for each waste listed on the manifest, matched to the relevant list number for the waste from Item 9b to EPA using the allowable methods listed in 40 CFR 262.83(b) until the facility can submit such a copy to the e-Manifest system per 40 CFR 262.83(c)(4); and

(iii) exporter pay user fees to EPA to recover EPA's costs related to the development and operation of an electronic hazardous waste manifest system, in the amounts specified by the user fee methodology included in subpart FF of 40 CFR parts 265, for all paper and electronic manifests submitted to the e-Manifest system.

■ 36. Section 271.12 is amended by adding paragraphs (i)(4), (5) and revising paragraph (k) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(i) * * *

(4) Requirements for owners and operators of facilities to submit electronic Discrepancy Reports to the e-Manifest system; and

(5) Requirements for owners and operators to submit electronic Unmanifested Waste Reports to the e-Manifest system.

(k) Requirements for owners or operators of facilities to pay user fees to EPA to recover EPA's costs related to the development and operation of an electronic hazardous waste manifest system, in the amounts specified by the user fee methodology included in subpart FF of 40 CFR parts 264 and 265, for all paper and electronic manifests and electronic Unmanifested Waste Reports submitted to the e-Manifest system.

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

■ 37. The authority citation for part 761 is revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616 and 42 U.S.C. 6939g.

■ 38. Section 761.3 is amended by adding the definition ''Electronic manifest'' in alphabetical order to read as follows:

§ 761.3 Definitions.

* * * * *

Electronic manifest means the electronic equivalent of the manifest (which is defined in this section as the shipping document EPA form 8700–22 and any continuation sheet attached to EPA form 8700–22, originated and signed by the generator of PCB waste in accordance with the instructions included with the form, and subpart K of this part), and also in accordance with §§ 262.20, 262.24, and 262.25.

* * * * *

Subpart D—Storage and Disposal

■ 39. Section 761.60 is amended by revising paragraph (e) to read as follows:

§ 761.60 Disposal requirements.

* * * * *

(e) Any person who is required to incinerate any PCBs and PCB items under this subpart and who can demonstrate that an alternative method of destroying PCBs and PCB items exists and that this alternative method can achieve a level of performance equivalent to an incinerator approved under § 761.70 or a high efficiency boiler operating in compliance with § 761.71, must submit a written request to the EPA Regional Administrator or the Director, Office of Resource Conservation and Recovery, for a waiver from the incineration requirements of § 761.70 or § 761.71. Requests for approval of alternate methods that will be operated in more than one Region must be submitted to the Director, Office of Resource Conservation and Recovery, except for research and development activities involving less than 500 pounds of PCB material (see paragraph (i)(2) of this section). Requests for approval of alternate methods that will be operated in only one Region must be submitted to the appropriate EPA Regional Administrator. The applicant must show that his or her method of destroying PCBs will not present an unreasonable risk of injury to health or the environment. On the basis of such information and any available information, EPA may, in its discretion, approve the use of the alternate method if it finds that the alternate disposal method provides PCB destruction equivalent to disposal in a § 761.70 incinerator or a § 761.71 high efficiency boiler and will not present an unreasonable risk of injury to health or the environment. Any approval must be stated in writing and may include such conditions and provisions as EPA deems appropriate. The person to whom such waiver is issued must comply with all limitations contained in such determination. No person may use the alternate method of destroying PCBs or PCB items prior to obtaining permission from the appropriate EPA official.

* * * * *

■ 40. Section 761.180 is amended by revising paragraph (b)(3) to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(b) * * *

(3) The owner or operator of a PCB disposal facility (including an owner or operator who disposes of their own waste and does not receive or generate manifests) or a commercial storage facility shall submit an annual report using EPA Form 6200–025, which briefly summarizes the records and annual document log required to be maintained and prepared under paragraphs (b)(1) and (2) of this section to the Director, Office Resource Conservation and Recovery in accordance with the instructions on the form by July 15 of each year, beginning with July 15, 1991. The first annual report submitted on July 15, 1991, shall be for the period starting February 5, 1990, and ending December 31, 1990. The annual report shall contain no confidential business information. The annual report shall consist of the information listed in paragraphs (b)(3)(i) through (b)(3)(vi) of this section.

* * * * *

■ 41. Section 761.205 is amended by revising paragraph (d) to read as follows:

§ 761.205 Notification of PCB waste activity (EPA Form 7710–53).

* * * * *

(d) Persons required to notify under this section shall file EPA Form 7710–53 with EPA in accordance with the instructions on the form.

* * * * *

■ 42. Section 761.207 is amended by adding paragraph (g) to read as follows:

§ 761.207 The manifest—general requirements.

* * * * *

(g)(1) A person required to prepare a manifest under § 761.207 may prepare and use an electronic manifest, provided that the person:

(i) Complies with the requirements in § 262.24 for use of electronic manifests, and

(ii) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

(2) Legal Equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with §§ 761.208 and 262.20(a)(3), and used in accordance with sections 262.20, 262.24, and 262.25 in lieu of EPA Forms 8700–22 and 8700–22A, are the legal equivalent of paper manifest forms bearing

handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(i) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of § 262.25.

(ii) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the e-Manifest system.

(iii) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.

(iv) No generator may be held liable for the inability to produce an electronic manifest for inspection under this section if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the e-Manifest system for which the generator bears no responsibility.

(v) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) named on the manifest. A generator, transporter, or commercial storage or disposal facility may participate electronically in the post-receipt data corrections process by following the process described in § 265.71(l) of this chapter, which applies to corrections made to either paper or electronic manifest records.

■ 43. Section 761.209 is revised to read as follows:

§ 761.209 Number of copies of a manifest.

The manifest consists of at least the number of copies which will provide the generator, the transporter, and the owner or operator of the designated facility with one copy each for their records and a copy to be submitted to the e-Manifest system as indicated in the instructions included with EPA form 8700–22. Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the e-Manifest system. All parties using electronic manifests must do so in accordance with §§ 262.20, 262.24, and 262.25.

■ 44. Section 761.210 is amended by revising paragraphs (a) introductory text, (a)(1) and (2) of to read as follows:

§ 761.210 Use of the manifest—Generator requirements.

(a) The generator must:

(1) Sign the manifest certification; and

(2) Obtain the signature of the initial transporter and date of acceptance on the manifest; and

* * * * *

■ 45. Section 761.211 is amended by revising paragraphs (d)(1), (e)(3), and (f)(3)(i), (f)(4)(i) and adding paragraph (g) to read as follows:

§ 761.211 Manifest system—Transporter requirements.

