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Contents

Federal Register

Vol. 85, No. 1

Thursday, January 2, 2020

Air Force Department
NOTICES
Environmental Assessments; Availability, etc.:
Juniper Butte Range Land Withdrawal Extension, Mountain Home Air Force Base, Idaho, 72

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Commerce in Explosives; 2019 Annual List of Explosive Materials, 128–130

Centers for Medicare & Medicaid Services
RULES
Medicare and Medicaid Programs:
Adjustment of Civil Monetary Penalties for Inflation, 7–8
Medicare Program:
CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicaid Promoting Interoperability Program Requirements for Eligible Professionals; Establishment of an Ambulance Data Collection System; Updates to the Quality Payment Program; Medicare Enrollment of Opioid Treatment Programs and Enhancements to Provider Enrollment Regulations Concerning Improper Prescribing and Patient Harm; and Amendments to Physician Self-Referral Law Advisory Opinion Regulations Final Rule; and Coding and Payment for Evaluation and Management, Observation and Provision of Self-Administered Esketamine Interim Final Rule; Correction, 8–10

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Air Force Department

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal-State Unemployment Insurance Program Data Exchange Standardization, 133–134
Job Corps Health Questionnaire, 131–132
Job Corps Placement and Assistance Record, 132–133
Meetings:
Workforce Innovation and Opportunity Act; Native American Employment and Training Council, 130–131

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update, 72–86

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 86–87

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
South Carolina; 2008 8-Hour Ozone Interstate Transport, 3–7
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Missouri; Revisions to the General Conformity Rules, 59–61
Oklahoma; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards, 54–59
NOTICES
Access to Confidential Business Information by Eastern Research Group and Its Identified Subcontractor, PG Environmental, 92–93
Certain New Chemicals:
Receipt and Status Information for September 2019, 100–111
Pesticide Emergency Exemptions:
Agency Decisions and State and Federal Agency Crisis Declarations, 96–99
Pesticide Registration Review:
Draft Human Health and/or Ecological Risk Assessments for Several Pesticides, 94–95
Proposed Interim Decisions for Several Triazines, 93–94
Revised Interim Registration Review Decision for Sodium Cyanide, 91–92
Updated Working Approach to Making New Chemical Determinations Under the Toxic Substances Control Act, 99–100

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
The Boeing Company Airplanes, 23–27
NOTICES
Final Environmental Assessment and Finding of No Significant Impact and Record of Decision for the Proposed Eastgate Air Cargo Facility, San Bernardino International Airport, San Bernardino County, CA, 160–161

Federal Communications Commission
PROPOSED RULES
Petition for Reconsideration of Action in Proceeding, 61–62

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 89–91
Combined Filings, 87, 91
Records Governing Off-the-Record Communications, 87–88
Request Under Blanket Authorization:
Columbia Gas Transmission, LLC, 88

Federal Railroad Administration
RULES
Training, Qualification, and Oversight for Safety-Related Railroad Employees, 10–14
NOTICES
Funding Opportunity:
Restoration and Enhancement Grants Program, 161

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 111
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 112
Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies, 111–112
Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities, 112

Fish and Wildlife Service
RULES
Endangered and Threatened Species:
Removing the Hawaiian Hawk From the Federal List of Endangered and Threatened Wildlife, 164–189

Foreign-Trade Zones Board
NOTICES
Authorization of Production Activity:
Gulfstream Aerospace Corp.; Foreign-Trade Zone 168; Dallas/Fort Worth, TX, 63
Patterson Pump Co.; Foreign-Trade Zone 26; Atlanta, GA, 63

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Meetings:
Advisory Commission on Childhood Vaccines, 112–113

Indian Affairs Bureau
PROPOSED RULES
Procedures for Federal Acknowledgment of Alaska Native Entities, 37–53

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See National Park Service
NOTICES
Request for Nominations:
Exxon Valdez Oil Spill Public Advisory Committee, 113

Internal Revenue Service
RULES
Regulations Relating to Withholding and Reporting Tax on Certain U.S. Source Income Paid to Foreign Persons, 192–206

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Advance Notification of Sunset Review, 63–64
Certain Carbon and Alloy Steel Cut-to-Length Plate From Taiwan, 69–71
Diamond Sawblades and Parts Thereof From the People's Republic of China, 66–67
Initiation of Five-Year (Sunset) Reviews, 67–68
Opportunity To Request Administrative Review, 64–66

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Barium Carbonate From China, 125–128
Certain Crystalline Silicon Photovoltaic Products From China and Taiwan, 120–122
Certain Tow-Behind Lawn Groomers and Parts Thereof From China, 117–120
Ferrovanadium From China and South Africa, 122–125
Polyethylene Terephthalate Film, Sheet, and Strip From China and the United Arab Emirates, 114–117

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration

Mine Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Waiver of Surface Facilities Requirements, 134–135
Slope and Shaft Sinking Plans, 141–142
Petitions for Modification of Application of Existing Mandatory Safety Standards, 135–141

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Atlantic Bluefin Tuna Fisheries, 17–19
North Atlantic Swordfish Fishery, 14–16
Fisheries of the Exclusive Economic Zone Off Alaska:
Inseason Adjustment to the 2020 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific Cod Total Allowable Catch Amounts, 19–22

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 113–114

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Advanced Power Reactor 1400 (APR1400) Design Certification, 142
Draft NUREG:
Methodology for Modeling Transient Fires in Nuclear Power Plant Fire Probabilistic Risk Assessments, 143–144
License Amendment Application:
Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4, 144–149

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 149, 156–157, 159–160

Self-Regulatory Organizations; Proposed Rule Changes:
ICE Clear Credit, LLC, 157–159
National Securities Clearing Corp., 149–154
New York Stock Exchange, LLC, 154–156

Surface Transportation Board
NOTICES
Trackage Rights Exemption:
Norfolk Southern Railway Co.; Canton Railroad Co., 160

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
PROPOSED RULES
Accessible Lavatories on Single-Aisle Aircraft; Part 1, 27–37

Treasury Department
See Internal Revenue Service
RULES
Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority, 1–3

Veterans Affairs Department
NOTICES
Meetings:
Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, 161–162

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 164–189

Part III
Treasury Department, Internal Revenue Service, 192–206

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

14 CFR

Proposed Rules:

39.....23
382.....27

25 CFR

Proposed Rules:

82.....37

26 CFR

1.....192

31 CFR

148.....1

40 CFR

52.....3

Proposed Rules:

52 (2 documents) 54, 59

42 CFR

402.....7
403 (2 documents) 7, 8
409.....8
410.....8
411 (2 documents) 7, 8
412.....7
414.....8
415.....8
416.....8
418.....8
422.....7
423.....7
424.....8
425.....8
460.....7
483.....7
488.....7
489.....8
493.....7
498.....8

47 CFR

Proposed Rules:

54.....61

49 CFR

243.....10

50 CFR

17.....164
635 (2 documents) 14, 17
679.....19

Rules and Regulations

Federal Register
Vol. 85, No. 1
Thursday, January 2, 2020

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

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

DEPARTMENT OF THE TREASURY

31 CFR Part 148

Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority

AGENCY: Department of the Treasury.

ACTION: Notification of exemption.

SUMMARY: The Secretary of the Treasury (the ''Secretary''), as Chairperson of the Financial Stability Oversight Council, after consultation with the Federal Deposit Insurance Corporation (the ''FDIC''), is issuing a determination regarding a request for an exemption from certain requirements of the rule implementing the qualified financial contracts (''QFC'') recordkeeping requirements of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or the ''Act'').

DATES: The exemption granted is effective January 2, 2020.

FOR FURTHER INFORMATION CONTACT: Peter Phelan, Deputy Assistant Secretary for Capital Markets, (202) 622–1746; Daniel Harty, Director, Office of Capital Markets, (202) 622–0509; Peter Nickoloff, Financial Economist, Office of Capital Markets, (202) 622–1692; or Stephen T. Milligan, Deputy Assistant General Counsel (Banking & Finance), (202) 622–4051.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2016, the Secretary published a final rule pursuant to section 210(c)(8)(H) of the Dodd-Frank Act requiring certain financial companies to maintain records with respect to their QFC positions, and the associated counterparties, legal documentation, and collateral, that would assist the FDIC as receiver in exercising its rights and fulfilling its obligations under Title II of the Act (the ''rule'').[1]

Section 148.3(c)(3) of the rule provides that one or more records entities may request an exemption from one or more of the requirements of the rule by writing to the Department of the Treasury (''Treasury''), the FDIC, and the applicable primary financial regulatory agency or agencies, if any.[2] Among other things, the written request for an exemption must provide details as to the size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system of each records entity, to the extent appropriate, and any other relevant factors and specify the reasons why granting the exemption will not impair or impede the FDIC's ability to exercise its rights or fulfill its statutory obligations under sections 210(c)(8), (9), and (10) of the Act.

The rule provides that, upon receipt of a written recommendation from the FDIC, prepared in consultation with the primary financial regulatory agency or agencies for the applicable records entity or entities, the Secretary may grant, in whole or in part, a conditional or unconditional exemption from compliance with one or more of the requirements of the rule to one or more records entities.[3] The rule further provides that, in determining whether to grant an exemption, the Secretary will consider any factors deemed appropriate by the Secretary, including whether application of one or more requirements of the rule is not necessary to achieve the purpose of the rule.[4]

Request for Exemption

On August 14, 2018, Wells Fargo & Company submitted, on behalf of its subsidiaries Wells Fargo Clearing Services, LLC (''WFCS'') and Wells Fargo Advisors Financial Network, LLC (''FiNet''), a request for an exemption from the rule to Treasury, the FDIC, and, as the primary financial regulatory agencies for WFCS and FiNet, the Securities and Exchange Commission (''SEC'') and the Commodity Futures Trading Commission (''CFTC''), which Wells Fargo supplemented with information provided on March 5, 2019, in response to questions from the FDIC, and on June 26, 2019, and August 30, 2019, in response to questions from Treasury.[5] Wells Fargo requested an exemption for WFCS and FiNet from compliance with sections 148.3 and 148.4 of the rule for WFCS' and FiNet's current and future QFC portfolio consisting of QFCs entered into by WFCS or FiNet with or on behalf of clients, referred to herein as ''client activity QFCs,'' and QFCs entered into by WFCS or FiNet in connection with or in support of client activity QFCs. As an alternative, Wells Fargo requested an exemption for QFCs, and all credit enhancements related to such QFCs, entered into by WFCS and FiNet with, on behalf of, or for the benefit of clients for which any of their transactions would be defined as being with a ''customer'' under the Securities Investor Protection Act, as amended (''SIPA''),[6] and transactions entered into in order to facilitate or complete transactions with such a customer. Wells Fargo also asked for an exemption from certain guarantees WFCS enters into for the benefit of a futures commission merchant in connection with WFCS' introduction of customer trades to such futures commission merchant.

In support of its request, Wells Fargo submitted information detailing the types, volume, and complexity of client activity and related QFCs to which WFCS and FiNet are a party. Wells Fargo stated that WFCS and FiNet's primary business activities comprise retail securities and commodities brokerage, investment advisory services, asset management, estate planning, retirement planning, and portfolio analysis and monitoring services and that WFCS, as a self-clearing broker-dealer, also carries the customer accounts of and provides clearing services on a fully disclosed basis to FiNet and various unaffiliated broker-dealers.

Wells Fargo represented that the client activity QFCs of WFCS and FiNet consist of retail cash and margin securities transactions, retail brokerage agreements, margin agreements, non-

[1] *See* 31 CFR part 148; 81 FR 75624 (Oct. 31, 2016).

[2] *See* 31 CFR 148.3(c)(3).

[3] *See* 31 CFR 148.3(c)(4)(i).

[4] *See* 31 CFR 148.3(c)(4)(ii).

[5] Each of WFCS and FiNet is registered with the SEC as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940 and is registered with the CFTC as an introducing broker under the Commodity Exchange Act.

[6] 15 U.S.C. 78aaa *et seq.*

purpose lending agreements, and a limited number of mortgage-backed securities forward transactions. As to leverage, Wells Fargo represented that retail margin and securities-based lending is done in accordance with initial and maintenance margin requirements. As to WFCS' and FiNet's interconnectedness to the rest of the financial system, Wells Fargo noted that the activities of WFCS and FiNet are limited to certain products and types of clients and, moreover, that their operations, funding, and liquidity are independent from the separate Wells Fargo broker-dealer subsidiary, Wells Fargo Securities, LLC, that serves institutional clients.[7] Furthermore, neither WFCS nor FiNet is registered with the CFTC as a swap dealer or a futures commission merchant; the lack of these registrations restricts their ability to transact in certain types of QFCs, including OTC derivatives. Finally, Wells Fargo asserted that the extent and nature of WFCS' and FiNet's businesses with respect to client activity QFCs, as described above, support its view that granting the requested exemption would not impair or impede the FDIC's ability to exercise its rights under section 210(c)(8), (9), and (10) of the Act.

Treasury received a final recommendation from the FDIC, prepared in consultation with the SEC and CFTC, regarding the exemption request, and, after consultation with the FDIC, Treasury is making the determination discussed below.[8]

Evaluation of the Exemption Request

The FDIC has the authority under Title II to transfer the assets and liabilities of any financial company for which it has been appointed receiver under Title II (a ''covered financial company'') to either a bridge financial company established by the FDIC or to another financial institution.[9] The FDIC generally has broad discretion under Title II as to which QFCs it transfers to the bridge financial company or to another financial institution subject to certain limitations, including the ''all or none rule.'' [10]

Separately, if the FDIC is appointed receiver of a covered financial company that is a broker-dealer and the FDIC establishes a bridge financial company to assist with the resolution of that broker-dealer, the FDIC must, pursuant to section 210(a)(1)(O) of the Act,[11] unless certain conditions are met, transfer to the bridge financial company all ''customer accounts'' of the broker-dealer and all associated ''customer name securities'' and ''customer property,'' as those terms are defined by reference to SIPA.[12] There are two conditions under which the FDIC is permitted not to transfer all such customer accounts, customer name securities, and customer property to the bridge financial company: (i) If the FDIC determines, after consulting with the Securities Investor Protection Corporation and the SEC, that such customer accounts, customer securities, and customer property are likely to be promptly transferred to another registered broker-dealer or (ii) if the transfer would materially interfere with the ability of the FDIC to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.[13]

Not all of a broker-dealer's clients qualify as ''customers'' under SIPA. For instance, a client of a broker-dealer that engaged in an FX spot transaction or an FX forward would not be a ''customer'' under SIPA with respect to those transactions.[14] Even if such a client were otherwise to have a customer relationship with the broker-dealer under SIPA, such as by virtue of having a brokerage account for the trading of securities, then, although that customer account would be required to be transferred pursuant to section 210(a)(1)(O) of the Act, the FX spot transaction or forward would not be required to be transferred pursuant to section 210(a)(1)(O) of the Act. However, pursuant to the all or none rule, if the FDIC were to transfer a customer account that held QFCs between the broker-dealer and the client, the FDIC would be required to transfer (i) all QFCs between the broker-dealer and the client and, if the client is a non-natural person, (ii) all QFCs between the broker-dealer and any affiliates of such client.

Determination of Exemption

Given the above-discussed restrictions on the FDIC's discretion as to whether or not to transfer QFCs from a broker-dealer, the limited nature of WFCS and FiNet's businesses, and the limited types of QFCs entered into by WFCS and FiNet with their clients, Treasury has determined to exempt WFCS and FiNet from the recordkeeping requirements of the rule with respect to any QFCs with clients that are their respective customers under SIPA with respect to any transactions or accounts such customers have with WFCS and FiNet, respectively, subject to the conditions stipulated below.[15] Treasury does not expect that granting this exemption will unduly interfere with the FDIC's ability to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States. In the case of each of WFCS and FiNet, the size, risk, complexity, and leverage of its QFCs with its customers do not present a high likelihood that the financial stability exception to the transfer requirement of section 210(a)(1)(O) of the Act would be met. If the financial stability exception is not met, the FDIC would likely either transfer, pursuant to section 210(a)(1)(O), all of a broker-dealer's customer accounts, customer name securities, and customer property included in such customer accounts and any other QFCs with such customer to the bridge financial company or transfer all such accounts, securities, and property to another broker-dealer. In either case, the FDIC would not need the detailed records required by the rule with respect to QFCs to accomplish the transfer. Likewise, Treasury has determined to exempt any guarantees of such QFCs by a third party if the guarantor is an affiliate of the customer, is itself a customer of WFCS or FiNet, as applicable, or does not have any other QFCs with WFCS or FiNet, as applicable. In addition, Treasury has determined to exempt WFCS from the

[7] Wells Fargo Securities, LLC was not included within the exemption request.

[8] All exemptions to the recordkeeping requirements of the rule are made at the discretion of the Secretary, and the Secretary's discretion is not limited by any recommendations received from other agencies. Exemptions from the FDIC's recordkeeping rules under 12 CFR part 371 (Recordkeeping Requirements for Qualified Financial Contracts) are at the discretion of the board of directors of the FDIC and entail a separate request and process and different policy considerations. References to the FDIC in this document should not be taken to imply that the FDIC has determined that similar exemptions under part 371 would be available.

[9] *See, e.g.,* 12 U.S.C. 5390(a)(1)(G)(i).

[10] For further discussion of the FDIC's authorities and responsibilities addressed in this section of the document, see the notice of exemption issued with respect to Morgan Stanley Smith Barney, 83 FR 66618, 66619–20 (Dec. 27, 2018).

[11] 12 U.S.C. 5390(a)(1)(O).

[12] *See* 15 U.S.C. 78aaa *et seq. See also* section 201(a)(10) of the Dodd-Frank Act (12 U.S.C. 5381(a)(10)) (providing that the terms ''customer,'' ''customer name securities,'' and ''customer property'' as used in Title II shall have the same meaning as provided in SIPA).

[13] *See* 12 U.S.C. 5390(a)(1)(O)(i)(I)–(II).

[14] *See* 15 U.S.C. 78lll(2) (defining ''customer'' as . . . ''any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of *securities* received, acquired, or held . .'' (emphasis added); *id.* section 78lll(14) (defining ''security'' to exclude currency and rights to buy and sell currency other than FX options and other derivatives executed on a national securities exchange).

[15] As used in the remainder of this notification of exemption, the term ''customer'' means a person who is a customer as defined in SIPA with respect to any transaction or account it has with WFCS or FiNet.

recordkeeping requirements of the rule with respect to any QFC entered into by WFCS with a clearing organization for the purpose of facilitating the clearance or settlement of any QFC subject to the exemption discussed above. As used in the exemption, the term ''clearing organization'' includes, among other things, clearing agencies registered with the SEC and derivatives clearing organizations registered with the CFTC.[16]

Treasury has determined not to exempt (i) QFCs with clients that are not customers under SIPA with respect to any transactions or accounts they have with WFCS and FiNet or (ii) WFCS's or FiNet's QFCs with third parties that are not customers, such as transactions with other broker-dealers entered into to fulfill obligations to customers or to hedge risk, other than the guarantees and the QFCs with clearing organizations discussed above. The exemption would not include any guarantees WFCS may enter into for the benefit of a futures commission merchant in connection with WFCS' introduction of customer trades to such futures commission merchant. Because the FDIC would retain discretion as to whether to transfer or retain QFCs with clients that are not customers under SIPA, and in consideration of the size of the QFCs with non-customer third parties and the risks they impose, the FDIC would need the detailed records required by the rule to make a transfer determination with respect to such transactions of WFCS and FiNet. To the extent the transactions excluded from this exemption qualify for the exemptions previously granted by Treasury with respect to cash market transactions and overnight transactions, WFCS or FiNet would only be required to maintain limited records with respect to such transactions.[17]

Conditions of the Exemption

The exemption granted below is based on the factual representations made by Wells Fargo on behalf of WFCS and FiNet to Treasury, the FDIC, the SEC, and the CFTC in its submissions. Treasury reserves the right to request an updated submission from WFCS and FiNet as to their business, and to rescind or modify the exemption, at any time. Further, Treasury intends to reassess the exemption in five years. At that time, Treasury, in consultation with the FDIC and the primary financial regulatory agencies, would evaluate any material changes in the nature of WFCS' and FiNet's businesses as well as any relevant changes to market structure or applicable law or other relevant factors that might affect the reasons for granting the exemptions. Treasury expects that it would provide notice to WFCS and FiNet prior to any modification or rescission of the exemption and that, in the event of a rescission or modification, Treasury would grant a limited period of time in which to come into compliance with the applicable recordkeeping requirements of the rule.

Terms and Conditions of the Exemption

Each of WFCS and FiNet (each a ''records entity'') is hereby granted an exemption from the requirements of 31 CFR 148.3 and 148.4 for the following: (i) Any QFC entered into by the records entity with or on behalf of any customer of the records entity that is booked and carried in accounts at the records entity maintained for the benefit of such customer and (ii) any guarantee of such an exempt QFC if the guarantor (x) is an affiliate of the customer whose obligations are guaranteed, (y) is itself a customer of the records entity, or (z) does not have any other QFCs with the records entity. In addition, WFCS is hereby granted an exemption from the requirements of 31 CFR 148.3 and 148.4 for QFCs entered into by WFCS with a clearing organization in order to facilitate the clearance or settlement of any QFC referenced in clause (i) of the preceding sentence. For purposes of the exemption, ''customer'' means a person who is a customer as defined in 15 U.S.C. 78lll(2) with respect to any transactions or accounts it has with the records entity, and ''clearing organization'' has the meaning provided in 12 U.S.C. 4402.

The exemption is subject to modification or revocation at any time the Secretary determines that such action is necessary or appropriate in order to assist the FDIC as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act. The exemption extends only to WFCS and FiNet and to no other entities.

Dated: December 13, 2019.

Peter Phelan,

Deputy Assistant Secretary for Capital Markets.

[FR Doc. 2019–27801 Filed 12–31–19; 8:45 am]

BILLING CODE 4810–25–P

[16] The exemption cross-references the definition from section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 4402.

[17] *See* 83 FR 65509 (Dec. 21, 2018).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0666; FRL–10003–56–Region 4]

Air Plan Approval; South Carolina; 2008 8-Hour Ozone Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of South Carolina's June 18, 2018, State Implementation Plan (SIP) submission pertaining to the ''good neighbor'' provision of the Clean Air Act (CAA or Act) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other state. In this action, EPA is finalizing the determination that South Carolina's SIP contains adequate provisions to prohibit emissions within the State from contributing significantly to nonattainment or interfering with maintenance of the 2008 8-hour ozone NAAQS in any other state.

DATES: This rule is effective February 3, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0666. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* 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 Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday

through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can also be reached via telephone at (404) 562–9009 and via electronic mail at *adams.evan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 27, 2008 (73 FR 16436), EPA published an ozone NAAQS that revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm. Pursuant to CAA section 110(a)(1), within three years after promulgation of a new or revised NAAQS (or shorter, if EPA prescribes), states must submit SIPs that meet the applicable requirements of section 110(a)(2). EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four sub-elements, or ''prongs,'' within section 110(a)(2)(D)(i) of the CAA. CAA section 110(a)(2)(D)(i)(I), also known as the ''good neighbor'' provision, requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance). Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4).

On June 18, 2018, the South Carolina Department of Health and Environmental Control (SC DHEC) provided a SIP submittal containing a certification that South Carolina's SIP meets the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. South Carolina's certification is based on available emissions data, air quality monitoring and modeling data, and SIP-approved [1] regulations controlling emissions of ozone precursors within the State. In a notice of proposed rulemaking (NPRM) published on May 28, 2019 (84 FR 24420), EPA proposed to approve South Carolina's SIP submission demonstrating that South Carolina's SIP is sufficient to address the CAA requirements of prongs 1 and 2 for the 2008 8-hour ozone NAAQS.[2] In that NPRM, EPA discussed the final determination made in the update to the Cross-State Air Pollution Rule (CSAPR) ozone season program that addresses good neighbor obligations for the 2008 8-hour ozone NAAQS (known as the ''CSAPR Update'') [3] that emissions activities within South Carolina will not significantly contribute to nonattainment or interfere with maintenance of that NAAQS in any other state. In the NPRM, EPA stated that it was not reopening for comment final determinations made in the CSAPR Update or the modeling conducted to support that rulemaking. The NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before June 27, 2019.

II. Response to Comments

EPA received two sets of comments on its May 28, 2019, NPRM. One set of comments is adverse but do not raise issues that would alter the action proposed in EPA's May 28, 2019, NPRM. EPA has summarized these comments below and provided its responses. The second set of comments are not relevant to EPA's May 28, 2019, NPRM because they are focused on greenhouse gases. Accordingly, the EPA is not required to respond to the second set of comments in finalizing this action. Both sets of comments are provided in the docket for this final action.

Comment 1: The Commenter asserts that EPA cannot rely on a Federal implementation program (FIP) in this action, stating that ''the agency and the state can't rely on federal implementation programs to meet requirements of plans required under Clean Air Act section 110(a)(2) because the language in the act requires all plans to include provisions in the state's plan.''

Response 1: EPA believes this comment inaccurately characterizes South Carolina's transport obligation status because neither EPA nor the State is relying on a FIP to meet the interstate transport requirements for the 2008 8-hour ozone NAAQS. Although the Commenter does not indicate which FIPs it believes EPA has inappropriately relied on, EPA is providing the following discussion to clarify the history involving South Carolina and CSAPR FIPs.

In 2015, EPA issued findings of failure to submit to 24 states, including South Carolina, for failure to submit complete SIP revisions to address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2008 ozone NAAQS. *See* 80 FR 39961 (July 13, 2015) (effective August 12, 2015). The CSAPR Update was developed to address EPA's obligation under CAA section 110(c) to promulgate FIPs addressing this statutory requirement on behalf of the states for which the findings were made. EPA's modeling in the CSAPR Update showed that emissions from South Carolina would not impact downwind air quality problems at or above the air quality screening threshold used to evaluate good neighbor obligations, and EPA therefore determined that South Carolina would not contribute significantly to nonattainment or interfere with maintenance for any other state with respect to the 2008 ozone NAAQS. Accordingly, EPA concluded that it need not require further emissions reductions from sources in South Carolina and therefore did not promulgate a FIP to address the good neighbor provision as to the 2008 ozone NAAQS. Thus, there is no CSAPR FIP currently in place for South Carolina sources with respect to the 2008 ozone NAAQS, and there is no obligation for

[1] South Carolina also identified state provisions regulating ozone precursors that are not in the SIP, but EPA is not relying on those regulations for purposes of this rulemaking.

[2] This action addresses only prongs 1 and 2 of section 110(a)(2)(D)(i). All other infrastructure SIP elements for South Carolina for the 2008 8-hour ozone NAAQS were addressed in separate rulemakings. *See* 83 FR 48237 (September 24, 2018); 81 FR 56512 (August 22, 2016); 80 FR 48255 (August 12, 2015); 80 FR 14019 (March 18, 2015); and 80 FR 11136 (March 2, 2015).

[3] *See* 81 FR 74504 (October 26, 2016). The CSAPR Update establishes statewide nitrogen oxide (NO_X) budgets for certain affected electricity generating units in 22 eastern states for the May–September ozone season to reduce the interstate transport of ozone pollution in the eastern United States, and thereby help downwind states and communities meet and maintain the 2008 8-hour ozone NAAQS. The rule also determined that emissions from 14 states (including South Carolina) will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. Accordingly, EPA determined that it need not require further emission reductions from sources in those states to address the good neighbor provision as to the 2008 ozone NAAQS. *Id.*

South Carolina to implement further emissions reductions from sources in the State to address that obligation. The approval of South Carolina's SIP here merely implements the final determination regarding the State's good neighbor obligation with respect to the 2008 ozone NAAQS already made in the CSAPR Update.

EPA notes that South Carolina is also not subject to any other FIPs under the good neighbor provision. Although South Carolina was originally subject to a CSAPR FIP to address the 1997 ozone NAAQS, the FIP was subsequently removed.[4] Similarly, the State was originally subject to CSAPR FIPs for the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS regulating annual emissions of NO_X and sulfur dioxide emissions, but the State has since adopted those requirements into its SIP. *See* 82 FR 47936 (October 13, 2017)

Comment 2: The Commenter questions EPA's modeling for the CSAPR Update and the use of that modeling for this action, stating that EPA ''cannot approve South Carolina's action since it is based on EPA's faulty CSAPR Update modeling analysis which uses illegal attainment years to base the state's contribution.'' Additionally, the Commenter questions the accuracy of EPA's modeling. The Commenter goes on to suggest that EPA should compare the ''modeling results for 2017 and 2018 and 2019 to see how accurate the agency's model performs.''

Response 2: EPA stated in the NPRM that it was not taking comment on the final determinations made in the CSAPR Update or the modeling conducted to support that rulemaking. The Commenter had the opportunity to raise concerns about the model year and accuracy in the CSAPR Update rulemaking.[5] Issues related to the final determinations made in the CSAPR Update or the modeling conducted to support that rulemaking are thus outside the scope of this rule. Nonetheless, the EPA is providing the following explanation.

The Commenter does not explain why it believes that the analytic year that EPA used in the CSAPR Update modeling is inappropriate. As explained in that action, the 2017 analytic year aligned with the July 2018 Moderate area attainment date, which was the next applicable attainment date at the time that rulemaking was conducted. The Commenter also does not explain why it believes the 2017 air quality modeling is inaccurate or unreliable such that modeling of additional years is necessary.

To the extent the commenter was concerned about EPA verification of the accuracy of the model's performance, in 2016 EPA performed an extensive model performance evaluation that compared the 2011 base year model predictions to the corresponding measured data.[6] This approach is consistent with recommendations in EPA's air quality modeling guidance.[7] This evaluation found that the predictions from the 2011 modeling platform correspond closely to observed concentrations in terms of the magnitude, temporal fluctuations, and geographic differences for 8-hour daily maximum ozone. Thus, the model performance results demonstrate the scientific credibility of our 2011 modeling platform. These results provide confidence in the ability of the modeling platform to provide a reasonable projection of expected future year ozone concentrations and contributions.

In addition, EPA has identified all monitoring sites outside of South Carolina that have predicted 2017 contributions from South Carolina that are at or above the 1 percent of the NAAQS threshold used by EPA as a screening threshold in evaluation contributions with respect to the 2008 NAAQS. The outcome of this analysis reveals that there are no monitors currently measuring violations to which South Carolina contributes at or above the 1 percent threshold. The data to support this finding are provided in Table 1.

TABLE 1—2018 DESIGN VALUES AND PREDICTED 2017 CONTRIBUTIONS FOR ALL MONITORING SITES TO WHICH SOUTH CAROLINA CONTRIBUTES AT OR ABOVE THE 1 PERCENT THRESHOLD

Site ID	State	County	2016–2018 design value (ppb)	2017 Contribution from South Carolina (ppb)
10499991	Alabama	DeKalb	62	0.86
10690004	Alabama	Houston	58	1.13
120030002	Florida	Baker	61	1.16
120230002	Florida	Columbia	62	1.10
120310077	Florida	Duval	58	0.97
120310106	Florida	Duval	61	1.01
120730012	Florida	Leon	61	0.89
121275002	Florida	Volusia	61	0.92
130510021	Georgia	Chatham	57	3.53
130550001	Georgia	Chattooga	60	0.98
130590002	Georgia	Clarke	65	1.10
130670003	Georgia	Cobb	66	1.06
130730001	Georgia	Columbia	60	6.19
130850001	Georgia	Dawson	65	1.60
130890002	Georgia	DeKalb	69	1.33
130970004	Georgia	Douglas	67	1.61
131210055	Georgia	Fulton	73	1.45

[4] EPA removed the FIP requiring South Carolina to participate in the CSAPR ozone season NO_X trading program because the updated modeling showed that the State was not linked to any identified downwind air quality problems for either the 2008 ozone NAAQS or 1997 ozone NAAQS. *See* 81 FR 74504 at 74524 (containing additional explanation on EPA's removal of South Carolina from the CSAPR ozone season NO_X trading program); *EME Homer City Generation, L.P.,* v. *EPA,* 795 F.3d 118, 129–30, 138 (D.C. Cir. 2015) (remanding South Carolina's CSAPR FIP for the 1997 ozone NAAQS for reconsideration).

[5] EPA notes that it already addressed comments raised in the CSAPR Update rulemaking regarding the use of 2017 as the model year and the accuracy of the modeling.

[6] *See* ''Air Quality Modeling Technical Support Document for the Final Cross State Air Pollution Rule Update,'' August 2016, available at *https://www.epa.gov/sites/production/files/2017-05/documents/aq_modeling_tsd_final_csapr_update.pdf.*

[7] *See* ''Draft Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' December 3, 2014, available at *https://www3.epa.gov/ttn/scram/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf.*

TABLE 1—2018 DESIGN VALUES AND PREDICTED 2017 CONTRIBUTIONS FOR ALL MONITORING SITES TO WHICH SOUTH CAROLINA CONTRIBUTES AT OR ABOVE THE 1 PERCENT THRESHOLD—Continued

Site ID	State	County	2016–2018 design value (ppb)	2017 Contribution from South Carolina (ppb)
131270006	Georgia	Glynn	57	3.17
131350002	Georgia	Gwinnett	69	1.74
131510002	Georgia	Henry	71	1.02
132130003	Georgia	Murray	65	0.82
132150008	Georgia	Muscogee	60	1.65
132450091	Georgia	Richmond	62	6.78
370210030	North Carolina	Buncombe	61	1.33
370270003	North Carolina	Caldwell	64	1.38
370330001	North Carolina	Caswell	62	1.85
370650099	North Carolina	Edgecombe	62	1.37
370670022	North Carolina	Forsyth	66	2.23
370670030	North Carolina	Forsyth	67	2.05
370671008	North Carolina	Forsyth	66	1.98
370810013	North Carolina	Guilford	66	1.30
370870008	North Carolina	Haywood	61	1.48
370870036	North Carolina	Haywood	64	0.82
371090004	North Carolina	Lincoln	65	1.16
371190041	North Carolina	Mecklenburg	68	4.53
371570099	North Carolina	Rockingham	65	0.90
371590021	North Carolina	Rowan	62	1.64
371730002	North Carolina	Swain	60	0.94
371790003	North Carolina	Union	68	4.79
371830014	North Carolina	Wake	66	0.87
470259991	Tennessee	Claiborne	63	0.89
470651011	Tennessee	Hamilton	64	1.59
470890002	Tennessee	Jefferson	66	1.16
470930021	Tennessee	Knox	65	1.07
471632002	Tennessee	Sullivan	66	0.79

III. Final Action

EPA is taking final action to approve South Carolina's June 18, 2018, SIP submission demonstrating that South Carolina's SIP is sufficient to address the CAA requirements of prongs 1 and 2 under section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. EPA is taking final action to approve the SIP submission because it is consistent with section 110 of the CAA.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this final action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this final action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose

regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 2, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: December 10, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart PP—South Carolina

■ 2. Section 52.2120(e), is amended by adding an entry for ''110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS'' at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

Provision	State effective date	EPA approval date	Explanation
*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS.	6/18/2018	1/2/2020 [Insert citation of publication].	Addressing prongs 1 and 2 of section 110(a)(2)(D)(i)(I) only.

[FR Doc. 2019–27543 Filed 12–31–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 402, 403, 411, 412, 422, 423, 460, 483, 488, and 493

[CMS–6076–RCN]

RIN 0991–AC07

Medicare and Medicaid Programs; Adjustment of Civil Monetary Penalties for Inflation; Continuation of Effectiveness and Extension of Timeline for Publication of the Final Rule

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Continuation of effectiveness and extension of timeline for publication of the final rule.

SUMMARY: This document announces the continuation of, effectiveness of, and the extension of the timeline for publication of a final rule. We are issuing this document in accordance with the Social Security Act (the Act), which allows an interim final rule to remain in effect after the expiration of the timeline specified in the Act if the Secretary publishes a notice of continuation explaining why the regular timeline was not complied with.

DATES: Effective December 31, 2019, the Medicare provisions adopted in the interim final rule published on September 6, 2016 (81 FR 61538) continue in effect and the regular timeline for publication of the final rule is extended for an additional year, until September 6, 2020.

FOR FURTHER INFORMATION CONTACT: Steve Forry (410) 786–1564 or Jaqueline Cipa (410) 786–3259.

SUPPLEMENTARY INFORMATION: Section 1871(a) of the Social Security Act (the Act) sets forth certain procedures for promulgating regulations necessary to carry out the administration of the insurance programs under Title XVIII of the Act. Section 1871(a)(3)(A) of the Act requires the Secretary, in consultation with the Director of the Office of Management and Budget (OMB), to establish a regular timeline for the publication of final regulations based on the previous publication of a proposed rule or an interim final rule. In accordance with section 1871(a)(3)(B) of the Act, such timeline may vary among different rules, based on the complexity of the rule, the number and scope of the comments received, and other relevant factors. However, the timeline for publishing the final rule, cannot exceed 3 years from the date of publication of the proposed or interim final rule, unless there are exceptional circumstances. After consultation with the Director of OMB, the Secretary published a notice, which appeared in the December 30, 2004 **Federal Register** on (69 FR 78442), establishing a general 3-year timeline for publishing Medicare final rules after the publication of a proposed or interim final rule.

Section 1871(a)(3)(C) of the Act states that upon expiration of the regular timeline for the publication of a final regulation after opportunity for public comment, a Medicare interim final rule shall not continue in effect unless the Secretary publishes notification of continuation of the regulation that includes an explanation of why the regular timeline was not met. Upon publication of such notification, the regular timeline for publication of the final regulation is treated as having been extended for 1 additional year.

On September 6, 2016 **Federal Register** (81 FR 61538), the Department

of Health and Human Services (HHS) issued a department-wide interim final rule titled ''Adjustment of Civil Monetary Penalties for Inflation'' that established new regulations at 45 CFR part 102 to adjust for inflation the maximum civil monetary penalty amounts for the various civil monetary penalty authorities for all agencies within the Department. HHS took this action to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (28 U.S.C. 2461 note 2(a)), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (section 701 of the Bipartisan Budget Act of 2015, (Pub. L. 114–74), enacted on November 2, 2015). In addition, this September 2016 interim final rule included updates to certain agency-specific regulations to reflect the new provisions governing the adjustment of civil monetary penalties for inflation in 45 CFR part 102.

One of the purposes of the Inflation Adjustment Act was to create a mechanism to allow for regular inflationary adjustments to federal civil monetary penalties. Section 2(b)(1) of the Inflation Adjustment Act. The 2015 amendments removed an inflation update exclusion that previously applied to the Social Security Act as well as to the Occupational Safety and Health Act. The 2015 amendments also ''reset'' the inflation calculations by excluding prior inflationary adjustments under the Inflation Adjustment Act and requiring agencies to identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established (that is, originally enacted by Congress) or last adjusted other than pursuant to the Inflation Adjustment Act. In accordance with section 4 of the Inflation Adjustment Act, agencies were required to: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rulemaking (IFR) to take effect by August 1, 2016; and (2) make subsequent annual adjustments for inflation.

In the September 2016 interim final rule, HHS adopted new regulations at 45 CFR part 102 to govern adjustment of civil monetary penalties for inflation. The regulation at 45 CFR 102.1 provides that part 102 applies to each statutory provision under the laws administered by the Department of Health and Human Services concerning civil monetary penalties, and that the regulations in part 102 supersede existing HHS regulations setting forth civil monetary penalty amounts. The civil money penalties and the adjusted penalty amounts administered by all HHS agencies are listed in tabular form in 45 CFR 102.3. In addition to codifying the adjusted penalty amounts identified in § 102.3, the HHS-wide interim final rule included several technical conforming updates to certain agency-specific regulations, including various CMS regulations, to identify their updated information, and incorporate a cross-reference to the location of HHS-wide regulations.

Because the conforming changes to the Medicare provisions were part of a larger, omnibus departmental interim final rule, we inadvertently missed setting a target date for the final rule to make permanent the changes to the Medicare regulations in accordance with section 1871(a)(3)(A) of the Act and the procedures outlined in the December 2004 notice. Consistent with section 1871(a)(3)(C) of the Act, we are publishing this notice of continuation extending the effectiveness of the technical conforming changes to the Medicare regulations that were implemented through interim final rule and to allow time to publish a final rule. The extended time is needed to allow for coordination with the Department to issue a final rule and to avoid the potential for confusion between 45 CFR part 102, which establishes the civil monetary payment amounts, and the Medicare regulations subject to the timing requirements in section 1871(a)(3)(C) of the Act which would otherwise revert to the language that was used prior to the Inflation Adjustment Act. Therefore, the Medicare provisions adopted in interim final regulation continue in effect and the regular timeline for publication of the final rule is extended for an additional year, until September 6, 2020.

Dated: December 19, 2019.

Ann C. Agnew,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2019–28363 Filed 12–31–19; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 409, 410, 411, 414, 415, 416, 418, 424, 425, 489, and 498

[CMS–1715–CN]

RIN 0938–AT72

Medicare Program; CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicaid Promoting Interoperability Program Requirements for Eligible Professionals; Establishment of an Ambulance Data Collection System; Updates to the Quality Payment Program; Medicare Enrollment of Opioid Treatment Programs and Enhancements to Provider Enrollment Regulations Concerning Improper Prescribing and Patient Harm; and Amendments to Physician Self-Referral Law Advisory Opinion Regulations Final Rule; and Coding and Payment for Evaluation and Management, Observation and Provision of Self-Administered Esketamine Interim Final Rule; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors in the final rule that appeared in the November 15, 2019 **Federal Register** entitled, ''Medicare Program; CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicaid Promoting Interoperability Program Requirements for Eligible Professionals; Establishment of an Ambulance Data Collection System; Updates to the Quality Payment Program; Medicare Enrollment of Opioid Treatment Programs and Enhancements to Provider Enrollment Regulations Concerning Improper Prescribing and Patient Harm; and Amendments to Physician Self-Referral Law Advisory Opinion Regulations Final Rule; and Coding and Payment for Evaluation and Management, Observation and Provision of Self-Administered Esketamine Interim Final Rule'' (referred to hereafter as the ''CY 2020 PFS final rule'').

DATES: This correcting document is effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Terri Plumb, (410) 786–4481, Gaysha Brooks, (410) 786–9649, or Annette Brewer (410) 786–6580.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2019–24086 of November 15, 2019, the CY 2020 PFS final rule (84 FR 62568), there were technical errors that are identified and corrected in this correcting document. These corrections are effective and applicable beginning January 1, 2020.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 62568 of the CY 2020 PFS final rule, under **DATES**, we inadvertently omitted the applicability date for certain provisions, consistent with and as described in section II.P. of the final rule, Payment for Evaluation and Management Services.

On page 62699, we inadvertently included language that we intended to delete.

On page 62910, we inadvertently included the word ''~~levels~~''.

On page 62932, we inadvertently stated incorrectly that the lone amendment to our regulation at § 424.535 was the addition of paragraph (a)(22).

On page 62972, third column, last paragraph, lines 20 through 21, we inadvertently omitted language.

On page 62973, first column, first paragraph, lines 4 through 7, we inadvertently included certain language and inadvertently omitted other language.

B. Summary of Errors in Regulations Text

On page 63185, we inadvertently omitted language in the amendatory instruction.

C. Summary of Errors in the Addenda

On page 63205, due to a typographical error, language was inadvertently omitted in the table title for Table Group A, the title is incorrect.

On page 63212, due to a typographical error, language was inadvertently omitted in the table title for Table Group AA, the title is incorrect.

On page 63438, the last sentence of Table D.12 contains a typographical error.

On page 63516, the Activity ID entry contains a typographical error.

On pages 63539 through 63563, Appendix 2 was inadvertently included twice.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. In addition, section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it. In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements.

This document merely corrects technical errors in the CY 2020 PFS final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were proposed, subject to notice and comment procedures, and adopted in the CY 2020 PFS final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies adopted in the final rule. Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the CY 2020 PFS final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

IV. Correction of Errors

In FR Doc. 2019–24086 (84 FR 62568), published November 15, 2019, make the following corrections:

A. Correction of Errors in the Preamble

1. On page 62568, in the second column, the first full paragraph is corrected to read:

''**DATES:**

Effective date: These regulations are effective on January 1, 2020.

Applicability date: The following provisions as described in section II.P. of this final rule, Payment for Evaluation and Management Services, are applicable beginning January 1, 2021: (1) Adoption of certain new coding, prefatory language, and interpretive guidance that has been approved by the American Medical Association/Common Procedural Terminology (AMA/CPT) Editorial Panel; (2) establishment of certain AMA Relative Value Scale Update Committee (RUC)-recommended work values for office/outpatient E/M visit codes; and (3) establishment and valuation of a single add-on code for visit complexity inherent to evaluation and management associated with medical care services that serve as the focal point for al needed health care services and/or with medical care services that are part of ongoing care related to a patient's single, serious, or complex chronic condition.''.

2. On page 62699, second column, under the heading, ''7. Rural Health Clinics (RHCs) and Federally-Qualified Health Centers (FQHCs)'', first paragraph, lines 9 through 11, that reads ''health services, and we are allowing G0511 to also be billed when the requirements for PCM are met.'' is corrected to read ''health services.''.

3. On page 62910, third column, second full paragraph, line 6, that reads ''(or payment models ~~levels~~ within a

track)'' should read ''(or payment models within a track)''.

4. On page 62932, second column, third full paragraph, lines 15 through 17, that reads ''(a)(15); the lone amendment to § 424.535 is the addition of paragraph (a)(22).'' is corrected to read ''(a)(15); the only amendments to § 424.535 are our previously mentioned revision to paragraph (a)(14) and the addition of paragraph (a)(22).''.

5. On page 62972, third column, last paragraph, lines 20 through 21, that reads ''Hospitalists, medical oncologists, and radiation specialties'' is corrected to read ''Hospitalists and radiation oncologists,''.

6. On page 62973, first column, first partial paragraph, lines 4 through 7, that reads ''Other oncology specialties, including hematology oncology, medical oncology, gynecological oncology, and rheumatology' is corrected to read ''Rheumatology and other oncology specialties, including hematology oncology, medical oncology, and gynecological oncology,''.

B. Correction of Errors in the Regulatory Text

§ 403.902 [Corrected]

■ 1. On page 63185, in the third column, amendatory instruction 2.b. is corrected to read ''In the definition of ''Covered recipient'' by revising paragraph (1).