* * * * *

(d) * * *

(1) Obtain the date of delivery and the signature of that transporter or of the owner or operator of the designated facility on the manifest; and

* * * * *

(e) * * *

(3) The delivering transporter obtains the date of delivery and signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(f) * * *

(3) * * *

(i) Obtain the date of delivery and signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

* * * * *

(4) * * *

(i) Obtain the date of delivery and the signature of the next non-rail transporter on the manifest; and

* * * * *

(g) Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then the transporter must follow the replacement manifest procedures in accordance with § 263.20(a)(6).

■ 46. Section 761.213 is amended by revising paragraph (a)(2)(i) and adding paragraphs (d) and (e) to read as follows:

§ 761.213 Use of manifest—Commercial storage and disposal facility requirements.

(a) * * *

(2) * * *

(i) Sign and date each copy of the manifest;

* * * * *

(d)) Special procedures applicable to replacement manifests. If a commercial storage or disposal facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the facility must follow the replacement manifest procedures in accordance with § 265.71(h).

(e) Imposition of user fee for manifest submissions. (1) As prescribed in § 265.1311, and determined in § 265.1312, a commercial storage or disposal facility who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in § 265.1313.

(2) A commercial storage or disposal facility subject to user fees under this section shall make user fee payments in accordance with the requirements of § 264.1314, subject to the informal fee dispute resolution process of § 264.1316, and subject to the sanctions for delinquent payments under § 264.1315.

■ 47. Section 761.215 is amended by adding paragraphs (c)(1) through (4) and revising (f)(6) to read as follows:

§ 761.215 Manifest discrepancies.

* * * * *

(c) * * *

(1) Legal equivalence to paper Discrepancy Reports. Electronic Discrepancy Reports that are completed, transmitted, and used in accordance with this section in lieu of the paper Discrepancy Report are the legal equivalent of paper Discrepancy Reports and satisfy for all purposes any requirement in these regulations to complete, provide, use, or retain a discrepancy report.

(2) Any requirement in these regulations to give, provide, or send a Discrepancy Report to the EPA Regional Administrator is satisfied when an electronic Discrepancy Report is transmitted to the EPA by submission to the e-Manifest system.

(3) Any requirement in these regulations for an owner or operator to keep or retain a copy of each Discrepancy Report is satisfied by the retention of the facility's electronic Discrepancy Reports in its account on the e-Manifest system, provided that such Discrepancy Reports are readily available for viewing and production if

requested by any EPA or authorized state inspector.

(4) No owner or operator may be held liable for the inability to produce a Discrepancy Report for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic Discrepancy Report is due exclusively to a technical difficulty with the e-Manifest system for which the owner or operator bears no responsibility.

* * * * *

(f) * * *

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail, or submit electronically through the e-Manifest system, a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * * * *

■ 39. Section 761.216 is amended by revising paragraph (a) introductory text and adding paragraph (b) to read as follows:

§ 761.216 Unmanifested waste report.

(a) If a facility accepts for storage or disposal any PCB waste from an offsite source without an accompanying manifest, or without an accompanying shipping paper as described by § 761.211(e), and the owner or operator of the commercial storage or disposal facility cannot contact the generator of the PCB waste, then they shall notify the Regional Administrator of the EPA region in which their facility is located of the unmanifested PCB waste so that the EPA Regional Administrator can determine whether further actions are required before the owner or operator may store or dispose of the unmanifested PCB waste, and additionally the owner or operator must prepare an electronic Unmanifested Waste Report in the e-Manifest system for submission to the EPA Regional Administrator within 15 days after receiving the waste. The Unmanifested Waste Report must contain the following information:

* * * * *

(b) Per Unmanifested Waste Report fee. Fees shall be assessed on a per Unmanifested Waste Report basis for the submission of each electronic Unmanifested Waste Report that is electronically signed and submitted to the e-Manifest system by the owners or operators of receiving facilities, with the fee assessed at the applicable rate per 40 CFR part 265.1312 for electronic manifest submissions.

■ 40. Section 761.217 is amended by revising paragraph (a)(1) and adding paragraph (c) to read as follows:

§ 761.217 Exception reporting.

(a)(1) A generator of PCB waste, who does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 40 days of the date the waste was accepted by the initial transporter, shall immediately contact the transporter and/or the owner or operator of the designated facility to determine the status of the PCB waste.

* * * * *

(c) Legal equivalence to paper exception reports. Electronic Exception Reports that are originated in the e-Manifest system in accordance with paragraph (a) of this section and used in accordance with this section in lieu of paper Exception Reports are the legal equivalent of paper Exception Reports bearing handwritten signatures and satisfy for all purposes any requirement in these regulations to complete, sign, provide, and retain an Exception Report.

(1) Any requirement in these regulations to sign an Exception Report certification by hand is satisfied by signing with a valid and enforceable electronic signature within the meaning of § 262.25.

(2) Any requirement in these regulations to give, provide or send an Exception Report to the EPA Regional Administrator is satisfied when an electronic Exception Report is transmitted to the EPA Regional Administrator by submission to the e-Manifest system.

(3) Any requirement in these regulations for a generator to keep or retain a copy of an Exception Report is satisfied by retention of a signed electronic Exception Report in the generator's account on the national e-Manifest system, provided that the Exception Report is readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No generator may be held liable for the inability to produce an electronic Exception Report for inspection under this section if the generator can demonstrate that the inability to produce the electronic Exception Report is due exclusively to a technical difficulty with the e-Manifest system for which the generator bears no responsibility.

* * * * *

■ 41. Section 761.218 is amended by adding paragraphs (e) and (f) to read as follows:

§ 761.218 Certificate of disposal.

* * * * *

(e) Legal equivalence to paper certificates of disposal. Electronic certificates of disposal that are originated in an EPA-approved electronic system in accordance with this section and used in accordance with this section in lieu of paper certificates of disposal are the legal equivalent of paper certificates of disposal bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to complete, sign, provide, and retain a certificate of disposal.

(1) Any requirement in these regulations to sign a certificate of disposal by hand is satisfied by signing with a valid and enforceable electronic signature within the meaning of § 262.25.

(2) Any requirement in these regulations to give, provide or send a certificate of disposal to the EPA Regional Administrator is satisfied when an electronic certificate of disposal is transmitted to the EPA Regional Administrator by submission to an EPA-approved electronic system.

(3) Any requirement in these regulations for a generator or disposer to keep or retain a copy of a certificate of disposal is satisfied by retention of a signed electronic certificate of disposal in the generator's or disposer's account, respectively, on an EPA-approved electronic system, provided that the certificate of disposal is readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No generator or disposer may be held liable for the inability to produce an electronic certificate of disposal for inspection under this section if the generator or disposer can demonstrate that the inability to produce the electronic certificate of disposal is due exclusively to a technical difficulty with the EPA-approved electronic system for which the generator or disposer bears no responsibility.

(f) Restriction on use of electronic certificates of disposal. The owner or operator of a disposal facility may participate in electronic certificates of disposal if it is known at the time the certificate of disposal is originated that:

(1) The manifest at issue originated in the e-Manifest system in accordance with §§ 262.24(c) and 262.25 of this part; and

(2) for mixed paper and electronic manifests (*i.e.,* hybrid manifests), the generator has registered in the e-Manifest system and has access to the electronic manifests for the site.

■ 42. Section 761.219 is amended by adding paragraphs (e) and (f) to read as follows:

§ 761.219 One-year exception reporting.

* * * * *

(e) Legal equivalence to paper One-year Exception Reports. Electronic One-year Exception Reports that are originated in an EPA-approved electronic system in accordance with paragraph (a) of this section and used in accordance with this section in lieu of paper One-year Exception Reports are the legal equivalent of paper One-year Exception Reports bearing handwritten signatures and satisfy for all purposes any requirement in these regulations to complete, sign, provide, and retain a One-year exception report.

(1) Any requirement in these regulations to sign a One-year Exception Report certification by hand is satisfied by signing with a valid and enforceable electronic signature within the meaning of § 262.25.

(2) Any requirement in these regulations to give, provide or send a One-year Exception Report to the EPA Regional Administrator is satisfied when a One-year electronic Exception Report is transmitted to the EPA Regional Administrator by submission to an EPA-approved electronic system.

(3) Any requirement in these regulations for a generator or disposer to keep or retain a copy of a One-year Exception Report is satisfied by retention of a signed electronic One-year Exception Report in the generator's or disposer's respective account on an EPA-approved electronic system, provided that the One-year Exception Report is readily available for viewing and production if requested by any EPA or authorized state inspector.

(4) No generator or disposer may be held liable for the inability to produce an electronic One-year Exception Report for inspection under this section if the generator or disposer can demonstrate that the inability to produce the electronic One-year Exception Report is due exclusively to a technical difficulty with the EPA-approved electronic system for which the generator or disposer bears no responsibility.

(f) Restriction on use of electronic One-year Exception Reporting. A generator or disposer may participate in electronic One-year Exception Reporting if it is known at the time the One-year Exception Report is originated that:

(1) The manifest at issue originated in the e-Manifest system in accordance with §§ 262.24(c) and 262.25 of this part; and

(2) for mixed paper and electronic manifests (*i.e.,* hybrid manifests), the generator has registered in the e-Manifest system and has access to the electronic manifests for the site.

[FR Doc. 2022–04705 Filed 3–31–22; 8:45 am]

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FEDERAL REGISTER

Vol. 87 Friday,

No. 63 April 1, 2022

Part V

The President

Notice of March 30, 2022—Continuation of the National Emergency With Respect to Somalia

Federal Register
Vol. 87, No. 63
Friday, April 1, 2022

Presidential Documents

Title 3—

The President

Notice of March 30, 2022

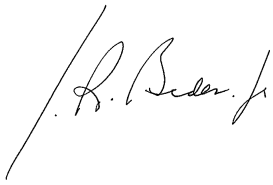
Continuation of the National Emergency With Respect to Somalia

On April 12, 2010, by Executive Order 13536, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the deterioration of the security situation and the persistence of violence in Somalia; acts of piracy and armed robbery at sea off the coast of Somalia, which have been the subject of United Nations Security Council resolutions; and violations of the arms embargo imposed by the United Nations Security Council.

On July 20, 2012, the President issued Executive Order 13620 to take additional steps to deal with the national emergency declared in Executive Order 13536 in view of United Nations Security Council Resolution 2036 of February 22, 2012, and Resolution 2002 of July 29, 2011, and to address: exports of charcoal from Somalia, which generate significant revenue for al-Shabaab; the misappropriation of Somali public assets; and certain acts of violence committed against civilians in Somalia, all of which contribute to the deterioration of the security situation and the persistence of violence in Somalia.

The situation with respect to Somalia continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on April 12, 2010, and the measures adopted on that date and on July 20, 2012, to deal with that threat, must continue in effect beyond April 12, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13536.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 30, 2022.

[FR Doc. 2022–07103
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FEDERAL REGISTER

Vol. 87 Friday,

No. 63 April 1, 2022

Part VI

The President

Proclamation 10354—César Chávez Day, 2022
Proclamation 10355—Transgender Day of Visibility, 2022
Proclamation 10356—Adjusting Imports of Steel Into the United States

Federal Register
Vol. 87, No. 63
Friday, April 1, 2022

Presidential Documents

Title 3—

The President

Proclamation 10354 of March 30, 2022

César Chávez Day, 2022

By the President of the United States of America

A Proclamation

Today we celebrate the life and legacy of César Estrada Chávez, a champion for social justice and advocate for hardworking people who build and sustain our Nation. Born into poverty and raised by migrant workers, Chávez courageously dedicated his life to improving conditions for workers across the country. Chávez witnessed firsthand the inequities of an economy that only served those at the top and left millions of hardworking Americans behind. Today, as we continue to build an economy from the bottom up and the middle out and that rewards work and not just wealth, we stand on the shoulders of César Chávez and carry forward his fight to advance the rights and dignity of working people and fulfill the promise of America for all Americans.

When César Chávez founded the United Farm Workers of America alongside Dolores Huerta, he drew national attention to the many agricultural workers who experience inhumane working conditions and unlivable wages. Through strikes, marches, and boycotts, he inspired millions of people across the country to fight for safe and healthy workplaces, better wages, improved workplace protections from sickness and disability, and other core rights and protections.

In the process, Chávez inspired generations of people across all backgrounds, ages, and industries to organize, bargain, and expand opportunity for workers and their families. His devotion to ''La Causa'' brought hope to workers and Latinos across the Nation—and his fight for justice, equality, and dignity gave workers and Latinos everywhere a voice. Today, we must summon the same courage and moral clarity to carry his legacy forward so that everyone has a fair shot at the American dream.