C. Correction of Errors in the Addenda

1. On page 63205, the title ''TABLE Group A: New Quality Measures Finalized for the 2022 MIPS Payment Year and Future Years'' is corrected to read: ''TABLE Group A: New Quality Measures Finalized and Not Finalized for the 2022 MIPS Payment Year and Future Years''.

2. On page 63212, the title ''TABLE Group AA: New Quality Measures Finalized for the 2023 MIPS Payment Year and Future Years'' is corrected to read: ''TABLE Group AA: New Quality Measure Not Finalized for the 2023 MIPS Payment Year and Future Years''.

3. On page 63438, the last sentence of Table D.12 is corrected by replacing ''Q112'' with ''Q113''.

4. On page 63516, the Activity ID entry ''IA_CC_18'' is corrected to read ''IA_CC_19''.

5. On pages 63539 through 63563, the second occurrence of Appendix 2 is removed.

Dated: December 19, 2019.

Ann C. Agnew,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2019–28005 Filed 12–30–19; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 243

[Docket No. FRA–2019–0095, Notice No. 2]

RIN 2130–AC86

Training, Qualification, and Oversight for Safety-Related Railroad Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In response to a petition for rulemaking, FRA is amending its regulation on Training, Qualification, and Oversight for Safety-Related Railroad Employees by delaying the regulation's implementation dates for all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more.

DATES: This regulation is effective December 30, 2019.

ADDRESSES: For access to the docket to read background documents or submissions received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert J. Castiglione, Staff Director—Human Performance Division, Federal Railroad Administration, 4100 International Plaza, Suite 450, Fort Worth, TX 76109–4820 (telephone: 817–447–2715); or Alan H. Nagler, Senior Attorney, Federal Railroad Administration, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On November 7, 2014, FRA published a final rule (2014 Final Rule) that established minimum training standards for each category and subcategory of safety-related railroad employees and required railroad carriers, contractors, and subcontractors to submit training programs to FRA for approval. *See* 79 FR 66459. The 2014 Final Rule was required by section 401(a) of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, 122 Stat. 4883 (Oct. 16, 2008), codified at 49 U.S.C. 20162. The Secretary of Transportation delegated the authority to conduct this rulemaking and implement the rule to the Federal Railroad Administrator. 49 CFR 1.89(b).

On May 3, 2017, FRA delayed implementation dates in the 2014 Final Rule by one year. On April 27, 2018, FRA responded to a petition for reconsideration of that May 2017 rule by granting the American Short Line and Regional Railroad Association's (ASLRRA) request to delay the implementation dates by an additional year.

On June 27 and July 12, 2019, ASLRRA and the National Railroad Construction and Maintenance Association, Inc. (NRC) (collectively Associations) filed petitions for rulemaking that were docketed in DOT's Docket Management System as FRA–2019–0050. The Associations' petitions request that FRA delay implementation and make several substantive changes to the part 243 regulation.

On November 22, 2019, FRA published a notice of proposed rulemaking (NPRM) describing the Associations' petitions and responding to the request to delay implementation. 84 FR 64447. FRA proposed to delay the implementation dates in the rule for all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. In the NPRM, FRA explained how its response is specifically targeted to equalize the implementation dates for those employers most likely to adopt model programs rather than develop their own programs. FRA also announced that it is considering whether to initiate a separate rulemaking which would be limited to amending FRA's training regulation so that the regulatory text includes the latest guidance that is intended to help small entities and other users of model training programs. Although these two rulemakings would be separate, FRA explained in the NPRM that they would be complementary in that, without any changes to the implementation dates, the targeted employers might not understand that the regulation contains more flexibility than is commonly understood or they may not feel comfortable following the guidance believing there is regulatory uncertainty.

II. Discussion of Comments and Conclusions

FRA received six written comments in response to the NPRM. FRA did not receive a request for a public hearing and none was provided.

A comment was filed jointly by ASLRRA and NRC in support of

finalizing the proposed rule. The Associations believe the extension and date alignment for Class II and III railroads and contractors will reduce confusion, especially for those companies with multiple operations. Additionally, the Associations express support for FRA to take up other aspects of their petitions for rulemaking and propose additional revisions to part 243 in future rulemakings.

Several comments from interested citizens were submitted. The most specific of these comments was against delaying the rule's implementation dates for refresher training citing the importance of the training. Other comments were more general in nature. A few commenters supported the NPRM, or did not express an opinion about the NPRM, while expressing a positive opinion about the part 243 training regulation generally. Another commenter supported the rulemaking, expressing that FRA should provide the flexibility necessary to best accommodate railroad workers.

FRA's Response

FRA initiated this rulemaking in response to ASLRRA and NRC's petitions for rulemaking, and the comment from the Associations, along with other commenters, expresses support for the NPRM. Moreover, none of the other comments raise significant safety concerns which would dictate against finalizing the proposed rule. Thus, FRA is amending part 243 as proposed.

As discussed further below, FRA is revising the part 243 regulation to reclassify those employers that FRA anticipates will likely adopt a model program so that they have the same implementation deadlines as the small entities subject to the regulation. In this regard, the Class II and III railroads and the contractors who will get relief provide training and operations in a manner more similar to that of a small entity than a Class I railroad. Treating this remainder group of employers in the same manner as the small entities would therefore reflect a more consistent approach to those employers adopting model programs, thereby justifying the delay in the implementation schedule.

The final rule's implementation date delays will not impact Class I railroads, and those commuter and intercity passenger railroads with 400,000 total employee work hours annually or more. Because the first implementation submission deadline for the entities affected by this rule is January 1, 2020, it is imperative for this final rule to become effective immediately, before that deadline is reached, to ensure the intended regulatory relief is provided.

III. Section-by-Section Analysis

Subpart B—Program Components and Approval Process

Section 243.101 Employer Program Required

FRA is amending the implementation date in § 243.101(a)(1) so that it is limited to Class I railroads, and those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. Also, FRA is amending this section so that all employers not covered by § 243.101(a)(1) will now be covered by § 243.101(a)(2), unless the employer is commencing operations after January 1, 2020, and will be covered by § 243.101(b). In other words, § 243.101(a)(1) will specifically except all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more, from complying with the January 1, 2020, training program submission implementation deadline. Instead, under § 243.101(a)(2), all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more, will be required to comply with a training program submission deadline of May 1, 2021; these entities will thus have an additional 16 months to submit a training program for their safety-related railroad employees.

Nonetheless, FRA understands that many regulated entities are on schedule to meet the earlier, January 1, 2020, deadline, or submit training programs well within the additional 16 months granted by this final rule. For those regulated entities that are prepared to move forward in advance of any deadline in part 243, there is certainly no prohibition against doing so. FRA recognizes that implementing a compliant training program earlier than required should benefit the overall safety of those employers' operations.

Subpart C—Program Implementation and Oversight Requirements

Section 243.201 Employee Qualification Requirements

FRA is amending the implementation dates in § 243.101(a)(1) and (e)(1) so that they are limited to Class I railroads, and those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. Also, FRA is amending this section so that all employers not covered by § 243.201(a)(1) and (e)(1) will now be covered by § 243.201(a)(2) and (e)(2). Please note that an employer commencing operations after January 1, 2020, will still be covered by § 243.201(b) and will be expected to implement a refresher training program upon commencing operations.

IV. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a non-significant regulatory action within the meaning of Executive Order 12866 and DOT policies and procedures. *See https://www.transportation.gov/regulations/2018-dot-rulemaking-order.* This rulemaking is a deregulatory action under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' See 82 FR 9339, Jan. 30, 2017.

As explained in the **SUPPLEMENTARY INFORMATION** section, FRA published the 2014 Final Rule to fulfill a statutory mandate. On May 3, 2017, FRA delayed implementation dates in the 2014 Final Rule by one year. On April 27, 2018, FRA responded to a petition for reconsideration of that May 2017 rule by granting the ASLRRA's request to delay the implementation dates an additional year. FRA is issuing a final rule targeted to equalize the implementation dates for Class II railroads, Class III railroads, and contractors regardless of their annual employee work hours, with the exception of those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. With adoption of this final rule, these employers will have until May 1, 2021, to submit a training program to FRA instead of the previous January 1, 2020, deadline that was applicable to railroads (regardless of whether they were Class II or III railroads), and contractors with 400,000 annual employee work hours or more.

FRA believes that the final rule will reduce the regulatory burden on the railroad industry by delaying the rule's implementation dates. This final rule will extend the implementation deadlines for some regulated entities by a total of 16 months. This final rule will be beneficial for regulated entities by adding time for some railroads and contractors to comply.

FRA is amending the training rule in part 243 to reclassify those employers that FRA anticipated in the 2014 Final Rule's Regulatory Impact Analysis would likely adopt a model program so that the regulation will reflect a more consistent approach to those employers

adopting model programs. Until the petitions for rulemaking were filed, FRA did not appreciate that the Class II and III railroads and the contractors who were not identified as small entities could be expected to encounter the same types of obstacles to training program implementation as that of a small entity. The final rule's implementation date delay will not impact Class I railroads, and those commuter and intercity passenger railroads with 400,000 total employee work hours annually or more. However, this final rule will provide all contractors, and those Class II and III railroads that are not currently identified as small entities in part 243, or are not commuter or intercity passenger railroads with 400,000 total employee work hours annually or more, with an additional 16 months to submit a training program for their safety-related railroad employees. FRA is also amending part 243 so that those same employers get an additional 16 months to designate each of their existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. In addition, the final rule will provide those same employers with one additional year to complete refresher training for each of their safety-related railroad employees. With this final rule, the training program submission date for Class II railroads, Class III railroads, and contractors regardless of their annual employee work hours, with the exception of those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more, will be delayed from January 1, 2020, to a new implementation date of May 1, 2021; the designation of employee date will be delayed from September 1, 2020, to a new implementation date of January 1, 2022; and, the deadline for the first refresher training cycle will be delayed from December 31, 2024, to a new deadline of December 31, 2025.

By delaying the implementation dates, all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more, will realize a cost savings. All contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more, will not incur costs during the first 16 months of this analysis. Also, costs incurred in future years will be discounted an extra 16 months, which will decrease the present value burden. The present value of costs will be less than if the original implementation dates were maintained. FRA has estimated this cost savings to be approximately $3.0 million, at a 7% discount rate, for impacted railroads and contractors that will experience relief as a result of this final rule.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* and Executive Order 13272, 67 FR 53461 (Aug. 16, 2002), require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

''Small entity'' is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''linehaul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than 15 million dollars. See ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A. Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies may adopt their own size standards for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891 (May 9, 2003), codified at appendix C to 49 CFR part 209. The $20-million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

The requirements of this final rule will apply to employers of safety-related railroad employees that FRA previously determined were not small entities. This final rule will have no direct impact on small units of government, businesses, or other organizations. State rail agencies are not required to participate in this program. State owned railroads that are subject to the relief provided by this final rule will receive a positive impact, if any impact. Therefore, the final rule will not impact any small entities. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this final rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

There are no new collection of information requirements contained in this final rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* the recordkeeping and reporting requirements already contained in the 2014 Final Rule have been approved by OMB. The OMB approval number is OMB No. 2130–0597. Thus, FRA is not required to seek additional OMB approval under the Paperwork Reduction Act.

D. Federalism Implications

This final rule will not have a substantial 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. Thus, in accordance with Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

E. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this final rule is not a major FRA action, requiring the preparation of an environmental impact statement or environmental assessment, because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999).

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

G. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). Section 202 of the Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in such an expenditure, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). FRA evaluated this final rule in accordance with Executive Order 13211, and determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

Executive Order 13783, ''Promoting Energy Independence and Economic Growth,'' requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. 82 FR 16093 (Mar. 31, 2017). FRA determined this final rule will not burden the development or use of domestically produced energy resources.

I. Congressional Review Act

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

List of Subjects in 49 CFR Part 243

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends part 243 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 243—TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY-RELATED RAILROAD EMPLOYEES—[AMENDED]

■ 1. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart B—Program Components and Approval Process

■ 2. In § 243.101 revise paragraph (a) to read as follows:

§ 243.101 Employer program required.

(a)(1) Effective January 1, 2020, each Class I railroad, and each intercity or commuter passenger railroad conducting operations subject to this part with 400,000 total employee work hours annually or more, shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(2) Effective May 1, 2021, each employer conducting operations subject to this part not covered by paragraph (a)(1) of this section shall submit, adopt, and comply with a training program for its safety-related railroad employees.

* * * * *

Subpart C—Program Implementation and Oversight Requirements

■ 3. In § 243.201, revise paragraphs (a)(1) and (2) and (e)(1) and (2) to read as follows:

§ 243.201 Employee qualification requirements.

(a) * * *

(1) By no later than September 1, 2020, each Class I railroad, and each intercity or commuter passenger railroad conducting operations subject to this part with 400,000 total employee work hours annually or more in operation as of January 1, 2020, shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. The Associate Administrator may extend this period based on a written request.

(2) By no later than January 1, 2022, each employer conducting operations subject to this part not covered by paragraph (a)(1) of this section in operation as of January 1, 2021, shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. The Associate Administrator may extend this period based on a written request.

* * * * *

(e) * * *

(1) Beginning January 1, 2022, each Class I railroad, and each intercity or commuter passenger railroad conducting operations subject to this part with 400,000 total employee work hours annually or more, shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs before FRA's approval of the employer's training program, the employer shall provide refresher training either within 3 calendar years

from that prior training event or no later than December 31, 2024. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

(2) Beginning May 1, 2023, each employer conducting operations subject to this part not covered by paragraph (e)(1) of this section shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs before FRA's approval of the employer's training program, the employer shall provide refresher training either within 3 calendar years from that prior training event or no later than December 31, 2025. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

Issued in Washington, DC, on December 27, 2019.

Brett A. Jortland,

Acting Chief Counsel, Federal Railroad Administration.

[FR Doc. 2019–28301 Filed 12–30–19; 11:15 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120627194–3657–02; RTID 0648–XT030]

Atlantic Highly Migratory Species; North Atlantic Swordfish Fishery

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

ACTION: Temporary rule.

SUMMARY: NMFS is adjusting the Swordfish General Commercial permit retention limits for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for January through June of the 2020 fishing year, unless otherwise later noticed. The Swordfish General Commercial permit retention limits in each of these regions are increased from the regulatory default limits (either two or three fish) to six swordfish per vessel per trip. The Swordfish General Commercial permit retention limit in the Florida Swordfish Management Area will remain unchanged at the default limit of zero swordfish per vessel per trip, as discussed in more detail below. These adjustments apply to Swordfish General Commercial permitted vessels and to Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial endorsement when on a non-for-hire trip. This action is based upon consideration of the applicable inseason regional retention limit adjustment criteria.

DATES: The adjusted Swordfish General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions are effective from January 1, 2020, through June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Rick Pearson, email: *rick.a.pearson@noaa.gov* or phone 727–824–5399.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of North Atlantic swordfish by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. North Atlantic swordfish quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and implemented by the United States into two equal semi-annual directed fishery quotas; an annual incidental catch quota for fishermen targeting other species or catching swordfish recreationally, and a reserve category, according to the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated Atlantic HMS FMP) (71 FR 58058, October 2, 2006), as amended, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

In 2017, ICCAT Recommendation 17–02 specified that the overall North Atlantic swordfish total allowable catch (TAC) be set at 9,925 metric tons (mt) dressed weight (dw) (13,200 mt whole weight (ww)) through 2021. Consistent with scientific advice, this was a reduction of 500 mt ww (375.9 mt dw) from previous ICCAT-recommended TACs. However, the United States' baseline quota remained at 2,937.6 mt dw (3,907 mt ww) per year. The Recommendation (17–02) also continued to limit underharvest carryover to 15 percent of a contracting party's baseline quota. Thus, the United States may carry over a maximum of 440.6 mt dw (586.0 mt ww) of underharvest. Absent adjustments, the codified baseline quota is 2,937.6 mt dw for 2020. At this time, given the extent of expected underharvest in 2019, NMFS anticipates carrying over the maximum allowable 15 percent (440.6 mt dw), which would result in a final adjusted North Atlantic swordfish quota for the 2020 fishing year equal to 3,378.2 mt dw (2,937.6 + 440.6 = 3,378.2 mt dw). As in past years we anticipate allocating 50 mt dw from the adjusted quota to the Reserve category for inseason adjustments/research and allocating 300 mt dw to the Incidental category, which includes recreational landings and landings by incidental swordfish permit holders, consistent with § 635.27(c)(1)(i)(D) and (B). This would result in an adjusted quota of 3,028.2 mt dw for the directed fishery, which would be split equally (1,514.1 mt dw) between the two semi-annual periods in 2020 (January through June, and July through December).

Adjustment of Swordfish General Commercial Permit Vessel Retention Limits

The 2020 North Atlantic swordfish fishing year, which is managed on a calendar-year basis and divided into two equal semi-annual quotas for the directed fishery, will begin on January 1, 2020. Landings attributable to the Swordfish General Commercial permit count against the applicable semi-annual directed fishery quota. Regional default retention limits for this permit have been established and are automatically effective from January 1 through December 31 each year, unless changed based on the inseason regional retention limit adjustment criteria at § 635.24(b)(4)(iv). The default retention limits established for the Swordfish General Commercial permit are: (1) Northwest Atlantic region—three swordfish per vessel per trip; (2) Gulf of Mexico region—three swordfish per vessel per trip; (3) U.S. Caribbean region—two swordfish per vessel per trip; and, (4) Florida Swordfish

Management Area—zero swordfish per vessel per trip. The default retention limits apply to Swordfish General Commercial permitted vessels and to HMS Charter/Headboat permitted vessels with a commercial endorsement when fishing on non-for-hire trips. As a condition of these permits, vessels may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

Under § 635.24(b)(4)(iii), NMFS may increase or decrease the Swordfish General Commercial permit vessel retention limit in any region within a range from zero to a maximum of six swordfish per vessel per trip. Any adjustments to the retention limits must be based upon a consideration of the relevant criteria provided in § 635.24(b)(4)(iv), which include: (A) The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock; (B) the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year; (C) the estimated amounts by which quotas for other categories of the fishery might be exceeded; (D) effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments; (E) variations in seasonal distribution, abundance, or migration patterns of swordfish; (F) effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and, (G) review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

NMFS has considered these criteria as discussed below and their applicability to the Swordfish General Commercial permit retention limit in all regions for January through June of the 2020 North Atlantic swordfish fishing year. We have determined that the Swordfish General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions applicable to persons issued a Swordfish General Commercial permit or HMS Charter/Headboat permit with a commercial endorsement (when on a non-for-hire trip) should be increased from the default levels that would otherwise automatically become effective on January 1, 2020, to six swordfish per vessel per trip from January 1 through June 30, 2020, unless otherwise later noticed. These are the same limits that were implemented through an inseason adjustment for the period July 1 through December 31, 2019 (84 FR 29088, June 21, 2019). Given the rebuilt status of the stock and the availability of quota, increasing the Swordfish General Commercial permit retention limits in three regions to six fish per vessel per trip will increase the likelihood that directed swordfish landings will approach, but not exceed, the available annual swordfish quota, and increase the opportunity for catching swordfish during the 2020 fishing year.

In 2019, a six swordfish per vessel trip limit was in effect for Swordfish General Commercial permit holders in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for the entire fishing season. As of November 30, 2019, this limit resulted in total annual directed swordfish landings of approximately 875.9 mt dw, or 28.9 percent of the 3,028.2 mt dw annual adjusted directed quota for 2019, which includes landings under the six fish trip limit.

Among the regulatory criteria for inseason adjustments to retention limits, and given the rebuilt status of the stock and availability of quota, is the requirement that NMFS consider the ''effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments.'' See § 635.24(b)(4)(iv)(D). A consideration in deciding whether to increase the retention limit, in this case, is the objective of providing opportunities to harvest the full North Atlantic directed swordfish quota without exceeding it based upon the 2006 Consolidated Atlantic HMS FMP goal to, consistent with other objectives of this FMP, ''manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.'' This action will help preserve a traditional swordfish handgear fishery (rod and reel, handline, harpoon, bandit gear, and greenstick). Although this action does not specifically provide recreational fishing opportunities, it will have a minimal impact on the recreational sector because recreational landings are counted against a separate incidental swordfish quota.

NMFS has examined dealer reports and landing trends and determined that the information obtained from biological sampling and monitoring of the North Atlantic swordfish stock is useful. See § 635.24(b)(4)(iv)(A). Regarding the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year, § 635.24(b)(4)(iv)(B), NMFS reviewed electronic dealer landings data, which indicates that sufficient directed swordfish quota should be available for the January through June 2020 semi-annual quota period if recent swordfish landing trends continue. The directed swordfish quota has not been harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded in 2020. Based upon recent landings rates from dealer reports, an increase in the vessel retention limits to six fish for Swordfish General Commercial permit holders and Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) in three regions is not likely to cause quotas for other categories of the fishery to be exceeded. See § 635.24(b)(4)(iv)(C). Similarly, regarding the criteria about the effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota, § 635.24(b)(4)(iv)(F), we expect there to be sufficient swordfish quota for the entirety of the 2020 fishing year. Thus, increased catch rates in these three regions as a result of this action would not be expected to preclude vessels in the other region (*e.g.,* the buoy gear fishery in the Florida Swordfish Management Area) from having a reasonable opportunity to harvest a portion of the overall swordfish quota.

In making adjustments to the retention limits NMFS must also consider variations in seasonal distribution, abundance, or migration patterns of swordfish, and the availability of swordfish on the fishing grounds. See § 635.24(b)(4)(iv)(G). With regard to swordfish abundance, the 2018 report by ICCAT's Standing Committee on Research and Statistics indicated that the North Atlantic swordfish stock is not overfished (B_{2015}/B_{msy} = 1.04), and overfishing is not occurring (F_{2015}/F_{msy} = 0.78). Increasing retention limits for the General Commercial directed fishery is not expected to affect the swordfish stock status determination because any additional landings would be within the ICCAT-recommended U.S. North Atlantic swordfish quota allocation, which is consistent with conservation and management measures to prevent overfishing on the stock. Increasing opportunities by increasing retention limits from the default levels beginning on January 1, 2020, is also important because of the migratory nature and seasonal distribution of swordfish. In a particular geographic region, or waters accessible from a particular port, the

amount of fishing opportunity for swordfish may be constrained by the short amount of time that the swordfish are present in the area as they migrate.

Finally, another consideration, consistent with the FMP and its amendments, is to continue to provide protection to important swordfish nursery areas and migratory corridors. Therefore, NMFS has determined that the retention limit for the Swordfish General Commercial permit will remain at zero swordfish per vessel per trip in the Florida Swordfish Management Area at this time. As discussed above, NMFS considered consistency with the 2006 HMS FMP and its amendments, and the importance for NMFS to continue to provide protection to important swordfish nursery areas and migratory corridors. As described in Amendment 8 to the 2006 Consolidated Atlantic HMS FMP (78 FR 52011, August 21, 2013), the area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile swordfish habitat, and is essentially a narrow migratory corridor containing high concentrations of swordfish located in close proximity to high concentrations of people who may fish for them. Public comment on Amendment 8, including from the Florida Fish and Wildlife Conservation Commission, indicated concern about the resultant high potential for the improper rapid growth of a commercial fishery, increased catches of undersized swordfish, the potential for larger numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to gear and user conflicts. These concerns remain valid. NMFS will continue to collect information to evaluate the appropriateness of the retention limit in the Florida Swordfish Management Area and other regional retention limits. This action therefore maintains a zero-fish retention limit in the Florida Swordfish Management Area.

The directed swordfish quota has not been harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded during 2020. This information indicates that sufficient directed swordfish quota should be available from January 1 through June 30, 2020, at the higher retention levels, within the limits of the scientifically-supported TAC and consistent with the goals of the 2006 Consolidated Atlantic HMS FMP as amended, ATCA, and the Magnuson-Stevens Act, and are not expected to negatively impact stock health.

Monitoring and Reporting

NMFS will continue to monitor the swordfish fishery closely during 2020 through mandatory landings and catch reports. Dealers are required to submit landing reports and negative reports (if no swordfish were purchased) on a weekly basis.

Depending upon the level of fishing effort and catch rates of swordfish, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure that the available quota is not exceeded or to enhance fishing opportunities. Subsequent actions, if any, will be published in the **Federal Register**. In addition, fishermen may access *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/2019-atlantic-swordfish-landings-updates* for updates on quota monitoring.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated Atlantic HMS FMP, as amended, provide for inseason retention limit adjustments to respond to changes in swordfish landings, the availability of swordfish on the fishing grounds, the migratory nature of this species, and regional variations in the fishery. Based on available swordfish quota, stock abundance, fishery performance in recent years, and the availability of swordfish on the fishing grounds, among other considerations, adjustment to the Swordfish General Commercial permit retention limits from the default levels of two or three fish to six swordfish per vessel per trip as discussed above is warranted, while maintaining the default limit of zero-fish retention in the Florida Swordfish Management Area. Analysis of available data shows that adjustment to the swordfish retention limit from the default levels would result in minimal risk of exceeding the ICCAT-allocated quota.

NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the ''News and Announcements'' website at *https://www.fisheries.noaa.gov/news-and-announcements* (filter by ''Atlantic Highly Migratory Species'' under ''Topic''). Delays in temporarily increasing these retention limits caused by the time required to publish a proposed rule and accept public comment would adversely and unnecessarily affect those Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) that would otherwise have an opportunity to harvest more than the otherwise applicable lower default retention limits of three swordfish per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions, and two swordfish per vessel per trip in the U.S. Caribbean region. Limiting opportunities to harvest available directed swordfish quota may have negative social and economic impacts for U.S. fishermen. Adjustment of the retention limits needs to be effective on January 1, 2020, to allow Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) to benefit from the adjustment during the relevant time period, which could pass by for some fishermen who have access to the fishery during a short time period because of seasonal fish migration, if the action is delayed for notice and public comment. Furthermore, the public was given an opportunity to comment on the underlying rulemakings, including the adoption of the North Atlantic swordfish U.S. quota, and the retention limit adjustments in this action would not have any additional effects or impacts since the retention limit does not affect the overall quota. Thus, there would be little opportunity for meaningful input and review with public comment on this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.24(b)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 27, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–28289 Filed 12–31–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02: RTID 0648–XT031]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 19.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the 28.9-mt General category December 2020 subquota to the January 2020 subquota period (from January 1 through March 31, 2020, or until the available subquota for this period is reached, whichever comes first). This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective January 1, 2020, through March 31, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260, Nicholas Velseboer, 978–675–2168, or Larry Redd, 301–427–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The base quota for the General category is 555.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a ''subquota'' or portion of the annual General category quota. Although it is called the ''January'' subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods.

Transfer of 19.5 mt From the December 2020 Subquota to the January 2020 Subquota

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provides NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT, and potentially over a greater portion of the January time period, would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including in December 2019 and during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). Without a quota transfer from December 2020 to January 2020 for the General category at this time, the quota available for the January period would be 29.5 mt (5.3 percent of the General category quota), and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT may remain available in the areas where General category permitted vessels operate. Transferring 19.5 mt of the 28.9-mt quota available for December 2020 (with 28.9 mt representing 5.2 percent of the General category quota) would result in 49 mt (8.8 percent of the General category quota) being available for the January 2020 subquota period. This quota transfer would provide additional opportunities to harvest the U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery at both the beginning and end of the calendar year.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years. General category landings in the winter BFT fishery tend to straddle the calendar year as BFT may be available in late November/December and into January of the following year or later. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. Any unused General category quota from the January subperiod that remains as of March 31 will roll forward to the next subperiod within the calendar year (*i.e.,* the June–August time period). In late 2018, NMFS transferred 19.5 mt of quota from the December 2019 subquota to the January 2019 subquota period, resulting in a subquota of 49 mt for the January 2019 period and a subquota of 9.4 mt for the December 2019 period (83 FR 67140, December 28, 2018). NMFS also made two transfers in 2019 of 26 mt and 25 mt from the Reserve to the General category effective February 8 and February 25, respectively, resulting in an adjusted subquota of 100 mt for the January 2019 period (84 FR 3724, February 13, 2019; 84 FR 6701, February 28, 2019), and closed the General category fishery for the January subquota period effective February 28 (84 FR 7302, March 4, 2019). Under a one-fish General category daily retention limit (*i.e.,* of large medium or giant BFT, measuring 73 inches (185 cm) curved fork length or greater) effective January 1 through February 28, a total of 108.9 mt were landed.

NMFS also considered the estimated amounts by which quotas for other gear

categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2019 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2020 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final rule (83 FR 51391, October 11, 2018), and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunity equitably across all time periods.

NMFS also anticipates that some underharvest of the 2019 adjusted U.S. BFT quota will be carried forward to 2020 and placed in the Reserve category, in accordance with the regulations. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, as well as NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2020 for December fishery participants, even with the quota transfer. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2019. NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2020, through active inseason management actions such as retention limit adjustments and/or the timing of quota transfers, as practicable.

Based on the considerations above, NMFS is transferring 19.5 mt of the 28.9-mt General category quota allocated for the December 2020 period to the January 2020 period, resulting in a subquota of 49 mt for the January 2020 period and a subquota of 9.4 mt for the December 2020 period. NMFS will close the General category fishery when the adjusted January period subquota of 49 mt has been reached, or it will close automatically on March 31, 2020, whichever comes first, and it will remain closed until the General category fishery reopens on June 1, 2020.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant bluefin tuna over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8). However, at this time, NMFS is maintaining the default daily retention limit of one large medium or giant BFT per vessel per day/trip (§ 635.23(a)(2)) for the January 2020 General category fishery. Regardless of the duration of a fishing trip, no more than a single day's retention limit may be possessed, retained, or landed. For example (and specific to the limit that will apply beginning January 1, 2020), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of one fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeting fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

Depending on the level of fishing effort and catch rates of BFT including catches of the General category quota during the winter fishery, NMFS may determine that additional action (*e.g.,* quota adjustment, daily retention limit adjustment, or closure) is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas, and to ensure available subquotas are not exceeded. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the January 2020 subquota period at this time is impracticable and contrary to the public interest as NMFS could not have proposed this action earlier, as it needed to consider and respond to updated data and information from the 2019 General category fishery, including the recently-available December 2019 data, in deciding to transfer a portion of the December 2020 subquota to the January 2020 subquota. If NMFS was to offer a public comment period now, after having appropriately considered that data, it could preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria, and/or could result in selection of a retention limit inappropriately high for the amount of quota available for the period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.27(a)(9) (Inseason adjustments),

and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 26, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–28271 Filed 12–31–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02; RTID 0648–XY059]

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2020 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific Cod Total Allowable Catch Amounts

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2020 total allowable catch (TAC) amounts for the Bering Sea and Aleutian Islands (BSAI) pollock, Atka mackerel, and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the BSAI pollock, Atka mackerel, and Pacific cod TACs are the appropriate amounts based on the best available scientific information. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), December 31, 2019, until the effective date of the final 2020 and 2021 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 17, 2020.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2018–0089, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0089,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) set the 2020 Aleutian Islands (AI) pollock TAC at 19,000 metric tons (mt), the 2020 Bering Sea (BS) pollock TAC at 1,420,000 mt, the 2020 BSAI Atka mackerel TAC at 53,635 mt, the 2019 BS Pacific cod TAC at 124,625 mt, and the 2019 AI Pacific cod TAC at 14,214 mt. Also set was a 2020 AI pollock ABC of 55,125 mt and a Western Aleutian Islands limit for Pacific cod at 15.7 percent of the AI Pacific cod ABC minus the State of Alaska's guideline harvest level. In December 2019, the North Pacific Fishery Management Council (Council) recommended a 2020 BS pollock TAC of 1,425,000 mt, which is more than the 1,420,000 mt TAC established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI. The Council also recommended decreasing the AI pollock ABC to 55,120 mt from 55,125 mt. This decreases some 2020 area and seasonal limits for AI pollock. The Council also recommended a 2020 BSAI Atka mackerel TAC of 59,305 mt, which is more than the 53,635 mt TAC established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI. Furthermore, the Council recommended a 2020 BS Pacific cod TAC of 141,799 mt, and an AI Pacific cod TAC of 13,796 mt, which is more than the BS Pacific cod TAC of 124,625 mt, and less than the AI Pacific cod TAC of 14,214 mt established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI. In addition to changes in TACs, the Council recommended the same percentage limit of Western Aleutian Islands Pacific cod of 15.7 percent of the AI Pacific cod ABC minus the State of Alaska's guideline harvest level. The Council's recommended 2020 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2019, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock, Atka mackerel, and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock, Atka mackerel, and Pacific cod are a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock, Atka mackerel, and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. NMFS published regulations and the revised harvest limit amounts for pollock, Atka mackerel, and Pacific cod fisheries to implement Steller sea lion protection measures to insure that groundfish fisheries of the BSAI are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or destroy or adversely modify their designated critical habitat (79 FR 70286, November 25, 2014). The regulations at § 679.20(a)(5)(i) and (iii) specify how the BS and AI pollock TAC will be apportioned. The regulations at § 679.20(a)(7) specify how the BSAI Pacific cod TAC will be apportioned. The regulations at § 679.20(a)(8) specify how the BSAI Atka mackerel TAC will be apportioned.

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2019 SAFE report for this fishery, the current BSAI pollock, Atka mackerel, and Pacific cod TACs are incorrectly

specified. Pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2020 BS pollock TAC to 1,425,000 mt, the 2020 BSAI Atka mackerel TAC to 59,305 mt, the 2020 BS Pacific cod TAC to 141,799 mt, and the 2020 AI Pacific cod TAC to 13,796 mt. Therefore, Table 2 of the final 2019 and 2020 harvest specifications for groundfish in the BSAI (843 FR 9000, March 13, 2019) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(i) and (iii), Table 5 of the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) is revised for the 2020 BS and AI allocations of pollock TAC to the directed pollock fisheries and to the Community Development Quota (CDQ) directed fishing allowances consistent with this adjustment. For AI pollock, harvest limits are set for pollock in the A season (January 20 to June 10) in Areas 543, 542, and 541, see § 679.20(a)(5)(iii)(B)(*6*). In Area 541, the 2020 A season pollock harvest limit is no more than 30 percent, or 16,536 mt, of the AI ABC of 55,120 mt. In Area 542, the 2020 A season pollock harvest limit is no more than 15 percent, or 8,268 mt, of the AI ABC of 55,120 mt. In Area 543, the 2020 A season pollock harvest limit is no more than 5 percent, or 2,756 mt, of the AI pollock ABC of 55,120 mt.

TABLE 5—FINAL 2020 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[amounts are in metric tons]

Area and sector	2020 allocations	2020 A season [1]		
		A season DFA	SCA harvest limit [2]	2020 B season [1]
Bering Sea subarea TAC [1]	1,425,000	n/a	n/a	n/a
CDQ DFA	142,500	64,125	39,900	78,375
ICA [1]	47,453	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,235,048	555,771	345,813	679,276
AFA Inshore	617,524	277,886	172,907	339,638
AFA Catcher/Processors [3]	494,019	222,309	138,325	271,710
Catch by C/Ps	452,027	203,412	n/a	248,615
Catch by CVs [3]	41,992	18,896	n/a	23,095
Unlisted C/P Limit [4]	2,470	1,112	n/a	1,359
AFA Motherships	123,505	55,577	34,581	67,928
Excessive Harvesting Limit [5]	216,133	n/a	n/a	n/a
Excessive Processing Limit [6]	370,514	n/a	n/a	n/a
Aleutian Islands subarea ABC	55,120	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	19,000	n/a	n/a	n/a
CDQ DFA	1,900	1,900	n/a	
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	14,700	14,700	n/a	
Area harvest limit [7]	n/a	n/a	n/a	n/a
541	16,536	n/a	n/a	n/a
542	8,268	n/a	n/a	n/a
543	2,756	n/a	n/a	n/a
Bogoslof District ICA [8]	75	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (3.7 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*), the annual Aleutian Islands pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the ABC for AI pollock.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the DFA allocated to listed C/Ps shall be available for harvest only by eligible catcher vessels with a C/P endorsement delivering to listed C/Ps, unless there is a C/P sector cooperative for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

[8] Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(8), Table 7 of the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) is revised for the 2020 seasonal and spatial allowances, gear shares, CDQ reserve, incidental catch allowance, jig, BSAI trawl limited access, and Amendment 80 allocations of the BSAI Atka mackerel TAC consistent with this adjustment.

TABLE 7—FINAL 2020 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2020 allocation by area		
		Eastern Aleutian District Bering Sea	Central Aleutian District [5]	Western Aleutian District
TAC	n/a	24,535	14,721	20,049
CDQ reserve	Total	2,625	1,575	2,145
	A	1,313	788	1,073
	Critical Habitat	n/a	473	644
	B	1,313	788	1,073
	Critical Habitat	n/a	473	644
Non-CDQ TAC	n/a	21,910	13,146	17,904
ICA	Total	800	75	20
Jig [6]	Total	106		
BSAI trawl limited access	Total	2,100	1,307	
	A	1,050	654	
	Critical Habitat	n/a	392	
	B	1,050	654	
	Critical Habitat	n/a	392	
Amendment 80 sector	Total	18,904	11,764	17,884
	A	9,452	5,882	8,942
	Critical Habitat	n/a	3,529	5,365
	B	9,452	5,882	8,942
	Critical Habitat	n/a	3,529	5,365

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

[5] Section 679.20(a)(8)(ii)(C)(*1*)(*i*) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; section 679.20(a)(8)(ii)(C)(*1*)(*ii*) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(*2*) requires the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS sets the amount of this allocation for 2020 at 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(7), Table 9 of the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) is revised for the 2020 gear shares and seasonal allowances of the BSAI Pacific cod TAC consistent with this adjustment.

TABLE 9—FINAL 2020 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2020 share of gear sector total	2020 share of sector total	2020 seasonal apportionment	
				Seasons	Amount
BS TAC	n/a	141,799	n/a	n/a	n/a
BS CDQ	n/a	15,172	n/a	see § 679.20(a)(7)(i)(B)	n/a
BS non-CDQ TAC	n/a	126,627	n/a	n/a	n/a
AI TAC	n/a	13,796	n/a	n/a	n/a
AI CDQ	n/a	1,476	n/a	see § 679.20(a)(7)(i)(B)	n/a
AI non-CDQ TAC	n/a	12,320	n/a	n/a	n/a
Western Aleutian Island Limit	n/a	2,166	n/a	n/a	n/a
Total BSAI non-CDQ TAC [1]	100	138,946	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	84,479	n/a	n/a	n/a
Hook-and-line/pot ICA [2]	n/a	400	n/a	see § 679.20(a)(7)(i)(B)	n/a
Hook-and-line/pot sub-total	n/a	84,079	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	67,346	Jan 1–Jun 10	34,347
				Jun 10–Dec 31	33,000
Hook-and-line catcher vessel ≥60 ft LOA	0.2	n/a	277	Jan 1–Jun 10	141
				Jun 10–Dec 31	136
Pot catcher/processor	1.5	n/a	2,074	Jan 1–Jun 10	1,058
				Sept 1–Dec 31	1,016
Pot catcher vessel ≥60 ft LOA	8.4	n/a	11,616	Jan 1–Jun 10	5,924
				Sept 1–Dec 31	5,692
Catcher vessel <60 ft LOA using hook-and-line or pot gear	2.0	n/a	2,766	n/a	n/a
Trawl catcher vessel	22.1	30,707	n/a	Jan 20–Apr 1	22,723
				Apr 1–Jun 10	3,378
				Jun 10–Nov 1	4,606
AFA trawl catcher/processor	2.3	3,196	n/a	Jan 20–Apr 1	2,397
				Apr–Jun 10	799

Jun 10–Nov 1.

TABLE 9—FINAL 2020 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued
[Amounts are in metric tons]

Gear sector	Percent	2020 share of gear sector total	2020 share of sector total	2020 seasonal apportionment	
				Seasons	Amount
Amendment 80	13.4	18,619	n/a	Jan 20–Apr 1	13,964
				Apr 1–Jun 10	4,655
				Jun 10–Nov 1.	
Jig	1.4	1,945	n/a	Jan 1–Apr 30	1,167
				Apr 30–Aug 31	389
				Aug 31–Dec 31	389

[1] The gear shares and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after the subtraction of CDQ. If the TAC for Pacific cod in either the AI or BS is reached, then directed fishing for Pacific cod in that subarea will be prohibited, even if a BSAI allowance remains.
[2] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 400 mt for 2020 based on anticipated incidental catch in these fisheries.
Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for pollock, Atka mackerel, and Pacific cod in the BSAI based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 9, 2019, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 17, 2020.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 19, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–27757 Filed 12–31–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 1
Thursday, January 2, 2020

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0989; Product Identifier 2019–NM–097–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directives (ADs) 2015–14–07, 2016–07–10, and 2016–24–09, which apply to The Boeing Company Model 787–8 and 787–9 airplanes. ADs 2015–14–07, 2016–07–10, and 2016–24–09 require actions related to certain flight control module (FCM) software. Since the FAA issued these ADs, the agency has received reports of unannunciated dual symmetric inboard slat skew and deficiencies in the FCM software. This proposed AD would also require installing flight control electronics (FCE) common block point 5 (CBP5) software, which would terminate the existing requirements. 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 February 18, 2020.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0989.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0989; 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 regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Maureen G. Fallon, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3690; email: *maureen.g.fallon@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 the **ADDRESSES** section. Include ''Docket No. FAA–2019–0989; Product Identifier 2019–NM–097–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposed AD.

Discussion

The FAA issued three ADs to address certain deficiencies in the FCM software that, if not corrected, could prevent continued safe flight and landing.

AD 2015–14–07, Amendment 39–18205 (80 FR 42014, July 16, 2015) (''AD 2015–14–07''), applies to certain Model 787–8 airplanes. AD 2015–14–07 requires installing certain FCM software, and resulted from reports of deficiencies in the FCM software.

AD 2016–07–10, Amendment 39–18455 (81 FR 18741, April 1, 2016) (''AD 2016–07–10''), applies to all Model 787–8 and 787–9 airplanes. AD 2016–07–10 requires revising the airplane flight manual (AFM) to instruct the flightcrew to avoid abrupt flight control inputs in response to sudden drops in airspeed, and to reinforce the need to disconnect the autopilot before making any manual flight control inputs. AD 2016–07–10 resulted from reports indicating that in certain weather conditions with high moisture content or possible icing, erroneous low airspeed may be displayed to the flightcrew before detection and annunciation via engine indicating and crew-alerting system (EICAS) messages.

AD 2016–24–09, Amendment 39–18726 (81 FR 86912, December 2, 2016) (''AD 2016–24–09''), applies to all Model 787–8 and 787–9 airplanes. AD 2016–24–09 requires repetitive cycling of either the airplane electrical power or the power to the three FCMs, and resulted from a report indicating that all three FCMs might simultaneously reset if continuously powered on for 22 days.

Actions Since ADs 2015–14–07, 2016–07–10, and 2016–24–09 Were Issued

The preambles to AD 2016–07–10 and AD 2016–24–09 explained that the FAA considered the requirements ''interim action'' and were considering further rulemaking. The FAA has now determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Since the FAA issued ADs 2015–14–07, 2016–07–10, and 2016–24–09, the

agency has received reports of unannunciated dual symmetric inboard slat skew and deficiencies in the FCM software. An unannunciated dual symmetric inboard slat skew can result in adverse handling characteristics of the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018. This service information describes procedures for installing FCM loadable diagnostic information (LDI) database (DB) and central maintenance computer function (CMCF) LDI DB software.

The FAA also reviewed Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018. This service information describes procedures for installing FCE CBP5 software, and applicable concurrent requirements (installing certain software).

The FAA also reviewed Boeing Service Bulletin B787–81205–SB310014, Issue 002, dated June 14, 2017. This service information describes procedures for installing new displays and crew alerting (DCA) system and maintenance system (MS) software and doing a software check.

This proposed AD would also require Boeing Alert Service Bulletin B787–81205–SB270017–00, Issue 001, dated September 18, 2013; Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015; and Boeing Service Bulletin B787–81205–SB270023–00, Issue 001, dated July 24, 2014; which the Director of the Federal Register approved for incorporation by reference as of August 20, 2015 (80 FR 42017, July 16, 2015).

This proposed AD would also require Boeing Alert Service Bulletin B787–81205–SB270040–00, Issue 001, dated November 25, 2016, which the Director of the Federal Register approved for incorporation by reference as of December 2, 2016 (81 FR 86912, December 2, 2016).

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

FAA's Determination

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2016–07–10 and AD 2016–24–09. This proposed AD would retain all of the requirements of AD 2015–14–07, except paragraph (g)(3) of AD 2015–14–07 (installation of FCM Common Block Point 1 software), which was erroneously included in AD 2015–14–07 and is therefore no longer necessary. The service information specified in paragraph (g)(3) of AD 2015–14–07 applies only to Model 787–9 airplanes. This proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between this Proposed AD and the Service Information,'' and except for any differences identified as exceptions in the regulatory text of this proposed AD. The new proposed requirements would terminate all of the retained requirements.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0989.

Difference Between This Proposed AD and the Service Information

Although Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018, recommends accomplishing the software installation within 12 months, the FAA has determined that this interval would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, the FAA considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet. In light of these factors, the FAA finds that a 6-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Other Relevant Rulemaking

The concurrent requirements specified in this proposed AD are also concurrent requirements for the actions required by AD 2019–08–05, Amendment 39–19626 (84 FR 18707, May 2, 2019) (''AD 2019–08–05''), as specified in paragraph (g)(2) of AD 2019–08–05.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

The FAA estimates that this proposed AD affects 78 airplanes of U.S. registry.

The compliance time has passed for the retained requirements in this proposed AD, so all affected airplanes should already be in compliance with those requirements. Therefore, this AD imposes no additional financial burden on any U.S. operator.

However, if a noncompliant airplane is imported and placed on the U.S. Register in the future, the FAA estimates the following costs to comply with the retained actions:

ESTIMATED COSTS FOR RETAINED REQUIREMENTS

Action	Labor cost	Parts cost	Cost per product
Retained requirements of AD 2015–14-07 (11 airplanes).	4 work-hours × $85 per hour = $340	$0	$340
Retained requirements of AD 2016–07–10	1 work-hour × $85 per hour = $85	0	85

ESTIMATED COSTS FOR RETAINED REQUIREMENTS—Continued

Action	Labor cost	Parts cost	Cost per product
Retained requirements of AD 2016–24–09	1 work-hour × $85 per hour = $85 per cycle	0	85

The FAA estimates the following costs to comply with the new requirements in this proposed AD:

ESTIMATED COSTS FOR NEW REQUIREMENTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New proposed software installation	2 work-hours × $85 per hour = $170	$0	$170	$13,260

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA has 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 that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2015–14–07, Amendment 39–18205 (80 FR 42014, July 16, 2015); AD 2016–07–10, Amendment 39–18455 (81 FR 18741, April 1, 2016); and AD 2016–24–09, Amendment 39–18726 (81 FR 86912, December 2, 2016); and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2019–0989; Product Identifier 2019–NM–097–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by February 18, 2020.