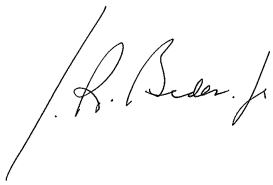
That is why my Administration continues to urge the Congress to pass the Protecting the Right to Organize Act and the Farm Workforce Modernization Act—so farmworkers can bargain collectively, obtain legal status, and have better working conditions. It is why I fought hard to pass the American Rescue Plan early in my Administration to ensure Latino workers, families, and small businesses had the protections and financial support they needed to pay rent and put food on their table. It is why I appointed Marty Walsh, a former union leader, to lead the Department of Labor—because he understands how union workers hold this country together. It is why my Administration created an historic Task Force on Worker Organizing and Empowerment—because I believe in empowering workers to organize and providing those that put food on our table an earned pathway to citizenship.

As our Nation celebrates César Chávez's 95th birthday, let us keep the lessons he taught in our minds and the values he lived by in our hearts: the power of workers to bargain for a better deal, strength in the face of extraordinary adversity, and the conviction to fight for what we believe in.

When I became President, I proudly placed a bust of César Chávez in the Oval Office—a constant reminder of the enduring values he embodied, the vision of freedom he fought for, and his commitment to social justice and equal dignity that we must uphold each and every day.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 31, 2022, as César Chávez Day. I call upon all Americans to observe this day as a day of service and learning, with appropriate service, community, and education programs to honor César Chávez's enduring legacy.

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



[FR Doc. 2022–07134
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Presidential Documents

Proclamation 10355 of March 30, 2022

Transgender Day of Visibility, 2022

By the President of the United States of America

A Proclamation

To everyone celebrating Transgender Day of Visibility, I want you to know that your President sees you. The First Lady, the Vice President, the Second Gentleman, and my entire Administration see you for who you are—made in the image of God and deserving of dignity, respect, and support. On this day and every day, we recognize the resilience, strength, and joy of transgender, nonbinary, and gender nonconforming people. We celebrate the activism and determination that have fueled the fight for transgender equality. We acknowledge the adversity and discrimination that the transgender community continues to face across our Nation and around the world.

Visibility matters, and so many transgender, nonbinary, and gender nonconforming Americans are thriving. Like never before, they are sharing their stories in books and magazines; breaking glass ceilings of representation on television and movie screens; enlisting—once again—to serve proudly and openly in our military; getting elected and making policy at every level of government; and running businesses, curing diseases, and serving our communities in countless other ways.

Despite this progress, transgender Americans continue to face discrimination, harassment, and barriers to opportunity. Transgender women and girls—especially transgender women and girls of color—continue to face epidemic levels of violence, and 2021 marked the deadliest year on record for transgender Americans. Each of these lives lost was precious. Each of them deserved freedom, justice, and joy. We must honor their lives with action by advancing equity and civil rights for all transgender people.

In the past year, hundreds of anti-transgender bills in States were proposed across America, most of them targeting transgender kids. The onslaught has continued this year. These bills are wrong. Efforts to criminalize supportive medical care for transgender kids, to ban transgender children from playing sports, and to outlaw discussing LGBTQI+ people in schools undermine their humanity and corrode our Nation's values. Studies have shown that these political attacks are damaging to the mental health and well-being of transgender youth, putting children and their families at greater risk of bullying and discrimination.

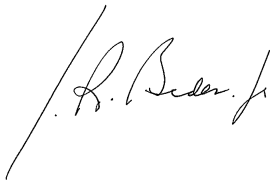
My entire Administration is committed to ensuring that transgender people enjoy the freedom and equality that are promised to everyone in America. That is why I signed an Executive Order Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation. We are expanding Federal non-discrimination protections; promoting strategies to address violence against the transgender community and advance gender equity and equality; and disseminating new resources to enhance inclusion, opportunity, and safety for transgender people. Additionally, Americans will soon be able to select more inclusive gender markers on their passports. I continue to call on the Congress to swiftly pass the bipartisan Equality Act, which will ensure that LGBTQI+ individuals and families cannot be denied housing, employment, education, credit, and more because of who they are or who

they love. We will continue to work to help transgender people around the world live free from discrimination and violence.

On this Transgender Day of Visibility, we honor transgender people who are fighting for freedom, equality, dignity, and respect. We also celebrate the parents, teachers, coaches, doctors, and other allies who affirm the identities of their transgender children and help these young people reach their potential. Transgender people are some of the bravest Americans I know, and our Nation and the world are stronger, more vibrant, and more prosperous because of them. To transgender Americans of all ages, I want you to know that you are so brave. You belong. I have your back.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 31, 2022, as Transgender Day of Visibility. I call upon all Americans to join us in lifting up the lives and voices of transgender people throughout our Nation and to work toward eliminating discrimination against all transgender, gender nonconforming, and nonbinary people—and all people.

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



[FR Doc. 2022–07135
Filed 3–31–22; 11:15 am]
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Presidential Documents

Proclamation 10356 of March 31, 2022

Adjusting Imports of Steel Into the United States

By the President of the United States of America

A Proclamation

1. On January 11, 2018, the Secretary of Commerce (Secretary) transmitted to the President a report on the Secretary's investigation into the effect of imports of steel mill articles (steel articles) on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised the President of his opinion that steel articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States), the President concurred in the Secretary's finding that steel articles, as defined in clause 1 of Proclamation 9705, as amended by clause 8 of Proclamation 9711 of March 22, 2018 (Adjusting Imports of Steel Into the United States), are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of those steel articles by imposing a 25 percent ad valorem tariff on such articles imported from all countries except Canada and Mexico. The proclamation further stated that any country with which we have a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment to the national security caused by imports from that country, and noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that the President determines that imports from that country no longer threaten to impair the national security, the President may remove or modify the restriction on steel articles imports from that country and, if necessary, adjust the tariff as it applies to other countries, as the national security interests of the United States require.

3. The United States has successfully concluded discussions with Japan on satisfactory alternative means to address the threatened impairment to the national security posed by imports of steel articles and derivative steel articles from Japan. The United States and Japan have agreed to expand coordination involving trade remedies and customs matters, monitor bilateral steel and aluminum trade, cooperate on addressing non-market excess capacity and carbon intensity in these sectors, and annually review their arrangement and their ongoing cooperation.