(b) Affected ADs

This AD replaces the ADs identified in paragraphs (b)(1) through (3) of this AD.

(1) AD 2015–14–07, Amendment 39–18205 (80 FR 42014, July 16, 2015) (''AD 2015–14–07'').

(2) AD 2016–07–10, Amendment 39–18455 (81 FR 18741, April 1, 2016) (''AD 2016–07–10'').

(3) AD 2016–24–09, Amendment 39–18726 (81 FR 86912, December 2, 2016) (''AD 2016–24–09'').

(c) Applicability

This AD applies to all The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by reports of deficiencies in the flight control module (FCM) software and unannunciated dual symmetric inboard slat skew. The FAA is issuing this AD to address deficiencies in the FCM software that could prevent continued safe flight and landing, and to address potential unannunciated dual symmetric inboard slat skew, which can result in adverse handling characteristics of the aircraft.

(f) Compliance

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

(g) Retained FCM Software Installation Requirement of AD 2015–14–07, With No Changes

This paragraph restates the requirements of the introductory text to paragraph (g) and paragraphs (g)(1), (2), and (4) of AD 2015–14–07 (paragraph (g)(3) of AD 2015–14–07 is not retained in this AD), with no changes. For Model 787–8 airplanes identified in Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015: Within 6 months after August 20, 2015 (the effective date of AD 2015–14–07), do one of the actions specified in paragraphs (g)(1) through (3) of this AD.

(1) Use the onboard data load function (ODLF) to install FCM Block Point 3 software (including FCM operational program software (OPS), FCM loadable diagnostic information (LDI) database (DB) software, and FCM air data reference function (ADRF) DB software), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015.

(2) Use the ODLF to install FCM Block Point 4 software (including FCM OPS, FCM LDI DB software, FCM ADRF DB software, and central maintenance computer function (CMCF) LDI DB software), in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB270023–00, Issue 001, dated July 24, 2014.

(3) Install any later FAA-approved FCM software version using a method approved in accordance with the procedures specified in paragraph (r) of this AD.

(h) Retained Concurrent Requirements of AD 2015–14–07, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2015–14–07, with no changes. For Group 1 airplanes, as identified in Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015: Prior to or concurrently with accomplishing the actions required by paragraph (g) of this AD, use the ODLF to install FCM OPS, FCM LDI DB, and CMCF LDI DB software, or at a minimum install the FCM LDI DB and CMCF LDI DB software, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270017–00, Issue 001, dated September 18, 2013.

(i) Retained Parts Installation Prohibition of AD 2015–14–07, With No Changes

This paragraph restates the provisions of paragraph (i) of AD 2015–14–07 with no changes. After installation of the software specified in paragraphs (g) and (h) of this AD, no person may install any previous versions of the FCM OPS, FCM LDI DB, FCM ADRF DB, or CMCF LDI DB software on any airplane.

(j) Retained Credit for Certain Previous Actions in AD 2015–14–07, With No Changes

This paragraph restates the provisions of paragraph (j) of AD 2015–14–07, with no changes. This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before August 20, 2015 (the effective date of AD 2015–14–07), using Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014.

(k) Retained Airplane Flight Manual (AFM) Revision of AD 2016–07–10, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2016–07–10, with no changes. Within 15 days after April 14, 2016 (the effective date of AD 2016–07–10), revise the applicable existing Boeing 787 AFM to add a ''Non-normal Procedure'' that includes the information in figure 1 to paragraph (k) of this AD. This may be done by inserting a copy of this AD into the existing AFM.

Figure 1 to paragraph (k)

Airspeed Drop

In the event of a sudden, unrealistic drop in indicated airspeed, do not apply large, abrupt control column inputs. Fly the airplane with normal pitch and power settings. If manual flight is needed, disconnect the autopilot prior to making manual flight control inputs.

(l) Retained FCM Reset Requirement of AD 2016–24–09, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2016–24–09, with no changes. Within 7 days after December 2, 2016 (the effective date of AD 2016–24–09), do the actions specified in paragraph (l)(1) or (2) of this AD. Repeat the action specified in paragraph (l)(1) or (2) of this AD thereafter at intervals not to exceed 21 days.

(1) Cycle the airplane electrical power, in accordance with ''Option 1'' of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270040–00, Issue 001, dated November 25, 2016.

(2) Cycle power to the left, center, and right FCMs, in accordance with ''Option 2'' of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270040–00, Issue 001, dated November 25, 2016.

(m) Retained Credit for Previous Actions in AD 2016–24–09, With No Changes

This paragraph restates the provisions of paragraph (h) of AD 2016–24–09, with no changes. This paragraph provides credit for the actions specified in paragraphs (l)(1) and (2) of this AD, if those actions were performed before December 2, 2016 (the effective date of AD 2016–24–09) using one of the service information documents specified in paragraphs (m)(1) through (3) of this AD.

(1) Boeing Multi-Operator Message MOM–MOM–16–0711–01B, dated October 21, 2016.

(2) Boeing Multi-Operator Message MOM–MOM–16–0711–01B(R1), dated November 17, 2016.

(3) Boeing Multi-Operator Message MOM–MOM–16–0711–01B(R2), dated November 17, 2016.

(n) New Required Software Installation

For airplanes identified in Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018: Do the actions specified in paragraphs (n)(1) through (3) of this AD, and, if applicable, do the actions specified in paragraph (n)(4) of this AD.

(1) Within 6 months after the effective date of this AD: Do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018.

Note 1 to paragraphs (n)(1) and (o)(1): Guidance for accomplishing the actions required by paragraphs (n)(1) and (o)(1) of this AD can be found in Boeing Alert Service Bulletin B787–81205–SB270044–00, Issue 001, dated December 18, 2018, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018.

(2) Before or concurrently with accomplishment of the actions specified in paragraph (n)(1) of this AD: Install FCM LDI DB and CMCF LDI DB software, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018.

Note 2 to paragraph (n)(2): The concurrent requirements specified in paragraph (n)(2) of this AD are also concurrent requirements for the actions required by paragraph (g)(2) of AD 2019–08–05, Amendment 39–19626 (84 FR 18707, May 2, 2019) (''AD 2019–08–05'').

(3) Within 6 months after the effective date of this AD: Identify the version of the displays and crew alerting (DCA) system and maintenance system (MS) software installed. If the installed version is not DCA MS CBP4 or a later-approved version of DCA MS software, do the actions specified in paragraph (n)(4) of this AD.

(4) Install a new DCA system and MS software and do a software check, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB310014, Issue 002, dated June 14, 2017.

(o) Software Version Identification

For airplanes not identified in Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December

18, 2018, that have an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD: Within 6 months after the effective date of this AD, do the actions specified in paragraphs (o)(1) and (2) of this AD.

(1) Identify the version of the flight control electronics (FCE) common block point (CBP) software installed. If the installed version is not CBP5 or later approved version: Within 6 months after the effective date of this AD, install CBP5 or later approved version, in accordance with the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB270044–00 RB, Issue 001, dated December 18, 2018. A review of airplane maintenance records is acceptable in lieu of this identification requirement, if the software version can be conclusively determined from that review.

(2) Identify the version of the DCA system and MS software installed. If the installed version is not DCA MS CBP4 or a later-approved version of DCA MS software: Within 6 months after the effective date of this AD, install a new DCA system and MS software and do a software check, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB310014, Issue 002, dated June 14, 2017.

(p) Terminating Action for Certain Requirements of This AD

(1) Except as specified in paragraph (p)(2) of this AD: Accomplishment of the actions required by paragraph (n) or (o) of this AD, as applicable, terminates the requirements of paragraphs (g) through (m) of this AD.

(2) Accomplishment of the actions required by paragraph (n) or (o) of this AD, as applicable, terminates the requirements of paragraph (k) of this AD for that airplane only.

(3) After the actions required by paragraph (n) or (o) of this AD have been accomplished on all affected airplanes in an operator's fleet, and within 6 months after the effective date of this AD, figure 1 to paragraph (k) of this AD must be removed from the existing AFM for the fleet.

(q) Parts Installation Prohibition

As of the effective date of this AD, installation on any airplane of FCE CBP software with a version previous to CBP5 is prohibited.

(r) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company 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.

(4) AMOCs approved previously for AD 2015–14–07, AD 2016–07–10, and AD 2016–24–09, are approved as AMOCs for the corresponding provisions of paragraphs (g) through (l) of this AD.

(s) Related Information

(1) For more information about this AD, contact Maureen G. Fallon, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3690; *email: maureen.g.fallon@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on December 17, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–27928 Filed 12–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2019–0180]

RIN 2105–AE88

Accessible Lavatories on Single-Aisle Aircraft: Part 1

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is seeking comment in this Notice of Proposed Rulemaking (NPRM) on proposed amendments to the Department's disability regulation. This NPRM proposes specific measures for improving accessibility of lavatories on single-aisle aircraft for passengers with disabilities. These improvements include changes to the interior of the lavatory, additional services that airlines would provide with respect to lavatory access, training requirements, and improvements to the aircraft's onboard wheelchair.

DATES: Comments should be filed by March 2, 2020. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by docket number DOT–OST–2019–0180 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2019–0180 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov*, or to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Robert Gorman, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342, 202–366–7152 (fax), *robert.gorman@dot.gov* (email). You may also contact Blane Workie, Assistant General Counsel, Office of Aviation Enforcement and Proceedings,

U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342, 202–366–7152 (fax), *blane.workie@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

The Air Carrier Access Act (ACAA), 49 U.S.C. 41705, prohibits discrimination in airline service on the basis of disability by U.S. and foreign air carriers. However, it does not specify how U.S. and foreign air carriers must act to avoid such discrimination or how the Department should regulate with respect to these issues. The Department's authority to regulate nondiscrimination in airline service is found in the ACAA in conjunction with its rulemaking authority under 49 U.S.C. 40113, which states that the Department may take action that it considers necessary to carry out this part, including prescribing regulations. The Department, through reasonable interpretation of its statutory authority, has issued regulations that require carriers to provide nondiscriminatory service to individuals with disabilities. In issuing regulations implementing the ACAA, the Department's general regulatory approach is to issue regulations that are reasonable, straightforward, clear, and designed to minimize burdens consistent with safety and access to air travel.

B. Need for a Rulemaking

Single-aisle aircraft are increasingly being used by airlines for long-haul flights. At present, there is no requirement that airlines provide accessible lavatories on single-aisle aircraft. The inability to use the lavatory on long flights can present significant challenges to passengers with disabilities, and poses a deterrent for some passengers with disabilities to traveling by air.

C. History of Regulations Governing Accessible Lavatories on Aircraft

The Air Carrier Access Act (ACAA), enacted in 1986, prohibits discrimination on the basis of disability in air travel.[1] In 1988, the Department conducted a regulatory negotiation to develop ACAA regulations. The regulatory negotiation included representatives of the airline industry, the disability community, and other stakeholders.[2] In March 1990, the Department issued final ACAA regulations, found at 14 CFR part 382.

The 1990 ACAA rule required twin-aisle aircraft to have at least one accessible lavatory, if lavatories were installed on the aircraft. In the context of twin-aisle aircraft, an accessible lavatory is one that: (1) Permits a qualified individual with a disability to enter, maneuver as necessary to use all lavatory facilities, and leave, by means of the aircraft's onboard wheelchair (OBW);[3] (2) affords privacy to persons using the OBW equivalent to that afforded ambulatory users; and (3) provides door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments.[4]

In the preamble to the 1990 ACAA rule, the Department stated that by requiring accessible lavatories on aircraft with more than one aisle, the result would be ''new aircraft with the greatest passenger capacities, and which make the longest flights, having a lavatory that handicapped persons can readily use.''[5] At the time, the Department declined to require accessible lavatories on single-aisle aircraft. Accessible lavatories on single-aisle aircraft were optional, but not mandatory.[6]

The Department noted airlines' concerns that providing accessible lavatories on single-aisle aircraft may require airlines to remove seats in order to install a lavatory of sufficient size to meet the accessibility standards of the existing rule. The Department found that those ''cost and feasibility concerns'' were ''worth serious consideration,''[7] and ultimately decided at the time that it was unable to ''obtain sufficient information to make a sound decision'' on whether requiring accessible lavatories on single-aisle aircraft would impose an undue burden on airlines.[8] The Department announced its intention to issue an advance notice of proposed rulemaking (ANPRM) to seek comment on the issue.[9] In 1992, the Department convened an advisory committee to study this issue. The Committee issued a report that discussed various lavatory designs, along with potential associated costs.[10]

The 1990 ACAA rule also set standards for the availability and design of OBWs. The rule generally requires airlines to provide OBWs in two circumstances: (1) If the aircraft has an accessible lavatory; or (2) on the request of a passenger with a disability, even if the aircraft does not have an accessible lavatory.[11] The rule also sets basic standards for OBW design, including elements such as footrests, movable armrests, adequate restraint systems, handles, and wheel locks.[12] The rule provides that the OBW must be designed to be compatible with the aisle width, maneuvering space, and seat height of the aircraft on which it is used, and must be easily pushed, pulled, and turned within the aircraft by airline personnel.[13]

As originally enacted, the ACAA covered only U.S. air carriers. However, on April 5, 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR–21''), which, among other things, amended the ACAA to include foreign carriers.[14] In response to the AIR–21 requirements, the Department on May 18, 2000, issued a notice of its intent to investigate complaints against foreign carriers according to the amended provisions of the ACAA. The notice also announced the Department's plan to initiate a rulemaking modifying Part 382 to cover foreign carriers. On November 4, 2004, the Department issued a notice of proposed rulemaking (NPRM) announcing its intention to apply the ACAA rule to foreign carriers.[15]

During the process of amending Part 382 to apply to foreign carriers, the Department received many comments

[1] 49 U.S.C. 41705.

[2] 53 FR 23574, 23574 (June 22, 1988).

[3] An OBW is a wheelchair that is used to transport a passenger with a disability between the aircraft seat and the lavatory, and is stowed onboard the aircraft itself. An OBW should not be confused with an aisle chair, which is used for enplaning and deplaning. Aisle chairs transport passengers between the jetbridge and the passenger's seat on the aircraft. Aisle chairs are generally kept in the airport, rather than on the aircraft itself.

[4] 14 CFR 382.63(a). The rule does not expressly require the lavatory to be large enough to permit a passenger to enter the lavatory with a personal care attendant who can help the individual transfer from the onboard wheelchair to and from the toilet seat (a ''dependent transfer''). It is our general understanding, however, that accessible lavatories on twin-aisle aircraft are generally large enough to permit a dependent transfer.

[5] 55 FR 8008, 8021 (March 6, 1990).

[6] 14 CFR 382.63(b).

[7] 55 FR 8008, 8021.

[8] Id.

[9] Id.

[10] See attachment at *https://www.regulations.gov/document?D=DOT-OST-2015-0246-0194.*

[11] The rule limits this requirement to aircraft with a design seat capacity of more than 60 passenger seats, with certain exceptions for specific types of smaller aircraft. 14 CFR 382.65(a). There are two limitations to the rule that airlines must provide OBWs on request when the lavatory itself is not accessible. First, the basis of the passenger's request must be that the passenger can use an inaccessible lavatory, but cannot reach it without the use of an OBW. Second, airlines may require passengers to provide up to 48 hours' advance notice to provide this service. 14 CFR 382.65(b).

[12] 14 CFR 382.65(c).

[13] 14 CFR 382.65(c).

[14] Public Law 106–181, 707(c), 114 Stat. 61, 158 (2000).

[15] 69 FR 64364.

expressing the view that the existing requirements concerning accessible lavatories were inadequate. Commenters at that time stated that accessible lavatories should be required in all aircraft, including single-aisle aircraft. The Department acknowledged that single-aisle aircraft sometimes make lengthy flights, and that providing accessible lavatories on single-aisle aircraft would be a significant improvement in airline service for passengers with disabilities. However, the Department ultimately declined to impose a requirement for accessible lavatories on single-aisle aircraft, given concerns that the ''revenue loss and other cost impacts'' could be too great.[16]

On May 13, 2008, the Department published a final rule amending Part 382 to cover foreign air carriers.[17] The 2008 final rule requires foreign air carriers operating twin-aisle aircraft to provide accessible lavatories with respect to new aircraft that were ordered after May 13, 2009, or which were delivered after May 13, 2010.[18] For U.S. carriers, the requirement applies to aircraft that were initially ordered after April 5, 1990, or which were delivered after April 1992.

D. DOT ACCESS Advisory Committee

1. Formation and History of Committee

On December 7, 2015, the Department issued a **Federal Register** document indicating that it was exploring the feasibility of conducting a negotiated rulemaking with respect to six accessibility issues, including accessibility of lavatories on single-aisle aircraft.[19] As part of this process, the Department hired a neutral facilitator to assist the Department in determining whether any or all of the six issues would be appropriate for a negotiated rulemaking. The facilitator found that the following three issues would be appropriate for a negotiated rulemaking: (1) Whether to require accessible in-flight entertainment and strengthen accessibility requirements for other in-flight communications; (2) whether to require an accessible lavatory on new single-aisle aircraft over a certain size; and (3) whether to amend the definition of ''service animals'' that may accompany passengers with a disability on a flight.[20]

The Department established and appointed members to the Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee or Committee) to negotiate and develop proposed regulations addressing accessible in-flight entertainment, accessible lavatories, and service animals.[21] The Committee comprised members representing various stakeholders including the Department, airlines, flight attendants, cross-disability advocacy groups, consumer groups, academic or non-profit institutions having technical expertise in accessibility research and development, and aircraft manufacturers.[22] The Committee formed separate subgroups of stakeholders to study and vote on the three topics, depending on the stakeholders' areas of interest and expertise. During the first meeting, the Department informed stakeholders that if they came to a consensus on the terms of a proposed rule, the Department would exercise good faith efforts to implement that consensus to the extent possible.[23] The ACCESS Advisory Committee gathered data, conducted meetings and site visits, and engaged in negotiations from May 2016 through November 2016.

2. Information Gathering

The ACCESS Advisory Committee gathered information concerning the benefits of improving the accessibility of lavatories on single-aisle aircraft. The Committee learned that single-aisle aircraft were being increasingly used for longer-haul flights, on which accessible lavatories were not available.[24]

Paralyzed Veterans of America (PVA) presented survey data showing that for a majority of respondents, the inability to use a lavatory would be reason enough to choose not to fly.[25] PVA reported that some passengers with disabilities choose to fly shorter routes, go to the lavatory before entering the aircraft, or dehydrate themselves before flying to alleviate the need to use the lavatory on the aircraft.[26] More than 500 of 725 respondents to PVA's survey indicated that the biggest hindrance was the size and space/design of the lavatory itself.[27] A majority of survey respondents also indicated that an OBW would be necessary to reach the lavatory.[28] Survey respondents noted a number of issues with current OBWs, including lack of access to an OBW, not knowing that OBWs are available, inability to transfer from the OBW to the toilet, and the narrowness of the aisle in relation to the OBW.[29]

3. Developments in Accessible Lavatory Design and OBW Design

The ACCESS Advisory Committee proceedings provided an opportunity for manufacturers to demonstrate improvements to the accessibility of lavatories on single-aisle aircraft. For example, at the first meeting on May 17–18, 2016, Airbus presented information about its SpaceFlex lavatories. During normal operation, they function as two lavatories, separated by a dividing wall. On request, however, the dividing wall can be removed by a flight attendant, creating a single large space for the passenger and an assistant to enter and use the facilities.[30] SpaceFlex lavatories are installed in the rear section of the aircraft against the back wall, in the area that is often used for galley space (where drinks, meals, snacks, and service carts are stowed). DOT has learned that some low-cost airlines that do not use significant galley space operate some aircraft with SpaceFlex lavatories. DOT has also learned that certain Airbus aircraft currently in operation have SpaceFlex lavatories installed as well.

[16] 73 FR 27614, 27625; available at *https://www.transportation.gov/sites/dot.gov/files/docs/Part%20382-2008_1.pdf.*

[17] 73 FR 27614.

[18] 14 CFR 382.63(d). The rule also extended the OBW requirements to foreign air carriers. 14 CFR 382.65(d).

[19] 80 FR 75953. The six issues were: (1) Accessibility of in-flight entertainment; (2) supplemental medical oxygen; (3) service animals; (4) accessible lavatories on single-aisle aircraft; (5) seating accommodations; and (6) carrier reporting of disability service requests. Id.

[20] 81 FR 20265; see also *https://www.regulations.gov/document?D=DOT-OST-2015-0246-0092.*

[21] 81 FR 26178.

[22] A full list of ACCESS Advisory Committee members and other information on the Committee may be found at *https://www.transportation.gov/access-advisory-committee.*

[23] Under the ground rules of the Committee, consensus was defined as ''no more than two negative votes in each issue area'', with abstentions not counting as negative votes. *https://www.transportation.gov/office-general-counsel/negotiated-regulations/access-committee-ground-rules.*

[24] *https://www.transportation.gov/sites/dot.gov/files/docs/Minutes%20-%201st%20Plenary%20Meeting.pdf.* More recent data shows similar trends. Figure 1 of the Preliminary Regulatory Impact Analysis indicates that in 1997, narrow-body aircraft accounted for slightly over 60% of departing flights of 2000–2499 miles; by 2018, that figure had risen to 90%. Narrow-body aircraft accounted for only 40% of departing flights of 2000–2499 miles in 1997; by 2018, that figure rose to approximately 75%.

[25] *https://www.transportation.gov/sites/dot.gov/files/docs/3a.P4.Lav_.Advocate%20Survey%20Results.v2.pdf.*

[26] Id. at 4.

[27] Id. at 3.

[28] Id.

[29] Id. at 3.

[30] *https://www.transportation.gov/sites/dot.gov/files/docs/Airbus%20Presentation%20on%20Lav.pdf.* This is the version of SpaceFlex known as ''V1.'' Airbus also produces a ''SpaceFlex V2,'' which does not increase the size of the lavatory, but provides a transfer seat to assist passengers in transitioning from the OBW to the aircraft toilet seat. To the Department's knowledge, no U.S. carrier uses the SpaceFlex V2.

Bombardier, Inc., a Canadian aircraft manufacturer, presented information about the accessibility features of its single-aisle C series aircraft. Bombardier explained that C-series lavatories were designed to allow passengers with reduced mobility the ability to transfer independently from the OBW to the toilet seat with the lavatory door closed.[31] Bombardier explained that accessible lavatories were a design feature of the aircraft from its inception,[32] and that ''clean sheet'' designs can take up to 20 years to produce. The Bombardier C series is now majority-owned by Airbus, and is known as the Airbus A220; seating capacity ranges from 100 to 160.[33] The accessibility lavatory feature of the Airbus 220 is optional.

The ACCESS Advisory Committee also learned about an innovative OBW design developed by researchers at the University of Hamburg in Germany. The cantilevered design of the ''Hamburg Chair'' allows it to enter the lavatory and be positioned over the toilet lid. The benefit of this design is that a passenger does not have to stand up out of the chair and make a transfer to the toilet. Instead, the passenger can enter the lavatory, use the facilities in privacy, and exit the lavatory without standing up.[34] Representatives of the University of Hamburg explained that the design was a prototype and had not been put into mass production. Members of the ACCESS Advisory Committee generally noted that the Hamburg Chair design was promising to the extent that it would allow greater accessibility to the lavatory for passengers with reduced mobility. They noted that even if the passenger could not use the toilet itself, the passenger could use the Hamburg Chair to enter the lavatory and perform other personal hygiene functions with privacy. Some ACCESS Advisory Committee members did raise hygiene concerns about the dual function of the chair.

4. Development of Tier System

During the course of the ACCESS Advisory Committee's negotiations, stakeholders recognized that there were various ways to improve accessibility of lavatories, with varying costs and timelines for implementation. For example, the lavatory interior could be upgraded to include features such as accessible handles, faucets, and call buttons. These improvements, which would not require increasing the floor dimensions (''footprint'') of the lavatory itself, became known as ''Tier 1'' improvements.

The stakeholders also discussed various accessibility options that would increase the footprint of the lavatory, but not to the full size of a twin-aisle aircraft lavatory. Finally, the stakeholders discussed the highest tier of accessibility: Expansion of lavatories to have the footprint (and accessibility features) of lavatories on twin-aisle aircraft.

Airlines took the position that lavatories with larger footprints would take up space that could otherwise be filled by a row of seats. Airlines and manufacturers argued that airlines would lose considerable revenue from increasing the footprint of the lavatory and losing this potential row of seats.[35]

5. Consensus and Production of Term Sheet

On November 22, 2016, the ACCESS Advisory Committee reached consensus on proposed new regulations to improve the accessibility of lavatories on single-aisle aircraft and to improve the accessibility of in-flight entertainment.[36] The Committee drafted an Agreed Term Sheet for each issue. The accessible lavatory Term Sheet states that the standards would apply to new single-aisle aircraft. The agreement does not call for retrofitting of existing aircraft, but it does call for airlines to comply with the new standards if they replace lavatories on older aircraft.[37] The agreement included provisions for both short-term and long-term accessibility improvements.

a. Short-Term Improvements

Under the ACCESS Advisory Committee's agreement, short-term improvements include Tier 1 improvements and improvements to the OBW design. Short-term improvements would be required on new single-aisle aircraft delivered 3 years after the effective date of the final rule.[38] Airlines operating aircraft with 60 or more passenger seats [39] would be required to: (1) Train flight attendants to proficiency with respect to transfers to and from the OBW, and with respect to accessibility features of the lavatory and the OBW; (2) publish lavatory accessibility information and provide it on request; and (3) remove the International Symbol of Accessibility from lavatories that are not capable of facilitating a seated independent transfer. Aircraft with 125 or more passenger seats would be required to have at least one lavatory with a number of accessibility features, including accessible door locks, flush handles, call buttons, faucets, and assist handles.

Single-aisle aircraft with 125 or more passenger seats would also be required to include an OBW meeting the Department's new standards. The term sheet itself did not specify the standards for a new OBW, other than: (1) It permits passage in the aircraft aisle; (2) it fits within an available certificated OBW stowage space; and (3) it accomplishes its functions without requiring modification to the interior arrangement of the aircraft or the lavatory. The Term Sheet called on the Department to develop OBW standards in consultation with stakeholders, and to publish those standards in a proposed rule. The Term Sheet indicated that standards for an over-the-toilet design OBW should be established, if feasible.

[31] *https://www.transportation.gov/sites/dot.gov/files/docs/P3.Lav_.2.Block_.Bombardier%20Presentation.v2.2016.07.11.pdf.*

[32] *https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/285871/july-meeting-minutes.pdf.*

[33] *https://www.airbus.com/content/dam/corporate-topics/publications/backgrounders/Backgrounder-Airbus-Commercial-Aircraft-A220-Facts-and-Figures-EN.pdf.*

[34] *https://www.transportation.gov/sites/dot.gov/files/docs/3a.P4.Lav_.2016%20OBW%20v3.0.pdf.* The Hamburg Chair has an optional removable seat panel. With this feature, a passenger could lift the toilet seat lid, position the chair over the toilet, then remove the seat panel on the chair so that the passenger can use the toilet without leaving the chair. Members of the ACCESS Advisory Committee also expressed hygiene concerns with this feature.

[35] Airlines and manufacturers calculated that costs in the form of lost revenue could be as high as $33.3 billion. *https://www.transportation.gov/sites/dot.gov/files/docs/3a.OEM_.Airline%20Accessible%20Lav.Position.8.15.16..pdf.*

[36] *https://www.transportation.gov/office-general-counsel/negotiated-regulations/final-resolution-access-committee.* Of the 27 total Committee members, 19 were voting members on the issue of accessible lavatories. Voting in favor of the agreement were United Airlines, the National Disability Rights Network, the National Air Carrier Association, JetBlue Airways, a subject matter expert from Oregon State University, the Association of Flight Attendants—CWA, the International Air Transport Association, WestJet, Delta Air Lines, Paralyzed Veterans of America, Frontier Airlines, Airbus, the American Council of the Blind, the Regional Airlines Association, and DOT. Boeing and Lufthansa voted to abstain, while the National Council on Independent Living voted against the agreement.

[37] As with the current rule, accessible lavatories would not be required if the airline chooses not to install any lavatories on the aircraft. In practice, however, airlines generally choose to install at least one lavatory onboard aircraft.

[38] The proposed rule text refers to ''all new single-aisle aircraft'' above a specific seating capacity that are ''delivered'' on or after a certain date. This phrasing makes clear that the proposed rule is not limited to newly-certificated aircraft models. Instead, it also applies to newly-manufactured aircraft of existing models.

[39] All references to seat capacity in the Term Sheet are references to FAA-certified maximum seat capacities.

b. Long-Term Improvements

Under the terms of the agreement, long-term improvements would be required on new single-aisle aircraft, with 125 or more passenger seats, that were initially ordered 18 years after the effective date of the final rule or delivered 20 years after the effective date of the final rule. Such aircraft would be required to include at least one lavatory of sufficient size to permit a qualified individual with a disability to perform a seated independent and dependent transfer from the OBW to and from the toilet within a closed space that affords to persons using the OBW privacy equivalent to that afforded ambulatory users. The lavatory would also include the interior accessibility improvements found in Tier 1.

E. Congressional Directive

In July 2016, while the ACCESS Advisory Committee was working on the regulatory negotiation, Congress enacted the FAA Extension, Safety, and Security Act of 2016 (FAA Act of 2016).[40] This statute directed the Department to issue a supplemental NPRM by July 15, 2017, on the issue of accessible lavatories on single-aisle aircraft.[41]

F. Conducting Lavatory Rulemakings in Two Phases

In June 2019, the Department announced that it had determined that the most appropriate course of action was to conduct two separate accessible lavatory rulemakings: (1) This NPRM, covering short-term accessibility improvements; and (2) an ANPRM titled ''Accessible Lavatories on Single-Aisle Aircraft: Part 2,'' covering long-term accessibility improvements.[42] The Department reasoned that it was necessary to gather additional data on the costs and benefits of long-term improvements. The Department also determined that an NPRM on accessible lavatories would be expedited if the complex and more costly long-term improvements were not included at this time. Information on the ANPRM can be found at Docket DOT–OST–2019–0181, RIN 2105–AE89.

G. OBW Design Process

As noted above, the ACCESS Committee's Term Sheet called for the Department to consult with stakeholders on OBW design improvements. The Department determined that the most appropriate method for developing initial OBW design standards was to seek the assistance of the Architectural and Transportation Barriers Compliance Board (Access Board).[43] The Access Board is a Federal agency that specializes in producing accessibility guidelines and standards for the built environment, transportation systems, and technology. On August 20, 2019, the Access Board published ''Proposed Advisory Guidelines for Aircraft Onboard Wheelchairs,'' and sought public comment.[44]

As the Access Board explains, its Advisory Guidelines are not mandatory. Instead, they are intended to ''serve as technical assistance for covered air carriers, providing one example of how covered air carriers might satisfy the performance standard for onboard wheelchairs established by DOT in its forthcoming rulemaking.''[45] The Department has considered the Access Board's proposed technical standards, along with the public comments in the Access Board's docket, when developing the OBW performance standards found in this NPRM. The Department's performance standards set the essential required features of the OBW, while allowing flexibility in how manufacturers meet those standards. Airlines may, if they wish, use the Access Board's more specific technical standards as a guide for complying with the Department's more generalized performance standards. However, airlines would not be required to use the Access Board's technical specifications in order to comply with the performance standards; airlines may choose to adopt alternative specifications for the OBW provided that those specifications achieve a level of accessibility consistent with the performance standards found in the Department's regulations.

II. Proposed Rule

The proposed accessibility improvements in this NPRM generally track the Tier 1 provisions in the ACCESS Advisory Committee's Term Sheet (relating to accessible interior features, training and information requirements, and OBW improvements). This NPRM does not propose expanding the size of the lavatory to provide a level of accessibility equivalent to that found on twin-aisle aircraft. That issue will be addressed in the related ANPRM.

A. Improvements to Lavatory Interiors

The first set of proposed improvements in this NPRM relate to the accessibility features of the lavatory itself. These improvements, found in proposed § 382.63(f), would apply to lavatories on new aircraft with an FAA-certificated maximum capacity of 125 seats or more. The Department is tentatively of the view that because aircraft with fewer than 125 seats tend to be shorter-haul aircraft, with shorter flight times, it may not be cost-beneficial to require interior improvements to lavatories on those aircraft. The Department seeks comment on this issue.

First, the proposed rule would require grab bars to be installed and positioned as required to meet the needs of individuals with disabilities. We note that the ACCESS Advisory Committee's Term Sheet provided that the pull handles must meet the needs of individuals with disabilities *and* must support a minimum of 250 pounds.[46] The proposed rule does not include a weight-support minimum threshold. We are tentatively of the view that setting a specific weight threshold would be unduly prescriptive,[47] and that grab bars must necessarily support significant weight in order to adequately meet the needs of individuals with disabilities. The Department seeks comment on whether this general performance standard provides sufficient guidance to airlines and lavatory manufacturers. The Department seeks comment on whether a weight-support minimum threshold is

[40] Public Law 114–190, 130 Stat. 615, § 2108.

[41] The FAA Act of 2016 directed the Department to issue the supplemental NPRM ''referenced in the Secretary's Report on Significant Rulemakings, dated June 15, 2015, and assigned Regulation Identification Number [RIN] 2105–AE12.'' Public Law 114–190, 130 Stat. 615, § 2108. At the time that the FAA Act of 2016 was enacted, one of the topics within RIN 2105–AE12 was ''whether carriers should be required to provide accessible lavatories on certain new single-aisle aircraft.'' See *https://cms.dot.gov/regulations/2015-significant-rulemaking-archive* (entry for June 2015). In other words, the direction was for the Department to issue a supplemental NPRM on whether carriers should be required to provide accessible lavatories on certain new single-aisle aircraft.

[42] The Department's NPRM on accessible lavatories was originally located at RIN 2105–AE32, which also addressed accessible in-flight entertainment. The Department eventually determined that the in-flight entertainment NPRM would proceed separately at RIN 2105–AE32, while the accessible lavatory rulemaking proceeded at RINs 2105–AE88 (this NPRM) and 2105–AE89 (the ANPRM).

[43] *https://www.access-board.gov/.*

[44] *https://www.federalregister.gov/documents/2019/08/20/2019-17873/advisory-guidelines-for-aircraft-onboard-wheelchairs.* The Access Board's Docket for OBW standards is found at *https://www.regulations.gov/docket?D=ATBCB-2019-0002.* The Access Board held a public hearing on these advisory guidelines on September 12, 2019.

[45] 84 FR 43100, 43101 (August 20, 2019).

[46] Term Sheet 2b.

[47] In 2018, the Department issued guidance regarding its own rulemaking procedures. The guidance provides, in relevant part, that regulations should be technologically neutral and should set performance objectives. *https://www.transportation.gov/sites/dot.gov/files/docs/regulations/328561/dot-order-21006-rulemaking-process-signed-122018.pdf,* section 6(e).

necessary, and if so, what that threshold would be. We specifically seek comment on whether or not the grab bar weight-support standards in other lavatory environments (*e.g.,* airports, trains, and restaurants) are transferable to the environment of an aircraft lavatory, and if so, how. We also seek comment on the costs and benefits of setting any specific threshold.

Next, the proposed rule would require that lavatory faucets have controls with tactile information concerning temperature. Alternatively, airlines may comply with this requirement by ensuring that lavatory water temperature is adjusted to eliminate the risk of scalding for all passengers. The rule would also require that automatic or hand-operated faucets shall dispense water for a minimum of five seconds for each application or while the hand is below the faucet.[48] The Department seeks comment on whether this last requirement is necessary, and the costs and benefits of including such a provision.

Next, the proposed rule would require attendant call buttons and door locks to be accessible to an individual seated in the lavatory.[49] We seek comment on whether to further define ''accessible'' with respect to call buttons and door locks. For example, we seek comment on whether they should be discernible through the sense of touch and/or through specific means of communication such as braille, or whether airlines should be permitted to develop their own methods of providing accessibility.

Next, the proposed rule would require that lavatory controls and dispensers must be discernible through the sense of touch. This rulemaking would also require operable parts of the lavatory to be operable with one hand and not require tight pinching, grasping, or twisting of the wrist.

We are of the view that the term ''operable parts'' includes, but is not limited to, call buttons, door locks, faucets, lavatory controls, and dispensers. We also seek comment on whether the Department should specify the maximum force required to activate operable parts; for example, whether the force should not exceed 5 pounds (2.2N), an accessibility standard applied under the Americans with Disabilities Act (ADA) or whether the proposed performance standard is sufficient to ensure accessibility.

Such requirements would apply if those accessible operable parts are reasonably available and certificated for the applicable aircraft type.[50] We seek comment on the availability of accessible controls and other lavatory parts that are operable by passengers with disabilities, along with the costs and benefits of requiring such accessible controls.

The Department proposes to require the lavatory door sill to provide minimum obstruction for the passage of an OBW, consistent with applicable safety regulations.[51] The Department recognizes that door sills must prevent the spillage of water into the aircraft cabin. On the other hand, during site visits to inspect aircraft lavatories at various airports, members of the ACCESS Advisory Committee's Lavatory Working Group found that a steep door sill can be a significant barrier for the entry of an OBW. This provision is intended to promote accessibility without compromising safety. We seek comment on whether the term ''minimum obstruction'' should be further defined and if so, what that definition should be.

Next, recognizing that adequate toe clearance is necessary to permit the OBW to maneuver into and out of the lavatory, the proposed rule would require airlines not to reduce toe clearance below the current specifications of the lavatory. The Department understands ''toe clearance'' to mean the space between the lavatory floor and the lower edge of the sink or other fixtures of the lavatory. The Department seeks comment on this proposed provision and on whether the term ''toe clearance'' should be specifically defined. If so, should the adequate toe clearance of a lavatory be defined in relation to the foot supports of the OBW that is installed on the specific aircraft containing that lavatory?

Finally, the proposed rule would require airlines to provide a visual barrier, on request, for passengers with disabilities who may require the use of the lavatory but who cannot do so with the door closed. The purpose of the visual barrier is to afford passengers with disabilities a level of privacy equivalent to that afforded to ambulatory users.[52] We seek comment on the means by which this proposed visual barrier may be installed and operated in an efficient and cost-effective manner, consistent with the privacy interests of passengers entering and using the lavatory.

The Department seeks comment on the costs and benefits of these features. The Department seeks comment on any additional features that may improve the accessibility of lavatories on single-aisle aircraft without expanding the footprint of the lavatory itself.[53] The Department also seeks comment and data on the extent to which the footprint of aircraft lavatories on single-aisle aircraft has been reduced in recent years, and the effect that any such reduction has on accessibility for passengers with disabilities. While the Department is not proposing to require in this NPRM that lavatory footprints be *expanded* to any particular size, the Department is considering whether to prohibit the footprint of lavatories from being further *reduced* from current measurements, on the ground that further reduction would adversely impact accessibility.[54] The Department seeks comment on the costs and benefits of any such proposal.

[48] See Term Sheet 2c.

[49] The Term Sheet had separate provisions for call buttons and for door locks. Specifically, the Term Sheet provided that ''call buttons shall be provided in the lavatory and accessible to an individual seated on the toilet,'' while ''the door lock must be accessible by a 5th percentile female seated on the OBW, if any, within the lavatory compartment.'' Term Sheet, sections 2e, 2i. The proposed rule simplifies and consolidates those two provisions. While we believe that both of these provisions are adequately reflected in the rule as currently phrased, we seek comment on whether the proposed rule should more explicitly track the provisions of the Term Sheet.

[50] This paragraph represents a consolidation of Term Sheet provisions 2f and 2l. We believe that the proposed rule as currently phrased adequately reflects these two provisions. We also note that section 2f of the Term Sheet would separately require ''information regarding location and use of all other lavatory controls and dispensers to be made available through informational cards on request, verbally through flight attendants, online, or by phone and TTY where those services are ordinarily provided.'' In our view, this provision is adequately reflected in proposed § 382.63(h), relating to training and information. We seek comment on whether the rule should more explicitly track the provisions of the Term Sheet in these respects.

[51] See Term Sheet 2g.

[52] See Term Sheet 2k.

[53] Section 2a of the Term Sheet included a provision that the lavatory's toilet seat height must be between 17 and 19 inches. The Department has declined to include this provision on the ground that it is unduly prescriptive. We are also tentatively of the view that the seat height requirement was included to ensure that the height of the toilet seat, aircraft seat, and OBW seat were all reasonably consistent. In our view, the more effective and flexible approach to this issue is to require the OBW to be compatible with the both the height of the toilet seat and the height of the aircraft passenger seat. That issue is addressed in the OBW section below.

[54] The Department notes that under 14 CFR 382.71, airlines are already required to ensure that any replacement or refurbishing of an aircraft cabin or its elements does not reduce the accessibility of that element to a level below that specified for new aircraft in Part 382. This existing requirement arguably does not apply to the footprint of lavatories on single-aisle aircraft, because Part 382 does not currently specify any minimum footprint for lavatories on single-aisle aircraft.

B. Retrofitting

Retrofitting of lavatories is addressed in proposed § 382.63(g). The proposed rule reflects the provisions of the ACCESS Advisory Committee's Term Sheet. Retrofitting of lavatories on aircraft currently in service would not be required under the proposed rule; however, if an airline replaces a lavatory 3 years or more after the effective date of the rule, the proposed rule would require the airline to install a lavatory that meets the new requirements. Under this paragraph, a lavatory is not considered replaced if it is removed for specified maintenance, safety checks, or any other action that results in returning the same lavatory into service. For retrofitted lavatories, there would be no requirement to install a visual barrier if doing so would obstruct the visibility of exit signs.

C. Training and Information

New proposed training and information requirements are found in § 382.63(h). These requirements largely reflect the provisions of the Committee's Term Sheet. They apply to airlines operating aircraft with an FAA-certificated maximum capacity of greater than 60 seats (*i.e.,* airlines that do not qualify as small businesses under 14 CFR 399.73). The training and information requirements would apply to the airlines' operations generally, not to the operation of any specific aircraft. Consistent with the Term Sheet, these provisions would apply three years after the effective date of the final rule.

First, the proposed rule would require airlines to train flight attendants to proficiency on proper procedures for providing assistance to qualified individuals with disabilities to and from the lavatory from the aircraft seat.[55] Such training would include hands-on training on the retrieval, assembly, stowage, and use of the aircraft's OBW, and training regarding the accessibility features of the lavatory.[56] Consistent with the Term Sheet, the proposed rule would require such training on an annual basis. The Department expects that both initial and annual hands-on training will be required for airline and contractor employees to gain proficiency in providing this assistance, in light of factors such as the various OBW designs that may be supplied to various aircraft, and the frequency of OBW use. The Department seeks comment on whether annual training is necessary, or whether a different frequency of training would be more appropriate.

Second, the Department proposes to require airlines to provide information on their websites and upon request regarding the accessibility features of the lavatory.[57] The purpose of this proposed requirement is to provide passengers with accurate information about the types of accessibility features that will be available on the aircraft, so that passengers may plan their flights appropriately.

Third, the Department proposes to require airlines to remove the International Symbol of Accessibility from new and in-service aircraft that are equipped with lavatories that are not capable of facilitating a seated independent transfer (*i.e.,* a transfer from an OBW to the toilet seat without requiring the use of an assistant).[58] During the ACCESS Advisory Committee's deliberations, advocates noted that the symbol appeared on certain lavatories where it was unclear what features, if any, made the lavatory accessible. This proposed rule would provide greater consistency regarding the use of the symbol.

Finally, the Department proposes to require airlines to develop and, on request, inform passengers about their procedures for disposing of sharps and bio-waste. It is reasonable to expect that as lavatories on single aisle aircraft become more accessible, they may be used increasingly as a location where passengers with disabilities may perform personal functions which require the disposal of sharps and bio-waste. The proposed rule does not require any specific type of disposal procedures, however (*e.g.,* a sharps disposal box installed within the lavatory).[59]

D. OBW Standards

The Department's proposed performance standards for new OBWs are found in § 382.65(h). The standards found in the NPRM describe the expected performance of the OBW, while allowing manufacturers to find efficient and innovative means for meeting those performance expectations. At the same time, the proposed rule states that airlines may use the Access Board's advisory guidelines for technical assistance in furnishing an OBW that meets the Department's performance standards. In this way, the Department intends to encourage innovation while also providing a specific example of how to comply with the proposed rule.

Under the proposed rule, OBWs meeting the new standards must be installed on new single-aisle aircraft with an FAA-certificated maximum capacity of 125 seats or more that enter service 3 years after the effective date of the final rule.[60] The Department seeks comment on whether aircraft with fewer than 125 seats tend to be used for shorter-haul flights, and whether or not such aircraft should be excluded from the new OBW requirements.

The proposed rule would require the OBW design to enable the OBW to completely enter the lavatory in a backward orientation. Specifically, the rule would require the OBW to fit over the closed toilet lid in a manner that permits the lavatory door to close completely. It is anticipated that the attendant would push the OBW backward into the lavatory by means of handles on the front of the OBW. After the OBW is situated over the closed toilet lid, the door would be closed and the passenger would be able to perform non-toileting lavatory functions in privacy. It is the tentative view of the Department that these OBW features would substantially improve accessibility for passengers who, at present, cannot enter the lavatory from existing OBWs.

[55] Airlines are already required to train their personnel to proficiency on the airline's procedures concerning the provision of air travel to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability. 14 CFR 382.141(a)(1)(ii).

[56] The Term Sheet states: ''You must train flight attendants to proficiency on an annual basis to provide assistance in transporting qualified individuals with disabilities to and from the lavatory from the aircraft seat, including hands-on training on the use of any new DOT-required on-board wheelchair, and with respect to any assembly or modifications to the accessibility features of the lavatory or on-board wheelchair.'' The proposed rule is broader than the Term Sheet to the extent that it clarifies training must be provided on the retrieval and stowage of the OBW, along with its assembly and use. The proposed rule does not implement the Term Sheet to the extent that it suggests that flight attendants must be trained with respect to any ''assembly or modifications'' of the lavatory's accessibility features. Such a provision would be, in our view, both unclear and unnecessary. In our view, it is appropriate to generally mandate that flight attendants are trained on the accessibility features of the lavatory. We solicit comment on whether the training requirements should track the Term Sheet more closely or should be otherwise modified.