4. The United States will implement a number of actions, including a tariff-rate quota that restricts the quantity of steel articles imported into the United States from Japan without the application of the tariff proclaimed in Proclamation 9705. Under the arrangement, steel articles that are melted and poured in Japan are eligible for in-quota treatment. In my judgment, these measures will provide an effective, long-term alternative means to address any contribution by Japanese steel articles imports to the threatened impairment to the national security by restraining steel articles imports to the United States from Japan, limiting transshipment, discouraging excess steel capacity and production, and strengthening the United States-Japan partnership. In light of this agreement, I have determined that imports of

specified volumes of eligible steel articles from Japan will no longer threaten to impair the national security and have decided to exclude such imports from Japan up to a designated quota from the tariff proclaimed in Proclamation 9705. The United States will monitor the implementation and effectiveness of the tariff-rate quota and other measures agreed upon with Japan in addressing our national security needs, and I may revisit this determination, as appropriate.

5. The alternative means, including the tariff-rate quota, advance the recommendations contained in the Secretary's January 2018 report. The agreed-upon aggregate tariff-rate quota volume specified in the agreement between the United States and Japan, totaling 1.25 million metric tons, is consistent with the objective of reaching and maintaining a sufficient capacity utilization rate in the domestic steel industry.

6. In light of my determination to adjust the tariff proclaimed in Proclamation 9705 as applied to eligible steel articles imported from Japan, I have considered whether it is necessary and appropriate in light of our national security interests to make any corresponding adjustments to such tariff as it applies to other countries. I have determined that it is necessary and appropriate, at this time, to maintain the current tariff level as it applies to other countries.

7. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

8. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) To establish a tariff-rate quota on imports of steel articles from Japan as set forth in paragraph 4 of this proclamation, U.S. Note 16 of subchapter III of chapter 99 of the HTSUS is amended as provided for in the Annex to this proclamation. Imports of steel articles from Japan in excess of the tariff-rate quota quantities shall remain subject to the duties imposed by clause 2 of Proclamation 9705, as amended. The Secretary, in consultation with the Secretary of Homeland Security and the United States Trade Representative, shall recommend to the President, as warranted, updates to the in-quota volumes contained in the Annex to this proclamation. Steel articles from Japan imported under an exclusion granted pursuant to clause 3 of Proclamation 9705, as amended, shall count against the in-quota volume of the tariff-rate quota established in clause 1 of this proclamation.

(2) Clause 2 of Proclamation 9705, as amended, is revised to read as follows:

''(2)(a) In order to establish certain modifications to the duty rate on imports of steel articles, subchapter III of chapter 99 of the HTSUS is modified as provided in the Annex to this proclamation and any subsequent proclamations regarding such steel articles.

(b) Except as otherwise provided in this proclamation, or in notices published pursuant to clause 3 of this proclamation, all steel articles imports covered by heading 9903.80.01, in subchapter III of chapter 99 of the HTSUS, shall be subject to an additional 25 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, as follows: (i) on or after 12:01 a.m.

eastern daylight time on March 23, 2018, from all countries except Argentina, Australia, Brazil, Canada, Mexico, South Korea, and the member countries of the European Union; (ii) on or after 12:01 a.m. eastern daylight time on June 1, 2018, from all countries except Argentina, Australia, Brazil, and South Korea; (iii) on or after 12:01 a.m. eastern daylight time on August 13, 2018, from all countries except Argentina, Australia, Brazil, South Korea, and Turkey; (iv) on or after 12:01 a.m. eastern daylight time on May 20, 2019, from all countries except Argentina, Australia, Brazil, South Korea, and Turkey; (v) on or after 12:01 a.m. eastern daylight time on May 21, 2019, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea; (vi) on or after 12:01 a.m. eastern standard time on January 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive; and (vii) on or after 12:01 a.m. eastern daylight time on April 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive, and from Japan, for steel articles covered by headings 9903.81.25 through 9903.81.80, inclusive. Further, except as otherwise provided in notices published pursuant to clause 3 of this proclamation, all steel articles imports from Turkey covered by heading 9903.80.02, in subchapter III of chapter 99 of the HTSUS, shall be subject to a 50 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 13, 2018, and prior to 12:01 a.m. eastern daylight time on May 21, 2019. All steel articles imports covered by heading 9903.80.61, in subchapter III of chapter 99 of the HTSUS, shall be subject to the additional 25 percent ad valorem rate of duty established herein with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on the date specified in a determination by the Secretary granting relief. These rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported steel articles, shall apply to imports of steel articles from each country as specified in the preceding three sentences.''

(3) The first two sentences of clause 1 of Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States), are revised to read as follows:

''In order to establish increases in the duty rate on imports of certain derivative articles, subchapter III of chapter 99 of the HTSUS is modified as provided in Annex I and Annex II to this proclamation. Except as otherwise provided in this proclamation, all imports of derivative aluminum articles specified in Annex I to this proclamation shall be subject to an additional 10 percent ad valorem rate of duty, and all imports of derivative steel articles specified in Annex II to this proclamation shall be subject to an additional 25 percent ad valorem rate of duty, with respect to goods entered for consumption, or withdrawn from warehouse for consumption, as follows: (i) on or after 12:01 a.m. eastern standard time on February 8, 2020, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, the Commonwealth of Australia (Australia), Canada, and the United Mexican States (Mexico) and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea; (ii) on or after 12:01 a.m. eastern standard time on January 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported

derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Mexico, and South Korea; and (iii) on or after 12:01 a.m. eastern daylight time on April 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, and South Korea.''

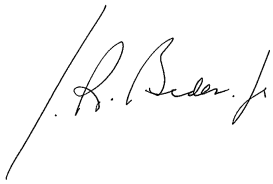
(4) Steel eligible for treatment under clause 1 of this proclamation must be melted and poured in Japan in order to receive such treatment. The Secretary, in consultation with the Secretary of Homeland Security and the United States Trade Representative, is authorized to take such actions as are necessary to ensure compliance with this requirement. Failure to comply could result in applicable remedies such as the collection of the tariff set forth in clause 2 of Proclamation 9705, or penalties under United States law.

(5) The modifications to the HTSUS made by clause 1 of this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 1, 2022, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(6) Any imports of steel articles from Japan that were admitted into a U.S. foreign trade zone under ''privileged foreign status'' as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on April 1, 2022, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern daylight time on April 1, 2022, to the provisions of the tariff rate quota in effect at the time of the entry for consumption.

(7) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

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



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ANNEX

TO MODIFY CERTAIN PROVISIONS OF CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 1, 2022, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is modified as follows, with the material in the new tariff provisions inserted in the columns labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special," and "Rates of Duty 2", respectively:

1. The text of subdivisions (b) and (d) of such U.S. note 16 are each modified by deleting "and 9903.80.65 through 9903.81.19, inclusive" and by inserting in lieu thereof "9902.80.65 through 9903.81.19, and 9903.81.25 through 9903.81.80, inclusive,". The text of subdivision (c) of such U.S. note 16 is modified by inserting after "9903.88.58" the phrase "and 9903.81.25 through 9903.81.78".

2. The following new subdivision (g) is hereby inserted at the end of such U.S. note 16:

"(g) Subheadings 9903.81.25 through 9903.81.80, inclusive, set forth the ordinary customs duty treatment for the iron or steel products (as enumerated in subdivision (b) of this note) of Japan. The aggregate annual import volume under subheadings 9903.81.25 through 9903.81.80 shall be limited to 1,250,000 metric tons. Subheadings 9903.81.25 through 9903.81.80 shall also be subject to any aggregate annual quantity established for each such subheading, including any allocations or other limitations that may be announced, all as set forth on the Internet site of the Department of Commerce at the following link: https://bis.doc.gov/232-steel. No shipments of such iron or steel products shall be allowed to enter in an aggregate quantity under any such subheading, during any of the periods January through March, April through June, July through September, or October through December in any 12-month period, that is in excess of the quantity that is made available to Japan during any such period by the Department of Commerce, as set forth on the Internet site of such Department as noted herein. The Department of Commerce is authorized to carry forward any unused quantity of such product from one or more such countries from the first quarter of any calendar year to the third quarter of such year, from the second quarter of any calendar year to the fourth quarter of such year, and from the third quarter of any calendar year to the first quarter of the next calendar year. Entries of any product of Japan that may be described in an exclusion granted by the Department of Commerce shall be eligible to utilize such exclusion upon proper claim therefor, and such entries shall be counted against the annual aggregate quantitative limitation set forth in this subdivision."

3. The article description of heading 9903.80.01 is modified by inserting after "of member countries of the European Union specified in subdivision (f) of such U.S. note 16" the phrase "or of Japan,".

4. The article description of heading 9903.80.03 is modified by adding after “of member countries of the European Union enumerated in note 16(f) to this subchapter,” the phrase “or of Japan”.

[Continues on next page]

5. The following new subheadings and superior text thereto are inserted in numerical sequence in subchapter III of chapter 99:

Heading/ Subheading	Article description	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
	"Iron or steel products of Japan enumerated in U.S. note 16 to this subchapter, if entered in aggregate quantities prescribed in subdivision (f) of such note for any calendar year starting on January 1, 2022, and for any portion thereof as prescribed in such subdivision (f):			
9903.81.25	Hot-rolled sheet (provided for in subheading 7208.10.60, 7208.26.00, 7208.27.00, 7208.38.00, 7208.39.00, 7208.40.60, 7208.53.00, 7208.54.00, 7208.90.00, 7225.30.70 or 7225.40.70)	Free		
9903.81.26	Hot-rolled strip (provided for in subheading 7211.19.15, 7211.19.20, 7211.19.30, 7211.19.45, 7211.19.60, 7211.19.75, 7226.91.70 or 7226.91.80).....	Free		
9903.81.62	Hot-rolled plate, in coils (provided for in subheading 7208.10.15, 7208.10.30, 7208.25.30, 7208.25.60, 7208.36.00, 7208.37.00, 7211.14.00 (except for statistical reporting number 7211.14.0030 or 7211.14.0045) or 7225.30.30).....	Free		
9903.81.28	Cold-rolled sheet, provided for in subheading 7209.15.00, 7209.16.00, 7209.17.00, 7209.18.15, 7209.18.60, 7209.25.00, 7209.26.00, 7209.27.00, 7209.28.00, 7209.90.00, 7210.70.30, 7225.50.70, 7225.50.80 or 7225.99.00).....	Free		
9903.81.29	Cold-rolled strip (provided for in subheading 7211.23.15, 7211.23.20, 7211.23.30, 7211.23.45, 7211.23.60, 7211.29.20, 7211.29.45, 7211.29.60, 7211.90.00, 7212.40.10, 7212.40.50, 7226.92.50, 7226.92.70, 7226.92.80 or 7226.99.01 (except for statistical reporting number 7226.99.0110 or 7226.99.0130).....	Free		
9903.81.30	Cold-rolled black plate (provided for in subheading 7209.18.25).....	Free		
9903.81.31	Plate in cut lengths (provided for in subheading 7208.40.30, 7208.51.00, 7208.52.00, 7210.90.10, 7211.13.00, 7211.14.00 (except for statistical reporting number 7211.14.0090), 7225.40.30, 7225.50.60 or 7226.91.50)	Free		

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
9903.81.32	Flat-rolled products, hot-dipped (provided for in subheading 7210.41.00, 7210.49.00, 7210.70.60 (except for statistical reporting number 7210.70.6030 or 7210.70.6090), 7212.30.10, 7212.30.30, 7212.30.50, 7225.92.00 or 7226.99.01 (except for statistical reporting number 7226.99.0110 or 7226.99.0180))	Free		
9903.81.33	Flat-rolled products, coated (provided for in subheading 7210.20.00, 7210.61.00, 7210.69.00, 7210.70.60 (except for statistical reporting number 7210.70.6030 or 7210.70.6060), 7210.90.60, 7210.90.90, 7212.50.00 or 7212.60.00)	Free		
9903.81.34	Tin-free steel (provided for in subheading 7210.50.00)	Free		
9903.81.35	Tin plate (provided for in subheading 7210.11.00, 7210.12.00 or 7212.10.00)	Free		
9903.81.36	Silicon electrical steel sheets and strip (provided for in subheading 7225.11.00, 7225.19.00, 7226.11.10, 7226.11.90, 7226.19.10 or 7226.19.90)	Free		
9903.81.37	Sheets and strip electrolytically coated or plated with zinc (provided for in subheading 7210.30.00, 7210.70.60 (except for statistical reporting number 7210.70.6060 or 7210.70.6090), 7212.20.00, 7225.91.00 or 7226.99.01 (except for statistical reporting number 7226.99.0130 or 7226.99.0180))	Free		
9903.8.38	Oil country pipe and tube goods (provided for in subheading 7304.23.30, 7304.23.60, 7304.29.10, 7304.29.20, 7304.29.31, 7304.29.41, 7304.29.50, 7304.29.61, 7305.20.20, 7305.20.40, 7305.20.60, 7305.20.80, 7306.29.10, 7306.29.20, 7306.29.31, 7306.29.41, 7306.29.60 or 7306.29.81)	Free		
9903.81.39	Line pipe exceeding 406.4 mm in outside diameter (provided for in subheading 7304.19.10 (except for statistical reporting number 7304.19.1020, 7304.19.1030, 7304.19.1045 or 7304.19.1060), 7304.19.50 (except for statistical reporting number 7304.19.5020 or 7304.19.5050), 7305.11.10, 7305.11.50, 7305.12.10, 7305.12.50, 7305.19.10 or 7305.19.50)	Free		