[57] Term Sheet 1(b).

[58] Removal of the international symbol is the only proposed rule that would apply to existing in-service lavatories, and to lavatories on aircraft with and FAA-certificated maximum capacity of fewer than 125 seats. The Term Sheet uses the term ''seated independent transfer'' without further defining the term. We believe that the definition provided in the rule text accurately reflects the meaning of ''seated independent transfer,'' but we seek comment on that issue.

[59] This provision is based on paragraph 2h of the Term Sheet. The Term Sheet placed the sharps/biowaste provision within the section of the agreement relating to the lavatory interior. In our view it is most appropriately seen as a provision relating to information and training.

[60] See Term Sheet 4A.

The proposed rule would also require that the OBW design enable it at a minimum to partially enter the lavatory in a forward orientation. The purpose of this provision is to facilitate a stand-and-pivot maneuver from the OBW to the toilet seat, for passengers who are able to do so. With a stand-and-pivot maneuver, the passenger would partially enter the lavatory by means of the OBW, stand up, and pivot 180 degrees to reach the toilet seat. Grab bars and/or visual barriers may be necessary to complete a stand-and-pivot. We seek comment on the ways that an OBW can be best designed to facilitate forward entry and a stand-and-pivot maneuver.

The next set of proposed rules relates to safety. In drafting these proposed performance standards, the Department considered the features that the Access Board has identified as necessary to ensure passenger safety. The proposed rule would require that the height of the OBW seat must align with the height of the aircraft seat to the maximum extent practicable, in order to permit a safe transfer between the OBW and the aircraft seat.[61] The rule would require the wheels of the OBW to lock in the direction of travel, in order to avoid contact with aircraft seats and other obstructions as it moves down the aisle. Any other moving parts of the onboard wheelchair would need to be capable of being secured such that they do not move while the occupied onboard wheelchair is being maneuvered. The wheels would also be required to lock in place so as to provide stability during transfers. When occupied for use, the onboard wheelchair would be required to not tip or fall in any direction under normal operating conditions.

The OBW would be required to have a padded seat and backrest, in order to preserve skin integrity, and to prevent spasticity and injury. We specifically seek comment on whether the proposed rule text adequately conveys the degree of back support and seat support necessary to properly accommodate passengers with disabilities, and if not, whether additional standards should be specified. For example, should the text further indicate that the seat and backrest must be ''firm'' or ''solid?''

The rule would also require the OBW to be free of sharp or abrasive components. The OBW would also be required to have arm supports that are sufficient to facilitate transfers; arm supports that are repositionable to permit unobstructed transfers between the OBW and the aircraft seat; torso and leg restraints to ensure stability and prevent injury; as well as a unitary foot support that would provide adequate clearance over the lavatory threshold and also allow for an unobstructed transfer between the OBW and the lavatory. Under the proposed rule, restraints must be operable by the passenger in order to permit the passenger the option to adjust the restraints unassisted. Finally, the rule would require the OBW to have instructions prominently displayed for proper use.

The Department seeks comment on these features, including their costs, benefits, and necessity. We also seek comment on whether additional features are necessary (for example, whether specific performance standards should be required with respect to minimum load weight), along with their costs and benefits.

Under paragraph (f) of this proposed rule, airlines would not be required to modify aircraft interiors, including lavatories and existing OBW stowage spaces, in order to comply with these OBW provisions. During negotiations, airlines and aircraft manufacturers expressed concern about the costs of altering the interior spaces of the aircraft to accommodate a newly designed OBW. These provisions reflect those concerns. Like the other improvements to the lavatory interior, the OBW design would not require alteration of the interior space of the lavatory or the aircraft generally.

The Department seeks comment on all aspects of this critical issue of OBW stowage space. Specifically, the Department seeks further data regarding: (1) The folded dimensions of OBWs currently in use on single-aisle aircraft; (2) the locations and dimensions of current OBW stowage spaces; and (3) the feasibility of designing and constructing an OBW that meets the listed performance standards, particularly including the ability to enter the lavatory in a backward orientation, while fitting into the existing OBW stowage space for that aircraft. The Department also seeks comment on an alternative proposal: Whether to require OBWs to meet the new performance standards set forth in this NPRM even if stowage space must be expanded to accommodate the OBW. The Department seeks comment on the costs of expanding OBW stowage spaces to meet these performance standards.

Under paragraph (g) of this proposed rule, and in keeping with the ACCESS Advisory Committee's Term Sheet, an airline would not be responsible for the failure of third parties to furnish an OBW that complies with these proposed standards, so long as the airline notifies and substantiates to the Department the efforts it expended to obtain compliant OBWs. The Department recognizes that, at present, no commercially available OBW exists that permits backward passage into an aircraft lavatory, and that while airlines may seek to procure an OBW that meets the Department's performance standards, airlines do not design or produce OBWs themselves. The Department seeks comment on whether there should be a deadline for an airline to notify the Department that the airline has expended its efforts to obtain compliant OBWs. If so, how many days after an airline becomes aware of such commercial unavailability (*e.g.,* 30 days) would be appropriate for airlines to notify the Department? The Department also recognizes the uncertainties surrounding the issue of whether OBWs meeting the Department's new standards can fit within existing OBW stowage spaces. The intent of proposed paragraph (g) is to encourage innovation in meeting the proposed standards by affirmatively requiring airlines to engage in reasonable efforts to obtain compliant OBWs from third parties. The Department seeks comment on whether the ''reasonable efforts'' clause is the most appropriate means of reaching the overarching goal of ensuring that OBWs with the new accessibility features are acquired.

Finally, the proposed rule provides that if an airline replaces an OBW on an aircraft with an FAA-certificated maximum capacity of 125 seats or more three years after the effective date of the rule, then the replacement OBW must comply with DOT's new OBW standards. That provision is reflected in § 382.65(h).

Regulatory Analyses and Notices

A. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Order 2100.6 (Policies and Procedures for Rulemakings)

This proposed rule is a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), ''Regulatory Planning and Review,'' as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011),

[61] Depending on the nature and extent of the passenger's disability, it may be necessary for the passenger's seat to have a movable aisle armrest. The Department believes that its existing rules relating to movable aisle armrests (14 CFR 382.61 and 382.81–87) are sufficient to ensure that passengers who require a movable aisle armrest are accommodated; however, the Department seeks comment on this issue.

''Improving Regulation and Regulatory Review.'' The Department made this determination by finding that, although the economic effects of this proposed regulatory action would not exceed the $100 million annual threshold defined by E.O. 12866, the proposed rule is significant because of the rule's substantial public interest in accessible transportation for individuals with disabilities. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (OMB). This proposed rule is issued consistent with the policies and procedures governing the development and issuance of regulations by the Department found in DOT Order 2100.6, ''Policies and Procedures for Rulemakings'' (December 20, 2018). This proposed rule is expected to be a regulatory action under Executive Order 13771. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

The Department has conducted a preliminary regulatory impact analysis (PRIA) in support of the NPRM. With respect to accessible lavatories, the total estimated costs and benefits of the proposed rule are as follows:

TABLE 1—COST SUMMARY OF THE LAVATORY ACCESSIBILITY AND OBW PROVISIONS

14 CFR	Regulatory topic	Discounted at 7 percent	Discounted at 3 percent	Annualized 25-year cost	Benefits
§ 382.63	Lavatory Accessibility	$21,353,264	$36,522,224	$1,832,334	Not Quantified.
§ 382.65	OBW	2,523,364	2,621,359	216,531	Not Quantified.
Total	Total	22,876,628	39,143,583	2,048,866	Not Quantified.

Benefits are expected to include ensuring the comfort, privacy, dignity, and civil rights of passengers with disabilities by improving their ability to access the lavatory and its facilities on long flights so as to perform personal functions in privacy. Passengers who are expected to benefit from the proposed rule include passengers currently unable to use lavatories on single-aisle aircraft because of a disability. Passengers with visual impairments will benefit from the requirement that controls be discernible through the sense of touch. Non-ambulatory passengers are expected to benefit from the safety improvements to the OBW. In general, passengers with disabilities will benefit from the provision requiring airlines to provide accurate information about the accessibility of the aircraft lavatory.

The PRIA provided a cost estimate for proposed § 382.63 (lavatory interiors, retrofitting, and information/training.) The improvements to lavatory interiors are estimated to cost approximately $1,000 per lavatory (collectively, $1.7 million discounted at 7% and $2.9 million discounted at 3%.) By far the largest estimated cost component for § 382.63 is the cost of training flight attendants to proficiency with respect to the operation of the OBW. These costs are estimated at $19.6 million discounted at 7%, and $33.6 million discounted at 3%. In general, other costs related to proposed § 382.63 are estimated to be minimal.[62]

The PRIA also estimated costs for improvements to the OBW. It is important to note that the PRIA estimated the costs of compliance with the Access Board's technical standards, not the costs of compliance with the more generalized performance standards in this NPRM. The PRIA noted certain key uncertainties of its OBW analysis, including but not limited to: (1) The difficulties in comparing the potential benefits of the new OBW design to an existing baseline; (2) whether OBW manufacturers are willing and able to manufacture an OBW with an over-the-toilet design; (3) the ability of any OBW with over-the-toilet positioning to fit within existing FAA stowage spaces; and (4) uncertainties regarding the reasonable weight load for an OBW, given constraints such as the width of the aircraft aisle. Bearing these uncertainties in mind, the PRIA estimates the costs of developing compliant OBWs to be $2.7 million undiscounted ($2.5 million discounted at 7% and $2.6 million discounted at 3%). These costs are largely related to design, and not to manufacturing. The Department's complete PRIA with more details on the economic analysis may be found in the rulemaking docket. The Department seeks comment on all elements of this PRIA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.,* aircraft with up to 60 seats/18,000-pound payload capacity).[63] This rule applies only to carriers that operate aircraft with FAA-certificated maximum capacity of more than 60 seats. The Department hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM does not include any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

[62] The PRIA refers to the information and training measures as appearing within § 382.63(f); they now appear in § 382.63(h). Similarly, the PRIA refers to lavatory interior improvements as appearing within § 382.63(h); they now appear in § 382.63(f).

[63] See 14 CFR 399.73.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. This rule adopts new information collection requirements subject to the PRA. The Department will publish a separate notice in the **Federal Register** inviting OMB, the general public, and other Federal agencies to comment on the new and revised information collection requirements contained in this document. As prescribed by the PRA, the requirements will not go into effect until OMB has approved them and the Department has published a notice announcing the effective date of the information collection requirements.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer protection, including regulations.'' This rulemaking concerns civil rights protection for individuals with disabilities. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

List of Subjects in 14 CFR Part 382

Lavatories; Single-aisle aircraft; Onboard wheelchairs.

For the reasons discussed in the preamble, the Department proposes to amend 14 CFR part 382 as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

■ 1. The authority citation for part 382 is revised to read as follows:

Authority: 49 U.S.C. 40113(a); 41702, 41705, 41712, and 41310; FAA Extension, Safety, and Security Act of 2016, section 2108.

Subpart E—Accessibility of Aircraft

■ 2. In § 382.63, add the phrase ''not covered in paragraph (f) of this section'' after the word ''aircraft'' in paragraph (b), and add paragraphs (f), (g), and (h) to read as follows:

§ 382.63 What are the requirements for accessible lavatories?

* * * * *

(f) As a carrier, you must ensure that all new single-aisle aircraft that you operate with an FAA-certificated maximum seating capacity of 125 or more that are delivered on or after [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] and on which lavatories are provided shall include at least one lavatory that meets the following specifications:

(1) Grab bars must be provided and positioned as required to meet the needs of individuals with disabilities.

(2) Lavatory faucets must have controls with tactile information concerning temperature. Alternatively, carriers may comply with this requirement by ensuring that lavatory water temperature is adjusted to eliminate the risk of scalding for all passengers. Automatic or hand-operated faucets shall dispense water for a minimum of five seconds for each application or while the hand is below the faucet.

(3) Attendant call buttons and door locks must be accessible to an individual seated within the lavatory.

(4) Lavatory controls and dispensers must be discernible through the sense of touch. Operable parts within the lavatory must be operable with one hand and must not require tight grasping, pinching, or twisting of the wrist.

(5) The lavatory door sill must provide minimum obstruction to the passage of the onboard wheelchair across the sill while preventing the leakage of fluids from the lavatory floor and trip hazards during an emergency evacuation.

(6) Toe clearance must not be reduced from current measurements.

(7) The aircraft must include a visual barrier that must be provided upon request of a passenger with a disability. The barrier must provide passengers with disabilities using the lavatory (with the lavatory door open) a level of privacy substantially equivalent to that provided to ambulatory users.

(g) You are not required to retrofit cabin interiors of existing single-aisle aircraft to comply with the requirements of paragraph (f) of this section. However, if you replace a lavatory on a single-aisle aircraft after [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], you must replace it with a lavatory complying with the requirements of paragraph (f) of this section. Under this paragraph (g), a lavatory is not considered replaced if it is removed for specified maintenance, safety checks, or any other action that results in returning the same lavatory into service. For retrofit lavatories, there shall be no requirement to install a visual barrier if doing so will obstruct the visibility of exit signs.

(h) As a carrier operating at least one aircraft with an FAA-certificated maximum seating capacity of 60 or more, you must comply with the following requirements:

(1) You must train flight attendants to proficiency on an annual basis to provide assistance in transporting qualified individuals with disabilities to and from the lavatory from the aircraft seat. Such training shall include hands-on training on the retrieval, assembly, stowage, and use of the aircraft's onboard wheelchair, and regarding the accessibility features of the lavatory.

(2) You must provide information, on request, to qualified individuals with a disability or persons making inquiries on their behalf concerning the accessibility of aircraft lavatories. This information must also be available on the carrier's website, and in printed or electronic form on the aircraft, including picture diagrams of accessibility features in the lavatory and the location and usage of all controls and dispensers.

(3) You must remove or conceal the International Symbol of Accessibility from new and in-service aircraft equipped with lavatories that are not capable of facilitating a seated independent transfer (*i.e.,* a transfer from an onboard wheelchair to the toilet seat without requiring the use of an assistant).

(4) You must develop and, upon request, inform passengers of trash disposal procedures and processes for sharps and bio-waste.

(5) You must comply with the provisions of this paragraph (h) by [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

■ 3. In § 382.65, add paragraphs (e), (f), (g), and (h) as follows:

§ 382.65 What are the requirements concerning on-board wheelchairs?

* * * * *

(e) As a carrier, you must ensure that all new single-aisle aircraft that you operate with an FAA-certificated maximum seating capacity of 125 or more that are delivered on or after [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] and on which lavatories are provided include an onboard wheelchair meeting the requirements of this section. The Access Board published nonbinding technical assistance titled, ''Advisory Guidelines for Aircraft Onboard Wheelchairs,'' for compliance with these requirements.

(1) The onboard wheelchair must be maneuverable both forward and backward through the aircraft aisle by an attendant.

(2) The onboard wheelchair must be maneuverable in a forward orientation partially into at least one aircraft lavatory to permit transfer from the onboard wheelchair to the toilet.

(3) The onboard wheelchair must be maneuverable into the aircraft lavatory in a backward orientation to permit positioning over the toilet lid without protruding into the clear space needed to completely close the lavatory door.

(4) The height of the onboard wheelchair seat must align with the height of the aircraft seat so as to facilitate a safe transfer between the onboard wheelchair seat and the aircraft seat.

(5) The onboard wheelchair must have wheels that lock in the direction of travel, and that lock in place so as to permit safe transfers. Any other moving parts of the onboard wheelchair must be capable of being secured such that they do not move while the occupied onboard wheelchair is being maneuvered.

(6) When occupied for use, the onboard wheelchair shall not tip or fall in any direction under normal operating conditions.

(7) The onboard wheelchair must have a padded seat and backrest, and must be free of sharp or abrasive components.

(8) The onboard wheelchair must have arm supports that are sufficiently structurally sound to permit transfers and repositionable so as to allow for unobstructed transfers; adequate back support; torso and leg restraints that are adequate to prevent injury during transport; and a unitary foot support that provides sufficient clearance to traverse the threshold of the lavatory and is repositionable so as to allow for unobstructed transfer. All restraints must be operable by the passenger.

(9) The onboard wheelchair must prominently display instructions for proper use.

(f) You are not required to expand the existing FAA-certificated onboard wheelchair stowage space of the aircraft, or modify the interior arrangement of the lavatory or the aircraft, in order to comply with this section.

(g) You are not responsible for the failure of third parties to develop and deliver an onboard wheelchair that complies with a requirement set forth in paragraph (e) of this section so long as you notify and demonstrate to the Department at the address cited in § 382.159 that an onboard wheelchair meeting that requirement is unavailable despite your reasonable efforts.

(h) If you replace an onboard wheelchair on aircraft with an FAA-certificated maximum seating capacity of 125 or more after [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], then you must replace it with an onboard wheelchair that meets the standards set forth in paragraph (e) of this section.

Issued this 16th day of December, 2019, in Washington, DC, under authority delegated in 49 CFR 1.27(n).

Steven G. Bradbury,

General Counsel.

[FR Doc. 2019–27631 Filed 12–31–19; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 82

[192A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076–AF51

Procedures for Federal Acknowledgment of Alaska Native Entities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a new part in the Code of Federal Regulations to address how Alaska Native entities may become acknowledged as an Indian Tribe pursuant to the Alaska Amendment to the Indian Reorganization Act. This proposed rule would not affect the status of Tribes that are already federally recognized.

DATES: Comments are due by March 2, 2020. Consultation and public meetings will be held January 28 and 30, and February 6, 2020 (see section IV of this preamble for additional information).

ADDRESSES: You may send comments, identified by RIN number 1076–AF51 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for sending comments.
- *Email: consultation@bia.gov*. Include RIN number 1076–AF51 in the subject line of the message.
- *Mail or Hand-Delivery/Courier:* Office of Regulatory Affairs & Collaborative Action—Indian Affairs (RACA), U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240.

All submissions received must include the Regulatory Information Number (RIN) for this rulemaking (RIN 1076–AF51). All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Background
A. Alaska IRA
B. Implementation of Alaska IRA
C. Tribal Input on the Department's Implementation of the Alaska IRA
1. Need for an Alaska-Specific Regulatory Process
2. No Effect on the Status of Tribes Who Are Currently Federally Recognized
3. Consideration of Pending Petitions
III. Summary of Proposed Rule
A. Subpart A—General Provisions
1. Definitions
2. Scope and Applicability
B. Subpart B—Criteria for Federal Acknowledgment
1. Evaluation of the Mandatory Criteria
2. Criteria for Federal Acknowledgment
C. Subpart C—Process for Federal Acknowledgment
IV. Tribal Consultation and Public Meeting Sessions
V. Procedural Requirements
A. Regulatory Planning and Review (E.O. 12866)

B. E.O. 13771: Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)
C. Regulatory Flexibility Act
D. Small Business Regulatory Enforcement Fairness Act
E. Unfunded Mandates Reform Act
F. Takings (E.O. 12630)
G. Federalism (E.O. 13132)
H. Civil Justice Reform (E.O. 12988)
I. Consultation With Indian Tribes (E.O. 13175)
J. Paperwork Reduction Act
K. National Environmental Policy Act
L. Effects on the Energy Supply (E.O. 13211)
M. Clarity of This Regulation
N. Public Availability of Comments

I. Executive Summary

In 1936, Congress enacted an amendment to the Indian Reorganization Act (Alaska IRA) to allow groups of Indians [1] in Alaska, not previously recognized as bands or Tribes by the United States, to organize under the Indian Reorganization Act (IRA), provided they could demonstrate ''a common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district.'' The Department of the Interior (Department) has not previously promulgated regulations establishing a process through which entities in Alaska that were not previously recognized as bands or Tribes before 1936 can be acknowledged pursuant to the Alaska IRA. Rather, the Department has reviewed Alaska IRA petitions on a case-by-case basis.

This proposed rule would establish a new 25 CFR part 82 that would establish an acknowledgment process for entities in Alaska that were not recognized as bands or Tribes before 1936. This proposed rule relies to a significant extent on the existing process through which entities may petition for Federal acknowledgment under 25 CFR part 83 (Part 83). However, the proposed rule would first require petitioners to establish a connection from an entity that satisfied the Alaska IRA as of the date of the statute's enactment. Upon such a showing, petitioners would then need to satisfy the current Part 83 evidentiary criteria, largely incorporated into the proposed rule, though on a shorter timeframe than that of a Part 83 petitioner.

This proposed rule would provide necessary consistency to the Alaska IRA petition process. This proposed rule would settle expectations among Alaska IRA petitioners, the United States, the State of Alaska and its constituent local governments, and federally recognized Tribes as to how an entity can petition for acknowledgment under the Alaska IRA. This proposed rule would not affect the status of Tribes that are already federally recognized.

The Department requests comments on this proposed rule.

II. Background

A. Alaska IRA

Congress enacted the IRA in 1934, which, among other things, authorized Indian Tribes to organize for their common welfare and adopt an appropriate constitution and bylaws. 25 U.S.C. 5101 *et seq.* Although Congress prohibited the IRA's application to the territories of the United States, Congress created an exception expressly making certain sections of the IRA applicable to the Territory of Alaska. 25 U.S.C. 5118.

As originally enacted, Congress expressly made Section 16 of the IRA applicable to the Territory of Alaska, which gave any Tribe or Tribes residing on a reservation the right to organize and adopt an appropriate constitution and bylaws. 25 U.S.C. 5123. However, there were very few areas in the Territory of Alaska that qualified as ''reservations'' within the meaning of the IRA. Further, Congress did not make Section 7 of the IRA applicable to the Territory of Alaska, which authorized the Secretary to proclaim new reservations. 25 U.S.C. 5110. Nor did Congress make Section 19 of the IRA applicable to the Territory of Alaska, which generally defined the terms Indian and Tribe, and which referenced ''Eskimos'' and other aboriginal peoples of Alaska. 25 U.S.C. 5129. Thus, the incomplete application of the IRA to Alaska in 1934 functionally prevented nearly all Alaska Natives from benefitting from the IRA's provisions.

Congress understood that many Alaska Native entities did not resemble Tribes in the conterminous United States and generally lacked reservations within the meaning of the IRA. Because of this, Alaska Native entities found themselves unable to meet the IRA's definition of ''tribe'' and unable to organize under Section 16 of the IRA, which required residence on a reservation.

In 1936, Congress accordingly established an alternative means for determining whether an Alaska Native entity could become eligible for benefits under the IRA. In enacting the Alaska IRA, the House of Representatives Committee on Indian Affairs explained the need for the amendment by expressly noting ''the peculiar nontribal organizations under which the Alaska Indians operate,'' as well as the fact that ''[m]any groups that would otherwise be termed 'tribes' live in villages which are the bases of their organizations.'' H.R. Rep. No. 74–2244, at 2 (1936).

B. Implementation of Alaska IRA

The Alaska IRA establishes a ''common bond'' basis of organization applicable only to certain entities in Alaska. To date, the Department has approved the organization of over 70 entities under this statutory standard. All such entities are included on the Department's list of federally recognized Indian Tribes (List).

The Department has not previously adopted regulations establishing requirements and procedures for implementing the eligibility criteria under the Alaska IRA. While the Department issued instructions in 1937 providing guidance on how to organize under the IRA and the Alaska IRA, those instructions did not fully address which entities would be eligible for organization under the ''common bond'' standard. Since then, the Department has determined eligibility for organization under the Alaska IRA on a case-by-case basis and in the absence of any comprehensive or binding regulations, has relied on the 1937 guidance, other Alaska IRA-contemporaneous guidance, and previous Alaska IRA determinations.

C. Tribal Input on the Department's Implementation of the Alaska IRA

In recent years, the Department has considered whether and how it should evaluate Alaska IRA petitions in the absence of an established regulatory process. On July 2, 2018, the Department issued a Dear Tribal Leader Letter (DTLL) initiating Tribal consultation in Alaska on a number of questions concerning the implementation of the Alaska IRA. The Department sought comment on the following issues:

- Is the Alaska IRA still relevant?
- How should the Department define or interpret the statutory phrase, ''common bond''?
- How should the Department define or interpret the statutory phrase, ''well-defined neighborhood, community, or rural district''?
- Should a group of Alaska Natives sharing a common bond of occupation

[1] The term ''Indian,'' as used herein, is a defined term in the Indian Reorganization Act and ''include[s] all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians.''

have the ability to exercise sovereign governmental powers, and, if so, should there be any limits on those powers?

- How should the Department implement the Alaska IRA? Through regulations? Through formal guidance? Through some other means?
- Are the federal acknowledgment regulations set out in 25 CFR part 83 (Part 83) an appropriate process for groups in Alaska to seek Federal acknowledgment?
- Are there challenges specific to Alaska Native groups that make the requirements of Part 83 particularly challenging to satisfy?
- Is there a need to create a separate process for Federal acknowledgment of Alaska groups, outside Part 83?

The Department held several listening sessions and consultations on these issues. The Department ultimately received eight written comments in response to the Tribal consultation (though several of the comments were submitted on behalf of multiple Tribes or Tribal organizations). Most commenters agreed that the Alaska IRA remains a viable means for Alaska Native groups to seek Federal acknowledgment outside of Part 83, and questioned the need for an Alaska-specific formal regulatory process. Other commenters expressed concern as to whether an Alaska-specific regulatory process would somehow affect the federal recognition of existing Tribes in Alaska (whether organized under the Alaska IRA or otherwise). Nearly all commenters urged the Department to issue final decisions on any outstanding Alaska IRA petitions prior to implementing a regulatory or guidance-based process for Alaska.

The Department reviewed and considered each comment in developing this proposed rule and addresses them here.

1. Need for an Alaska-Specific Regulatory Process

The Department has determined that regulations determining eligibility to organize under the Alaska IRA are necessary to effectively carry out its provisions. After consideration of the various regulatory options, the Department has concluded that a formal acknowledgment process based on the criteria and the procedures set forth in Part 83, but tailored to accommodate the unique provisions of the Alaska IRA, is the best path forward for acknowledging Alaska Native entities under the Alaska IRA.

Specifically, and as discussed further below, the proposed rule would require that an Alaska Native entity seeking Federal acknowledgment under the Alaska IRA submit a ''documented petition,'' as currently required for Part 83 purposes at 25 CFR 83.21. As part of such ''documented petition,'' an Alaska Native entity would additionally need to submit evidence establishing a connection to an entity or group that satisfied the Alaska IRA's ''common bond'' standard as of the statute's enactment on May 1, 1936. Upon fulfilling these requirements, the petitioner would then need to satisfy the evidentiary criteria of Part 83 currently enacted in 25 CFR 83.11. For those criteria that require satisfaction from 1900 to present, however, under this proposed rule the petitioner would need only to satisfy the criteria from May 1, 1936 to present.

The Department has examined its authority to interpret and implement the Alaska IRA in this manner. We conclude that Congress has delegated the necessary authority to the Department to implement the statute through rulemaking. Further, we conclude that such rulemaking may incorporate Part 83 standards.

The Department is the Federal agency charged with the management of all Indian affairs and of all matters arising out of Indian relations. 25 U.S.C. 2. Similarly, the Secretary may prescribe such regulations as he or she sees fit for carrying into effect the various provisions of any act relating to Indian affairs, 25 U.S.C. 9, which includes the IRA and the Alaska IRA. Thus Federal acknowledgment determinations are squarely within the Department's authority and expertise.

Courts have accordingly recognized that the acknowledgement of Tribal status and the commensurate government-to-government relationship between the Indian Tribe and the United States is a political question on which deference is provided to the political branches of the government. *See Miami Nation of Indians of Ind.* v. *Dep't of the Interior,* 255 F.3d 342 (7th Cir. 2001). As a general matter, the Department's authority to decide matters of Federal acknowledgment is derived from the Secretary's broad discretionary authority to handle all public business relating to Indians and the authority to manage all Indian affairs and matters arising out of Indian relations. *See* 43 U.S.C. 1457, and 25 U.S.C. 2, 9. Under this broad delegation of powers, the Department's authority to adopt Federal acknowledgment regulations and the appropriateness of those regulations has been litigated and uniformly upheld. *See, e.g., James* v. *U.S. Dep't of Health and Human Servs.,* 824 F.2d 1132, 1138 (D.C. Cir. 1987); *Miami Nation of Indians of Ind.* v. *Babbitt,* 887 F. Supp. 1158 (N.D. Ind. 1995).

The Department has historically determined eligibility for organization under the Alaska IRA on a case-by-case basis and in the absence of any comprehensive or binding regulations, relying on the 1937 guidance, other Alaska IRA-contemporaneous guidance, and previous Alaska IRA determinations. Applying its expertise in the field of Indian affairs, the Department believes the most appropriate option is to require that eligible Alaska Native entities seeking to organize under the Alaska IRA first satisfy a process similar to Part 83, with certain Alaska-specific distinctions. The Department reached this conclusion based on several considerations.

First, Part 83 is premised on the fundamental tenet that a petitioner's membership consist of individuals who descend from a historical Indian Tribe (or from historical Indian Tribes that combined and functioned as a single autonomous political entity). 25 CFR 83.11(e). By requiring that petitioners demonstrate a historical connection to an entity that could have satisfied the Alaska IRA in 1936, the proposed rule balances the specific provisions of the Alaska IRA with the historical demonstration undertaken in Part 83. This ensures that when acknowledging a petitioner under the Alaska IRA criteria, the Department has determined that said petitioner is an Alaska Native political entity exercising governmental authority over a discrete Alaska Native membership, and has a direct connection to such an entity that was in existence at the time that Congress enacted the Alaska IRA.

Second, the proposed rule envisions that the Office of Federal Acknowledgment (OFA) will review Alaska IRA petitions on the merits. OFA is composed of anthropologists, historians, and genealogists, all of whom are civil servants who work together to review, analyze, and evaluate evidence submitted by Part 83 petitioners consistent with the methods and standards of their profession. OFA's professional expertise is important not only to safeguard the uniform application of the Alaska IRA according to best practices within these academic fields, but also to help ensure the Department's administrative decisions will be accorded due deference by a reviewing court.

The Department has previously suggested that Part 83 may not be appropriate in Alaska. In 1988, the Department wrote that:

> [A]pplying the criteria presently contained in Part 83 to Alaska may be unduly burdensome for the many small Alaska organizations. Alaska, with small pockets of Natives living in isolated locations scattered throughout the state, may not have extensive documentation on its history during the 1800's and early 1900's much less the even earlier periods commonly researched for groups in the lower-48. While it is fair to require groups in the lower-48 states to produce such documentation because they are located in areas where no group could exist without being the subject of detailed written records, insistence on the same formality for those Alaska groups might penalize them simply for being located in an area that was, until recently, extremely isolated.

53 FR 52829, 52833 (Dec. 28, 1988). We subsequently reasoned in the proposed rule to the 1994 amendments of Part 83 that treating Alaska differently than the conterminous United States reflected the fact that Alaska Native entities ''are not tribes in the historical or political senses.'' 56 FR 47320, 47321 (Sept. 18, 1991). Finally, in a 2015 guidance document limiting Departmental Federal acknowledgment to the Part 83 process, the Assistant Secretary—Indian Affairs (AS–IA) noted this limitation applied only in the conterminous United States, and that the Alaska IRA criteria presented an alternative process through which Alaska Native entities could organize. 80 FR 37538, 37539 n.1 (July 15, 2015). One could argue that these statements suggest that the process for implementing the Alaska IRA criteria inherently cannot incorporate Part 83 standards.

We have determined that the Department may and should incorporate relevant Part 83 requirements into the proposed rule. Federal courts have affirmed the authority and broad discretion of the Secretary to regulate issues concerning the acknowledgment of Tribal entities, even if it results in a significant departure from past administrative practices. *See, e.g., Miami Nation,* 887 F. Supp. at 1169 (''That the Secretary elected to promulgate [Federal acknowledgment] regulations that allegedly differ from past practices is not enough to render that decision impermissible.''); *accord James,* 824 F.2d at 1137–38. And as the Supreme Court has observed, '' '[regulatory] agencies do not establish rules of conduct to last forever,' . . . and . . . an agency must be given ample latitude to 'adapt their rules and policies to the demands of changing circumstances.' '' *Motor Vehicle Mfrs. Ass'n of the United States, Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983) (quoting *Am. Trucking Ass'ns, Inc.* v. *Atchison, Topeka & Santa Fe R.R. Co.,* 387 U.S. 397, 416 (1967) *and Permian Basin Area Rate Cases,* 390 U.S., 747, 784 (1968)) (alteration in original). So, while an agency must show that there are good reasons for the new policy, it need not demonstrate that the reasons for the new policy *are better* than the reasons for the old one; rather, it suffices that the new policy is permissible under the statute and that the agency believes it to be better than the previous policy. *FCC* v. *Fox TV Stations, Inc.,* 556 U.S. 502, 515–16 (2009). In such cases, the agency need only explain why it is disregarding the facts and circumstances that underlay or were engendered by the prior policy. *Id.*

In this instance, the aforementioned reasoning suggesting that the Department should not apply Part 83 to Alaska does not rise to the level of ''prior policy.'' In the 1994 Final Rule amending Part 83, for example, the Department declined to implement an Alaska-specific alternative to the Part 83 process because:

> Alaska villages have the same governmental status as other federally acknowledged tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, and privileges as other acknowledged tribes; have the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes; and are subject to the same limitations imposed by law on other tribes. . . . [A] modification now of the acknowledgment process to address the special circumstances in Alaska is unwarranted.

59 FR 9280, 9284 (Feb. 25, 1994). In that Final Rule, the Department recognized that it was nevertheless appropriate to include Alaska Native entities within the parameters of those regulations. The incorporation of Part 83 standards under the current proposed rule therefore does not qualify as a deviation from previous Department precedent.

Additionally, as stated in the Department's 1988 notice of its list of federally recognized Indian Tribes, the Department's main concern about requiring an Alaska Native entity to undergo Part 83 was that it ''may not have extensive documentation on its history during the 1800's and early 1900's much less the even earlier periods commonly researched for groups in the lower-48.'' 53 FR at 52833. As further discussed below, this concern is largely ameliorated by the proposed requirement that petitioners under the Alaska IRA criteria satisfy Part 83's evidentiary criteria only from May 1, 1936—not ''during the 1800's and early 1900's, much less the even earlier periods.''

Finally, in the 2015 AS–IA guidance, the Department wrote that while Part 83 ''should be the only method utilized by the Department to acknowledge an Indian tribe in the contiguous 48 states,'' the Alaska IRA criteria nevertheless also applied ''[w]ith regard to Alaska.'' 80 FR at 37539, *id.* at n.1. The 2015 guidance stated neither that Part 83 was inapplicable in Alaska nor that the Alaska IRA criteria required the Department to apply any particular standard, whether based on Part 83 or otherwise. The 2015 guidance's acknowledgment of the Alaska IRA's existence as an alternative to Part 83 does not prohibit the Department from designing such an alternative that incorporates by reference aspects of Part 83.

For these reasons, the Department concludes that the proposed rule's inclusion of aspects of Part 83 does not depart from previous Department precedent. Assuming, *arguendo,* that it did, however, the necessity of establishing a consistent, predictable procedure that is subject to public notice and comment in determining eligibility under the Alaska IRA would wholly justify the Department's ''change in position'' within the meaning of Federal law. Federal acknowledgment of Indian groups establishes a government-to-government relationship with the United States and is a prerequisite to eligibility for nearly all of the Federal protections, services, and benefits available to Indian Tribes. 25 CFR 83.2 (2015). As affirmed by case law, Part 83 is a rigorous, legally viable implementation of the Department's statutory mandate concerning the management of Indian affairs. *See, e.g., Miami Nation,* 887 F. Supp. at 1176–77. By drawing upon the examination of continuous Tribal existence set forth in Part 83, the Department will ensure that a positive determination under the proposed Federal acknowledgment procedures for petitioners under the Alaska IRA accurately reflects such petitioner's status as a distinct governmental entity.

2. No Effect on the Status of Tribes Who Are Currently Federally Recognized

As noted above, several comments expressed concern as to whether an Alaska-specific regulatory process would affect the federal recognition status of existing Tribes in Alaska (whether organized under the Alaska IRA or otherwise). This proposed rule applies only to groups not currently present on the List. It does not impair or otherwise affect the existing rights and authorities of any Alaska Native

tribe already recognized and included on the List.

3. Consideration of Pending Petitions

The Department will not consider any acknowledgment petitions submitted by Alaska Native entities under the Alaska IRA during the pendency of this proposed rulemaking. Should the Department ultimately enact a final rule implementing the Alaska IRA criteria in a formal acknowledgment process, then that process will become the sole mechanism through which entities may petition for acknowledgment under the Alaska IRA. Alaska Native groups that have previously submitted petitions would be invited to revise or resubmit such petitions to conform to the final rule.

III. Summary of the Proposed Rule

This proposed rule sets forth a new regulatory process through which Alaska Native entities can become federally acknowledged under the common bond standard set forth in the Alaska IRA. This proposed rule applies only to groups not currently present on the List. It does not impair or otherwise affect the existing rights and authorities of any Alaska Native Tribe already recognized and included on the List. Pursuant to the List Act of 1994 and the IRA Technical Amendments of 1994, Act of May 31, 1994, Public Law 103–263, 108 Stat. 709, any Alaska Native entity acknowledged under this proposed rule would be eligible to receive all services available to federally recognized Tribes.

In large part, this proposed rule incorporates the requirements and procedures for federal acknowledgment found in Part 83, with a limited number of important distinctions. First, rather than establishing descent from a ''historical Indian Tribe,'' a petitioner under the proposed rule must descend, genealogically and politically, from an Alaska IRA-eligible entity (as defined). Second, and relatedly, since descent from a historical Indian Tribe is not required, the proposed rule shifts the start date for satisfying the Part 83 evidentiary standards from 1900 (as presently used under Part 83) to May 1, 1936 (the date of enactment of the Alaska IRA). Third, a petitioner under the proposed rule must submit as part of their documented petition ''a clear, concise claim of an Alaska IRA-eligible entity that existed on May 1, 1936 . . . from which the petitioner will claim descent.'' Once a petitioner has satisfied the requirements of a documented petition, including a showing of the existence of an Alaska IRA-eligible entity in 1936, the petitioning entity would then be required to satisfy all Part 83 evidentiary criteria from May 1, 1936 to present.

Next, this proposed rule establishes a requirement that Alaska Native entities seeking to hold secretarial elections pursuant to 25 CFR part 81 (Part 81) first gain Federal recognition through the proposed process. This requirement is consistent with past Department practices, which have focused on organizing entities capable of establishing government-to-government relations with the United States. The requirement to first obtain Federal acknowledgement before conducting an IRA election (where desired) is consistent with the intent of the IRA, the Alaska IRA, and the administrative process set forth in Part 81.

Like the current regulations at Part 83, this proposed rule is broken down into three subparts. First, ''General Provisions'' sets forth definitions, the overall purpose of the regulations, deadlines, and various administrative legalities. Second, ''Criteria for Federal Acknowledgment'' establishes the substantive evidentiary and factual requirements for petitioner to achieve Federal recognition. Third, ''Process for Federal Acknowledgment'' sets out the actual processes through which OFA will receive a Part 82 petition, engage with the petitioner, and make and publish decisions; this section further discusses the process for obtaining and appealing a final decision by AS–IA.

At the outset, the Department notes that this proposed rule largely incorporates the Part 83 regulations, with certain distinctions. As justification for, and clarification of, this proposed rule, the Department accordingly adopts the preambles to the proposed and final rules associated with Part 83, as relevant. 80 FR 37862 (July 1, 2015); 79 FR 30766 (May 29, 2014); 59 FR 9280 (Feb. 25, 1994); 56 FR 47320 (Sept. 18, 1991); 43 FR 23743 (June 1, 1978).

The Department similarly notes that this proposed rule incorporates the provision currently codified at 25 CFR 83.10(a)(4), which provides that when the Department finds that evidence or methodology was sufficient to satisfy any particular criterion in a previous Part 83 petition, the Department will find that evidence or methodology sufficient to satisfy the criterion for a present petitioner. As the Department noted in the 2015 Final Rule, previous decisions provide examples of how a criterion may be met, and a petitioner satisfies the standards or evidence or baseline requirements of a criterion if that type or amount of evidence was sufficient in a previous decision. (80 FR 37865). The Department notes here that the same premise will apply under this proposed rule. To the extent that the Department found a particular type of evidence or line of argument either probative or non-probative with regard to a previous petition, the Department will similarly evaluate such evidence or reasoning under this proposed rule. As the Department processes petitions for acknowledgment under this proposed rule, it will similarly treat such petitions as ''precedential'' with regard to one another to the extent that they demonstrate how a particular criterion may be met.

With that said, the Department generally requests comments on the issues set out above concerning the role of Part 83 and OFA in the proposed Alaska IRA acknowledgment process. These include, but are not limited to:

- Whether it is appropriate to require petitioners under the Alaska IRA criteria to satisfy any Part 83 requirements.
- Even if it is appropriate for the Department to require Alaska Native petitioners to satisfy the Part 83 requirements (in whole or in part), whether alternative mechanisms or processes exist through which the Department can or should evaluate Alaska IRA petitions outside of Part 83.
- Whether any recordkeeping or other historical or practical concerns specific to Alaska counsel against applying Part 83's evidentiary criteria to Alaska Native petitioners.
- Whether there exists any other way that the Department should incorporate the Part 83 requirements with the Alaska IRA criteria, in whole or in part, other than as proposed in this NPRM.
- Whether the Department is constrained in any way from directing Alaska Native groups with outstanding petitions to re-submit their petitions under the ultimate final rule.
- Whether there exist any textual or procedural inconsistencies, ambiguities, or other discrepancies in Part 83 that the Department should clarify or amend for the purposes of this proposed rule.

A. Subpart A—General Provisions

1. Definitions

This proposed rule defines the term ''Alaska IRA-eligible entity'' as an entity that as of May 1, 1936, (1) was *not* recognized by the Federal government as a band or Tribe; (2) was organized on the basis of a common bond of occupation, association, or residence; and (3) was comprised of members descending from Indians in Alaska. As part of its documented petition, the petitioner must submit a claim of an Alaska IRA-eligible entity from which it

will demonstrate descent. This proposed rule further defines each of these constituent requirements.

First, since the Alaska IRA excludes ''groups of Indians in Alaska not heretofore *recognized* as bands or tribes,'' the proposed rule includes the term ''recognized by the Federal government,'' to mean that the Federal government took an action clearly premised on identification of a Tribal political entity as such and indicating clearly the recognition of a relationship between that entity and the United States. The Alaska IRA criteria were intended to permit Alaska Native entities that were *not* previously recognized to become eligible to organize under the IRA and the Alaska IRA. As this suggests, Alaska Native tribes or bands recognized before May 1, 1936 do not qualify for acknowledgment under this proposed rule. The proposed definition for ''recognition'' reasons that for Alaska Native entities that were already ''recognized'' as of May 1, 1936, there would exist evidence of formalized relationship between that entity and the United States. Presumably, this would involve evidence along the lines ordinarily considered under 25 CFR 83.11(a), ''Indian entity identification.'' In reviewing the documented petition, OFA will evaluate contemporary evidence to determine whether a petitioner's Alaska IRA-eligible entity was recognized as of May 1, 1936. The Department invites comment as to whether this definition requires additional clarification. The Department also invites comment as to the specific type of evidence that OFA should view as proof of ''recognition'' in Alaska as of May 1, 1936, such as to disqualify an entity from being considered Alaska IRA-eligible.

Second, this proposed rule defines ''Common Bond'' in a manner that draws from contemporaneous interpretations of the Alaska IRA, as well as past administrative actions by the Department: A clearly defined common interest shared and acted upon by a group of Alaska Natives, distinguishable from other groups or associations. The definition is broadly drafted on the assumption that a more flexible, open-ended common bond standard will allow petitioners to more easily satisfy that standard before proceeding to the more rigorous and substantive post-May 1, 1936 showing under the Part 83 evidentiary criteria. However, additional guidance on the common bond standard is provided in proposed § 82.21(a)(5), which states that having a common bond:

> [M]eans that the petitioner must be bound together by their common interest and actions taken in common. The claimed common bond must be clear and capable of statement and definition, and the petitioner must be distinguishable from other groups or associations. Groups of Alaska Natives having a common bond must be substantial enough and democratic enough to permit participation by a substantial share of the persons within the entity. There is no legal requirement that the members of a petitioning group must all live in one community or village to meet this criterion. The claimed common bond is best understood flexibly in the context of the history, geography, culture, and social organization of the entity.

With an eye toward maintaining flexibility as to the manner in which petitioners can demonstrate that an Alaska IRA-eligible entity satisfied the common bond standard as of May 1, 1936, the Department invites comment on whether the proposed definition of ''common bond,'' paired with the clarifying language in § 82.21(a)(5), is sufficient. The Department also invites comment on whether and how the Department should define the terms ''occupation,'' ''association,'' and ''residence within a well-defined neighborhood, community, or rural district'' as they appear in the Alaska IRA criteria, or whether such terms are already well-understood and need not be further defined.

Third, the proposed rule defines the terms ''Indians in Alaska'' or ''Alaska Native'' to mean Eskimos and other aboriginal peoples in Alaska. While recognizing that these terms are anachronistic in modern parlance, this definition was adopted from the definition of ''Indian'' provided in the IRA, which states that for the purposes of that Act, ''Eskimos and other aboriginal peoples of Alaska'' are considered Indians. 25 U.S.C. 5129. The Department invites comment as to whether this definition should be expanded, narrowed, or clarified. The Department also invites comment as to the manner of evidence that petitioners can submit to demonstrate descent from, and current composition of, ''Indians in Alaska.''

The term ''historical'' is defined in Part 83 as the period before 1900 and is included in the context of the requirement that Part 83 petitioners demonstrate descent from a ''historical Indian Tribe.'' This definition has been removed from this proposed rule. Federal acknowledgment under the Alaska IRA criteria does not require descent or any connection to a historical Indian Tribe. The petitioner must instead make a comparable showing of connection to an entity that satisfied the Alaska IRA's common bond requirement in 1936. The term ''historical'' was therefore removed as it has little relevance or applicability to this proposed rule.

This proposed rule includes a definition of ''membership list,'' which must include all known current members of the petitioning entity. An official and current membership list must be included in the documented petition submitted by the petitioner. The Department invites comments as to whether entities in Alaska differ from those in the conterminous United States such that it will complicate the provision of a membership list, or otherwise require further consideration of this specific definition or of the overall requirement.

The term ''roll'' is defined in Part 83, but has been removed from this proposed rule since the proposed descent criteria does not necessarily require evidence that the petitioner's membership descends from a Tribal roll. The descent criteria does, however, require evidence identifying individuals associated with the petitioning entity.

2. Scope and Applicability

As with Part 83, there are a number of entities that the Department will not acknowledge under the proposed rule, including any entity that has already petitioned for, and been denied, Federal acknowledgment under Part 83. The Department may, however, acknowledge under the eventual final rule implementing this proposed rule any entity that has petitioned under Part 83 but withdrawn its documented petition pursuant to 25 CFR 83.30 and has not received a final determination pursuant to 25 CFR 83.43.

In addition to those entities listed in Part 83, the Department will not acknowledge the following entities in light of the eligibility standards specific to this proposed rule: (1) Entities that petition and are denied acknowledgment under the eventual final rule implementing this proposed rule; (2) entities located outside of Alaska; (3) any Alaska Native group that was recognized as a band or Tribe by the Federal government on or before May 1, 1936, and (4) any Alaska Native tribes or bands that was recognized by the Federal government through some other means and included on the List after May 1, 1936. An entity that has petitioned and been denied acknowledgment under the eventual final rule implementing this proposed rule will not be eligible for Federal acknowledgement under Part 83.

The Department invites comment on any of these standards, particularly as to

whether it must clarify the manner in which it will determine where a petitioner is ''located'' or, as discussed, how an entity may or may not be determined to be ''recognized'' within the meaning of the Alaska IRA.

B. Subpart B—Criteria for Federal Acknowledgment

1. Evaluation of the Mandatory Criteria

Under this proposed rule, the Department will evaluate the mandatory criteria set forth in proposed § 82.11 under the same ''reasonable likelihood of the validity of the facts relating to that criterion'' standard of proof used in the Part 83 process. Under this standard, facts are considered established if the available evidence demonstrates a reasonable likelihood of their validity. This standard of evidence has governed the acknowledgment process since 1994, and is particularly appropriate in the acknowledgment context where the primary question is usually whether the level of evidence is high enough to demonstrate meeting a particular criterion.

As in Part 83, under this proposed rule, the Department will require that existence of community and political influence and authority be demonstrated on a substantially continuous basis. In the Part 83 context, the Department has interpreted ''substantially continuous'' to mean that overall continuity has been maintained, even though there may be interruptions or periods where evidence is absent or limited.

Finally, and as discussed above, in order to ensure predictability and consistency with precedent, this proposed rule provides that if there was a prior decision finding that evidence or methodology was sufficient to satisfy any particular criterion in a particular petition, the Department will find that evidence or methodology sufficient to satisfy the criterion for a present petitioner.

2. Criteria for Acknowledgment

This proposed rule includes seven mandatory criteria designed to demonstrate an Alaska IRA-eligible entity's continued Tribal existence. To become acknowledged, the petitioner must satisfy all seven of the mandatory criteria set forth in § 82.11, which are the same criteria used to evaluate petitioners under the Part 83 process.

One of the principle differences between this proposed rule and Part 83 is that petitioners under this proposed rule must satisfy the evidentiary standards between 1936 and the present, not 1900 to the present as under Part 83. The later start date comports with Congressional intent to establish an alternative means for Alaska Native entities to be eligible to organize under the Alaska IRA that would not require descent from a Tribe that existed during historical times. H.R. Rep. No. 74–2244, at 2, 4–5 (1936); 53 FR 52835, 52832–33 (Dec. 28, 1988). Moreover, it follows the Department's longstanding practical interpretation of the Alaska IRA criteria that petitioners must be a continuation of a pre-existing group that existed before May 1, 1936, the date the Alaska IRA was enacted. For example, in a July 10, 1978, memorandum on the eligibility of Eskimo Village to organize under the IRA, the Associate Solicitor, Indian Affairs, concluded in part that the Department's interpretation of the Alaska IRA as limiting the eligibility of Alaska Native groups to organize pursuant to the common bond standard only if the basis of association existed prior to May 1, 1936 was ''consistent with the intent of the Congress and the application of the Indian Reorganization Act to tribes in the other states.'' The Department solicits comment on whether there are legal or practical justifications for requiring a different ''start date.''

Criterion (a) requires the petitioner to show that it has been identified as an Alaska Native entity on a substantially continuous basis since May 1, 1936. Evidence of both self-identification and external identification as an Alaska Native entity will be accepted under this proposed rule. This proposed rule lists specific evidence that may be used to demonstrate that this criterion has been met, including contemporaneous identification as an Alaska Native entity by the petitioner itself.

Criterion (b) requires the petitioner to show that its members have comprised a distinct community from May 1, 1936 to the present. The petitioner's evidence must show consistent interactions and significant social relationships within its membership, and demonstrate how its members are differentiated from and distinct from nonmembers. The community criterion provides a list of evidence that is sufficient in itself to demonstrate the criterion at a particular point in time, as well as specific evidence that may be used to demonstrate that this criterion has been met, including shared or cooperative labor or other economic activity among members and shared cultural patterns distinct from those of the non-Alaska Native populations with whom it interacts. Community may also be shown by evidence of distinct social institutions encompassing at least 50 percent of the members.

Criterion (c) examines the political influence/authority of the petitioner over its members. Exercising political influence or authority means the entity uses some mechanism to influence or control the behavior of its members in significant respects. This proposed rule lists specific evidence that may be used to demonstrate that this criterion has been met, including mobilization of significant numbers of members and resources for entity purposes and a continuous line of entity leaders and a means of selection or acquiescence by a majority of the membership. The political influence/authority criterion also provides a list of evidence that is sufficient in itself to demonstrate the criterion at a particular point in time.

Criterion (d) requires the submission of the entity's present governing document or, in the absence of such a document, a written statement describing its membership criteria and current governing procedures.

Criterion (e) requires petitioners to demonstrate descent from members of the Alaska IRA-eligible entity that existed on May 1, 1936. This proposed rule does not quantify the number of members who must satisfy this descent criterion; in practice, however, OFA applies an 80% threshold in the Part 83 context. The Department invites comment on whether an 80% threshold is appropriate for this proposed rule, or whether a different threshold is needed to accommodate the fluidity and geographically transient nature of some historical Alaska Native communities. A member who is unable to establish descent from an Alaska IRA-eligible entity can still satisfy this criterion with documentation detailing his or her integration or adoption into the petitioning group and by demonstrating descent from an Alaska Native.

Criterion (f) requires that a petitioner's membership not be ''composed principally'' of persons who have dual membership in two federally recognized Indian Tribes. In the Part 83 context, this criterion is intended to prohibit a faction of a federally recognized Tribe from seeking acknowledgment as a separate Tribe, unless it can demonstrate its status as a politically autonomous community. This proposed rule does not define a percentage for ''composed principally'' because the appropriate percentage may vary depending upon the role the individuals play within the petitioner and recognized Indian Tribe. Even if a petitioner is composed principally of members of a federally recognized Indian Tribe, the petitioner may meet

this criterion as long as it satisfies the community and political influence/authority criteria, and its members have provided written confirmation of their membership in the petitioner. There is no requirement to withdraw from membership in the federally recognized Tribe.

The Department seeks comment on the manner in which criterion (f) would apply in the context of the Alaska IRA. First, the Department seeks comment on the relevance of Alaska Native Claims Settlement Act (ANCSA) shareholder status under this requirement, as opposed to Tribal membership. The Department also seeks comment on whether it should reevaluate or reframe this requirement if, as a practical matter, many potential Alaska IRA petitioners would have high levels of dual membership.

Under criterion (g), neither the petitioner nor its members must be subject to any legislation that has expressly terminated or forbidden a government-to-government relationship. For this criterion, the evidentiary burden shifts to the Department to show that the petitioner has not been congressionally terminated. However, the Department notes that it is unaware of any entity in Alaska that would be disqualified under proposed criterion (g). The Department solicits comment as to whether this criterion is applicable in Alaska or whether it should be deleted from the final rule.

3. Previous Federal Acknowledgment

Unlike Part 83, this proposed rule does not include criteria and procedures for evaluating claims of previous Federal acknowledgment. Any group claiming to have been Federally acknowledged prior to May 1, 1936, would necessarily be excluded from this proposed rule since the Alaska IRA only applies to groups that were ''not heretofore recognized as bands or tribes'' on or before May 1, 1936. Any claims of previous Federal acknowledgment after May 1, 1936, may be evaluated through the Part 83 process.

C. Subpart C—Process for Federal Acknowledgment

Under the proposed rule, the administrative process begins when an Alaska Native entity petitions for acknowledgment and submits its documented petition to OFA. The documented petition must include a concise written narrative explaining how the petitioner meets criteria (a) through (f) and, if the petitioner wishes, it can address criterion (g). The documented petition must also include the petitioner's claim that an Alaska IRA-eligible entity existed on May 1, 1936, which will be evaluated using the ''reasonable likelihood of the validity of the facts'' standard. If the claim fails to show the existence of an Alaska IRA-eligible entity, the petitioner will not be considered to have submitted a documented petition and will not be able to move forward under the proposed rule. Since, unlike Part 83 petitions, a documented petition under Part 82 must include an additional claim of an Alaska IRA-eligible entity, the proposed rule includes a longer timeframe of 120 days for processing documented petitions.

As is the case under Part 83, OFA will review a documented petition in two phases. During Phase I, OFA will determine whether the petitioner meets criteria (d) (governing document), (e) (descent), (f) (unique membership), and (g) (termination). Once OFA has completed its review under this phase, it will issue a proposed finding within six months of giving notice that review of the petition has begun. During Phase II, OFA will review criteria (a) (identification), (b) (community), and (c) (political influence/authority). The proposed finding following completion of the Phase II review is due within six months of the deadline for the Phase I proposed finding.

By beginning with the more straightforward, easily demonstrated requirements in Phase I prior to turning to the more substantive requirements in Phase II, the proposed rule allows OFA to identify more glaring shortcomings in a petition prior to a petitioner having to undertake the more arduous information-gathering required under Phase II. This allows OFA to issue negative decisions more quickly, thereby resolving petitions sooner, reducing time delays, increasing efficiency, and preserving resources. During each phase, OFA will provide technical assistance review, which will be limited to the criteria under review at that time.

The proposed rule offers petitioners who receive a negative proposed finding the opportunity for a hearing, in which third parties may intervene, to address their objections to the proposed finding before an administrative law judge, who will then provide a recommended decision to the AS–IA. The AS–IA will review the proposed finding and the record, including the administrative law judge's recommended decision, and issue a determination that is a final agency action for the Department. Any challenges to the final determination would be pursued in Federal court rather than in an administrative forum.

Acknowledgment occurs when a petitioner has received a positive final determination. Upon acknowledgement, the petitioner will be a federally recognized Indian Tribe and included on the next list of federally recognized Indian Tribes. The fact that a petitioner has achieved acknowledgment, but there is a time gap between the publication of the positive final determination and the publication of the next List, does not in the interim deny the petitioner the benefits of Federal recognition.

IV. Tribal Consultation and Public Meeting Sessions

This rule does not address or impact Tribes in Alaska that are presently recognized; however, to further the existing government-to-government relationship with Tribes by seeking their input on this proposed rule, the Department will be holding the following Tribal consultation and public meeting sessions:

- Tuesday, January 28, 2020, at the Centennial Hall Convention Center, 101 Egan Drive, Juneau, AK 99801: Tribal consultation from 10 a.m. to 12 p.m. (Local Time); public meeting from 1 p.m. to 3 p.m. (Local Time)
- Thursday, January 30, 2020, at the Raven Landing Center, 1222 Cowles Street (Mailing: 949 McGown St.) Fairbanks, AK 99701: Tribal consultation from 10 a.m. to 12 p.m. (Local Time); public meeting from 1 p.m. to 3 p.m. (Local Time)
- Thursday, February 6, 2020, by teleconference
  - Tribal consultation 1 p.m. to 3 p.m. (Eastern Time): (888) 456–0351, Passcode 5309360
  - Public meeting 3:30 p.m. to 5:50 p.m. (Eastern Time): (888) 857–9837, Passcode 6239571

Please check the following website for any updates: *https://www.bia.gov/as-ia/raca/regulations-development-andor-under-review/alaska-ira.*

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best,

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

B. Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This action is not an E.O. 13771 regulatory action because this rule is not significant under Executive Order 12866.

C. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and would not impose any economic effects on small governmental entities; rather, it addresses how Alaska Native entities may become acknowledged as an Indian Tribe pursuant to the Alaska IRA.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act because this rule affects only those Alaska Native entities that may seek to become acknowledged as an Indian Tribe pursuant to the Alaska IRA. This rule:

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

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

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

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector because this rule affects only those Alaska Native entities that may seek to become acknowledged as an Indian Tribe pursuant to the Alaska IRA. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

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

G. Federalism (E.O. 13132)

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

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

This rule complies with the requirements of E.O. 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined there are no substantial direct effects on federally recognized Indian Tribes that will result from this rulemaking because the rule is limited to entities in Alaska and the Department has conducted consultation with the federally recognized Indian Tribes in Alaska prior to promulgating this proposed rule. The Department will also be hosting consultation on this proposed rule.

J. Paperwork Reduction Act

OMB Control No. 1076–0104 currently authorizes the collections of information related to petitions for Federal acknowledgment under the Indian Reorganization Act (IRA) contained in 25 CFR part 83, with an expiration of October 31, 2021. With this rulemaking, we are seeking to revise this information collection to include collections of information related to petitions for Federal acknowledgment under the Alaska IRA and 25 CFR part 82. The current authorization totals an estimated 14,360 annual burden hours. This rule change would require a revision to an approved information collection under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* for which the Department is requesting OMB approval.

OMB Control Number: 1076–0104.

Title: Federal Acknowledgment as an Indian Tribe, 25 CFR 82 & 83.

Brief Description of Collection: This information collection requires entities seeking Federal recognition as an Indian Tribe to collect and provide information in a documented petition evidencing that the entities meet the criteria set out in the rule.

Type of Review: Revision of currently approved collection.

Respondents: Entities petitioning for Federal acknowledgment.

Number of Respondents: 2 on average (each year).

Number of Responses: 2 on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: (See table below).

Estimated Total Annual Hour Burden: 2,872 hours.

Estimated Total Annual Non-Hour Cost: $2,100,000.

OMB Control No. 1076–0104 currently authorizes the collections of information contained in 25 CFR part 83. If this proposed rule is finalized, DOI estimates that the annual burden hours for respondents (entities petitioning for Federal acknowledgment) will increase by approximately 1,436 hours, for a total of 2,872 hours.

K. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

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

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

M. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

N. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 82

Administrative practice and procedure, Indians-tribal government.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR chapter I, subchapter F, to add a new part 82 to read as follows:

PART 82—FEDERAL RECOGNITION OF ALASKA TRIBES UNDER THE ALASKA INDIAN REORGANIZATION ACT

Subpart A—General Provisions

Sec.
82.1 What terms are used in this part?
82.2 What is the purpose of the regulations in this part?
82.3 To whom does this part apply?
82.4 Who cannot be acknowledged under this part?
82.5 How does a petitioner obtain Federal acknowledgment under this part?
82.6 What are the Department's duties?
82.8 May the deadlines in this part be extended?
82.9 How does the Paperwork Reduction Act affect the information collections in this part?

Subpart B—Criteria for Federal Acknowledgment

82.10 How will the Department evaluate each of the criteria?
82.11 What are the criteria for acknowledgment as a federally recognized Indian Tribe?

Subpart C—Process for Federal Acknowledgment

Documented Petition Submission

82.20 How does an entity request Federal acknowledgment?
82.21 What must a documented petition include?
82.22 What notice will the Office of Federal Acknowledgment (OFA) provide upon receipt of a documented petition?

Review of Documented Petition

82.23 How will OFA determine which documented petition to consider first?
82.24 What opportunity will the petitioner have to respond to comments before OFA reviews the petition?
82.25 Who will OFA notify when it begins review of a documented petition?
82.26 How will OFA review a documented petition?
82.27 What are technical assistance reviews?
82.28 [Reserved].
82.29 What will OFA consider in its reviews?
82.30 Can a petitioner withdraw its documented petition?
82.31 Can OFA suspend review of a documented petition?

Proposed Finding

82.32 When will OFA issue a proposed finding?
82.33 What will the proposed finding include?
82.34 What notice of the proposed finding will OFA provide?

Comment and Response Periods, Hearing

82.35 What opportunity will there be to comment after OFA issues the proposed finding?
82.36 What procedure follows the end of the comment period for a positive proposed finding?
82.37 What procedure follows the end of the comment period on a negative proposed finding?
82.38 What options does the petitioner have at the end of the response period on a negative proposed finding?
82.39 What is the procedure if the petitioner elects to have a hearing before an administrative law judge (ALJ)?

AS–IA Evaluation and Preparation of Final Determination

82.40 When will the Assistant Secretary begin review?
82.41 What will the Assistant Secretary consider in his/her review?
82.42 When will the Assistant Secretary issue a final determination?
82.43 How will the Assistant Secretary make the final determination decision?
82.44 Is the Assistant Secretary's final determination final for the Department?
82.45 When will the final determination be effective?
82.46 How is a petitioner with a positive final determination integrated into Federal programs as a federally recognized Indian Tribe?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 5119, 5131; Public Law 103–454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

Subpart A—General Provisions

§ 82.1 What terms are used in this part?

As used in this part:

Alaska IRA-eligible entity means a group of Indians in Alaska that was not, as of May 1, 1936, recognized by the Federal government as a band or Tribe, but that had a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district. All members of the entity must descend from Indians in Alaska.

ALJ means an administrative law judge in the Departmental Cases Hearings Division, Office of Hearings and Appeals (OHA), Department of the Interior, appointed under 5 U.S.C. 3105.

Assistant Secretary or *AS–IA* means the Assistant Secretary—Indian Affairs within the Department of the Interior, or that officer's authorized representative, but does not include representatives of the Office of Federal Acknowledgment.

Autonomous means independent of the control of any other Indian governing entity.

Bureau means the Bureau of Indian Affairs within the Department of the Interior.

Common bond means a clearly defined common interest shared and acted upon by a group of Alaska Natives, distinguishable from other groups or associations.

Department means the Department of the Interior, including the Assistant Secretary and OFA.

Documented petition means the detailed arguments and supporting documentary evidence enumerated in § 82.21 and submitted by a petitioner claiming that it meets the mandatory criteria in § 82.11.

Federally recognized Indian Tribe or *Indian Tribe* means an entity appearing on the list published by the Department

of the Interior under the Federally Recognized Indian Tribe List Act of 1994, which the Secretary currently acknowledges as an Indian Tribe and with which the United States maintains a government-to-government relationship.

Indians in Alaska or *Alaska Native* means ''Eskimos and other aboriginal peoples of Alaska'' as stated in Section 19 of the Indian Reorganization Act.

Member means an individual who is recognized by the petitioner as meeting its membership criteria and who consents to being listed as a member of the petitioner.

Membership list means a list of all known current members of the petitioner, including each member's full name (including maiden name, if any), date of birth, and current residential address.

Office of Federal Acknowledgment or *OFA* means the Office of Federal Acknowledgment within the Office of the Assistant Secretary—Indian Affairs, Department of the Interior.

Petitioner means any Alaska Native entity that has submitted a documented petition to OFA requesting Federal acknowledgment as a federally recognized Indian Tribe.

Recognized by the Federal government means that the Federal government took an action clearly premised on identification of a Tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.

Secretary means the Secretary of the Interior within the Department of the Interior or that officer's authorized representative.

§ 82.2 What is the purpose of the regulations in this part?

The regulations in this part implement Federal statutes for the benefit of Indian Tribes by establishing procedures and criteria for the Department to use to determine whether an Alaska Native entity may be considered an Indian Tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A positive determination will result in acknowledgment of the petitioner's Tribal status and the petitioner's addition to the Department's list of federally recognized Indian Tribes. Federal recognition:

(a) Is a prerequisite to the protection, services, and benefits of the Federal Government available to those that qualify as Indian Tribes and possess a government-to-government relationship with the United States;

(b) Means the Tribe is entitled to the immunities and privileges available to other federally recognized Indian Tribes;

(c) Means the Tribe has the responsibilities, powers, limitations, and obligations of other federally recognized Indian Tribes; and

(d) Subjects the Indian Tribe to the same authority of Congress and the United States as other federally recognized Indian Tribes.

§ 82.3 To whom does this part apply?

This part applies only to Alaska Native entities in Alaska that are not federally recognized Indian Tribes.

§ 82.4 Who cannot be acknowledged under this part?

(a) The Department will not acknowledge:

(1) An association, organization, corporation, or entity of any character formed in recent times unless the entity has only changed form by recently incorporating or otherwise formalizing its existing politically autonomous community;

(2) A splinter group, political faction, community, or entity of any character that separates from the main body of a currently federally recognized Indian Tribe, petitioner, or previous petitioner unless the entity can clearly demonstrate it has functioned from May 1, 1936, until the present as a politically autonomous community and meets § 82.11(f), even though some have regarded them as part of or associated in some manner with a federally recognized Indian Tribe;

(3) An entity that is, or an entity whose members are, subject to congressional legislation terminating or forbidding the government-to-government relationship;

(4) An entity that previously petitioned and was denied Federal acknowledgment under these regulations (including reconstituted, splinter, spin-off, or component groups who were once part of previously denied petitioners);

(5) An entity that petitioned for Federal acknowledgment and was denied under Part 83 of this title;

(6) Any entity outside of Alaska;

(7) Any Alaska Native entity that was recognized by the Federal government on or before May 1, 1936; or

(8) Any Alaska Native entity that was recognized by the Federal government and included on the List after May 1, 1936.

(b) A petitioner that has been denied Federal acknowledgment under these regulations will be ineligible to seek Federal acknowledgment under Part 83 of this title.

§ 82.5 How does a petitioner obtain Federal acknowledgment under this part?

To be acknowledged as a federally recognized Indian Tribe under this part, a petitioner must meet the Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)), Political Authority (§ 82.11(c)), Governing Document (§ 82.11(d)), Descent (§ 82.11(e)), Unique Membership (§ 82.11(f)), and Congressional Termination (§ 82.11(g)) Criteria.

§ 82.6 What are the Department's duties?

(a) The Department will publish in the **Federal Register**, by January 30 each year, a list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians, in accordance with the Federally Recognized Indian Tribe List Act of 1994. The list may be published more frequently, if the Assistant Secretary deems it necessary.

(b) OFA will maintain guidelines limited to general suggestions on how and where to conduct research. The guidelines may be supplemented or updated as necessary. OFA will also make available examples of portions of documented petitions in the preferred format, though OFA will accept other formats.

(c) OFA will, upon request, give prospective petitioners suggestions and advice on how to prepare the documented petition. OFA will not be responsible for the actual research on behalf of the petitioner.

§ 82.7 [Reserved]

§ 82.8 May the deadlines in this part be extended?

(a) The AS–IA may extend any of the deadlines in this part upon a finding of good cause.

(b) For deadlines applicable to the Department, AS–IA may extend the deadlines upon the consent of the petitioner.

(c) If AS–IA grants a time extension, it will notify the petitioner and those listed in § 82.22(d).

§ 82.9 How does the Paperwork Reduction Act affect the information collections in this part?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0104. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or

regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW, Washington, DC 20240.

Subpart B—Criteria for Federal Acknowledgment

§ 82.10 How will the Department evaluate each of the criteria?

(a) The Department will consider a criterion in § 82.11 to be met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.

(1) The Department will not require conclusive proof of the facts relating to a criterion in order to consider the criterion met.

(2) The Department will require existence of community and political influence or authority be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time. Fluctuations in Tribal activity during various years will not in themselves be a cause for denial of acknowledgment under these criteria.

(3) The petitioner may use the same evidence to establish more than one criterion.

(4) Evidence or methodology that the Department found sufficient to satisfy any particular criterion in a previous Part 82 decision will be sufficient to satisfy the criterion for a present petitioner.

(b) When evaluating a petition, the Department will:

(1) Allow criteria to be met by any suitable evidence, rather than requiring the specific forms of evidence stated in the criteria;

(2) Take into account historical situations and time periods for which evidence is demonstrably limited or not available;

(3) Take into account the limitations inherent in demonstrating historical existence of community and political influence or authority;

(4) Require a demonstration that the criteria are met on a substantially continuous basis, meaning without substantial interruption; and

(5) Apply these criteria in context with the history, regional differences, culture, and social organization of the petitioner.

§ 82.11 What are the criteria for acknowledgment as a federally recognized Indian Tribe?

The criteria for acknowledgment as a federally recognized Indian Tribe are delineated in paragraphs (a) through (g) of this section.

(a) *Alaska Native entity identification.* The petitioner has been identified as an Alaska Native entity on a substantially continuous basis since May 1, 1936. Evidence that the entity's character as an Alaska Native entity has from time to time been denied will not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining an entity's Alaska Native identity may include one or a combination of the following, as well as other evidence of identification.

(1) Identification as an Alaska Native entity by Federal authorities.

(2) Relationships with the Alaska State or territorial governments based on identification of the entity as Alaska Native.

(3) Dealings with a borough or other local government in a relationship based on the entity's Alaska Native identity.

(4) Identification as an Alaska Native entity by anthropologists, historians, and/or other scholars.

(5) Identification as an Alaska Native entity in newspapers and books.

(6) Identification as an Alaska Native entity in relationships with Indian Tribes or with national, regional, or State Indian or Alaska Native organizations.

(7) Contemporaneous identification as an Alaska Native entity by the petitioner itself.

(b) *Community.* The petitioner comprises a distinct community and demonstrates that it evolved as such from the Alaska IRA-eligible entity in existence on May 1, 1936, until the present. Distinct community means an entity with consistent interactions and significant social relationships within its membership and whose members are differentiated from and distinct from nonmembers. Distinct community must be understood flexibly in the context of the history, geography, culture, and social organization of the entity. The petitioner may demonstrate that it meets this criterion by providing evidence for known adult members or by providing evidence of relationships of a reliable, statistically significant sample of known adult members.

(1) The petitioner may demonstrate that it meets this criterion at a given point in time by some combination of two or more of the following forms of evidence or by other evidence to show that a significant and meaningful portion of the petitioner's members constituted a distinct community at a given point in time:

(i) Rates or patterns of known marriages within the entity, or, as may be culturally required, known patterned out-marriages;

(ii) Social relationships connecting individual members;

(iii) Rates or patterns of informal social interaction that exist broadly among the members of the entity;

(iv) Shared or cooperative labor or other economic activity among members;

(v) Strong patterns of discrimination or other social distinctions by non-members;

(vi) Shared sacred or secular ritual activity;

(vii) Cultural patterns shared among a portion of the entity that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the entity as Alaska Native. They may include, but are not limited to, language, kinship organization or system, religious beliefs or practices, and ceremonies;

(viii) The persistence of a collective identity continuously over a period of more than 50 years, notwithstanding any absence of or changes in name;

(ix) Land set aside by the Federal Government, the Territorial government, or the State of Alaska for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period;

(x) Children of members from a geographic area attended Indian boarding schools or other Indian educational institutions, to the extent that supporting evidence documents the community claimed; or

(xi) A demonstration of political influence under the criterion in § 82.11(c)(1) will be evidence for demonstrating distinct community for that same time period.

(2) The petitioner will be considered to have provided more than sufficient evidence to demonstrate distinct community and political authority under § 82.11(c) at a given point in time if the evidence demonstrates any one of the following:

(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area;

(ii) At least 50 percent of the members of the entity were married to other members of the entity;

(iii) At least 50 percent of the entity members maintain distinct cultural patterns such as, but not limited to, language, kinship system, religious beliefs and practices, or ceremonies;

(iv) There are distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

(v) The petitioner has met the criterion in § 82.11(c) using evidence described in § 82.11(c)(2).

(c) *Political influence or authority.* The petitioner has maintained political influence or authority over its members as an autonomous entity from when it existed as the Alaska IRA-eligible entity on May 1, 1936, until the present. Political influence or authority means the entity uses a council, leadership, internal process, or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and/or representing the entity in dealing with outsiders in matters of consequence. This process is to be understood flexibly in the context of the history, culture, and social organization of the entity.

(1) The petitioner may demonstrate that it meets this criterion by some combination of two or more of the following forms of evidence or by other evidence that the petitioner had political influence or authority over its members as an autonomous entity:

(i) The entity is able to mobilize significant numbers of members and significant resources from its members for entity purposes.

(ii) Many of the membership consider issues acted upon or actions taken by entity leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication, or involvement in political processes by many of the entity's members.

(iv) The entity meets the criterion in § 82.11(b) at greater than or equal to the percentages set forth under § 82.11(b)(2).

(v) There are internal conflicts that show controversy over valued entity goals, properties, policies, processes, or decisions.

(vi) The government of a federally recognized Indian Tribe has a significant relationship with the leaders or the governing body of the petitioner.

(vii) Land set aside by the Federal Government, the territorial government, or the State of Alaska for petitioner, or collective ancestors of the petitioner, that is actively used for that time period.

(viii) There is a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity's members.

(2) The petitioner will be considered to have provided sufficient evidence of political influence or authority at a given point in time if the evidence demonstrates any one of the following:

(i) Entity leaders or other internal mechanisms exist or existed that:

(A) Allocate entity resources such as land, residence rights, and the like on a consistent basis;

(B) Settle disputes between members or subgroups by mediation or other means on a regular basis;

(C) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms or the enforcement of sanctions to direct or control behavior; or

(D) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(ii) The petitioner has met the requirements in § 82.11(b)(2) at a given time.

(d) *Governing document.* The petitioner must provide:

(1) A copy of the entity's present governing document, including its membership criteria; or

(2) In the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures.

(e) *Descent.* The petitioner's membership consists of individuals who descend from the Alaska IRA-eligible entity that existed on May 1, 1936, or demonstrate Alaska Native descent. Those members who do not descend genealogically from members of the Alaska IRA-eligible entity that existed on May 1, 1936, must be able to document their integration into the petitioning group.

(1) All present members must be able to demonstrate Alaska Native descent.

(2) The petitioner satisfies this criterion by demonstrating descent either from the Alaska IRA-eligible entity that existed on May 1, 1936, or from an Alaska Native with sufficient evidence including, but not limited to, one or a combination of the following identifying present members or ancestors of present members as being descendants of the Alaska IRA-eligible entity that existed on May 1, 1936:

(i) Federal, State of Alaska, Territory of Alaska, or other official records or evidence;

(ii) Church, school, or other similar enrollment records;

(iii) Records created by historians and anthropologists in historical times;

(iv) Affidavits of personal knowledge by Alaska Native elders, leaders, or the petitioner's governing body;

(v) Records created by the group itself detailing the adoption or integration of other Alaska Natives into the entity; and

(vi) Other records or evidence acceptable to the Secretary.

(f) *Unique membership.* The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian Tribe. However, a petitioner may be acknowledged even if its membership is composed principally of persons whose names have appeared on the membership list of, or who have been otherwise associated with, a federally recognized Indian Tribe, if the petitioner demonstrates that:

(1) It has functioned as a separate politically autonomous community by satisfying criteria in paragraphs (b) and (c) of this section; and

(2) Its members have provided written confirmation of their membership in the petitioner.

(g) *Congressional termination.* Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Department must determine whether the petitioner meets this criterion, and the petitioner is not required to submit evidence to meet it.

Subpart C—Process for Federal Acknowledgment

Documented Petition Submission and Review

§ 82.20 How does an entity request Federal acknowledgment?

Any entity that believes it can satisfy the criteria in this part may submit a documented petition under this part to: Department of the Interior, Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgement, 1849 C Street NW, Washington, DC 20240.

§ 82.21 What must a documented petition include?

(a) The documented petition may be in any readable form and must include the following:

(1) A certification, signed and dated by the petitioner's governing body, stating that it is the petitioner's official documented petition;

(2) A concise written narrative, with citations to supporting documentation, thoroughly explaining how the petitioner meets each of the criteria in § 82.11, except the Congressional Termination Criterion (§ 82.11(g)); it must also include the claim of an Alaska IRA-eligible entity that existed on May 1, 1936, required in § 82.21(5)—

(i) If the petitioner chooses to provide explanations of and supporting documentation for the Congressional

Termination Criterion (§ 82.11(g)), the Department will review them; but

(ii) The Department will conduct the research necessary to determine whether the petitioner meets the Congressional Termination Criterion (§ 82.11(g)).

(3) Supporting documentation cited in the written narrative and containing specific, detailed evidence that the petitioner meets each of the criteria in § 82.11;

(4) Membership lists and explanations, including:

(i) An official current membership list, separately certified by the petitioner's governing body, of all known current members of the petitioner, including each member's full name (including maiden name, if any), date of birth, and current residential address;

(ii) A statement describing the circumstances surrounding the preparation of the current membership list;

(iii) A copy of each available former list of members based on the petitioner's own defined criteria; and

(iv) A statement describing the circumstances surrounding the preparation of the former membership lists, insofar as possible.

(5) A clear, concise claim of an Alaska IRA-eligible entity that existed on May 1, 1936, as described in § 82.1, from which the petitioner will claim descent and continuous existence. The existence of this claimed entity, including satisfaction of the common bond standard as described in § 82.1, must be supported by contemporaneous documentation and evaluated using the reasonable likelihood of the validity of the facts standard.

(i) For the purposes of this requirement, having a common bond means that the petitioner must be bound together by their common interest and actions taken in common. The claimed common bond must be clear and capable of statement and definition, and the petitioner must be distinguishable from other groups or associations. Groups of Alaska Natives having a common bond must be substantial enough to permit participation by a substantial share of the persons within the entity.

(ii) There is no legal requirement that the members of a petitioning group must all live in one community or village to meet this criterion.

(iii) The claimed common bond must be understood flexibly in the context of the history, geography, culture, and social organization of the entity.

(b) If the documented petition contains any information that is protectable under Federal law such as the Privacy Act and Freedom of Information Act, the petitioner must provide a redacted version, an unredacted version of the relevant pages, and an explanation of the legal basis for withholding such information from public release. The Department will not publicly release information that is protectable under Federal law, but may release redacted information if not protectable under Federal law.

§ 82.22 What notice will the Office of Federal Acknowledgment (OFA) provide upon receipt of a documented petition?

When OFA receives a documented petition, it will do all of the following:

(a) Within 30 days of receipt, acknowledge receipt in writing to the petitioner.

(b) Within 120 days of receipt:

(1) Publish notice of receipt of the documented petition in the **Federal Register** and publish the following on the OFA website:

(i) The narrative portion of the documented petition, as submitted by the petitioner (with any redactions appropriate under § 82.21(b));

(ii) The name, location, and mailing address of the petitioner and other information to identify the entity;

(iii) The date of receipt;

(iv) The opportunity for individuals and entities to submit comments and evidence supporting or opposing the petitioner's request for acknowledgment within 120 days of the date of the website posting; and

(v) The opportunity for individuals and entities to request to be kept informed of general actions regarding a specific petitioner.

(2) Notify, in writing, the following:

(i) The governor of Alaska;

(ii) The attorney general of Alaska;

(iii) The government of the borough-level (or equivalent) jurisdiction in which the petitioner is located; and

(iv) Notify any recognized Tribe and any petitioner that appears to have a historical or present relationship with the petitioner or that may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) Publish the following additional information to the OFA website:

(1) Other portions of the documented petition, to the extent feasible and allowable under Federal law, except documentation and information protectable from disclosure under Federal law, as identified by the petitioner under § 82.21(b) or otherwise;

(2) Any comments or materials submitted by third parties to OFA relating to the documented petition;

(3) Any substantive letter, proposed finding, recommended decision, and final determination issued by the Department;

(4) OFA's contact list for each petitioner, including the point of contact for the petitioner; attorneys, and representatives; and

(5) Contact information for any other individuals and entities that request to be kept informed of general actions regarding the petitioner.

(d) All subsequent notices that the Department provides under this part will be provided via the most efficient means for OFA to:

(1) The governor of Alaska;

(2) The attorney general of Alaska;

(3) The government of the borough-level (or equivalent) jurisdiction in which the petitioner is located;

(4) Any federally recognized Indian Tribe and any petitioner that appears to have a historical or present relationship with the petitioner or that may otherwise be considered to have a potential interest in the acknowledgment determination; and

(5) Any individuals and entities that request to be kept informed of general actions regarding a specific petitioner.

Review of Documented Petition

§ 82.23 How will OFA determine which documented petition to consider first?

(a) OFA will begin reviews of documented petitions in the order of their receipt.

(1) At each successive review stage, there may be points at which OFA is waiting on additional information or clarification from the petitioner. Upon receipt of the additional information or clarification, OFA will return to its review of the documented petition as soon as possible.

(2) To the extent possible, OFA will give highest priority to completing reviews of documented petitions it has already begun to review.

(b) OFA will maintain a numbered register of documented petitions that have been received.

§ 82.24 What opportunity will the petitioner have to respond to comments before OFA reviews the petition?

Before beginning review of a documented petition, OFA will provide the petitioner with any comments on the petition received from individuals or entities under § 82.22(b) and provide the petitioner with 90 days to respond to such comments. OFA will not begin review until it receives the petitioner's response to the comments, the petitioner requests that OFA proceed without its response, or the 90-day response period has expired and OFA has not received a response from the petitioner, whichever occurs earlier.

§ 82.25 Who will OFA notify when it begins review of a documented petition?

OFA will notify the petitioner and those listed in § 82.22(d) when it begins review of a documented petition and will provide the petitioner and those listed in § 82.22(d) with:

(a) The name, office address, and telephone number of the staff member with primary administrative responsibility for the petition;

(b) The names of the researchers conducting the evaluation of the petition; and

(c) The name of their supervisor.

§ 82.26 How will OFA review a documented petition?

(a) *Phase I.* When reviewing a documented petition, OFA will first determine if the petitioner meets the Governing Document Criterion (§ 82.11(d)), Descent Criterion (§ 82.11(e)), Unique Membership Criterion (§ 82.11(f)), and Termination Criterion (§ 82.11(g)), in accordance with the following steps.

(1) OFA will conduct a Phase I technical assistance review and notify the petitioner by letter of any deficiencies that would prevent the petitioner from meeting the Governing Document, Descent, Unique Membership, or Termination Criteria. Upon receipt of the letter, the petitioner must submit a written response that:

(i) Withdraws the documented petition to further prepare the petition;

(ii) Submits additional information and/or clarification; or

(iii) Asks OFA to proceed with the review.

(2) Following the receipt of the petitioner's written response to the Phase I technical assistance review, OFA will provide the petitioner with:

(i) Any comments and evidence OFA may consider that the petitioner does not already have, to the extent allowable by Federal law; and

(ii) The opportunity to respond in writing to the comments and evidence provided.

(3) OFA will publish a negative proposed finding if it issues a deficiency letter under paragraph (a)(1)(i) of this section, and the petitioner:

(i) Does not withdraw the documented petition or does not respond with information or clarification sufficient to address the deficiencies; or

(ii) Asks OFA in writing to proceed with the review.

(4) OFA will publish a positive proposed finding without a comment period and proceed to Phase II if it determines that the petitioner meets the Governing Document, Descent, Unique Membership, and Termination criteria.

(5) If a criterion cannot be properly evaluated during Phase I, the Phase I proposed finding will describe OFA's evaluation and findings under that criterion but reserve its conclusion for the Phase II proposed finding.

(b) *Phase II.* If the petitioner meets the Governing Document, Descent, Unique Membership, and Termination criteria, OFA will next review whether the petitioner meets the Alaska Native Entity Identification Criterion (§ 82.11(a)), the Community Criterion (§ 82.11(b)), and the Political Influence/Authority Criterion (§ 82.11(c)).

(1) OFA will conduct a Phase II technical assistance review and notify the petitioner by letter of any deficiencies that would prevent the petitioner from meeting these criteria. Upon receipt of the letter, the petitioner must submit a written response that:

(i) Withdraws the documented petition to further prepare the petition;

(ii) Provides additional information and/or clarification; or

(iii) Asks OFA to proceed with the review.

(2) Following receipt of the petitioner's written response to the Phase II technical assistance review, OFA will provide the petitioner with:

(i) Any comments and evidence OFA may consider in preparing the proposed finding that the petitioner does not already have, to the extent allowable by Federal law; and

(ii) The opportunity to respond in writing to the comments and evidence provided.

(3) OFA will then review the record to determine whether the Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)) and Political Authority (§ 82.11(c)) Criteria are met.

(4) OFA will publish a negative proposed finding if it issues a deficiency letter under paragraph (a)(1) of this section, and the petitioner:

(i) Does not withdraw the documented petition or does not respond with information or clarification sufficient to address the deficiencies; or

(ii) Asks OFA in writing to proceed with the review.

(5) OFA will publish a positive proposed finding if it determines that the petitioner meets the Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)) and Political Authority (§ 82.11(c)) Criteria.

§ 82.27 What are technical assistance reviews?

Technical assistance reviews are preliminary reviews for OFA to tell the petitioner where there appear to be evidentiary gaps for the criteria that will be under review in that phase and to provide the petitioner with an opportunity to supplement or revise the documented petition.

§ 82.28 [Reserved]

§ 82.29 What will OFA consider in its reviews?

(a) In any review, OFA will consider the documented petition and evidence submitted by the petitioner, any comments and evidence on the petition received during the comment period, and petitioners' responses to comments and evidence received during the response period.

(b) OFA may also:

(1) Initiate and consider other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status; and

(2) Request and consider timely submitted additional explanations and information from commenting parties to support or supplement their comments on the proposed finding and from the petitioner to support or supplement their responses to comments.

(c) OFA must provide the petitioner with the additional material obtained in paragraph (b) of this section, and provide the petitioner with the opportunity to respond to the additional material. The additional material and any response by the petitioner will become part of the record.

§ 82.30 Can a petitioner withdraw its documented petition?

A petitioner can withdraw its documented petition at any point in the process but the petition will be placed at the end of the numbered register of documented petitions upon re-submission and may not regain its initial priority number.

§ 82.31 Can OFA suspend review of a documented petition?

(a) OFA can suspend review of a documented petition, either conditionally or for a stated period, upon:

(1) A showing to the petitioner that there are technical or administrative problems that temporarily preclude continuing review; and

(2) Approval by the Assistant Secretary.

(b) Upon resolution of the technical or administrative problems that led to the suspension, the documented petition will have the same priority on the numbered register of documented petitions to the extent possible.

(1) OFA will notify the petitioner and those listed in § 82.22(d) when it

suspends and when it resumes review of the documented petition.

(2) Upon the resumption of review, OFA will have the full six months to issue a proposed finding.

Proposed Finding

§ 82.32 When will OFA issue a proposed finding?

(a) OFA will issue a proposed finding as shown in table 1:

TABLE 1 TO PARAGRAPH (a)

OFA must	within . . .
(1) Complete its review under Phase I and either issue a negative proposed finding and publish a notice of availability in the **Federal Register**, or proceed to review under Phase II.	six months after notifying the petitioner under § 82.25 that OFA has begun review of the petition.
(2) Complete its review under Phase II and issue a proposed finding and publish a notice of availability in the **Federal Register**.	six months after the deadline in paragraph (a)(1) of this section.

(b) The times set out in paragraph (a) of this section will be suspended any time the Department is waiting for a response or additional information from the petitioner.

(c) OFA will strive to limit the proposed finding and any reports to no more than 100 pages, cumulatively, excluding source documents.

§ 82.33 What will the proposed finding include?

The proposed finding will summarize the evidence, reasoning, and analyses that are the basis for OFA's proposed finding regarding whether the petitioner meets the applicable criteria.

(a) A Phase I negative proposed finding will address that the petitioner fails to meet any one or more of the following criteria: Governing Document (§ 82.11(d)), Descent (§ 82.11(e)), Unique Membership (§ 82.11(f)), or Congressional Termination (§ 82.11(g)).

(b) A Phase II proposed finding will address whether the petitioner meets the following criteria: Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)), and Political Influence/Authority (§ 82.11(c)).

§ 82.34 What notice of the proposed finding will OFA provide?

In addition to publishing notice of the proposed finding in the **Federal Register**, OFA will:

(a) Provide copies of the proposed finding and any supporting reports to the petitioner and those listed in § 82.22(d); and

(b) Publish the proposed finding and reports on the OFA website.

Proposed Finding—Comment and Response Periods, Hearing

§ 82.35 What opportunity to comment will there be after OFA issues the proposed finding?

(a) Publication of notice of the proposed finding will be followed by a 120-day comment period. During this comment period, the petitioner or any individual or entity may submit the following to OFA to rebut or support the proposed finding:

(1) Comments, with citations to and explanations of supporting evidence; and

(2) Evidence cited and explained in the comments.

(b) Any individual or entity that submits comments and evidence must provide the petitioner with a copy of their submission.

§ 82.36 What procedure follows the end of the comment period on a positive proposed finding?

(a) At the end of the comment period for a positive Phase II proposed finding, AS–IA will automatically issue a final determination acknowledging the petitioner as a federally recognized Indian Tribe if OFA does not receive a timely objection with evidence challenging the proposed finding that the petitioner meets the acknowledgment criteria.

(b) If OFA has received a timely objection and evidence challenging the positive Phase II proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence, and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

§ 82.37 What procedure follows the end of the comment period on a negative proposed finding?

If OFA has received comments on the negative proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence, and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

§ 82.38 What options does the petitioner have at the end of the response period on a negative proposed finding?

(a) At the end of the response period for a negative proposed finding, the petitioner will have 60 days to elect to challenge the proposed finding before an ALJ by sending to the Departmental Cases Hearings Division, Office of Hearings and Appeals, with a copy to OFA a written election of hearing that lists:

(1) Grounds for challenging the proposed finding, including issues of law and issues of material fact; and

(2) The witnesses and exhibits the petitioner intends to present at the hearing, other than solely for impeachment purposes, including:

(i) For each witness listed, his or her name, address, telephone number, and qualifications and a brief narrative summary of his or her expected testimony; and

(ii) For each exhibit listed, a statement confirming that the exhibit is in the administrative record reviewed by OFA or is a previous final determination of a petitioner issued by the Department.