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
9903.81.40	Line pipe not exceeding 406.4 mm in outside diameter (provided for in subheading 7304.19.10 (except for statistical reporting number 7304.19.1080), 7304.19.50 (except for statistical reporting number 7304.19.5080), 7306.19.10 (except for statistical reporting number 7306.19.1050) or 7306.19.51 (except for statistical reporting number 7306.19.5150)).....	Free		
9903.81.41	Other line pipe (provided for in subheading 7306.19.10 (except for statistical reporting number 7306.19.1010) or 7306.19.51 (except for statistical reporting number 7306.19.5110)).....	Free		
9903.81.42	Standard pipe (provided for in subheading 7304.39.00 (except for statistical reporting number 7304.39.0002, 7304.39.0004, 7304.39.0006, 7304.39.0008, 7304.39.0028, 7304.39.0032, 7304.39.0040, 7304.39.0044, 7304.39.0052, 7304.39.0056, 7304.39.0068 or 7304.39.0072), 7304.59.80 (except for statistical reporting number 7304.59.8020, 7304.59.8025, 7304.59.8035, 7304.59.8040, 7304.59.8050, 7304.59.8055, 7304.59.8065 or 7304.59.8070) or 7306.30.50 (except for statistical reporting number 7306.30.5010, 7306.30.5015, 7306.30.5020 or 7306.30.5035)).....	Free		
9903.81.43	Structural pipe and tube (provided for in subheading 7304.90.10, 7304.90.30, 7305.31.20, 7305.31.40, 7305.31.60 (except for statistical reporting number 7305.31.6010), 7306.30.30, 7306.50.30, 7306.61.10, 7306.61.30, 7306.69.10 or 7306.69.30).....	Free		
9903.81.44	Mechanical tubing (provided for in subheading 7304.31.30, 7304.31.60 (except for statistical reporting number 7304.31.6010), 7304.39.00 (except for statistical reporting number 7304.39.0002, 7304.39.0004, 7304.39.0006, 7304.39.0008, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0036, 7304.39.0048, 7304.39.0062, 7304.39.0076 or 7304.39.0080), 7304.51.10, 7304.51.50 (except for statistical reporting number 7304.51.5005, 7304.51.5015 or 7304.51.5045), 7304.59.10, 7304.59.60, 7304.59.80 (except for			

Heading/ Subheading	Article description	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
	statistical reporting number 7304.59.8010, 7304.59.8015, 7304.59.8030, 7304.59.8045, 7304.59.8060 or 7304.59.8080), 7304.90.50, 7304.90.70, 7306.30.10, 7306.30.50 (except for statistical reporting number 7306.30.5010, 7306.30.5025, 7306.30.5028, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 or 7306.30.5090), 7306.50.10, 7306.50.50 (except for statistical reporting number 7306.50.5010), 7306.61.50, 7306.61.70 (except for statistical reporting number 7306.61.7030), 7306.69.50 or 7306.69.70 (except for statistical reporting number 7306.69.7030))	Free		
9903.81.45	Pressure tubing (provided for in subheading 7304.31.60 (except for statistical reporting number 7304.31.6050), 7304.39.00 (except for statistical reporting number 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076 or 7304.39.0080), 7304.51.50 (except for statistical reporting number 7304.51.5005 or 7304.51.5060), 7304.59.20, 7306.30.50 (except for statistical reporting number 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5028, 7306.30.5032, 7306.30.5035, 7306.30.5040, 7306.30.5055, 7306.30.5085 or 7306.30.5090) or 7306.50.50 (except for statistical reporting number 7306.50.5030, 7306.50.5050 or 7306.50.5070)	Free		
9903.81.46	Tubes or pipes for piling (provided for in subheading 7305.39.10 or 7305.39.50)	Free		
9903.81.47	Pipes and tubes, not specially provided for (provided for in subheading 7304.51.50 (except for statistical reporting number 7304.51.5015, 7304.51.5045 or 7304.51.5060), 7305.90.10, 7305.90.50, 7306.90.10 or 7306.90.50)	Free		
9903.81.48	Hot-rolled sheet of stainless steel (provided for in subheading 7219.13.00, 7219.14.00, 7319.23.00 or 7219.24.00)	Free		
9903.81.49	Hot-rolled strip of stainless steel (provided for in			

Heading/ Subheading	Article description	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
	subheading 7220.12.10 or 7220.12.50)	Free		
9903.81.50	Hot-rolled plate of stainless steel, in coils (provided for in subheading 7219.11.00 or 7219.12.00).....	Free		
9903.81.51	Cold-rolled sheet of stainless steel (provided for in subheading 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 or 7219.90.00)	Free		
9903.81.52	Cold-rolled strip of stainless steel (provided for in subheading 7220.20.10, 7220.20.60, 7220.20.70, 7220.20.80, 7220.20.90 or 7220.90.00).....	Free		
9903.81.53	Cold-rolled plate of stainless steel, in coils (provided for in subheading 7219.31.00 (except for statistical reporting number 7219.31.0050)).....	Free		
9903.81.54	Wire of stainless steel, drawn (provided for in subheading 7223.00.10, 7223.00.50 or 7223.00.90) ...	Free		
9903.81.55	Pipes and tubes of stainless steel (provided for in subheading 7304.41.30, 7304.41.60, 7304.49.00, 7305.31.60 (except for statistical reporting number 7305.31.6090), 7306.40.10, 7306.40.50, 7306.61.70 (except statistical reporting number 7306.61.7060) or 7306.69.70 (except for statistical reporting number 7306.69.7060)).....	Free		
9903.81.56	Line pipe of stainless steel (provided for in subheading 7304.11.00 or 7306.11.00)	Free		
9903.81.57	Bars and rods of stainless steel, cold finished (provided for in subheading 7222.20.00 or 7222.30.00).....	Free		
9903.81.58	Bars and rods of stainless steel, hot-rolled (provided for in heading 7221.00.00 (except for statistical reporting number 7221.00.0017, 7221.00.0018 or 7221.00.0030) or subheading 7222.11.00, 7222.19.00 or 7222.40.30 (except for statistical reporting number 7222.40.3025 or 7222.40.3045).....	Free		
9903.81.59	Blooms, billets and slabs of stainless steel (provided for in subheading 7218.91.00 and 7218.99.00).....	Free		
9903.81.60	Oil country pipe and tube goods of stainless steel (provided for in subheading 7304.22.00, 7304.24.30,			