(b) The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this period.

§ 82.39 What is the procedure if the petitioner elects to have a hearing before an administrative law judge (ALJ)?

(a) *OFA action if petitioner elects a hearing.* If the petitioner elects a hearing to challenge the proposed finding before an ALJ, OFA will provide to the Departmental Cases Hearings Division, Office of Hearings and Appeals, copies of the negative proposed finding, critical documents from the administrative record that are central to the portions of the negative proposed finding at issue, and any comments and evidence and

responses sent in response to the proposed finding.

(1) Within 5 business days after receipt of the petitioner's hearing election, OFA will send notice of the election to each of those listed in § 82.22(d) and the Departmental Cases Hearings Division by express mail or courier service for delivery on the next business day.

(2) OFA will retain custody of the entire, original administrative record.

(b) *Hearing process.* The assigned ALJ will conduct the hearing process in accordance with 43 CFR part 4, subpart K.

(c) *Hearing record.* The hearing will be on the record before an ALJ. The hearing record will become part of the record considered by AS–IA in reaching a final determination.

(d) *Recommended decision.* The ALJ will issue a recommended decision and forward it along with the hearing record to the AS–IA in accordance with the timeline and procedures in 43 CFR part 4, subpart K.

AS–IA Evaluation and Preparation of Final Determination

§ 82.40 When will the Assistant Secretary begin review?

(a) AS–IA will begin his/her review in accordance with table 1:

TABLE 1 TO PARAGRAPH (a)

If the PF was:	And:	AS–IA will begin review upon:
(1) Negative	The petitioner did not elect a hearing,	Expiration of the period for the petitioner to elect a hearing.
(2) Negative	The petitioner elected a hearing,	Receipt of the ALJ's recommended decision.
(3) Positive	No objections with evidence were received,	Expiration of the comment period for the positive PF.
(4) Positive	Objections with evidence were received,	Expiration of the period for the petitioner to respond to comments on the positive PF.

(b) AS–IA will notify the petitioner and those listed in § 82.22(d) of the date he/she begins consideration.

§ 82.41 What will the Assistant Secretary consider in his/her review?

(a) AS–IA will consider all the evidence in the administrative record, including any comments and responses on the proposed finding and the hearing transcript and recommended decision.

(b) AS–IA will not consider comments submitted after the close of the comment period in § 82.35, the response period in § 82.36 or § 82.37, or the hearing election period in § 82.38.

§ 82.42 When will the Assistant Secretary issue a final determination?

(a) AS–IA will issue a final determination and publish a notice of availability in the **Federal Register** within 90 days from the date on which he/she begins its review. AS–IA will also:

(1) Provide copies of the final determination to the petitioner and those listed in § 82.22(d); and

(2) Make copies of the final determination available to others upon written request.

(b) AS–IA will strive to limit the final determination and any reports to no more than 100 pages, cumulatively, excluding source documents.

§ 82.43 How will the Assistant Secretary make the determination decision?

(a) AS–IA will issue a final determination granting acknowledgment as a federally recognized Indian Tribe when AS–IA finds that the petitioner meets the Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)) and Political Authority (§ 82.11(c)), Governing Document (§ 82.11(d)), Descent (§ 82.11(e)), Unique Membership (§ 82.11(f)), and Congressional Termination (§ 82.11(g)).

(b) AS–IA will issue a final determination declining acknowledgment as a federally recognized Indian Tribe when he/she finds that the petitioner:

(1) In Phase I, does not meet the Governing Document (§ 82.11(d)), Descent (§ 82.11(e)), Unique Membership (§ 82.11(f)), or Congressional Termination (§ 82.11(g)) Criteria: or;

(2) In Phase II, does not meet the Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)) and Political Authority (§ 82.11(c)) Criteria.

§ 82.44 Is the Assistant Secretary's final determination final for the Department?

Yes. The AS–IA's final determination is final for the Department and is a final agency action under the Administrative Procedure Act (5 U.S.C. 704).

§ 82.45 When will the final determination be effective?

The final determination will become immediately effective. Within 10 business days of the decision, the Assistant Secretary will submit to the **Federal Register** a notice of the final determination to be published in the **Federal Register**.

§ 82.46 How is a petitioner with a positive final determination integrated into Federal programs as a federally recognized Indian Tribe?

(a) Upon acknowledgment, the petitioner will be a federally recognized Indian Tribe entitled to the privileges and immunities available to federally recognized Indian Tribes. It will be included on the list of federally recognized Indian Tribes in the next scheduled publication.

(b) Within six months after acknowledgment, the appropriate Bureau of Indian Affairs Regional Office will consult with the newly federally recognized Indian Tribe and develop, in cooperation with the federally recognized Indian Tribe, a determination of needs and a recommended budget. These will be forwarded to the Assistant Secretary. The recommended budget will then be considered with other recommendations by the Assistant Secretary in the usual budget request process.

(c) While the newly federally acknowledged Indian Tribe is eligible for benefits and services available to federally recognized Indian Tribes, acknowledgment as a federally recognized Indian Tribe does not create immediate access to existing programs. The newly federally acknowledged Indian Tribe may participate in existing programs after it meets the specific program requirements, if any, and upon appropriation of funds by Congress. Requests for appropriations will follow a determination of the needs of the newly federally acknowledged Indian Tribe.

Dated: November 15, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27998 Filed 12–31–19; 8:45 am]

BILLING CODE 4337–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0786; FRL–10002–90–Region 6]

Air Plan Approval; Oklahoma; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Oklahoma for the 2015 Ozone (O_3) National Ambient Air Quality Standard (NAAQS). This submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2015 O_3 NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Oklahoma SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS.

DATES: Written comments must be received on or before February 3, 2020.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2018–0786, at *http://www.regulations.gov* or via email *todd.robert@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Robert Todd, (214) 665–2156, *todd.robert@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The docket index and publicly available docket materials for this action are available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6 Office, 1201 Elm St., Suite 500, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Robert Todd, EPA Region 6 Office, Infrastructure & Ozone Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214–665–2156, *todd.robert@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Mr. Todd or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: In this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

Below is a short discussion of background on the 2015 Ozone NAAQS addressed in this action. For more information, please see the Technical Support Document (TSD) in the docket for this action.

Following a periodic review of the 2008 NAAQS for O_3, EPA revised the primary and secondary O_3 NAAQS to 0.070 ppm (80 FR 65291, October 26, 2015).[1] The primary NAAQS is designed to protect human health, and the secondary NAAQS is designed to protect the public welfare.[2]

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP'' or ''i-SIP''. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[3] We are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[4] The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

The State of Oklahoma's i-SIP certification, submitted on October 25, 2018, provides a demonstration of how the existing Oklahoma SIP meets the applicable section 110(a)(2) requirements for the 2015 O_3 NAAQS. Our technical evaluation of the submittal is provided in the TSD for this action.[5]

Each state must submit a SIP within three years after the promulgation of a new or revised NAAQS showing how it meets the elements of section 110(a)(2) of the CAA. This section of the CAA includes a list of specific elements necessary for a state's air quality program. We term this SIP an infrastructure SIP or i-SIP. On September 13, 2013, the EPA issued guidance addressing the i-SIP elements for NAAQS.[6] On October 25, 2018, the Oklahoma Secretary of Energy and the Environment made one submission to address the 2015 NAAQS for O_3.[7] The

[1] Additional information on the history of the NAAQS for ozone is available at *https://www.epa.gov/ozone-pollution/table-historicalozone-national-ambient-air-quality-standardsnaaqs.*

[2] Information on ozone formation and health effects is available at *https://www.epa.gov/ozonepollution.*

[3] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on Louisiana's infrastructure SIP to address the 2006 $PM_{2.5}$, 2008 PB, 2008 O_3, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS (81 FR 68322 (October 4, 2016)).

[4] See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center* v. *EPA,* No. 16–71933 (Aug. 30, 2018).

[5] The TSD for this action can be accessed through *www.regulations.gov* (Docket No. EPA–R06–OAR–2018–0786).

[6] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[7] Additional information, including the history of the priority pollutants, their levels, the forms of the standard and the determination of compliance; EPA's approach for reviewing the i-SIP submittal and EPA's evaluation; the statute and regulatory citations in the Oklahoma SIP specific to the review of this i-SIP, applicable CAA and EPA regulatory citations, **Federal Register** citations for the Oklahoma SIP approvals; Oklahoma minor New Source Review program and EPA approval activities, and Oklahoma's Prevention of Significant Deterioration program can be found in the TSD for this action.

submittal addressed CAA sections 110(a)(2)(A) through (M).

We are proposing that CAA section 110(a)(1) and parts of section 110(a)(2) are met by the State. Specifically, we are proposing to approve the state's compliance with CAA sections 110(a)(1) and 110(a)(2)(A) through (C) and (E) through (M). In this action we are also proposing to approve Oklahoma's representations that CAA sections 110(a)(2)(D)(i)(II), Interference with Prevention of Significant Deterioration (often referred to as prong 3) and 110(a)(2)(D)(ii), Interstate Pollution Abatement (which refers to CAA section 126) and International Air Pollution (which refers to CAA section 115) requirements are met. The remaining portions of the October 25, 2018, submittal, addressing CAA section 110(a)(2)(D)(i)(I), often referred to as prongs 1 and 2, and CAA section 110(a)(2)(D)(i)(II), often referred to as prong 4, will be addressed in subsequent actions. A copy of the State's entire submittal is provided in the docket for this proposed rulemaking.

II. EPA's Evaluation of the Oklahoma 2015 O_3 NAAQS Submission

Below is a summary of our evaluation of the October 25, 2018, Oklahoma submittal for each element of 110(a)(2) that we are proposing to approve.[8]

(A) Emission limits and other control measures: The SIP must include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, as may be appropriate to meet the applicable requirements of the Act and other related matters as needed to implement, maintain and enforce each of the NAAQS.[9]

The Oklahoma Environmental Quality Act, the Oklahoma Environmental Quality Code, the Oklahoma Clean Air Act (OCAA) and other portions of the Oklahoma's Administrative Code (OAC), including the rules of Practice and Procedure (OAC 252:4) and the Air Pollution Control Rules (OAC 252:100) provide the Oklahoma Department of Environmental Quality (ODEQ or State) and its staff the legal authority needed to implement, maintain and enforce the NAAQS within Oklahoma. They may adopt emission standards and compliance schedules applicable to regulated entities; emission standards and limitations and any other measures necessary for attainment and maintenance of national standards; and enforce applicable laws, regulations, standards and compliance schedules, and seek injunctive relief. This authority has been employed in the past to adopt and submit multiple revisions to the Oklahoma SIP. The federally-approved SIP for Oklahoma is documented at 40 CFR part 52.1920. The State's air quality rules and standards are codified at Title 252 of the Oklahoma Administrative Code (denoted here as OAC 252). Numerous parts of these regulations necessary for implementing and enforcing the NAAQS have been already been adopted into the SIP. (See the TSD to this proposal for a thorough discussion of the State's authorities.)

(B) Ambient air quality monitoring/data system: The SIP must provide for establishment and implementation of ambient air quality monitors, collection and analysis of ambient air quality data, and providing such data to EPA upon request.

The Oklahoma Clean Air Act provides the authority allowing the ODEQ to collect air monitoring data, quality-assure the results, and report the data. ODEQ maintains and operates a monitoring network to measure levels of ozone, as well as other pollutants, in accordance with EPA regulations specifying siting and monitoring requirements. All monitoring data is measured using EPA approved methods and subject to the EPA quality assurance requirements. ODEQ submits all required data to us, following the EPA regulations. The Oklahoma statewide monitoring network was approved into the SIP on May 31, 1972 (37 FR 10842, 10887), was revised on March 28, 1979 (44 FR 18490), and it undergoes annual review by EPA.[10] In addition, ODEQ submits an assessment of its monitoring network every five years, as required by EPA rules. The most recent of these annual monitoring network assessments was submitted by ODEQ and approved by us October 15, 2018. The most recent of the five year monitoring assessments was submitted by ODEQ and approved by us July 22, 2016. The ODEQ website provides the monitor locations and posts past and current concentrations of criteria pollutants measured by the State's network of monitors.[11]

(C) Program for enforcement of control measures: The SIP must include the following three elements: (1) A program providing for enforcement of the measures in CAA section 110(a)(2)(A); (2) a minor new source review (NSR) program for the regulation of new and modified minor stationary sources and minor modifications of new major stationary sources as necessary to protect the applicable NAAQS; and (3) a major stationary source permit program to meet the prevention of significant deterioration (PSD) permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question). Each of these elements is described in more detail in the TSD for this action.

(1) Enforcement of SIP measures: The state must provide a program for enforcement of the necessary control measures described in subparagraph (A). As noted earlier, the OCAA provides authority for the ODEQ, and its Executive Director, to enforce the requirements of the OCAA, and any regulations, permits, or final compliance orders. These statutes also provide the ODEQ with general enforcement powers. Among other things, they can file lawsuits to compel compliance with the statutes and regulations; commence civil actions; conduct investigations of regulated entities; collect criminal and civil penalties; develop and enforce rules and standards related to protection of air quality; issue compliance orders; pursue criminal prosecutions; investigate, enter into remediation agreements; and issue emergency cease and desist orders. The OCAA also provides additional enforcement authorities and funding mechanisms.

(2) Minor New Source Review (NSR). The SIP is required to include measures to regulate construction and modification of minor stationary sources and minor modifications to major stationary sources to protect the NAAQS. The Oklahoma minor NSR permitting requirements are approved as part of the SIP.[12]

[8] A detailed discussion of our evaluation can be found in the TSD for this action.

[9] The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2015 Ozone NAAQS. Those SIP provisions are due as part of each state's attainment plan and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

[10] A copy of the 2018 Annual Air Monitoring Network Plan and our approval letter, as well as the most recent five year assessment and approval letter, are included in the docket for this proposed rulemaking.

[11] See *https://www.deq.ok.gov/air-quality-division/ambient-monitoring/.*

[12] EPA is not proposing in this action to approve or disapprove the existing Oklahoma minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs for EPA to approve the infrastructure SIP for element C, program for

Continued

(3) PSD permit program for major stationary sources. The Oklahoma PSD portion of the SIP covers all NSR regulated pollutants as well as the requirements for the 2015 O_3 NAAQS. However, in order for the State's PSD permitting program to fully meet the requirements of 110(a)(2)(C)(3), our recent proposal to approve the state's adoption by reference of the Guideline to Air Quality Models, 2017 Appendix W, 40 CFR part 51, must be approved. We proposed to approve the updated version of Oklahoma's PSD program December 3, 2019.[13]

(D) Interstate and international transport: The requirements for interstate transport of O_3 emissions are that the SIP contain adequate provisions prohibiting O_3 emission transport to other states which will (1) contribute significantly to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with measures required to prevent significant deterioration or (4) interfere with measures to protect visibility (CAA 110(a)(2)(D)(i)). In addition, states must comply with requirements to prevent transport of international air pollution (CAA section 110(a)(2)(D)(ii)). As noted earlier, EPA often refers to these four requirements within CAA section 110(a)(2)(D)(i) as prongs or sub-elements. We are not evaluating prongs 1, 2, and 4 in this rulemaking action, but will address them in separate actions. However, we are proposing to approve prong 3 of CAA section 110(a)(2)(D)(i), pertaining to interference with measures to prevent significant deterioration in other states for O_3. Oklahoma has a SIP-approved PSD program that regulates all NSR pollutants, and thus, prevents significant deterioration in nearby states. See the TSD for more detail.

Section 110(a)(2)(D)(ii) of the CAA requires SIPs to include adequate provisions to ensure compliance with sections 115 and 126 of the Act, relating to international and interstate pollution abatement. Section 115 of the Act addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. There are no final findings by the EPA that Oklahoma air emissions affect other countries. Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. The Oklahoma SIP requires that each major proposed new or modified source provide such notification.[14] The State also has no pending obligations under CAA section 126. See the TSD for more detail.

(E) Adequate authority, resources, implementation, and oversight: The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements relating to state boards; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan. Both elements (A) and (E) address the requirement that there is adequate authority to implement and enforce the SIP and that there are no legal impediments. The i-SIP submission for the 2015 O_3 NAAQS describes the SIP regulations governing the various functions of personnel within the ODEQ, including the administrative, technical support, planning, enforcement, and permitting functions of the program. With respect to funding, state law establishes the ODEQ's authority to accept and expend funds necessary to carry out the requirements of the Act. The ODEQ receives air quality program funds through state appropriations, permit application fees, annual operating fees, and federal grants. As required by the CAA, the Oklahoma Environmental Quality Code lays out the composition, powers and duties of the state's Environmental Quality Board and the Air Quality Council. The members of the board and council are required to abide by conflict of interest provisions for DEQ staff and the DEQ Executive Director as described in the state's statutes. The requirement to comply with the section 128 (State boards) of the Act is met.[15] With respect to assurances that the State has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, the ODEQ is the primary air pollution control agency and does not rely on local or regional boards to implement any portion of the portion of the state's air quality implementation plan. More detail is provided in the TSD for this action.

(F) Stationary source monitoring system: The SIP must provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times. The OCAA authorizes the ODEQ to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. There also are SIP-approved state regulations pertaining to sampling and testing and requirements for reporting of emissions inventories. In addition, SIP-approved rules establish general requirements for maintaining records and reporting emissions. The ODEQ uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels and determining compliance with SIP-approved regulations and additional EPA requirements. The SIP requires this information be made available to the public. Provisions concerning the handling of confidential data and proprietary business information are included in the SIP-approved regulations. These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources. More detail and links to Oklahoma's emissions data are provided in the TSD for this action.

(G) Emergency authority: The SIP must provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment and to include contingency plans to implement such authorities as necessary. The OCAA provides ODEQ with authority to address environmental emergencies, and ODEQ has an ''emergency episode plan,'' which

enforcement of control measures (*e.g.,* 76 FR 41076–41079). The statutory requirements of section 110(a)(2)(C) of the Act provide for considerable flexibility in designing minor NSR programs. See the TSD for more information.

[13] For details of our proposed action, please see 84 FR 66103, December 3, 2019 and the materials provided in the associated docket number EPA–R06–OAR–2018–0208 available at *https://www.regulations.gov/.*

[14] See EPA docket number EPA–R06–OAR–2018–0208.

[15] Last approved by EPA at 81 FR 89008, December 9, 2016.

includes contingency plans which are included in the SIP (56 FR 5656, February 2, 1991). The ODEQ has authority to respond to possible dangerous ozone air pollution episodes if necessary to protect the environment and public health.

(H) Future SIP revisions: States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS. The OCAA authorizes the ODEQ to revise the SIP, as necessary, to account for revisions of an existing NAAQS, establishment of a new NAAQS, to attain and maintain a NAAQS, to abate air pollution, to adopt more effective methods of attaining a NAAQS, and to respond to EPA SIP calls concerning NAAQS adoption or implementation.

(I) Nonattainment areas: The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. EPA does not expect infrastructure SIP submissions to address CAA section 110(a)(2)(I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will act on any part D nonattainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.[16]

(J) Consultation with government officials, public notification, PSD and visibility protection: The SIP must meet the following three CAA requirements: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; (3) prevention of significant deterioration of air quality; and (4) visibility protection.

(1) Interagency consultation: As required by the OCAA, there must be a public hearing before the adoption of any regulations or emission control requirements, and all interested persons are given a reasonable opportunity to review the action that is being proposed and to submit data or arguments, either orally or in writing, and to examine the testimony of witnesses from the public hearing. In addition, the OCAA provides the ODEQ the power and duty to advise, consult, and cooperate with other agencies of the State, towns, cities, counties, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control. Furthermore, the Oklahoma PSD SIP rules mandate that the ODEQ shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Manager (FLMs) whose lands may be affected by emissions from the source or modification. Additionally, the State's PSD SIP rules require the ODEQ to consult with FLMs regarding permit applications for sources with the potential to impact Class I Federal Areas. The SIP also includes a commitment to consult, as required, with the FLMs on the review and implementation of the visibility program. The State recognizes the expertise of the FLMs in monitoring and new source review applicability analyses for visibility and has agreed to notify the FLMs of any advance notification or early consultation with a new or modifying source prior to the submission of a permit application.

(2) Public Notification: ODEQ regularly notifies the public of instances or areas in which any NAAQS are exceeded. Included in the SIP are the rules for ODEQ to advise the public of the health hazard associated with such exceedances; and enhance public awareness of measures that can prevent such exceedances and of ways in which the public can participate in the regulatory and other efforts to improve air quality. In addition, as discussed earlier for CAA section 110(a)(2)(B), the ODEQ air monitoring website provides air quality data for each of the monitoring stations in Oklahoma; this data is provided in real time for certain pollutants, such as ozone. The website also provides information on the health effects of lead, ozone, particulate matter, and other criteria pollutants.

(3) PSD: The PSD requirements for this sub-element are the same as those addressed earlier under CAA section 110(a)(2)(C), *Program for enforcement of control measures.* The State has a SIP-approved PSD program. This requirement is met.[17]

(4) Visibility Protection: The ODEQ SIP requirements relating to visibility protection are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of the NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to CAA section 110(a)(2)(J).

(K) Air quality and modeling/data: The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

The ODEQ has the power and duty, under OCAA to conduct air quality research and assessments, including the causes, effects, prevention, control and abatement of air pollution. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, ODEQ can perform modeling for primary and secondary NAAQS on a case-by-case permit basis consistent with their SIP approved PSD rules and with EPA guidance.[18]

The OCAA authorizes and empowers the ODEQ to cooperate with the federal government and local authorities concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA.

(L) Permitting Fees: The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

With respect to funding, the OCAA and the SIP provide the ODEQ with authority to hire. The EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement and enforce the SIP.

Oklahoma's statutes authorize ODEQ ''to promulgate rules regarding permit fees and . . . establish that the owner or

[16] Oklahoma does not presently have any designated ozone nonattainment areas.

[17] For details of our recent proposed action to update the state SIP with regard to PSD, please see 84 FR 66103, December 3, 2019 and the materials provided in the associated docket number EPA–R06–OAR–2018–0208 available at *https://www.regulations.gov/.*

[18] Note that our recent proposed action to update the state SIP included citations adopting the most current version of EPA's Guideline on Air Quality Models at 40 CFR part 51, 2017 Appendix W. See 84 FR 66103.

operator of any source required to have a permit must pay a permit fee to cover the cost of implementing and enforcing Oklahoma's Air Qualtiy permit program.'' The OCAA provides the ODEQ with authority to hire and compensate employees; accept and administer grants or other funds; requires the ODEQ to establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs; and authorizes the ODEQ to collect additional fees necessary to cover reasonable costs associated with processing air permit applications and the costs of implementing and enforcing the terms and provisions of the permits. The state has in place fee programs for major and minor sources of air pollution, as well as an area source operating fee program that covers other sources in the state. This requirement is met.[19]

(M) Consultation/participation by affected local entities: The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See the earlier discussions for CAA sections 110(a)(2)(J), sub-elements (1) and (2) for a description of the SIP's public participation process, the authority to advise and consult, and the PSD SIP's public participation requirements. Additionally, the OCAA requires cooperative action between ODEQ and local authorities, other agencies of the State, other states, Indian Tribes, other affected groups and the federal government in the prevention and control of air pollution.

III. Proposed Action

EPA is proposing to approve portions of the October 25, 2018, Oklahoma i-SIP submittal for the 2015 ozone NAAQS as detailed in Table 1, below. The portions of the submittal dealing with CAA section 110(a)(2)(D)(i)(I), prongs 1 and 2, Significant Contribution to Nonattainment and Interference with Maintenance in other States, and CAA section 110(a)(2)(D)(i)(II), prong 4, Interference with Visibility Protection in other States will be addressed in separate, future actions.

TABLE 1—PROPOSED ACTION ON OKLAHOMA INFRASTRUCTURE AND TRANSPORT SIP SUBMITTALS FOR THE 2015 OZONE NAAQS

Element	Proposed action
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii):PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	SA
(D)(i)(II): PSD (prong 3)	A
(D)(i)(II): Visibility Protection (prong 4)	SA
(D)(ii): Interstate and International Pollution Abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table 1:
A: Proposing to Approve.
+: Not germane to infrastructure SIPs.
SA: EPA is acting on this infrastructure requirement in a separate rulemaking action.

Based upon review of the State's infrastructure SIP submission and relevant statutory and regulatory authorities and provisions referenced in this submission or referenced in the EPA-approved ODEQ SIP, EPA believes that Oklahoma has the infrastructure in place to address all applicable required elements of CAA sections 110(a)(1) and (2), except as noted above, to ensure that the 2015 O_3 NAAQS is implemented in the State. However, as mentioned above, our approval of this proposed action is dependent upon finalization of our proposal to approve updates to Oklahoma's new source review permitting requirements. (see 84 FR 66103, December 3, 2019).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

[19] Last approved by EPA at 81 FR 89008, December 9, 2016.

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: December 23, 2019.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2019–28329 Filed 12–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0658; FRL–10003–16–Region 7]

Air Plan Approval; Missouri; Revisions to the General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a Missouri State Implementation Plan (SIP) revision submitted on February 15, 2019. The submission revises the State's general conformity rule. Specifically, the proposed action revises the rule to add definitions specific to the rule, remove references to a rule that is being rescinded, remove the unnecessary use of restrictive words and make other clarifying changes. The revision does not have an adverse effect on air quality. The EPA's proposed approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before February 3, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2019–0658 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will 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 ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jed Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7588; email address *wolkins.jed@epa.gov.*

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

Table of Contents

I. Written Comments
II. What is being addressed in this document?
III. Have the requirements for approval of a SIP revision been met?
IV. What action is the EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2019–0658, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, 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.*

II. What is being addressed in this document?

The EPA is proposing to approve a revision to Missouri's rule 10–6.300 ''Conformity of General Federal Actions to State Implementation Plans.'' There are several proposed revisions to the rule. The proposed revisions modify text that Missouri has determined make the rule more understandable while retaining the intent of the rule. The following changes to the rule have been made:

10–6.300(1) the title changed from ''General'' to ''Applicability'';

10–6.300(1)(B) insertion of ''de minimis'';

10–6.300(1)(C) change from ''shall'' to ''do'';

10–6.300(1)(C)2. and 2.V. insertion ''below the'' and ''levels identified in subsection (1)(B) of this rule'';

10–6.300(1)(C)2.H. and I. change from ''required'' to ''necessary'';

10–6.300(1)(C)2.J. removal of ''Actions'';

10–6.300(1)(K) removal of ''shall'';

10–6.300(2) removal of existing incorporation by reference and insertion of rule specific definitions (A) thru (JJ);

10–6.300(3)(A)1. change from ''shall'' to ''may'';

10–6.300(3)(E)3. change from ''may'' to ''will'';

10–6.300(3)(E)4. and (3)(F)1., 2., 3., and 4. change from ''required'' to ''conducted'';

10–6.300(3)(F)2.A.(II) change form ''shall apply'' to ''applies'';

10–6.300(3)(I)2. change from ''shall'' to ''may'';

10–6.300(3)(J)2.B. change from ''must not'' to ''cannot'';

10–6.300(3)(J)3. change from ''they are not required'' to ''they are under no obligation'';

10–6.300(3)(L)2.E. change from ''the time frame for the reductions must be specified'' to ''have a specific time frame for the reductions'';

10–6.300(3)(L)3. correction of the spelling of ''credits'';

10–6.300(3)(L)3.A. and B. change from ''as required in'' to ''under'';

10–6.300(4)(C) change from ''shall be'' to ''is''.

The full text of these changes can be found in the State's submission which is in the docket for this action.

The EPA has analyzed these wording changes, specifically focusing on the language changes that might alter the stringency or intent such as using ''de minimus'' or changes from ''shall'' to ''may''. Although the EPA takes no position regarding whether the altered text is clearer to the reader, the EPA finds the full rule language does not alter the intent of the rule. For example, 10–6.300(3)(A)1. now reads, ''No department, agency, or instrumentality may engage in'' rather than ''shall engage in''. The EPA believes that the change from ''shall'' to ''may'' does not alter the intent of the language to prohibit an action from occurring. Another example is the insertion of ''de minimus'', which refers to a table being used to establish a threshold floor, or de minimus level in this context. The EPA believes the use of de minimus is appropriate in this context and that this language does not alter the intent. Therefore, the EPA does not believe that these specific examples and other language changes represent a relaxation of the rule.

Then, Missouri revised its rule to incorporate general conformity rule-specific definitions into the rule itself. These added rule definitions come from 10–6.020 which is already approved into the SIP. The EPA provided one specific comment during the public comment period regarding the definition of precursors to fine particulate matter ($PM_{2.5}$).[1] The EPA asked Missouri to update the State general conformity rule to match updates to the Federal general conformity rule, 40 CFR part 93. These updates include changes to the applicability tables clarifying that volatile organic compounds (VOCs) and ammonia (NH_3) are presumed precursors of $PM_{2.5}$. Missouri did not change the rule in response to this comment. While Missouri did not update the rule to reflect changes to the Federal general conformity rule, the EPA believes the SIP revision is approvable. The changes to the Federal general conformity rule stem from the January 4, 2013, D.C. Circuit Court ruling that we erred when not considering the particulate matter-specific provisions of subpart 4 of part D of title I of the CAA.[2] In response, on March 23, 2015, we proposed the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (80 FR 15340, March 23, 2015). In that action, we defined $PM_{2.5}$ precursors as ''sulfur dioxide (SO_2), oxides of nitrogen (NO_X), volatile organic compounds (VOC), and ammonia (NH_3).'' The EPA finalized this rule on August 24, 2016 (81 FR 58010).

10–6.300(2)(DD)(3)(C) states VOC and NH_3 are $PM_{2.5}$ precursors ''only in $PM_{2.5}$ nonattainment or maintenance areas where either the State or the EPA determines that they are significant precursors.'' The EPA has now determined that VOC and NH_3 are $PM_{2.5}$ precursors presumptively subject to regulation, therefore any General Transportation Conformity review in a $PM_{2.5}$ nonattainment or maintenance area in Missouri would need to consider VOC and NH_3 as $PM_{2.5}$ precursors. This determination that VOC and NH_3 are precursors to $PM_{2.5}$ subject to regulation applies in any current and future $PM_{2.5}$ nonattainment or maintenance area in the State of Missouri until such time that Missouri adequately demonstrates, and the EPA agrees, that these pollutants do not need to be regulated in a particular plan despite the fact that they are $PM_{2.5}$ precursors.

Finally, at 10–6.300(1)A. and (E)1.E.(II), Missouri revised its rule to remove a reference to 10–2.390, which has been rescinded. The EPA approved rescission of this rule from the Missouri SIP in a separate action.[3]

The EPA has evaluated the changes made by Missouri and is proposing to approve these changes in the SIP. The EPA believes that these changes will not have an adverse impact on air quality.

III. Have the requirements for approval of a SIP revision been met?

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from May 2, 2018 to August 2, 2018 and received two public comments, both from the EPA.[4] Missouri's response to our general comment is sufficient. As discussed above, while Missouri did not update the rule for the definition of precursors of $PM_{2.5}$, the revision is still approvable. We highly encourage Missouri to make such update in the future. The revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA taking?

The EPA is proposing to approve Missouri's revisions to 10–6.300. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

[1] The EPA also provided a general comment on several Missouri rulemakings around the same time.

[2] *Natural Resources Defense Council (NRDC)* v. *EPA,* Nos. 08–1250, 09–1102, 11–1430 (D.C. Circuit 2013).

[3] See 84 FR 54035, October 9, 2019.

[4] Missouri DNR staff also made a comment.

• Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
• Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 19, 2019.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart-AA Missouri

■ 2. In § 52.1230, the table in paragraph (c) is amended by revising the entry ''10–6.300'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.300	Conformity of General Federal Actions to State Implementation Plans.	2/28/2019	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2019–28332 Filed 12–31–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 18–143, 10–90 and 14–58; Report No. 3138; FRS 16364]

Petition for Reconsideration of Action in Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: A Petition for Reconsideration (Petition) has been filed in the Commission's proceeding listed below by Geraldine Pitt, on behalf of Virgin Islands Telephone Corp. d/b/a Viya.

DATES: Oppositions to the Petition must be filed on or before January 17, 2020. Replies to an opposition must be filed on or before January 27, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Telecommunications

Access Policy Division, Wireline Competition Bureau, at (202) 418–7400, *email: AlexanderMinard@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3138, released December 19, 2019. The full text of the Petition is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It also may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801 because no rules are being adopted by the Commission.

Subject: The Uniendo a Puerto Rico Fund and the Connect America USVI Fund, Connect America Fund, ETC Annual Reports and Certifications, FCC 19–95, published at 84 FR 59937, November 7, 2019, in WC Docket Nos. 18–143, 10–90 and 14–58. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–28348 Filed 12–31–19; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 85, No. 1
Thursday, January 2, 2020

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 COMMERCE

Foreign-Trade Zones Board

[B–53–2019]

Foreign-Trade Zone (FTZ) 26—Atlanta, Georgia; Authorization of Production Activity; Patterson Pump Company (Specialty Pumps); Toccoa, Georgia

On August 29, 2019, Patterson Pump Company submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 26, in Toccoa, Georgia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 47480–47481, September 10, 2019). On December 27, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 27, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–28330 Filed 12–31–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–52–2019]

Foreign-Trade Zone (FTZ) 168—Dallas/Fort Worth, Texas; Authorization of Production Activity; Gulfstream Aerospace Corporation (Disassembly of Aircraft); Dallas, Texas

On August 26, 2019, the Metroplex International Trade Development Corporation, grantee of FTZ 168, submitted a notification of proposed production activity to the FTZ Board on behalf of Gulfstream Aerospace Corporation, within FTZ 168, in Dallas, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 46709, September 5, 2019). On December 26, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 26, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–28328 Filed 12–31–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUPPLEMENTARY INFORMATION:

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for February 2020

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in December 2019 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Kitchen Appliance Shelving and Racks from China (A–570–941) (2nd Review)	Matthew Renkey; (202) 482–2312.
Countervailing Duty Proceedings	
Kitchen Appliance Shelving and Racks from China (C–570–942) (2nd Review)	Matthew Renkey; (202) 482–2312.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in February 2020.

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.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 20, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–28345 Filed 12–31–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

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 21 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.

Opportunity To Request a Review: Not later than the last day of January 2020,[2] interested parties may request

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period of review
Antidumping Duty Proceedings	
BELARUS: Carbon and Alloy Steel Wire Rod, A–822–806	1/1/19–12/31/19
BRAZIL: Prestressed Concrete Steel Wire Stand, A–351–837	1/1/19–12/31/19
CANADA: Softwood Lumber, A–122–857	1/1/19–12/31/19
INDIA: Prestressed Concrete Steel Wire Strand, A–533–828	1/1/19–12/31/19
MEXICO: Prestressed Concrete Steel Wire Strand, A–201–831	1/1/19–12/31/19
REPUBLIC OF KOREA: Prestressed Concrete Steel Wire Strand, A–580–852	1/1/19–12/31/19
RUSSIA: Carbon and Alloy Steel Wire Rod, A–821–824	1/1/19–12/31/19
SOUTH AFRICA: Ferrovanadium, A–791–815	1/1/19–12/31/19
THAILAND: Prestressed Concrete Steel Wire Strand, A–549–820	1/1/19–12/31/19
THE PEOPLE'S REPUBLIC OF CHINA:	
Calcium Hypochlorite, A–570–008	1/1/19–12/31/19
Carbon and Certain Alloy Steel Wire Rod, A–570–012	1/1/19–12/31/19
Crepe Paper Products, A–570–895	1/1/19–12/31/19
Ferrovanadium, A–570–873	1/1/19–12/31/19
Folding Gift Boxes, A–570–866	1/1/19–12/31/19
Hardwood Plywood Products, A–570–051	1/1/19–12/31/19
Potassium Permanganate, A–570–001	1/1/19–12/31/19
Wooden Bedroom Furniture, A–570–890	1/1/19–12/31/19
UNITED ARAB EMIRATES: Carbon and Alloy Steel Wire Rod, A–520–808	1/1/19–12/31/19
Countervailing Duty Proceedings	
ARGENTINA: Biodiesel, C–357–821	1/1/19–12/31/19
CANADA: Softwood Lumber, C–122–858	1/1/19–12/31/19
INDONESIA: Biodiesel, C–560–831	1/1/19–12/31/19
THE PEOPLE'S REPUBLIC OF CHINA:	
Calcium Hypochlorite, C–570–009	1/1/19–12/31/19
Carbon and Certain Alloy Steel Wire Rod, C–570–013	1/1/19–12/31/19
Circular Welded Carbon Quality Steel Line Pipe, C–570–936	1/1/19–12/31/19
Hardwood Plywood Products, C–570–052	1/1/19–12/31/19
Oil Country Tubular Goods, C–570–944	1/1/18–12/31/18
Tool Chests and Cabinets, C–570–057	1/1/19–12/31/19
Suspension Agreements	
RUSSIA: Certain Cut-To-Length Carbon Steel Plate, A–821–808	1/1/19–12/31/19

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[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

[3] *See also* the Enforcement and Compliance website at *http://trade.gov/enforcement/.*

[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.

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 *http://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.

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 January 2020. If Commerce does not receive, by the last day of January 2020, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 18, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–28342 Filed 12–31–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Review and Amended Final Results of the Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 16, 2019, the United States Court of International Trade (CIT) sustained the final remand redetermination pertaining to the administrative review of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China covering the period November 1, 2014 through October 31, 2015. The Department of Commerce (Commerce) is notifying the public that the CIT's final judgment in this case is not in harmony with the final results of the administrative review and that Commerce is amending the final results with respect to certain respondents eligible for separate rates.

Applicable date: December 26, 2019.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–5760 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2017, Commerce published the *Final Results,* in which we accepted an alternative sales identification methodology for Bosun Tools Co., Ltd. (Bosun), calculated a margin for Bosun, and assigned the margin for Bosun to the non-selected separate rate respondents.[1] On October 23, 2018, the CIT remanded the *Final Results* to Commerce to: (1) Further clarify or reconsider Commerce's conclusion that Bosun acted to the best of its ability in responding to Commerce's requests for information; and (2) further explain Commerce's selection of surrogate values for copper powder and copper iron clab.[2]

In the final remand redetermination, we found that Bosun had not acted to the best of its ability in responding to our request for information and determined Bosun's margin entirely on the basis of the facts available with an adverse inference (AFA). Because we applied AFA to Bosun, the issue concerning the surrogate value for copper power and copper iron clab was moot.[3] On December 16, 2019, the CIT sustained our final remand redetermination in its entirety.[4]

Timken Notice

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010), the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 16, 2019, final judgment sustaining the final remand redetermination constitutes the CIT's final decision which is not ''in harmony'' with the *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending expiration of the period to appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results of Review

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to Bosun and

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 26912 (June 12, 2017) (*Final Results*).

[2] *See Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 17–00167, Slip Op. 18–146 (CIT Oct. 23, 2018).

[3] *See* Final Remand Redetermination dated April 17, 2019, pursuant to *Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 17–00167, Slip Op. 18–146 (CIT Oct. 23, 2018), available at https://enforcement.trade.gov/remands/18-146.pdf.

[4] *See Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 17–00167, Slip Op. 19–157 (CIT Dec. 16, 2019).

the non-selected separate rate respondents as follows:

Exporter	Weighted-average dumping margin (percent)
Bosun Tools Co., Ltd	82.05
Chengdu Huifeng Diamond Tools Co., Ltd[5]	82.05
Danyang Hantronic Import & Export Co., Ltd	82.05
Danyang Huachang Diamond Tools Manufacturing Co., Ltd	82.05
Danyang Like Tools Manufacturing Co., Ltd	82.05
Danyang NYCL Tools Manufacturing Co., Ltd	82.05
Danyang Weiwang Tools Manufacturing Co., Ltd	82.05
Guilin Tebon Superhard Material Co., Ltd	82.05
Hangzhou Deer King Industrial and Trading Co., Ltd	82.05
Hangzhou Kingburg Import & Export Co., Ltd	82.05
Huzhou Gu's Import & Export Co., Ltd	82.05
Jiangsu Inter-China Group Corporation	82.05
Jiangsu Youhe Tool Manufacturer Co., Ltd	82.05
Qingyuan Shangtai Diamond Tools Co., Ltd	82.05
Quanzhou Zhongzhi Diamond Tool Co., Ltd	82.05
Rizhao Hein Saw Co., Ltd	82.05
Saint-Gobain Abrasives (Shanghai) Co., Ltd	82.05
Shanghai Jingquan Industrial Trade Co., Ltd	82.05
Sino Tools Co., Ltd	82.05
Weihai Xiangguang Mechanical Industrial Co., Ltd	82.05
Wuhan Wanbang Laser Diamond Tools Co., Ltd[6]	82.05
Xiamen ZL Diamond Technology Co., Ltd	82.05
Zhejiang Wanli Tools Group Co., Ltd	82.05

In the event the CIT's ruling is not appealed or, if appealed, upheld by a final and conclusive court decision, Commerce will instruct the U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise based on the revised rates listed above, in accordance with 19 CFR 351.212(c)(2).

Cash Deposit Requirements

As the cash deposit rate for Danyang Hantronic Import & Export Co., Ltd., has not been subject to subsequent administrative reviews, Commerce will issue revised cash deposit instructions to CBP adjusting the rate from 6.19 percent to 82.05 percent, effective December 26, 2019. For all other respondents listed above, because the cash deposit rates have been updated in subsequent administrative reviews,[7] we will not update their cash deposit rates as a result of these amended final results.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 27, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–28327 Filed 12–31–19; 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) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable January 1, 2020.

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 Commission 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):

DOC Case No.	ITC Case No.	Country	Product	Commerce contact
A–570–880	731–TA–1020	China	Barium Carbonate (3rd Review)	Matthew Renkey (202) 482–2312.
A–570–010	731–TA–1246	China	Crystalline Silicon Photovoltaic Products (1st Review).	Matthew Renkey (202) 482–2312.
C–570–011	701–TA–511	China	Crystalline Silicon Photovoltaic Products (1st Review).	Jacqueline Arrowsmith (202) 482–5255.
A–570–873	731–TA–986	China	Ferrovanadium (3rd Review)	Mark Kolberg (202) 482–1785.

[5] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 82 FR 60177 (December 19, 2017). In this changed circumstances review, Commerce determined that Chengdu Huifeng New Material Technology Co., Ltd. is the successor-in-interest to Chengdu Huifeng Diamond Tools Co., Ltd.

[6] Wuhan Wanbang Laser Diamond Tools Co., Ltd., is the successor-in-interest to Wuhan Wanbang Laser Diamond Tools Co. *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 81 FR 20618 (April 8, 2016).

[7] For Bosun, Danyang NYCL Tools Manufacturing Co., Ltd., Weihai Xiangguang Mechanical Industrial Co., Ltd., and Wuhan Wanbang Laser Diamond Tools Co., Ltd., *see Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 83 FR 17527, 17528 (April 20, 2018). For all other respondents listed above, *see Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 39673, 39674, n.10 (August 10, 2018), unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 64331 (December 14, 2018).

DOC Case No.	ITC Case No.	Country	Product	Commerce contact
A–570–924	731–TAA–1132.	China	Polyethylene Terephthalate (Pet) Film (2nd Review).	Jacqueline Arrowsmith (202) 482–5255.
A–570–939	731–TA–1153	China	Tow-Behind Lawn Groomers And Parts Thereof (2nd Review).	Matthew Renkey (202) 483–2312.
A–791–815	731–TA–987 ..	South Africa	Ferrovanadium (3rd Review)	Mary Kolberg (202) 482–1785.
A–583–853	731–TA–1247	Taiwan	Crystalline Silicon Photovoltaic Products (1st Review).	Matthey Renkey (202) 482–2312.
A–520–803	731–TA–1134	United Arab Emirates.	Polyethylene Terephthalate (Pet) Film (2nd Review).	Jacqueline Arrowsmith (202) 482–5255.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerces'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: *http://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.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

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.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[6]

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 Commission'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: December 20, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–28344 Filed 12–31–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–858]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that producers or exporters of certain carbon and alloy steel cut-to-length plate (CTL plate) from Taiwan sold subject merchandise at less than normal value during the period of review (POR), November 14, 2016 through April 30, 2018.

DATES: Applicable January 2, 2020.

FOR FURTHER INFORMATION CONTACT: Joshua Tucker or Darla Brown, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2044 or (202) 482–1791, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 19 producers or exporters. Commerce selected two companies, China Steel Corporation (CSC) and Shang Chen Steel Co., Ltd. (SCS), for individual examination. The producers or exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.

On July 17, 2019, Commerce published the *Preliminary Results.*[1] On August 16, 2019, we received a case brief from ArcelorMittal USA LLC, the petitioner in this administrative review.[2] On April 12, 2019, we received a rebuttal brief from SCS.[3]

Scope of the Order

The merchandise subject to the order is CTL plate. The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive. For a complete description of the scope of the order, *see* Appendix I of this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in Appendix II to this notice and addressed in the IDM.[4] Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which 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,* and ACCESS is also available to all interested parties in the Central Records Unit, Room B8024, of the main Commerce building. In addition, a complete version of the IDM can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed IDM and the electronic version of the IDM are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made no changes to the weighted-average dumping margin for SCS from that presented in the *Preliminary Results;* however, we did make certain changes to SCS's reported entered value.[5]

Determination of No Shipments

As noted in the *Preliminary Results,* we received no-shipment claims from Chun Chi Grating Co., Ltd. (Chun Chi), Product Depot International Corp. (Product Depot), and CSC, and we preliminarily determined that Chun Chi, Product Depot, and CSC had no shipments during the POR.[6] We received no comments from interested parties with respect to this claim. Therefore, because the record indicates that Chun Chi, Product Depot, and CSC had no entries of subject merchandise to the United States during the POR, we continue to find that Chun Chi, Product Depot, and CSC had no shipments during the POR.

Final Results of the Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period November 14, 2016 through April 30, 2018:

Producer or exporter	Weighted-average dumping margin (percent)
Shang Chen Steel Co., Ltd	2.59

Review-Specific Average Rate Applicable to the Following Companies: [7]

Exporter or producer	Weighted-average dumping margin (percent)
Broad Hand Enterprise Co., Ltd	2.59
C.H. Robinson Freight Services	2.59
Eci Taiwan Co., Ltd	2.59
Locksure Inc	2.59
Nan Hoang Traffic Instrument Co	2.59
New Marine Consolidator Co., Ltd	2.59
North America Mining Group Co., Ltd	2.59
Oriental Power Logistics Co., Ltd	2.59
Scanwell Logistics (Taiwan)	2.59
Shin Yang Steel Co., Ltd	2.59
Shye Yao Steel Co., Ltd	2.59
Speedmark Consolidation	2.59
Sumeeko Industries Co., Ltd	2.59
Triple Merits Ltd	2.59
UKI Enterprise Co., Ltd	2.59

Disclosure of Calculations

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2018,* 84 FR 34127 (July 17, 2019) (*Preliminary Results*).

[2] *See* Petitioner's Letter, ''Carbon and Alloy Steel Cut-to-Length Plate from the Taiwan: Petitioner's Case Brief for Shang Chen Steel Co., Ltd.,'' dated August 16, 2019.

[3] *See* SCS's Letter, ''Rebuttal Brief of Shang Chen Steel Co., Ltd.,'' dated August 21, 2019.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2016–2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan'' (IDM), dated concurrently with, and hereby adopted by, this notice.

[5] *See* IDM at Comment 3.

[6] *See Preliminary Results,* 84 FR at 34127.

[7] This rate is the rate calculated for SCS.

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We further will instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

For the companies which were not selected for individual review, we will assign an assessment rate equal to SCS's dumping margin identified above.[8] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[9]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be equal to the weighted-average dumping margin that is established in the final results of this review, except if the rate is less than 0.50 percent and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not listed above, including the company for Commerce has determined had no shipments in these final results, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 39.52 percent, the all-others rate established in the LTFV investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: December 20, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

The products covered by this order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non- metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross- section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) Except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an order existing on that specific country (*i.e., Notice of Antidumping Duty Order; Certain Hot-Rolled Carbon Steel Flat Products From Taiwan,* 66 FR 59563 (November 29, 2001)); and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cut-to-length plate.

[8] The Act does not specify how to calculate a dumping margin for a respondent that is not selected for individual review in an administrative review. Therefore, we look to section 735(c)(5)(A) of the Act, which explains how to calculate the ''all others'' rate in an investigation, for guidance. Consistent with how we would calculate the ''all others'' rate in an investigation, we are basing the dumping margin for non-selected companies on the weighted-average dumping margin calculated for the selected respondent, SCS.

[9] *See* section 751(a)(2)(C) of the Act.

[10] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096 (May 25, 2017).

All products that meet the written physical description, are within the scope of this order unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this order:

(1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) Military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80,
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) Stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A–829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the order may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Margin Calculations
IV. Discussion of the Issues
  Comment 1: Issues with SCS's Sales Reconciliation
  Comment 2: Issues with SCS's Reported Entry Data for U.S. Sales
  Comment 3: Actions to Remedy SCS's Alleged Reporting Inaccuracies
V. Recommendation

[FR Doc. 2019–28326 Filed 12–31–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for the Juniper Butte Range Land Withdrawal Extension, Mountain Home Air Force Base, Idaho

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of availability.

SUMMARY: The US Air Force (Air Force) is issuing this notice of availability of a Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Juniper Butte Range Land Withdrawal Extension, Mountain Home Air Force Base (AFB), Idaho.

ADDRESSES: For information on this EA contact Mountain Home AFB 366 Fighter Wing Public Affairs (366 FW/PA) at *366FW.PA.Public.Affairs@us.af.mil;* 208–826–6800; or 366 FW/PA, 366 Gunfighter Avenue, Suite 310, Mountain Home AFB 83648. For further information contact Robin Divine at 208–826–6800.

SUPPLEMENTARY INFORMATION: The Final EA and FONSI have been prepared to consider the potential environmental consequences of extending the public lands withdrawal established in Title XXIX of Public Law 105–261 on October 17, 1998, the *Juniper Butte Range Withdrawal Act,* at the Mountain Home Range Complex associated with Mountain Home AFB, Idaho. Per section 2915(c) of the *Juniper Butte Range Withdrawal Act,* the Draft EA and FONSI were made available for public review and comment for a 60-day period beginning on 10 April 2019, and a public meeting was held in Mountain Home, Idaho on April 25, 2019. No public comments were received. The agency comment letters received during the 60-day public review period are addressed in the Final EA. Under the *Juniper Butte Range Withdrawal Act,* approximately 11,816 acres of public land located in Owyhee and Twin Falls Counties, Idaho, were withdrawn from the Department of Interior, Bureau of Land Management to the Air Force for military use. Under the *Juniper Butte Range Withdrawal Act,* the withdrawal of these public lands will expire in 2023 unless the Air Force meets the requirements for extension in section 2915(c) of the Act. Therefore, the Air Force has analyzed the potential environmental impacts in the Final EA and signed a FONSI proposing to extend the withdrawal of this public land for continued military training for an additional 25 years. In addition, except as provided in section 2908(f) of the *Juniper Butte Range Withdrawal Act,* withdrawn and acquired mineral resources within the boundaries of the Juniper Butte Range will continue as originally withdrawn from United States mining laws. The Final EA and signed FONSI are available on the internet at *https://www.mountainhome.af.mil/Home/Environmental-News/.* Printed copies of the Final EA and signed FONSI are also available for review at the following locations:

- Mountain Home Public Library, 790 N 10th E Street, Mountain Home, Idaho 83647
- Mountain Home AFB Library, 480 5th Avenue, Building 2610, Mountain Home AFB, Idaho 83648
- Twin Falls Public Library, 201 4th Avenue East, Twin Falls, Idaho 83301

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019–28300 Filed 12–31–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

[FE Docket Nos.]

Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments

	FE Docket No.
Sabine Pass Liquefaction, LLC.	10–111–LNG
Freeport LNG Expansion, L.P. et al.	10–161–LNG
Lake Charles Exports, LLC.	11–59–LNG
Dominion Cove Point LNG, LP.	11–128–LNG
Freeport LNG Expansion, L.P. et al.	11–161–LNG
Cameron LNG, LLC	11–162–LNG
Southern LNG Company, LLC.	12–100–LNG
Gulf LNG Liquefaction Company, LLC.	12–101–LNG
Jordan Cove Energy Project, L.P.	12–32–LNG
CE FLNG, LLC	12–123–LNG
Golden Pass Products, LLC.	12–156–LNG
Lake Charles LNG Export Co.	13–04–LNG
MPEH LLC	13–26–LNG
Cheniere Marketing LLC and Corpus Christi Liquefaction, LLC.	13–30–LNG, 13–42 LNG, & 13–121–LNG
Venture Global Calcasieu Pass, LLC.	13–69–LNG, 14–88–LNG, & 15–25 LNG
Eos LNG LLC	13–116–LNG
Barca LNG LLC	13–118–LNG
Magnolia LNG, LLC	13–132–LNG
Delfin LNG, LLC	13–147–LNG
Commonwealth LNG, LLC.	13–153–LNG
SCT&E LNG, LLC	14–98–LNG
Pieridae Energy (USA) Ltd.	14–179–LNG
Bear Head LNG Corporation and Bear Head LNG (USA).	15–33–LNG
G2 LNG LLC	15–45–LNG
Texas LNG Brownsville LLC.	15–62–LNG
Sabine Pass Liquefaction, LLC.	15–63–LNG
Cameron LNG, LLC	15–90–LNG
Port Arthur LNG, LLC ...	15–96–LNG
Cameron LNG, LLC	15–167–LNG
Rio Grande LNG, LLC ..	15–190–LNG
Venture Global Plaquemines LNG, LLC.	16–28–LNG
Freeport LNG Expansion, L.P., et al.	16–108–LNG
Lake Charles LNG Export Co.	16–109–LNG
Lake Charles Exports, LLC.	16–110–LNG
Driftwood LNG LLC	16–144–LNG
Fourchon LNG, LLC	17–105–LNG
Galveston Bay LNG, LLC.	17–167–LNG
Freeport LNG Expansion, L.P., et al.	18–26–LNG
Corpus Christi Liquefaction Stage III, LLC.	18–78–LNG
Mexico Pacific Limited LLC.	18–70–LNG
Energía Liquefaction, S. de R.L. de C.V.	18–144–LNG
Energía Costa Azul, S. de R.L. de C.V.	18–145–LNG
Annova LNG Common Infrastructure, LLC.	19–34–LNG
Cheniere Marketing LLC and Corpus Christi Liquefaction, LLC.	19–124–LNG
Sabine Pass Liquefaction, LLC.	19–125–LNG
Commonwealth LNG, LLC.	19–134–LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of response to comments.

SUMMARY: On September 19, 2019, the Office of Fossil Energy (FE) of the Department of Energy (DOE) gave notice of the availability of a study entitled, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update* (LCA GHG Update or Update), in the above-referenced proceedings and invited the submission of public comments on the Update. DOE commissioned the LCA GHG Update to inform its decision on pending and future applications seeking authorization to export domestically

produced liquefied natural gas (LNG) from the lower-48 states to countries with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). The LCA GHG Update includes three principal updates to DOE's 2014 LCA GHG Report. In this document, DOE responds to the seven public comments received on the LCA GHG Update and summarizes its conclusions on the Update. The LCA GHG Update and the public comments are posted on the DOE website at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

DATES: Applicable on December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–2627; *amy.sweeney@hq.doe.gov;* Cassandra Bernstein or Kari Twaite, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Ave. SW, Washington, DC 20585; (202) 586–9793 or (202) 586–6978; *cassandra.bernstein@hq.doe.gov* or *kari.twaite@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. Acronyms and abbreviations used in this document are set forth below for reference.

API American Petroleum Institute
AR5 Fifth Assessment Report
Bcf/d Billion Cubic Feet per Day
Bcf/yr Billion Cubic Feet per Year
CLNG Center for Liquefied Natural Gas
CO_2 Carbon Dioxide
CO_2e Carbon Dioxide Equivalents
DOE U.S. Department of Energy
EIA U.S. Energy Information Administration
EPA U.S. Environmental Protection Agency
FE Office of Fossil Energy, U.S. Department of Energy
FTA Free Trade Agreement
GHG Greenhouse Gas
GWP Global Warming Potential
IEA International Energy Agency
IECA Industrial Energy Consumers of America
IPCC Intergovernmental Panel on Climate Change
LCA Life Cycle Analysis
LNG Liquefied Natural Gas
MWh Megawatt-Hour
NETL National Energy Technology Laboratory
NEPA National Environmental Policy Act of 1969
NGA Natural Gas Act of 1938

Table of Contents

I. Background
A. DOE Export Authorizations Under Section 3 of the Natural Gas Act
B. Public Interest Review for Non-FTA Export Authorizations
C. 2014 Life Cycle Greenhouse Gas Report (LCA GHG Report)
D. Judicial Decisions Upholding DOE's Non-FTA Authorizations
II. Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update (LCA GHG Update)
A. Overview of the LCA GHG Update
B. The April 2019 LCA of Natural Gas Extraction and Power Generation
C. Purpose of the LCA GHG Update
D. Study Scenarios
E. GHGs Reported as Carbon Dioxide Equivalents
F. Natural Gas Modeling Approach
G. Coal Modeling Approach
H. Key Modeling Parameters
I. Results of the LCA GHG Update
III. Notice of Availability of the LCA GHG Update
IV. Comments on the LCA GHG Update and DOE Responses
A. Scope of the LCA GHG Update
B. Roles of Natural Gas and Renewable Energy
C. Domestic Natural Gas-to-Coal Switching
D. Global Warming Potential of Methane
E. Methane Emission Rate of U.S. Natural Gas Production
F. Other Aspects of NETL's Natural Gas Modeling Approach
V. Discussion and Conclusions

I. Background

A. DOE Export Authorizations Under Section 3 of the Natural Gas Act

DOE is responsible for authorizing exports of domestically produced natural gas to foreign countries pursuant to section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b.[1] In relevant part, section 3(c) of the NGA applies to applications for exports of natural gas, including LNG, to countries with which the United States has entered into a FTA requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (FTA countries).[2] Section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102–486) to require that FTA applications ''shall be deemed to be consistent with the public interest'' and granted ''without modification or delay.'' [3] Therefore, DOE approves applications for FTA authorizations without modification or delay.[4] None of the comments or discussion herein apply to FTA authorizations issued under NGA section 3(c).

For applications to export natural gas to non-FTA countries, section 3(a) of the NGA sets forth the following standard of review:

> [N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy [5]] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation *will not be consistent with the public interest.* The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.[6]

DOE—as affirmed by the D.C. Circuit—has consistently interpreted NGA section 3(a) as creating a rebuttable presumption that a proposed export of natural gas is in the public interest.[7] Accordingly, DOE will conduct an informal adjudication and grant a non-FTA application unless DOE finds that the proposed exportation will not be consistent with the public interest.[8] Before reaching a final decision, DOE must also comply with the National

[1] The authority to regulate the imports and exports of natural gas, including LNG, under section 3 of the NGA (15 U.S.C. 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00–002.04G issued on June 4, 2019.

[2] 15 U.S.C. 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

[3] 15 U.S.C. 717b(c).

[4] Unless otherwise stated, all references to exports of LNG herein refer to natural gas produced and liquefied in the lower-48 states. Additionally, DOE uses the terms ''authorization'' and ''order'' interchangeably.

[5] The Secretary's authority was established by the Department of Energy Organization Act, 42 U.S.C. 7172, which transferred jurisdiction over imports and export authorizations from the Federal Power Commission to the Secretary of Energy.

[6] 15 U.S.C. 717b(a) (emphasis added).

[7] *See Sierra Club* v. *U.S. Dep't of Energy,* 867 F.3d 189, 203 (D.C. Cir. 2017) (''We have construed [NGA section 3(a)] as containing a 'general presumption favoring [export] authorization.' '') (quoting *W. Va. Pub. Serv. Comm'n* v. *U.S. Dep't of Energy,* 681 F.2d 847, 856 (D.C. Cir. 1982)).

[8] *See id.* (''there must be 'an affirmative showing of inconsistency with the public interest' to deny the application'' under NGA section 3(a)) (quoting *Panhandle Producers & Royalty Owners Ass'n* v. *Econ. Regulatory Admin.,* 822 F.2d 1105, 1111 (D.C. Cir. 1987)). As of August 24, 2018, qualifying small-scale exports of natural gas to non-FTA countries are treated differently—specifically, they are deemed to be consistent with the public interest under NGA section 3(a). *See* 10 CFR 590.102(p); 10 CFR 590.208(a); *see also* U.S. Dep't of Energy, Small-Scale Natural Gas Exports; Final Rule, 83 FR 35106 (July 25, 2018).

Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*

B. Public Interest Review for Non-FTA Export Authorizations

Although NGA section 3(a) establishes a broad public interest standard and a presumption favoring export authorizations, the statute does not define ''public interest'' or identify criteria that must be considered. In prior decisions, DOE has identified a range of factors that it evaluates when reviewing an application to export LNG to non-FTA countries. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. To conduct this review, DOE looks to record evidence developed in the application proceeding.

DOE's prior decisions have also looked to certain principles established in its 1984 Policy Guidelines.[9] The goals of the 1984 Policy Guidelines are to minimize federal control and involvement in energy markets and to promote a balanced and mixed energy resource system. Specifically, the 1984 Policy Guidelines state that ''[t]he market, not government, should determine the price and other contract terms of imported [or exported] gas,'' and that DOE's ''primary responsibility in authorizing imports [or exports] should be to evaluate the need for the [natural] gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.'' [10] Although the Policy Guidelines are nominally applicable to natural gas import cases, DOE held in DOE/FE Order No. 1473 that the 1984 Policy Guidelines should be applied to natural gas export applications.[11]

In Order No. 1473, DOE stated that it was guided by DOE Delegation Order No. 0204–111. That delegation order directed the regulation of exports of natural gas ''based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator [of the Economic Regulatory Administration] finds in the circumstances of a particular case to be appropriate.'' [12]

Although DOE Delegation Order No. 0204–111 is no longer in effect, DOE's review of export applications has continued to focus on: (i) The domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the arrangement is consistent with DOE's policy of promoting market competition, and (iv) any other factors bearing on the public interest described herein.

Under this public interest standard, DOE has issued 38 final long-term authorizations to export domestically produced (or U.S.) LNG or compressed natural gas to non-FTA countries.[13] The cumulative volume of approved non-FTA exports under these authorizations is 38.06 billion cubic feet per day (Bcf/d) of natural gas, or 13.9 trillion cubic feet per year.[14] Each of these non-FTA orders authorize an export term of 20 years.

C. 2014 Life Cycle Greenhouse Gas Report (LCA GHG Report)

In 2014, DOE commissioned the National Energy Technology Laboratory (NETL), a DOE applied research laboratory, to conduct an analysis calculating the life cycle greenhouse gas (GHG) emissions for LNG exported from the United States. DOE commissioned this life cycle analysis (LCA) to inform its public interest review of non-FTA applications, as part of its broader effort to evaluate different environmental aspects of the LNG production and export chain.

DOE sought to determine: (i) How domestically-produced LNG exported from the United States compares with regional coal (or other LNG sources) for electric power generation in Europe and Asia from a life cycle GHG perspective, and (ii) how those results compare with natural gas sourced from Russia and delivered to the same markets via pipeline. In June 2014, DOE published NETL's report entitled, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* (2014 LCA GHG Report or 2014 Report).[15] Subsequently, DOE received public comments on the 2014 LCA GHG Report and responded to those comments in non-FTA orders.[16] DOE has relied on the 2014 Report in its review of all subsequent applications to export LNG to non-FTA countries.[17]

D. Judicial Decisions Upholding DOE's Non-FTA Authorizations

Beginning in 2015, Sierra Club petitioned the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or the Court) for review of five long-term LNG export authorizations issued by DOE under the standard of review described above. Sierra Club challenged DOE's approval of LNG exports to non-FTA countries from projects proposed or operated by the following authorization holders: Freeport LNG Expansion, L.P., *et al.;* Dominion Energy Cove Point LNG, LP (formerly Dominion Cove Point LNG, LP); Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.* The D.C. Circuit subsequently denied four of the five petitions for review: One in a published decision issued on August 15, 2017 (*Sierra Club I*),[18] and three in a consolidated, unpublished opinion issued on November 1, 2017 (*Sierra Club II*).[19] Sierra Club subsequently withdrew its fifth and remaining petition for review.[20]

In *Sierra Club I,* the D.C. Circuit concluded that DOE had complied with both NGA section 3(a) and NEPA in

[9] New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 FR 6684 (Feb. 22, 1984) [hereinafter 1984 Policy Guidelines].

[10] *Id.* at 49 FR 6685.

[11] *Phillips Alaska Natural Gas Corp., et al.,* DOE/FE Order No. 1473, FE Docket No. 96–99–LNG, Order Extending Authorization to Export Liquefied Natural Gas from Alaska (Apr. 2, 1999), at 14 (citing *Yukon Pacific Corp.,* DOE/FE Order No. 350, Order Granting Authorization to Export Liquefied Natural Gas from Alaska, 1 FE ¶ 70,259, 71,128 (1989)).

[12] DOE Delegation Order No. 0204–111 (Feb. 22, 1984), at 1 (¶ (b)); *see also* 1984 Policy Guidelines, 49 FR 6690 (incorporating DOE Delegation Order No. 0204–111). In February 1989, the Assistant Secretary for Fossil Energy assumed the delegated responsibilities of the Administrator of the Economic Regulatory Administration. *See* Applications for Authorization to Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas, 62 FR 30435, 30437 n.15 (June 4, 1997) (citing DOE Delegation Order No. 0204–127, 54 FR 11436 (Mar. 20, 1989)).

[13] *See Venture Global Plaquemines LNG, LLC,* DOE/FE Order No. 4446, FE Docket No. 16–28–LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 43 (Oct. 15, 2019).

[14] *See id.*

[15] Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States, 79 FR 32260 (June 4, 2014). DOE announced the availability of the LCA GHG Report on its website on May 29, 2014.

[16] *See, e.g., Golden Pass Products LLC,* DOE/FE Order No. 3978, FE Docket No. 12–156–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Golden Pass LNG Terminal Located in Jefferson County, Louisiana, to Non-Free Trade Agreement Nations, at 102–28 (Apr. 25, 2017) (description of LCA GHG Report and response to comments).

[17] *See, e.g., Venture Global Plaquemines LNG, LLC,* DOE/FE Order No. 4446, at 14–15, 38–41.

[18] *Sierra Club* vs. *U.S. Dep't of Energy,* 867 F.3d 189 (Aug. 15, 2017) (denying petition of review of the LNG export authorization issued to Freeport LNG Expansion, L.P., *et al.*).

[19] *Sierra Club* v. *U.S. Dep't of Energy,* Nos. 16–1186, 16–1252, 16–1253, 703 Fed. Appx. 1 (D.C. Cir. Nov. 1, 2017) (denying petitions of review of the LNG export authorization issued to Dominion Cove Point LNG, LP; Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.,* respectively).

[20] *See Sierra Club* v. *U.S. Dep't of Energy,* No. 16–1426, Per Curiam Order (D.C. Cir. Jan. 30, 2018) (granting Sierra Club's unopposed motion for voluntarily dismissal).

issuing the challenged non-FTA authorization. Freeport LNG Expansion, L.P. and its related entities (collectively, Freeport) had applied to DOE for authorization to export LNG to non-FTA countries from the Freeport Terminal located on Quintana Island, Texas. DOE granted the application in 2014 in a volume equivalent to 0.4 Bcf/d of natural gas, finding that Freeport's proposed exports were in the public interest under NGA section 3(a). DOE also considered and disclosed the potential environmental impacts of its decision under NEPA. Sierra Club petitioned for review of the Freeport authorization, arguing that DOE fell short of its obligations under both the NGA and NEPA. The D.C. Circuit rejected Sierra Club's arguments in a unanimous decision, holding that, ''Sierra Club has given us no reason to question the Department's judgment that the [Freeport] application is not inconsistent with the public interest.'' [21]

As relevant here, the D.C. Circuit rejected Sierra Club's challenge to DOE's analysis of the potential ''downstream'' GHG emissions resulting from the transport and usage of U.S. LNG abroad, set forth in the 2014 LCA GHG Report.[22] The Court pointed out that Sierra Club did not challenge the method employed in the LCA GHG Report to evaluate such GHG emissions, but instead argued that DOE ''should have evaluated additional variables'' as part of the analysis.[23] Specifically, Sierra Club asserted that DOE should have considered the potential for LNG to compete with renewable sources of energy (or ''renewables''), which Sierra Club argued are prevalent in certain import markets. The D.C. Circuit rejected this argument, finding that ''Sierra Club's complaint 'falls under the category of flyspecking.' '' [24] The Court further held there was ''nothing arbitrary about [DOE's] decision'' in the 2014 LCA GHG Report to compare emissions from exported U.S. LNG to emissions of coal or other sources of natural gas, rather than a variety of other possible fuel sources with which U.S. LNG might compete in importing nations.[25]

In the consolidated opinion in *Sierra Club II* issued on November 1, 2017, the D.C. Circuit ruled that ''[t]he court's decision in [*Sierra Club I*] largely governs the resolution of the [three] instant cases.'' [26] Upon its review of the remaining ''narrow issues'' in those cases, the Court again rejected Sierra Club's arguments under the NGA and NEPA, and upheld DOE's actions in issuing the non-FTA authorizations in those proceedings.[27]

The D.C. Circuit's decisions in *Sierra Club I and II*—including the Court's holding on the 2014 LCA GHG Report—continue to guide DOE's review of applications to export LNG to non-FTA countries.

II. Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update (LCA GHG Update)

In 2018, DOE commissioned NETL to conduct an update to the 2014 LCA GHG Report, referred to as the LCA GHG Update.[28] As with the 2014 Report, the LCA GHG Update compares life cycle GHG emissions of exports of domestically produced LNG to Europe and Asia, compared with alternative fuel sources (such as regional coal and other imported natural gas) for electric power generation in the destination countries. Although core aspects of the analysis—such as the scenarios investigated—are the same as the 2014 Report, NETL included three principal updates in the LCA GHG Update. In this section, we summarize the scope of the LCA GHG Update, as well as its methods, limitations, and conclusions.

A. Overview of the LCA GHG Update

In commissioning the LCA GHG Update, DOE sought information on the same two questions presented in the 2014 LCA GHG Report:

- How does domestically produced LNG exported from the United States compare with regional coal (or other LNG sources) used for electric power generation in Europe and Asia, from a life cycle GHG perspective?
- How do those results compare with natural gas sourced from Russia and delivered via pipeline to the same European and Asian markets? [29]

To evaluate these questions on the basis of more current information, NETL made the following three updates to the 2014 LCA GHG Report:

- Incorporated NETL's most recent characterization of upstream natural gas production, set forth in NETL's April 2019 report entitled, *Life Cycle Analysis of Natural Gas Extraction and Power Generation* (April 2019 LCA of Natural Gas Extraction and Power Generation); [30]
- Updated the unit processes for liquefaction, ocean transport, and regasification characterization using engineering-based models and publicly-available data informed and reviewed by existing LNG export facilities, where possible; and
- Updated the 100-year global warming potential (GWP) for methane (CH_4) to reflect the current Intergovernmental Panel on Climate Change's (IPCC) Fifth Assessment Report (AR5).[31]

In all other respects, the 2019 LCA GHG Update is unchanged from the 2014 Report.

B. The April 2019 LCA of Natural Gas Extraction and Power Generation

The primary component of natural gas is methane, a type of GHG. The methane emission rate—sometimes referred to as the methane leakage rate [32]—represents methane emissions released to the air through venting, fugitives, combustion, or other sources per unit of natural gas delivered to end users. For example, emissions of methane during the production, processing, transmission, and delivery of natural gas were 25% of total U.S. methane emissions in 2016 (the most recent year for which adequate data are available), and were 2.8% of all GHGs when comparing GHGs on a 100-year time frame.[33] The methane emission rate varies with the source of natural gas, due to the variability among geographic locations of natural gas-bearing formations and the different technologies used to extract natural gas.[34]

To evaluate changes in the scientific knowledge of methane and other GHG emissions associated with natural gas

[21] *Sierra Club I,* 867 F.3d at 203.

[22] *Id.* at 201–02.

[23] *Id.* at 202.

[24] *Id.* (citing *Myersville Citizens for a Rural Cmty., Inc.* v. *FERC,* 783 F.3d 1301, 1324 (D.C. Cir. 2015)).

[25] *Id.*

[26] *Sierra Club,* 703 Fed. Appx. 1 at * 2.

[27] *Id.*

[28] Nat'l Energy Technology Laboratory, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update* (DOE/NETL 2019/2041) (Sept. 12, 2019), *available at: https://www.energy.gov/sites/prod/files/2019/09/f66/2019%20NETL%20LCA-GHG%20Report.pdf.* Although the LCA GHG Update is dated September 12, 2019, DOE announced the availability of the LCA GHG Update on its website and in the **Federal Register** on September 19, 2019.

[29] *See id.* at 1.

[30] Nat'l Energy Technology Laboratory, *Life Cycle Analysis of Natural Gas Extraction and Power Generation* (DOE/NETL–2019/2039) (Apr. 19, 2019), *available at: https://www.netl.doe.gov/energy-analysis/details?id=3198* [hereinafter April 2019 LCA of Natural Gas Extraction and Power Generation].

[31] *See* LCA GHG Update at 1 (citing IPCC. 2013. Climate Change 2013 The Physical Science Basis. Intergovernmental Panel on Climate Change, *available at: http://www.climatechange2013.org/report/*).

[32] Because Sierra Club uses the term ''methane leakage rate'' instead of methane emission rate in its Comments, we use the terms interchangeably for purposes of this document.

[33] *See* April 2019 LCA of Natural Gas Extraction and Power Generation, at 3 (citation omitted).

[34] *See id.* at 1, 3–4, 76.

systems, NETL updates its LCA of Natural Gas Extraction and Power Generation every two to three years. NETL published the most recent version of this LCA on April 19, 2019.[35] The April LCA informs the LCA GHG Update in this proceeding, which in turn was published on September 12, 2019.[36]

Expanding upon NETL's previous LCAs of natural gas systems, the April 2019 LCA of Natural Gas Extraction and Power Generation provides a complete inventory of emissions to air and water, water consumption, and land use change.[37] It also evaluates the GHG emissions across the entire natural gas supply chain—including production, gathering and boosting, processing, transmission and storage, and distribution of natural gas to consumers.

For this LCA, NETL developed 30 scenarios as a way to better understand variability in natural gas systems. The results were generated using a model made up of 140 sources of emissions to account for different types of variability. Among other findings, NETL determined that the top contributors to carbon dioxide and methane emissions are combustion exhaust and other venting from compressor systems.[38] Additionally, NETL calculated a national average methane emission rate (or leakage rate) of 1.24%.[39] However, if the modeling boundaries end after pipeline transmission—which is the case for large-scale end users like power plants and liquefaction terminals—NETL calculated an average methane emission rate of 1.08%.[40]

[35] *See supra* at note 30.

[36] *See, e.g.,* LCA GHG Update at 1, 4.

[37] *See* April 2019 LCA of Natural Gas Extraction and Power Generation at 3 (stating that ''GHGs are not the only metric that should be considered when comparing energy options, so this analysis also includes a full inventory of air emissions, water use and quality, and land use.'').

[38] *Id.* at 1.

[39] *Id.* (95% confidence interval ranging from 0.84% to 1.76%); *see also id.* at 76–77 & Exh. 6–2.

[40] *Id.* at 77 (Exh. 6–2).

C. Purpose of the LCA GHG Update

At the time of the 2014 LCA GHG Report, NETL considered one medium-distance destination (a location in Europe) and one long-distance destination (a location in Asia), since the exact destination countries for U.S. LNG exports could not be predicted at the time.[41] Specifically, NETL applied its LCA model to represent: (1) Unconventional natural gas production and transportation to a U.S. Gulf Coast liquefaction facility (Gulf Coast facility), (2) liquefaction of the natural gas at the Gulf Coast facility, (3) transportation of the LNG to an import terminal in Rotterdam, Netherlands, to represent a European market; and (4) transportation of the LNG to an import terminal in Shanghai, China, to represent Asian markets.[42] At the time of the LCA GHG Update, those choices were still valid based on U.S. LNG exports to date.[43]

NETL determined that one of the most likely uses of U.S. LNG is to generate electric power in the destination countries. Accordingly, NETL used a parametric model for the scenarios to account for variability in supply chain characteristics and power plant efficiencies. In considering sources of fuel other than U.S. LNG, NETL assumed that producers in Europe and Asia could generate electricity in the following ways: (1) By obtaining natural gas from a local or regional pipeline, (2) by obtaining LNG from a LNG producer located closer geographically than the United States, or (3) by using regional coal supplies, foregoing natural gas altogether.[44]

Using this framework, NETL developed four study scenarios, identified below. To compare scenarios, NETL used a common denominator as the end result for each scenario: One megawatt-hour (MWh) of electricity delivered to the consumer, representing the final consumption of electricity. Additionally, NETL considered GHG emissions from all processes in the LNG supply chains—from the ''cradle'' when natural gas or coal is extracted from the ground, to the ''grave'' when electricity is used by the consumer. This method of accounting for cradle-to-grave emissions over a single common denominator is known as a life cycle analysis, or LCA.[45]

Using this LCA approach, NETL's objective was to model realistic LNG export scenarios—encompassing locations at both a medium and long distance from the United States—while also considering local fuel alternatives. The purpose of the medium and long distance scenarios was to establish likely results for both extremes (*i.e.,* both low and high bounds).[46]

D. Study Scenarios

NETL identified four modeling scenarios to capture the cradle-to-grave process for both the European and Asian cases. The scenarios vary based on where the fuel (natural gas or coal) comes from and how it is transported to the power plant. For this reason, the beginning ''cradle'' of each scenario varies, whereas the end, or ''grave,'' of each scenario is the same because the uniform goal is to produce 1 MWh of electricity. The first three scenarios explore different ways to transport natural gas; the fourth provides an example of how regional coal may be used to generate electricity, as summarized in Table 1:

[41] *See* LCA GHG Update at 2 n.1.

[42] *See id.*

[43] *See, e.g.,* U.S. Dep't of Energy, LNG Annual Report 2018, at 1–2 (Feb. 15, 2019), *available at: https://www.energy.gov/fe/downloads/lng-annual-report-2018* (shipments of domestically produced LNG delivered from February 2016 through December 2018).

[44] *See* LCA GHG Update at 2–3.

[45] The data used in the LCA GHG Update were originally developed to represent U.S. energy systems. To apply the data to this study, NETL adapted its natural gas and coal LCA models. The five life cycle stages used by NETL (or ''LC Stages''), ranging from Raw Material Acquisition to End Use, are identified in the LCA GHG Update at 2.

[46] *See id.* at 2 n.1.

TABLE 1—LCA GHG SCENARIOS ANALYZED BY NETL [47]

Scenario	Description	Key assumptions
1	• Natural gas is extracted in the United States from Appalachian Shale. • It is transported by pipeline to an LNG facility, where it is cooled to liquid form, loaded onto a LNG tanker, and transported to a LNG port in the receiving country (Rotterdam, Netherlands, for the European case and Shanghai, China, for the Asian case). • Upon reaching its destination, the LNG is re-gasified, then transported to a natural gas power plant.	The power plant is located near the LNG import site.
2	• Same as Scenario 1, except that the natural gas comes from a regional source closer to the destination. • In the European case, the regional source is Oran, Algeria, with a destination of Rotterdam. • In the Asian case, the regional source is Darwin, Australia, with a destination of Shanghai, China.	Unlike Scenario 1, the regional gas is produced using conventional extraction methods, such as vertical wells that do not use hydraulic fracturing. The LNG tanker transport distance is adjusted accordingly.
3	• Natural gas is produced in the Yamal region of Siberia, Russia, using conventional extraction methods [48]. • It is transported by pipeline directly to a natural gas power plant in either Rotterdam or Shanghai.	The pipeline distance was calculated based on a ''great circle distance'' (the shortest possible distance between two points on a sphere) between the Yamal district in Siberia and a power plant located in either Rotterdam or Shanghai.
4	• Coal is extracted in either Europe or Asia. It is transported by rail to a domestic coal-fired power plant.	This scenario models two types of coal widely used to generate steam-electric power: (1) Surface mined sub-bituminous coal, and (2) underground mined bituminous coal. Additionally, U.S. mining data and U.S. plant operations were used as a proxy for foreign extraction in Germany and China.

In all four scenarios, the 1 MWh of electricity delivered to the end consumer is assumed to be distributed using existing transmission infrastructure.[49]

E. GHGs Reported as Carbon Dioxide Equivalents

Recognizing that there are several types of GHGs, each having a different potential impact on the climate, NETL normalized GHGs for the study. NETL chose carbon dioxide equivalents (CO_2e), which convert GHGs to the same basis: an equivalent mass of carbon dioxide. CO_2e is a metric commonly used to estimate the amount of global warming that GHGs may cause, relative to the same mass of carbon dioxide released to the atmosphere.[50] NETL chose CO_2e using the GWP of each gas set forth in the IPCC's AR5, published in 2013.[51]

GWP is an impact category that comprises carbon dioxide, methane, and nitrous oxide (N_2O). All three of these gases have the ability to trap heat in the atmosphere, but each one has a unique heat trapping capacity and atmospheric decay rate, thus requiring an impact assessment method that allows aggregation of their impacts to a common basis. Without multiplying each of these gases by an equivalency factor (*e.g.,* a GWP), there is no way to directly compare them. Therefore, the IPCC uses the relative radiative forcing of these gases, the secondary effects of their decay, and feedback from the ecosystem—all of which are a function of a specified time frame—to develop the GWP equivalency factors.

In the Update, NETL notes that the IPCC AR5 gives the GWPs on a 20- and 100-year time frame that includes climate-carbon feedback.[52] NETL used a 20-year methane GWP of 87 and a 100-year methane GWP of 36. Because climate carbon effects are included in these GWP values, they are slightly higher than the GWP values used in the 2014 LCA GHG Report (which were 85 and 30, respectively). As a result, the LCA GHG Update reflects the most current GWP for methane as set forth in the IPCC AR5.[53]

F. Natural Gas Modeling Approach

NETL's natural gas model is flexible, allowing for the modeling of different methods of producing natural gas. For Scenario 1, all natural gas was modeled as unconventional gas from the Appalachian Shale, since that shale play reasonably represents new marginal gas production in the United States. For Scenarios 2 and 3, the extraction process was modeled after conventional onshore natural gas production in the United States. This includes both the regional LNG supply options that were chosen for this study (Algeria for Europe and Australia for Asia) and extraction in the Siberian region of Russia for pipeline transport to the power plants in Europe and Asia.[54]

In the above three natural gas scenarios, the natural gas is transported through a pipeline, either to an area that processes LNG (Scenarios 1 and 2) or directly to a power plant (Scenario 3). NETL's model also includes an option for all LNG steps—from extraction to consumption—known as the LNG supply chain. After extraction and processing, natural gas is transported through a pipeline to a liquefaction facility. The LNG is loaded onto an ocean tanker, transported to an LNG terminal, re-gasified, and fed to a pipeline that transports it to a power plant. NETL assumed that the natural gas power plant in each of the import destinations already exists and is located close to the LNG port, such that no additional pipeline transport of natural gas is modeled in the destination country.[55]

The amount of natural gas ultimately used to make electricity is affected by power plant efficiency. Therefore, the efficiency of the destination power plant is an important parameter required for determining the life cycle emissions for

[47] The four scenarios are set forth in the LCA GHG Update at 2–3 and also discussed at 4–5.

[48] Yamal, Siberia, was chosen as the extraction site because that region accounted for 82.6% of natural gas production in Russia in 2012. LCA GHG Update at 5.

[49] *See id.* at 3.

[50] *See id.*

[51] *See id.*

[52] *See id.* & n.2 (discussing the IPCC AR5's GWPs).

[53] *See id.*

[54] LCA GHG Update at 4.

[55] *See id.*

natural gas power. The less efficient a power plant is, the more natural gas it consumes and the more GHG emissions it produces per unit of electricity generated. The LCA GHG Update used a natural gas power plant efficiency of 46.4%, the same efficiency used in the 2014 Report.[56] This efficiency is consistent with the efficiencies of currently installed, large-scale natural gas power plants in the United States, as detailed in the Update.[57] NETL also assumed that the efficiencies used at the destination power plants (in Rotterdam and Shanghai) were the same as those used in the U.S. model, which are representative of fleet baseload power plants.[58]

G. Coal Modeling Approach

NETL modeled Scenario 4, the regional coal scenario, based on two types of coal: bituminous and sub-bituminous. Bituminous coal is a soft coal known for its bright bands. Sub-bituminous coal is a form of bituminous coal with a lower heating value. Both types are widely used as fuel to generate steam-electric power. NETL used its existing LCA model for the extraction and transport of sub-bituminous and bituminous coal in the United States as a proxy for foreign extraction in Germany and China. Likewise, NETL modeled foreign coal production as having emissions characteristics equivalent to average U.S. coal production. No ocean transport of coal was included to represent the most conservative coal profile (whether regionally sourced or imported).[59]

The heating value of coal is the amount of energy released when coal is combusted, whereas the heat rate is the rate at which coal is converted to electricity by a power plant. Both factors were used in the model to determine the feed rate of coal to the destination power plant (or the speed at which the coal would be used). For consistency, the LCA GHG Update used the same range of efficiencies that NETL used in the 2014 LCA GHG Report for the modeling of coal power in the United States. The Update also assumed the same range of power plant efficiencies for Europe and Asia as the U.S. model, which are representative of fleet baseload power plants.[60]

H. Key Modeling Parameters

NETL modeled variability among each scenario by adjusting numerous parameters, giving rise to hundreds of variables. Key modeling parameters described in the LCA GHG Update include, but are not limited to: (1) Lifetime well production rates, (2) emission factors for non-routine (or episodic) emissions,[61] (3) the flaring rate for natural gas,[62] (4) coal type (sub-bituminous or bituminous), (5) transport distance (ocean tanker for LNG transport, and rail for coal transport), and (6) the efficiency of the destination power plant.[63] To account for uncertainty, NETL developed distributions of low, expected, and high values when the data allowed. Otherwise, NETL gave an expected value for each parameter.[64]

NETL noted that the results of the LCA GHG Update are sensitive to these key modeling parameters—particularly changes in coal type, coal transport distance, and power plant net efficiency (*i.e.,* performance).[65] NETL also identified several study limitations attributable to challenges with LNG market dynamics and data availability in foreign countries, including that: (1) NETL had to model foreign natural gas and coal production based on U.S. models; (2) NETL had to model foreign power plant efficiencies based on data from U.S. power plants; and (3) the specific LNG export and import locations used in the Update represent an estimate for an entire region (*e.g.,* New Orleans representing the U.S. Gulf Coast).[66]

I. Results of the LCA GHG Update

As with the 2014 LCA GHG Report, two primary conclusions may be drawn from the LCA GHG Update.[67] First, use of U.S. LNG exports to produce electricity in European and Asian markets will *not* increase GHG emissions on a life cycle perspective, when compared to regional coal extraction and consumption for power production.[68] As shown below in Figures 1 and 2, the Update indicates that, for most scenarios in both the European and Asian regions, the generation of power from imported natural gas has lower life cycle GHG emissions than power generation from regional coal.[69] The use of imported coal in these countries would only increase coal's GHG profile. Given the uncertainty in the underlying model data, however, it is not clear if there are significant differences between the corresponding European and Asian cases other than the LNG transport distance from the United States and the pipeline distance from Russia.[70]

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[70] *See id.* at 22.

[71] *See id.* at 20 (Exh. 6–1).

[72] *See id.* at 21 (Exh. 6–2).

[73] LCA GHG Update at 21, 32.

[74] *See* U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States; Notice of Availability of Report Entitled Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update and Request for Comments, 84 FR 49278 (Sept. 19, 2019).

[75] *Id.* at 84 FR 49279.

[76] *Id.* at 84 FR 49280 (also stating that persons with an interest in individual docket proceedings

[60] *See id.* at 6–7.

[61] The key modeling parameters for the natural gas scenarios are provided in the LCA GHG Update at Exhibits 5–1 through Exhibit 5–6 (LNG and Russian natural gas). *See* LCA GHG Update at 8–14.

[62] Flaring rate is a modeling parameter because the GWP of vented natural gas can be reduced if it is flared, or burned, to create carbon dioxide. *See id.* at 8.

[63] *See generally id.* at 8–19 (key modeling parameters).

[64] *Id.* at 9.

[65] *See id.* at 18–19.

[66] *See id.* at 32 (summary and study limitations).

[67] For detailed study results, *see* LCA GHG Update at 20–31.

[68] *See id.* at 32.

[69] Although these figures present an expected value for each of the four scenarios, the figures should not be interpreted as the most likely values due to the wide range of scenario variability and data uncertainty. Rather, the values allow an evaluation of trends only—specifically, how each of the major processes (*e.g.,* extraction, transport, combustion) contribute to the total life cycle GHG emissions. *See id.* at 20.

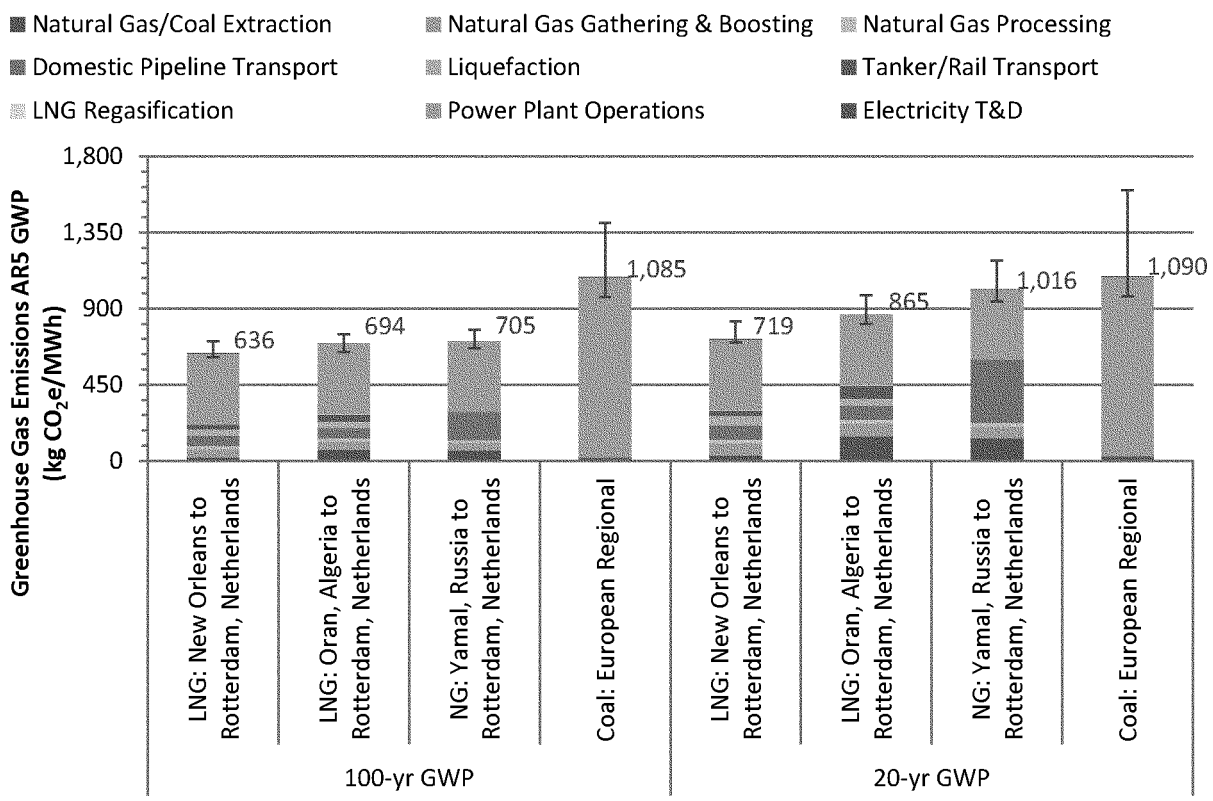

Figure 1: Life Cycle GHG Emissions for Natural Gas and Coal Power in Europe[71]

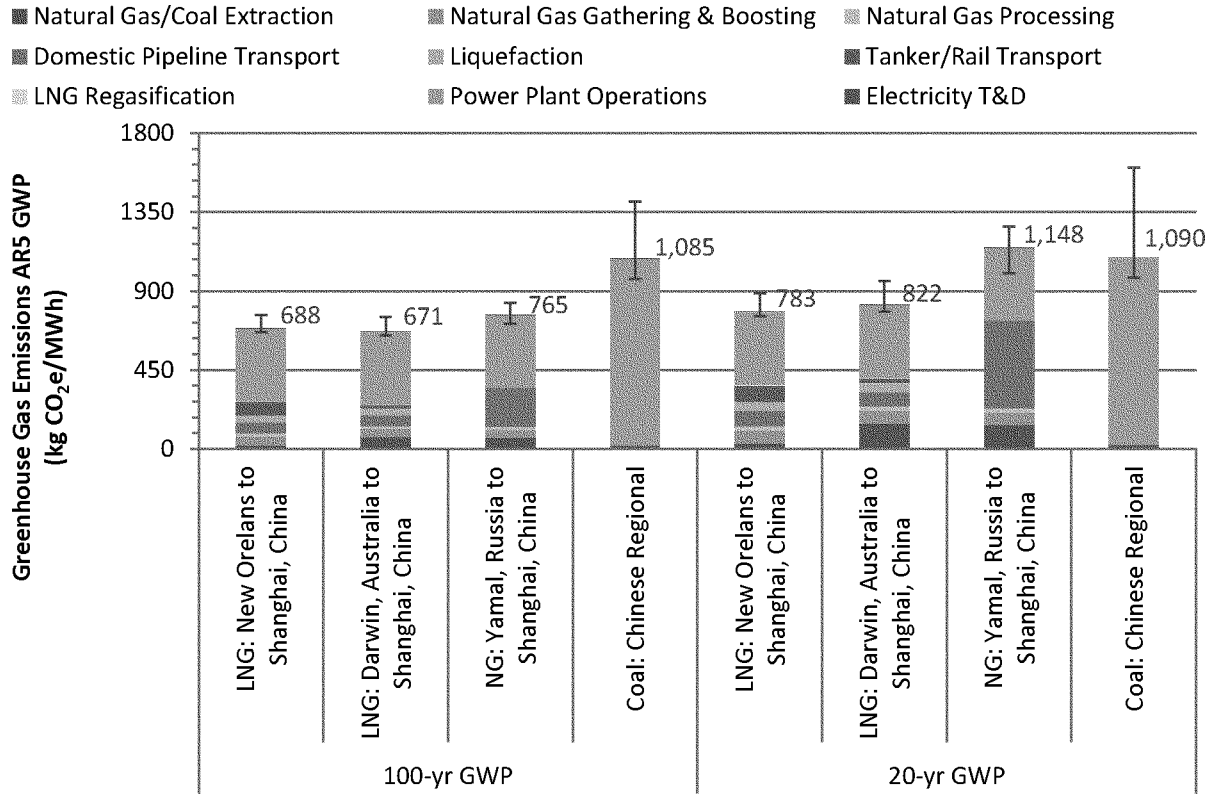

Figure 2: Life Cycle GHG Emissions for Natural Gas and Coal Power in Asia[72]

[70] *See id.* at 22.