Heading/ Subheading	Article description	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
	7304.24.40, 7304.24.60, 7306.21.30, 7306.21.40 or 7306.21.80).....	Free		
9903.81.61	Ingot and other primary forms of stainless steel (provided for in subheading 7218.10.00).....	Free		
9903.81.62	Flat-rolled products of stainless steel (provided for in subheading 7219.21.00, 7219.22.00, 7219.31.00 (except for statistical reporting number 7219.31.0010) or 7220.11.00).....	Free		
9903.81.63	Bars and rods, hot-rolled, in irregularly wound coils, of stainless steel (provided for in heading 7221.00.00 (except for statistical reporting number 7221.00.0005, 7221.00.0045 or 7221.00.0075)).....	Free		
9903.81.64	Angles, shapes and sections of stainless steel (provided for in subheading 7222.40.30 (except for statistical reporting number 7222.40.3065 or 7222.40.3085) or 7222.40.60).....	Free		
9903.81.65	Angles, shapes and sections (provided for in subheading 7216.31.00, 7216.32.00, 7216.33.00, 7216.40.00, 7216.50.00, 7216.99.00, 7228.70.30 (except for statistical reporting number 7228.70.3060 or 7228.70.3081) or 7228.70.60).....	Free		
9903.81.66	Bars and rods, hot-rolled, in irregularly wound coils (provided for in subheading 7213.91.30, 9213.91.45, 7213.91.60, 7213.99.00 (except for statistical reporting number 7213.99.0060), 7227.20.00 (except for statistical reporting number 7227.20.0080) or 7227.90.60 (except for statistical reporting number 7227.90.6005, 7227.90.6010, 7227.90.6040 or 7227.90.6090)).....	Free		
9903.81.67	Wire (other than of stainless steel) (provided for in subheading 7217.10.10, 7217.10.20, 7217.10.30, 7217.10.40, 7217.10.50, 7217.10.60, 7217.10.70, 7217.10.80, 7217.10.90, 7217.20.15, 7217.20.30, 7217.20.45, 7217.20.60, 7217.20.75, 7217.30.15, 7217.30.30, 7217.30.45, 7217.30.60, 7217.30.75, 7217.90.10, 7217.90.50, 7229.20.00, 7229.90.10, 7229.90.50 or 7229.90.90).....	Free		
9903.81.68	Bars, hot-rolled, not of stainless steel (provided for in			

Heading/ Subheading	Article description	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
	subheading 7213.20.00, 7213.99.00 (except for statistical reporting number 7213.99.0030 or 7213.99.0090), 7214.10.00, 7214.30.00, 7214.91.00, 7214.99.00, 7215.90.10, 7227.20.00 (except for statistical reporting number 7227.20.0030), 7227.90.60 (except for statistical reporting number 7227.90.6020, 7227.90.6030 or 7227.90.6035), 7228.20.10, 7228.30.80 (except for statistical reporting number 7228.30.8010), 7228.40.00, 7228.60.60 or 7228.80.00).....	Free		
9903.81.69	Bars, cold-finished, not of stainless steel (provided for in subheading 7215.10.00, 7215.50.00, 7215.90.30, 7215.90.50, 7228.20.50, 7228.50.50 or 7228.60.80).....	Free		
9903.81.70	Angles, shapes and sections of a type known as "light-shaped bars" (provided for in subheading 7216.10.00, 7216.21.00, 7216.22.00 or 7228.70.30 (except for statistical reporting number 7228.70.3010, 7228.70.3020 or 7228.70.3041)).....	Free		
9903.81.71	Reinforcing bars (provided for in subheading 7213.10.00, 7214.20.00 or 7228.30.80 (except for statistical reporting number 7228.30.8005, 7228.30.8015, 7228.30.8041, 7228.30.8045 or 7228.30.8070)).....	Free		
9903.81.72	Sheet piling (provided for in subheading 7301.10.00).....	Free		
9903.81.73	Nonumerated railroad good (provided for in subheading 7302.40.00, 7302.90.10 or 7302.90.90).....	Free		
9903.81.74	Rails other than those known as "standard rails" (provided for in subheading 7302.10.10 (except for statistical reporting number 7302.10.1010, 7302.10.1035, 7302.10.1065 or 7302.10.1075).....	Free		
9903.81.75	Rails known as "standard rails" (provided for in subheading 7302.10.10 (except for statistical reporting number 7302.10.1015, 7302.10.1025, 7302.10.1045 or 7302.10.1055) or 7302.10.50).....	Free		
9903.81.76	Products of tool steel (provided for in subheading			

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	7224.10.00 (except for statistical reporting number 7224.10.0005 or 7224.10.0075), 7224.90.00 (except for statistical reporting number 7224.90.0005, 7224.90.0045, 7224.90.0055, 7224.90.0065 or 7224.90.0075), 7225.30.11, 7225.30.51, 7225.40.11, 7225.40.51, 7225.50.11, 7226.20.00, 7226.91.05, 7226.91.15, 7226.91.25, 7226.92.10, 7226.92.30, 7227.10.00, 7227.90.10, 7227.90.20, 7228.10.00, 7228.30.20, 7228.30.40, 7228.30.60, 7228.50.10, 7228.60.10 or 7229.90.05).....	Free		
9903.81.77	Blooms, billets and slabs, semi-finished (provided for in subheading 7207.11.00, 7207.12.00, 7207.19.00, 7207.20.00 or 7224.90.00 (except for statistical reporting number 7224.90.0015, 7224.90.0025 or 7224.90.0035)).....	Free		
9903.81.78	Ingots (provided for in subheading 7206.10.00, 7206.90.00 or 7224.10.00 (except for statistical reporting number 7224.10.0045)).....	Free		
9903.81.80	Iron or steel products of Japan enumerated in U.S. note 16 to this subchapter, when such products are covered by an exclusion granted by the Secretary of Commerce under note 16(c) to this subchapter, provided that such goods shall be counted toward any quantitative limitation applicable to any such product under U.S. note 16(g) to this subchapter until such limitation has filled.....	Free”		

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A new table will be published in the first issue of each month.

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