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Second, on a 100-year GWP timeframe, there is an overlap between the ranges in the life cycle GHG emissions of U.S. LNG, regional alternative sources of LNG, and natural gas from Russia delivered to the European or Asian markets. Any differences are considered indeterminate due to the underlying uncertainty in the modeling data. Therefore, on a 100-year GWP timeframe, the life cycle GHG emissions among these sources of natural gas are considered similar, and no significant increase or decrease in net climate impact is anticipated from any of these three scenarios.[73]

When using a 20-year GWP timeframe, the Russian scenario (which transports natural gas via pipeline) has higher life cycle GHG emissions than the LNG scenarios, with no overlapping of error bars. Further, on a 20-year GWP time frame, the error bars for the Russian scenario overlap those for the regional coal scenarios for both Europe and Asia.

For additional information, please see the LCA GHG Update available on DOE's website at: *https://www.energy.gov/sites/prod/files/2019/09/f66/2019%20NETL%20LCA-GHG%20Report.pdf.*

III. Notice of Availability of the LCA GHG Update

On September 19, 2019, DOE published notice of availability (NOA) of the LCA GHG Update and a request for comments.[74] The purpose of the NOA was ''to provide additional information to the public and to inform DOE's decisions regarding the life cycle greenhouse gas emissions of U.S. [LNG] exports for use in electric power generation.'' [75] DOE stated that ''any person may file comments addressing the LCA GHG Update.'' [76]

Publication of the NOA began a 30-day public comment period that ended on October 21, 2018. DOE received seven comments in response to the NOA. Three commenters supported the LCA GHG Update: (1) LNG Allies, the U.S. LNG Association (LNG Allies), (2) the American Petroleum Institute (API), and (3) the Center for Liquefied Natural Gas (CLNG). Three commenters opposed the LCA GHG Update, or otherwise criticized aspects of the Update: (1) John Young, (2) the Industrial Energy Consumers of America (IECA), and (3) Sierra Club. The final comment, submitted by Croitiene ganMoryn, was non-responsive. Ms. ganMoryn did not address the LCA GHG Update but rather stated her opposition to exports of LNG generally.

The NOA and comments received on the NOA are available on DOE's website at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

IV. Comments on the LCA GHG Update and DOE Responses

DOE has evaluated the comments received during the public comment period. In this section, DOE discusses the relevant comments received on the LCA GHG Update and provides DOE's responses to those comments. DOE does not address comments outside the scope of the LCA GHG Update, such as concerns related to hydraulic fracturing (or ''fracking'') and the geopolitical aspects of exporting U.S. LNG.[77]

A. Scope of the LCA GHG Update

1. Comments

Commenters supporting the LCA GHG Update express support for NETL's study design. For example, LNG Allies supports NETL's transparency in presenting the LCA approach, the modeling scenarios used, and other aspects of the Update.[78] LNG Allies further states that the assumptions used in the LCA GHG Update track other peer-reviewed studies published between 2015 and 2019—which, LNG Allies asserts, found that exports of U.S. LNG yield ''substantial net positive global GHG benefits.'' [79] CLNG states that NETL's updates to the 2014 LCA GHG Report reflect the latest science and understanding of new technology, including a comprehensive upstream LCA model and updated shipping and regasification modules.[80] Similarly, API expresses support for DOE's decision to provide updates to the assumptions and methodologies used in the 2014 Report, and notes that the overall conclusions in the Update remain the same.[81]

Sierra Club observes that ''comparing the lifecycle emissions of US LNG with other fossil fuels can provide a useful perspective on the climate impacts of potential LNG exports.'' [82] Sierra Club, however, also criticizes the scope of the LCA GHG Update for this same comparison.

In Sierra Club's view, comparing the lifecycle emissions of electricity generated in foreign markets using various fossil fuels ''does not answer the question of how *DOE's* decision to approve *additional* US LNG exports, generally for 20-year licenses, will affect global greenhouse gas emissions throughout the approved project lifetimes.'' [83] Sierra Club argues that the LCA GHG Update fails to account for two factors: (1) That U.S. LNG exports allegedly will, to some extent, displace renewables or increase overall energy consumption, rather than only displacing other fossil fuels, and (2) that increasing LNG exports will cause ''domestic gas-to-coal switching,'' and thus result in an increase in coal use.[84] We address the domestic gas-to-coal switching argument in section IV.C.

As to the first point, Sierra Club asserts that the LCA GHG Update ignores the effect that exports of U.S. LNG will have on renewable sources of energy and overall energy consumption.[85] Sierra Club maintains that increasing international trade in LNG to increase global availability of natural gas will cause natural gas to displace use of wind, solar, or other renewables that would otherwise occur. Further, according to Sierra Club, ''recent peer reviewed research concludes that US LNG exports are likely to play only a limited role in displacing foreign use of coal . . . such that US LNG exports are likely to increase net global GHG emissions.'' [86]

Mr. Young similarly questions whether exports of U.S. LNG will delay or reduce the transition to renewable sources of energy, and whether LNG will replace or be added to coal generated power.[87]

2. DOE Response

The 2019 LCA GHG Update was a timely update to the 2014 LCA GHG Report and maintained the same analytical structure. As with the 2014 Report, the boundaries of the 2019 Update were developed with respect to questions about two fossil fuels—natural gas and coal—and where they

[71] *See id.* at 20 (Exh. 6–1).

[72] *See id.* at 21 (Exh. 6–2).

[73] LCA GHG Update at 21, 32.

[74] *See* U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States; Notice of Availability of Report Entitled Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update and Request for Comments, 84 FR 49278 (Sept. 19, 2019).

[75] *Id.* at 84 FR 49279.

[76] *Id.* at 84 FR 49280 (also stating that persons with an interest in individual docket proceedings already have been given an opportunity to intervene in or protest those matters).

[77] *See* Comments of John Young at 1–2.

[78] Comments of LNG Allies at 1.

[79] *Id.* at 1–2.

[80] Comments of CLNG at 2–3.

[81] Comments of API at 1–2.

[82] Comments of Sierra Club at 5.

[83] *Id.* at 1 (emphasis in original).

[84] *Id.*

[85] *Id.* at 3 (and section heading).

[86] *Id.* at 4 (citing Gilbert, A.Q. & Sovacool, B.K., *U.S. liquefied natural gas (LNG) exports: Boom or bust for the global climate?* Energy (Dec. 15, 2017) [hereinafter Gilbert & Sovacool]).

[87] Comments of John Young at 1.

come from. Although Sierra Club criticizes the Update for ''not looking at the whole picture,'' [88] the purpose of the LCA was to understand the life cycle GHG emissions from natural gas-fired power and how it varies with changes to natural gas sources, destinations, and transport distances. The LCA included coal-fired power as a comparative scenario because coal is currently the most likely alternative to natural gas-fired power for baseload power generation.

Additionally, the LCA is an attributional analysis, meaning that the natural gas and coal scenarios are considered independent supply chains. Therefore, the LCA does not account for supply or demand shifts caused by the use of one fuel instead of another fuel (or types of fuels).

For these reasons, the LCA GHG Update (like the 2014 Report) does not provide information on whether authorizing exports of U.S. LNG to non-FTA nations will increase or decrease GHG emissions on a global scale. Recognizing there is a global market for LNG, exports of U.S. LNG will affect the global price of LNG which, in turn, will affect energy systems in numerous countries. DOE further acknowledges that regional coal and imported natural gas are not the only fuels with which U.S.-exported LNG will compete. U.S. LNG exports may also compete with renewable energy, nuclear energy, petroleum-based liquid fuels, coal imported from outside East Asia or Western Europe, indigenous natural gas, synthetic natural gas derived from coal, and other resources. However, to model the effect that U.S. LNG exports would have on net global GHG emissions would require projections of how each of these fuel sources would be affected in each LNG-importing nation. Such an analysis would not only have to consider market dynamics in each of these countries over the coming decades, but also the interventions of numerous foreign governments in those markets. Moreover, the uncertainty associated with estimating each of these factors would likely render such an analysis too speculative to inform the public interest determination in DOE's non-FTA proceedings.

Although Sierra Club expresses concern with the scope of the LCA GHG Update, the D.C. Circuit held in 2017 that there was, in fact, ''nothing arbitrary about the Department's decision'' to compare emissions from exported U.S. LNG to emissions of coal or other sources of natural gas, rather than renewables or other possible fuel sources.[89] The Court's decision in *Sierra Club I* guided our development of this Update.[90]

Nonetheless, Sierra Club asserts that DOE could now conduct a more careful and informative analysis than it did in the 2014 Report.[91] Sierra Club does not cite any study that provides the sort of analysis it urges DOE to undertake. Rather, Sierra Club cites projections from the U.S. Energy Information Administration (EIA) that ''global energy consumption will steadily increase in the coming decades, and that this increase will be satisfied by growth in renewables and [natural] gas,'' [92] as well as projections by the International Energy Agency (IEA) that exports of LNG are likely to supply increased demand rather than displace existing generation.[93] Sierra Club also points to a study by Gilbert and Sovacool which, according to Sierra Club, concludes that U.S. LNG is ''likely to play only a limited role in displacing foreign use of coal.'' [94]

As explained previously, NETL's LCA GHG Update uses the most current data and methodology to assess GHG emissions. The materials cited by Sierra Club do not provide any new analysis to evaluate how exports of U.S. LNG may affect global GHG emissions. The market projections by EIA and IEA cited by Sierra Club simply provide a case of continued exports of U.S. LNG to support global energy demands. Conclusions by other analysts (such as the Gilbert and Sovacool study) provide a different analysis, but they do not provide new data or tools beyond what NETL already has integrated into the Update.

The reality is that, although it may be straightforward to model simplified cause-and-effect relationships between energy options (such as the direct displacement of coal with natural gas), the modeling of complex market interactions in different countries introduces significant uncertainty, while at the same time expanding study boundaries and hindering accurate comparisons.[95] For these reasons, DOE finds that Sierra Club has not provided new evidence to justify changes to the scope of the LCA GHG Update.

B. Roles of Natural Gas and Renewable Energy

1. Comments

In challenging the scope of the LCA, Sierra Club states that the ''primary question'' facing international markets that may import U.S. LNG is ''whether to meet increasing energy needs through [natural] gas or renewables.'' [96]

CLNG states, however, that natural gas is an ''ideal partner'' to renewable energy resources in global energy markets.[97] According to CLNG, when countries increase their use of natural gas for power generation, they both reduce their GHG emissions by switching to natural gas *and* have the opportunity to increase their use of renewable energy. CLNG asserts that, for every 1% increase in natural gas-powered electric generation, renewable power generation increases by 0.88%, further reducing emissions.[98] CLNG thus argues that natural gas is helping the transition to a lower-carbon future.[99]

2. DOE Response

Projections by IEA from November 2019 indicate that the question of how to meet the demand for global energy should not be framed as natural gas *or* renewables, as suggested by Sierra Club.[100] IEA's World Energy Model predicts medium to long-term energy trends, using simulations to replicate the inner-workings of energy markets.[101] In that Model, the Sustainable Development Scenario models the behavior of energy markets in reaction to holding the increase in global average temperature below a 2 °C increase from pre-industrial levels. The Sustainable Development Scenario projects that global CO_2 emissions will peak around 2020, then steeply decline by 2040. Although renewable energy sources will comprise much of this change—as renewables are projected to provide over 65% of global electricity generation by 2040—the use of natural gas remains

[88] Comments of Sierra Club at 3.

[89] *Sierra Club I,* 867 F.3d at 202 (finding that ''Sierra Club's complaint 'falls under the category of flyspecking' '') (citation omitted).

[90] *See supra* at § I.D.

[91] Comments of Sierra Club at 4.

[92] *Id.* (citing U.S. Energy Info. Admin., *International Energy Outlook 2019,* at 31).

[93] *Id.* at 3–4.

[94] *Id.* at 4 (citing Gilbert & Sovacool, *supra*).

[95] For example, in one recent study (cited with approval by LNG Allies), Kasumu *et al.* mention the interaction among fuel options for electricity generation (*e.g.,* LNG vs. renewables), but this study likewise did not model a complex cause-and-effect relationship between LNG and other fuels. *See* Kasumu, A.S., Li, V., Coleman, J.W., Liendo, J., & Jordaan, S.M. (2018). Country-level life cycle assessment of greenhouse gas emissions from liquefied natural gas trade for electricity generation. *Environmental Science & Technology,* 52(4), 1735–1746.

[96] Comments of Sierra Club at 4.

[97] Comments of CLNG at 4.

[98] *Id.* (citing National Bureau of Economic Research, ''Bridging the Gap: Do Fast Reacting Fossil Technologies Facilitate Renewable Energy Diffusion?'' (July 2016)).

[99] *Id.*

[100] *See* Comments of Sierra Club at 4.

[101] Internat'l Energy Agency, World Energy Model (Nov. 2019), *available at: https://www.iea.org/weo/weomodel/.*

part of the portfolio through 2040.[102] As a result, DOE concludes that natural gas is one part of an environmentally-preferable global energy portfolio.

C. Domestic Natural Gas-to-Coal Switching

1. Comments

Sierra Club asserts that the LCA GHG Update is flawed because it does not consider that increasing LNG exports will cause natural gas-to-coal switching in the United States.[103] Citing EIA's 2012 and 2014 LNG Export Studies for DOE, Sierra Club argues that some of the additional U.S. LNG to be exported will not be supplied by new production, but instead will be supplied by diverting natural gas from domestic consumers—which allegedly will cause an increase in domestic natural gas prices.[104] According to Sierra Club, these price increases will cause domestic consumers to switch to using coal for power generation. Sierra Club therefore claims that the LCA GHG Update should have evaluated how increasing U.S. LNG exports will lead to an increase in domestic coal use and, in turn, how global GHG emissions will change based on DOE's decision to approve LNG export applications.[105]

2. DOE Response

The purpose of the Update was to conduct a life cycle analysis of GHG emissions in Europe and Asia, not to predict future coal usage by U.S. consumers. This argument is thus beyond the scope of this proceeding.

Nonetheless, we note that the current price of natural gas in the United States is historically low, at less than $3.00/MMBtu. There would have to be substantial price increases before domestic consumers would switch from natural gas to coal. In 2018, however, DOE issued the 2018 LNG Export Study, which found that '' '[i]ncreasing U.S. LNG exports under any given set of assumptions about U.S. natural gas resources and their production leads to only small increases in U.S. natural gas prices.' '' [106] The 2018 LNG Export Study also refuted the concern that LNG exports would negatively impact domestic natural gas production.[107] Further, EIA's Reference Case in the *Annual Energy Outlook 2019* (AEO 2019) shows decreasing levels of coal consumption through 2050, falling from 677 million short tons (MMst) in 2018 to 538 MMst in 2050.[108] Although Sierra Club participated in the 2018 LNG Export Study proceeding, it did not raise concerns about gas-to-coal switching in that proceeding.[109] Sierra Club also does not acknowledge the findings of the 2018 LNG Export Study or EIA's projections in AEO 2019 in its comments on the LCA GHG Update.

We also note that, in prior LNG export proceedings, Sierra Club raised this natural gas-to-coal switching argument under the National Environmental Policy Act (NEPA). In *Sierra Club I,* the D.C. Circuit rejected this argument by Sierra Club. The Court agreed with DOE that ''the economic causal chain between its [non-FTA] export authorization and the potential use of coal as a substitute fuel for gas 'is even more attenuated' than its relationship to export-induced gas production.'' [110]

D. Global Warming Potential of Methane

1. Comments

Although CLNG states that it supports the conclusion of the LCA GHG Update, it contends that NETL used an incorrect 100-year Global Warming Potential (GWP) for methane of 36.[111] CLNG argues that this GWP value is out of line with most LCA practitioners and that, if NETL instead used a lower GWP of 28 or 30, the LCA GHG Update would show even greater benefits of U.S. LNG exports.[112]

2. DOE Response

Although the 2014 LCA GHG Report used a 100-year methane GWP of 30, that value is no longer appropriate today. In the LCA GHG Update, NETL used the 100-year methane GWP of 36, as set forth in the IPCC's Fifth Assessment Report (or AR5). The GWP value of 36 captures climate carbon feedbacks not reflected in lower GWP values for methane, and thus represents the current consensus of the international scientific and policy communities. DOE commissioned the LCA GHG Update in part to recognize this updated GWP value.[113]

E. Methane Emission Rate of U.S. Natural Gas Production

1. Comments

Sierra Club challenges the methane emission rate (also called the methane leakage rate) for U.S. natural gas production used in the LCA GHG Update. As explained previously, the methane emission rate measures the amount of methane that is emitted during the production, processing, and transportation of natural gas to a U.S. liquefaction facility.[114] Sierra Club points out that, in the Update, NETL used a methane leakage rate of 0.7% of the natural gas delivered. Sierra Club states that this figure underestimates the methane leakage rate of domestic natural gas production, and thus underestimates the lifecycle GHG emissions of U.S. LNG.[115]

First, Sierra Club argues that the 0.7% leakage rate is not consistent with NETL's supporting documentation. Sierra Club points to NETL's April 2019 LCA of Natural Gas Extraction and Power Generation, which found a national average methane emission rate of 1.24%.[116] Sierra Club further states that, even if it is appropriate to use a regional (as opposed to national) value representing natural gas coming from the Appalachian Shale (as NETL did in the Update), NETL's supporting documentation provides a leakage rate of 0.88% for Appalachian Shale production.[117]

Second, Sierra Club maintains that the 0.7% leakage rate is far lower than ''top-down'' measurements, which it contends provide a more accurate leakage rate. Top-down studies measure methane emissions by measuring—through aerial flyovers—atmospheric measurements where oil and natural gas activity is occurring. Sierra Club

[102] *See id.* at *https://www.iea.org/weo/weomodel/sds/* and *https://www.iea.org/weo2018/scenarios/.* Table A3 (at page 679) shows the Sustainable Development Scenario World Energy Demand for the years 2030 and 2040. In 2040, natural gas is projected to be 17% of total world electricity demand and meet 24% of total world primary energy demand under the Sustainable Development Scenario.

[103] Comments of Sierra Club at 1.

[104] *Id.* at 5.

[105] *Id.* at 1, 5.

[106] *See* U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports; Response to Comments Received on Study, 83 FR 67251, 67258 (quoting 2018 LNG Export Study), 67272 (same) (Dec. 28, 2018).

[107] *Id.* at 83 FR 62273.

[108] *See* U.S. Energy Info. Admin., *Annual Energy Outlook 2019* (with projections to 2050) (Jan. 24, 2019), *available at: https://www.eia.gov/outlooks/aeo/pdf/aeo2019.pdf.*

[109] *See* Sierra Club, Comments on the 2018 LNG Export Study (July 27, 2018), *available at: https://fossil.energy.gov/app/DocketIndex/docket/DownloadFile/582.*

[110] *Sierra Club I,* 867 F.3d at 201 (quoting DOE's order on rehearing) (denying Sierra Club's petition with respect to coal usage).

[111] Comments of CLNG at 3 n.3.

[112] *Id.*

[113] LCA GHG Update at 3 & n.2; *see also supra* at § II.E. Insofar as CLNG argues that the 100-year methane GWP of 36 skews the results of the LCA GHG Update, we refer CLNG to our prior proceedings, where we explained that a 100-year methane GWP of 36 versus 30 would not have materially affected the conclusions of the 2014 LCA GHG Report. *See, e.g., Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 3792–A, FE Docket No. 15–63–LNG, Opinion and Order Denying Request for Rehearing, at 37–38 (Oct. 20, 2016).

[114] *See supra* at § II.B.

[115] Comments of Sierra Club at 6 (citing LCA GHG Update at 27).

[116] *Id.*

[117] *See id.*

criticizes NETL's 0.7% leakage rate because it is taken from ''bottom-up'' measurement studies, which use measurements of methane emissions taken ''on the ground'' at natural gas production facilities.[118] We note that this choice is consistent with the 2014 Report, in which NETL also used a methane emission rate derived from bottom-up measurement studies.

Sierra Club argues that methane leakage rates from top-down measurement studies are more common in the published literature, and that bottom-up estimates are ''systemically too low.'' [119] According to Sierra Club, ''the likely average leak rate for U.S. natural gas production is 2.3% or more.'' [120] Therefore, in Sierra Club's opinion, the 0.7% leakage rate used in the Update significantly understates the likely climate impact of U.S. LNG exports.[121]

2. DOE Response

The average methane leakage rate estimated in the LCA GHG Update, at 0.7%, is based on NETL's analyses and relevant scientific literature.

As a starting point, NETL used Appalachian Shale in the Update to represent the upstream emissions from U.S. LNG exports. NETL chose this scenario because Appalachian Shale is a growing share of the U.S. natural gas supply, currently representing approximately 30% of U.S. natural gas production.[122] NETL's April 2019 LCA of Natural Gas Extraction and Power Generation showed a methane emission rate (or leakage rate) of 0.88% from cradle through distribution. This rate, like all GHG emissions in NETL's results, was bounded by wide uncertainty bounds that are driven by the variability in natural gas systems. The upper error bound for Appalachian Shale natural gas, from cradle through transmission, is 1.21%. When the boundaries of this emission rate are modified to represent natural gas production through *transmission* only (*i.e.,* not including distribution to the end consumer), the average methane emission rate is reduced to 0.7%. This boundary modification is necessary because LNG liquefaction terminals pull natural gas directly from the natural gas transmission network to supply exports—meaning the natural gas does not pass through local distribution networks to U.S. consumers (which would increase the leakage rate). Accordingly, NETL's choice of a 0.7% leakage rate is representative of natural gas produced in the Appalachian Shale region for purposes of this export-focused analysis.

Second, we note that the studies cited by Sierra Club were generally published between 2012 and 2014.[123] Sierra Club cites two more recent studies: A study published by Tong, *et al.* in 2015,[124] and a study published by Alvarez, *et al.* in 2018.[125] DOE addressed Sierra Club's argument based on several of the earlier studies in connection with the 2014 LCA GHG Report, and we incorporate by reference DOE's prior response.[126]

Turning to the Tong study, DOE notes that this study presents a LCA for fuel pathways for vehicles. Although the study includes a 2015-era estimates of methane emissions from the natural gas supply chain, its primary focus is *transportation.* Specifically, for natural gas supply chain emissions, the Tong study estimates a baseline methane leakage rate ranging from 1.0% to 2.2%, then multiplies this baseline rate by 1.5 to account for ''superemitters.'' (''Superemitters'' is an expression that has been adopted by natural gas analysts to describe a small number of emission sources that contribute a disproportionately large share of emissions to the total U.S. natural gas emission inventory.) The methodology used in the Tong study, however, is neither as specific nor as current as NETL's 2019 methodology, which characterizes upstream natural gas production using data published by NETL in the April 2019 LCA of Natural Gas Extraction and Power Generation.[127]

Likewise, the Alvarez study—which used a bottom-up approach—evaluates measurements taken between 2012 and 2016. These measurements covered the natural gas supply chain, from production through distribution, and included methane emissions from petroleum production. Nonetheless, most of these measurements were collected at the facility level, and do not provide information on component-level emission sources within the fence-lines of facilities. On this basis, the Alvarez study calculated an average methane emission rate (or leakage rate) of 2.3%. This rate is higher than the rate in EPA's Greenhouse Gas Inventory, which shows an average methane emission rate of 1.4% for all U.S. natural gas from production through distribution.[128] The Alvarez study further concluded that traditional inventory methods underestimate total methane emissions because they do not account for emissions from abnormal events, although the study did not provide data on what constitutes an abnormal event. Therefore, although the Alvarez study assembles emissions to a national level, its results do not provide insight on how methane emissions vary geographically or temporally.

Unlike the Tong and Alvarez studies, the LCA GHG Update accounts for methane emissions at the component level (*i.e.,* specific pieces of supply chain equipment) and accounts for geographic and temporal variability. To address the discrepancies between top-down and bottom-up measurement studies, NETL accounted for geographic and component variability in its April 2019 LCA on Natural Gas Extraction and Power Generation—which, in turn, was used as part of the 2019 Update. Specifically, NETL stratified EPA's Greenhouse Gas Reporting Program data into 27 scenarios that represent four extraction technologies and 12 onshore production basins (''techno-basins''). This approach allowed NETL to factor in the regional differences in natural gas production methods and geologic sources across the country, with regional variability in methane emission profiles.[129] The average life cycle methane emissions across NETL's techno-basins range from 0.8% to 3.2% (production through distribution).[130]

NETL's methodology thus acknowledges that there are combinations of natural gas extraction technologies and geographical regions that both exceed the methane emission rate (or leakage rate) calculated in the Alvarez study *and* that have upper error bounds that include the leakage rates from top-down studies. The existence of higher leakage rates does not undermine

[118] *See id.* at 6–8.

[119] *Id.* at 7.

[120] *See id.* at 8.

[121] Comments of Sierra Club at 8.

[122] *See, e.g.,* LCA GHG Update at 4, 9–11.

[123] *See* Comments of Sierra Club at 6–8.

[124] Tong, *et al., Comparison of Life Cycle Greenhouse Gases from Natural Gas Pathways for Medium and Heavy-Duty Vehicles,* 49 Environ. Sci. Technol. 12 (2015), *cited in* Comments of Sierra Club at 6 n.16 & Exh. 11 [hereinafter Tong study].

[125] Alvarez, *et al., Assessment of methane emissions from the U.S. oil and gas supply chain,* 361 Science 186 (July 13, 2018), *cited in* Comments of Sierra Club at 6 n.16 & Exh. 10 [hereinafter Alvarez study].

[126] *See, e.g., Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 3792–A, *supra* note 113, at 31–35 (stating, *inter alia,* that ''[t]he top-down studies cited by Sierra Club represent valuable research that advance our understanding of methane emissions, but do not form a robust basis for estimating the leakage rate from U.S. natural gas systems in the aggregate.'').

[127] LCA GHG Update at 1, 4–5; *see also supra* at § II.B (discussing the April 2019 LCA).

[128] *See* U.S. Envt'l Protection, 2018. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016. EPA 430–R–18–003 (Apr. 12, 2018), *cited in* LCA GHG Update at 33.

[129] *See, e.g.,* LCA GHG Update at 1, 4–5, 8–9.

[130] April 2019 LCA of Natural Gas Extraction and Power Generation, at 79 (Exh. 6–4).

NETL's use of 0.7% as the methane emission rate because part of NETL's analysis in the Update sought to address the discrepancies between the two types of measurements.

Further, as noted, NETL chose the Appalachian Shale scenario because the Appalachian Shale represents a growing share of U.S. natural gas production and is currently supporting the U.S. LNG export market. The other, higher leakage rates cited by Alvarez are merely indicative of the type of irregular behavior expected in highly variable natural gas systems, which have many contributors with skewed probability distribution functions (*e.g.,* superemitters).[131]

In sum, top-down and bottom-up methods are complementary, and more research and analysis are necessary to reconcile them. NETL has continued to update its LCA of Natural Gas Extraction and Power Generation with the current state of the science, inclusive of *both* top-down and bottom-up measurement data. By characterizing the variability inherent in EPA's Greenhouse Gas Reporting Program data, NETL's bottom-up method provides results that are comparable to top-down studies.[132] For these reasons, DOE concludes that a higher methane leakage rate derived through top-down studies is not inherently more accurate than the 0.7% rate calculated by NETL on the basis of its bottom-up method.

F. Other Aspects of NETL's Natural Gas Modeling Approach

1. Comments

Sierra Club and IECA assert that the LCA GHG Update either underestimates certain categories of GHG emissions (including methane) present at other stages of the LNG lifecycle or does not include them at all. Neither commenter explains how or to what extent these alleged deficiencies in NETL's natural gas modeling approach would affect the conclusions of the Update. However, both commenters assert that the Update must account for these emissions.[133]

First, Sierra Club contends that it was improper for NETL to assume that the natural gas power plant in each of the import destinations is located close to the LNG port, so that no additional pipeline transport of natural gas was modeled in the destination country.[134] Citing an article in *Bloomberg Business,* Sierra Club states that, ''in China, LNG is being transported from terminal to end users by *truck,* a process that presumably entails significant emissions even greater than transportation by pipeline.'' [135]

Second, Sierra Club contends that the LCA GHG Update should account for the fact that LNG may not proceed directly from the import facility to regasification due to an emerging LNG resale market.[136] Sierra Club states that resale (or re-export) of U.S. LNG in the destination country may involve additional steps in storing, moving, and shipping LNG, beyond the direct shipping routes assumed by NETL in its national gas modeling approach.[137]

Next, IECA identifies the following five types of emissions that, it states, should be included in the LCA GHG Update:

(1) GHG emissions from natural gas electricity consumption to compress the natural gas into LNG and to operate the liquefaction facility;

(2) GHG emissions from the LNG liquefaction process inside-the-fence line, including CO_2, methane, and GHG emissions emitted during the refrigeration process;

(3) Methane emissions inside-the-fence line, including those emitted during the loading and unloading of LNG;

(4) Methane emissions from pipelines used to serve the LNG facility, using the EIA/EPA national average methane leakage rates; and

(5) National average EIA/EPA GHG emissions from drilling oil and natural gas wells, plus any related power generation.[138]

Additionally, API states that the Update likely overestimated the emissions associated with the natural gas extraction and processing stage, citing the availability of new, low-leak equipment.[139] CLNG likewise asserts that NETL overestimated the GHG emissions associated with compressor stations and, by extension, pipelines.[140]

2. DOE Response

Addressing Sierra Club's first concern, DOE notes that the LCA GHG Update intentionally did not account for natural gas transmission between regasification facilities and power plants. This was a modeling simplification—the same one used in the 2014 Report—based on an assumption that large-scale natural gas power plants are located close to LNG import terminals.

As a way of testing the effect of this assumption, NETL has approximated the marginal increase in life cycle GHG emissions by adding 100 miles of natural gas pipeline transmission between the regasification facility and power plant. The April 2019 LCA of Natural Gas Extraction and Power Generation, at Exhibit 6–1, shows that there are approximately 6 kilograms (kg) of CO_2e emitted from natural gas transmission per megajoule (MJ) of delivered natural gas. These emissions comprise approximately 4.5 grams of CO_2 and 1.5 grams of methane (in 100-year methane GWPs). NETL's life cycle natural gas model uses an average transmission distance of 971 kilometers (km) and a natural gas combustion emission factor of approximately 2.7 kg CO_2/kg natural gas. This information allows the computation of a transmission energy intensity of 0.0017 g NG fuel/MJ-km and a transmission emission intensity factor of 0.0062 g CO_2e/MJ-km. After balancing these intensity factors with upstream natural gas losses and downstream power plant demands, DOE finds that an additional 100 miles of transmission between regasification and power generation increases the life cycle GHG emissions for NETL's New Orleans-to-Rotterdam scenario by only 1.8% (from 636 to 648 kg CO_2e/MWh). The magnitude of this increase would be similar for all LNG scenarios, and such a small increase would not change the conclusions of the LCA GHG Update.

With regard to truck transport, DOE agrees that trucks are another potential option for moving natural gas between import terminals and end users, including power plants. However, because truck transport of LNG is still relatively new and transport by pipeline remains the dominant way to move LNG to end users, NETL did not model LNG tanker truck transport for purposes of this analysis. In a fully developed LNG supply chain, we expect that LNG importers will invest in efficient, cost-effective infrastructure, like pipelines, to transport natural gas to end users. Sierra Club does not provide evidence, other than the *Bloomberg Business*

[131] *See, e.g.,* Brandt, A.R., Heath, G.A., & Cooley, D. (2016). Methane leaks from natural gas systems follow extreme distributions. *Environmental science & technology, 50*(22), 12512–12520.

[132] As one example, NETL has accounted for variability between top-down and bottom-up methods by evaluating liquids unloading. NETL produced a multivariable model that simulates liquids unloading at a basin level and generates methane emission rates that are comparable to top-down measurements (Zaimes, *et al.,* 2019). This method is included in NETL's latest work, including in the LCA GHG Update and the April 2019 LCA of Natural Gas Extraction and Power Generation.

[133] *See* Comments of Sierra Club at 8–9; Comments of IECA at 1.

[134] Comments of Sierra Club at 8 (discussing LCA GHG Update at 4).

[135] Comments of Sierra Club at 8 & n.26 (citing Dan Murtaugh, *Welcome to Gas Pipelines on Wheels,* Bloomberg Business (Nov. 5, 2018)).

[136] *Id.* at 9.

[137] *Id.*

[138] Comments of IECA at 1.

[139] Comments of API at 2.

[140] Comments of CLNG at 3 n.3 (referencing Exhibit 6–3 of the April 2019 LCA of Natural Gas Extraction and Power Generation).

article, to support this point, and we decline to make any changes to the LCA GHG Update on this basis.[141]

As to Sierra Club's concern regarding emissions potentially associated with the resale or re-export of U.S. LNG in importing countries, this issue is outside the scope of this proceeding. Nonetheless, in December 2018, DOE found that re-exports of U.S. LNG cargoes represent a ''very small percentage'' of global LNG trade.[142]

DOE next addresses the concerns raised by IECA, API, and CLNG concerning the alleged deficiencies or errors in NETL's natural gas modeling approach. First, IECA contends that the Update overlooks GHG emissions from natural gas electricity consumption to compress the natural gas into LNG and to operate the liquefaction facility. NETL's model, however, has a unit process that accounts for all inputs and outputs from liquefaction, including the portion of natural gas that a liquefaction facility sends to gas-fired turbines to generate power for the liquefaction trains.[143]

Second, IECA claims that the Update does not account for GHG emissions from the LNG liquefaction process inside-the-fence line, including GHG emissions released during the refrigeration process. In fact, NETL's unit process for liquefaction accounts for all GHG emissions from both onsite energy generation at the liquefaction facility and the operation of ancillary equipment at the facility. The unit process also includes fugitive methane emissions as reported by facility operators to EPA.[144]

Third, IECA contends that the Update does not account for methane emissions inside-the-fence line, including those emitted during the loading and unloading of LNG. IECA is correct that the Update does not account for this emission source, but NETL has conducted a screening analysis based on the length of a LNG tanker loading arm connector. This screening analysis determined that the scale of these emissions are miniscule in comparison to the fugitive emissions already accounted for in the liquefaction unit process.

Fourth, IECA asserts that the Update does not account for the methane emissions from pipelines used to serve the LNG facility, using the EIA and EPA national average methane leakage rates. NETL's unit process for transmission, however, is representative of a 971 km natural gas pipeline with fugitive emissions of methane, as well as intentional methane releases through routine blowdown and other pipeline maintenance events.[145] The data for these methane emissions are representative of industry reporting to EPA and emission factors used by EPA's Greenhouse Gas Inventory.

Finally, IECA contends that the LCA GHG Update does not account for national average EIA and EPA GHG emissions from drilling oil and natural gas wells, plus any related power generation. On the other hand, API and CLNG state that the Update likely overestimates other categories of GHG emissions in the natural gas supply chain. NETL's LCA, however, is a detailed, engineering-based life cycle model of the U.S. natural gas supply chain. It includes well drilling energy and emissions, as well as all ancillary systems used by the natural gas supply chain. It uses data from EIA, EPA, and other government sources, as well as data from peer-reviewed literature and fundamental engineering concepts to represent the energy and material flow of the entire natural gas supply chain.[146] DOE also believes that the uncertainty bounds strengthen the LCA by accounting for variability in natural gas systems.[147]

V. Discussion and Conclusions

Since August 2014, DOE's 2014 LCA GHG Report has been an important part of DOE's decision-making in numerous non-FTA orders issued to date. Although Sierra Club challenged DOE's conclusions based on the 2014 LCA GHG Report, the D.C. Circuit ruled in favor of DOE in 2017.[148] In 2018, DOE commissioned NETL to undertake the LCA GHG Update to ensure that the conclusions of the 2014 Report were still valid based on newer information, including the IPCC's updated 100-year GWP for methane.

NETL's detailed analysis, set forth in the LCA GHG Update dated September 12, 2019, is based on the most current available science, methodology, and data from the U.S. natural gas system to assess the GHGs associated with exports of U.S. LNG. The Update demonstrates that the conclusions of the 2014 LCA GHG Report have not changed. Specifically, the Update concludes that the use of U.S. LNG exports for power production in European and Asian markets will not increase GHG emissions from a life cycle perspective, when compared to regional coal extraction and consumption for power production.[149]

The LCA GHG Update estimates the life cycle GHG emissions of U.S. LNG exports to Europe and Asia, compared with certain other fuels used to produce electric power in those importing countries. While acknowledging uncertainty, the LCA GHG Update shows that, to the extent U.S. LNG exports are preferred over coal in LNG-importing nations, U.S. LNG exports are likely to reduce global GHG emissions on per unit of energy consumed basis for power production. Further, to the extent U.S. LNG exports are preferred over other forms of imported natural gas, they are likely to have only a small impact on global GHG emissions.[150] The key findings for U.S. LNG exports to Europe and Asia are summarized in Figures 1 and 2.[151]

Sierra Club continues to express its concern that exports of U.S. LNG may have a negative effect on the total amount of energy consumed in foreign nations and on global GHG emissions. The conclusions of the LCA GHG

[141] Among other observations about Sierra Club's truck argument, we note that imports of U.S. LNG as modeled in the LCA GHG Update would be delivered in large-scale LNG carriers capable of delivering the equivalent of more than three billion cubic feet of natural gas. Those deliveries would serve power plants on a scale requiring continuous supply of natural gas that would make deliveries by truck impracticable. Additionally, Sierra Club claims that LNG transported from terminals to end users by truck ''accounts for 12 percent of China's LNG use.'' Comments of Sierra Club at 8–9. Sierra Club cites the *Bloomberg Business* article for this statistic. We are unable to evaluate this statistic, however, as it is appears to be taken from a Wood Mackenzie report that is not part of the record. Finally, Sierra Club's argument is based on the assumption that all truck transport of LNG in China involves *imported* LNG. We note, however, that China produces its own natural gas, and also receives natural gas by pipeline from neighboring countries. These supplies of natural gas could be liquefied in China for delivery by truck.

[142] U.S. Dep't of Energy, Eliminating the End Use Reporting Provision in Authorizations for the Export of Liquefied Natural Gas; Policy Statement, 83 FR 65078, 65079 (Dec. 19, 2018) (citation omitted).

[143] LCA GHG Update at App. B (Unit Process Descriptions).

[144] *See id.*

[145] *See* April 2019 LCA of Natural Gas Extraction and Power Generation, at 21 (Exh. 3–7), 62–64 (Exhs. 4–4 and 4–6).

[146] *See, e.g.,* LCA Update at 1–9; April 2019 LCA of Natural Gas Extraction and Power Generation, at 57–58 (Exh. 4–1). With regard to CLNG's concern about emissions from gathering and boosting stations within the natural gas value chain, NETL modeled these emissions based on the current state of science at the time of analysis. Field measurement activities and related research are currently focused on improving the understanding of methane emissions and the representativeness to regional operations. DOE agrees that this is an area of continual scientific research to improve upon previous understandings of the contribution of gathering and boosting operations to the total life cycle analysis.

[147] *See, e.g.,* LCA GHG Update at 9, 32.

[148] *See supra* at § I.D (discussing *Sierra Club I,* 867 F.3d at 202).

[149] LCA GHG Update at 32.

[150] *See id.* at 21, 32.

[151] *See supra* at § II.I.

Update, combined with the observation that many LNG-importing nations rely heavily on fossil fuels for electric generation, suggest that exports of U.S. LNG may decrease global GHG emissions, although there is substantial uncertainty on this point, as indicated above.[152] Further, based on the evidence, we see no reason to conclude that U.S. LNG exports will increase global GHG emissions in a material or predictable way. Neither Sierra Club nor the other commenters opposing the LCA GHG Update have provided sufficient evidence to rebut or otherwise undermine these findings.

In sum, DOE finds that the LCA GHG Update is both fundamentally sound and supports the proposition that exports of LNG from the lower-48 states will not be inconsistent with the public interest. As stated, DOE will consider each pending and future non-FTA application as required under the NGA and NEPA, based on the administrative record compiled in each individual proceeding.

Signed in Washington, DC, on December 19, 2019.

Steven Winberg,

Assistant Secretary, Office of Fossil Energy.

[FR Doc. 2019–28306 Filed 12–31–19; 8:45 am]

BILLING CODE 6450–01–P

[152] *See* LCA GHG Update at 32.

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA submitted an information collection request for extension as required by The Paperwork Reduction Act of 1995. The information collection requests a three-year extension with changes to the *Electric Power & Renewable Electricity Surveys* (EPRES), OMB Control Number 1905–0129. The collection consists of eight surveys and collects data from entities involved in the production, transmission, delivery, and sale of electricity, and the manufacture, shipment, import, and export of photovoltaic cells and modules in maintaining the reliable operation of the power system. The data collected are the primary source of information on the nation's electric power system.

DATES: Comments on this information collection must be received no later than February 3, 2020. If you anticipate any difficulties in submitting your comments by the deadline, contact the OMB Desk Officer by email or mail.

ADDRESSES: Written comments should be sent to OMB Desk Officer: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503. *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: If you need additional information or copies of the information collection instrument, send your request to Daniel Bier by email at *Electricity2020@eia.gov,* or by phone at (202) 586–0379. The forms and instructions are available on EIA's website at *https://www.eia.gov/survey/.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0129;

(2) *Information Collection Request Title:* Electric Power & Renewable Electricity Surveys;

The surveys included in this information collection request are:

- Form EIA–63B *Photovoltaic Module Shipments Report;*
- Form EIA–860 *Annual Electric Generator Report;*
- Form EIA–860M *Monthly Update to the Annual Electric Generator Report;*
- Form EIA–861 *Annual Electric Power Industry Report;*
- Form EIA–861S *Annual Electric Power Industry Report (Short Form;*
- Form EIA–861M *Monthly Electric Power Industry Report;*
- Form EIA–923 *Power Plant Operations Report; and*
- Form EIA–930 *Balancing Authority Operations Report.*

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* The EPRES survey program collects data from business entities involved in the production, transmission, delivery, and sale of electricity, and in maintaining the reliable operation of the power system. The data collected are the primary source of information on the nation's electric power industry.

The individual surveys and their uses are described below:

- Form EIA–63B *Photovoltaic Module Shipments Report* collects information on photovoltaic module manufacturing, shipments, technology types, revenue, and related information. The data collected on this form are used by DOE, Congress, other government and non-government entities, and the public to monitor the current status and trends of the photovoltaic industry.
- Form EIA–860 *Annual Electric Generator Report* collects data on existing and planned electric generation plants, and associated equipment including generators, boilers, cooling systems, and environmental control systems to provide information on the generating capacity of the U.S. electric grid.
- Form EIA–860M *Monthly Update to the Annual Electric Generator Report* collects data on the status of proposed new generators scheduled to begin commercial operation within the future 12-month period; and existing generators that have proposed modifications that are scheduled for completion within one month as well as existing generators scheduled to shut down within the subsequent 12 months.
- Form EIA–861 *Annual Electric Power Industry Report* collects annual information on the retail sale, distribution, transmission, and generation of electric energy in the United States and its territories. The data include related activities such as energy efficiency and demand response programs. In combination with Form EIA–861S short form and the monthly Form EIA–861M, this annual survey provides coverage of sales to ultimate customers of electric power and related activities. Form EIA–861S, *Annual Electric Power Industry Report (Short Form)* collects a limited set of information annually from small companies involved in the retail sale of electricity. A complete set of annual data are collected from large companies on Form EIA–861. The small utilities that currently report on Form EIA–861S are required to complete Form EIA–861 once every eight years to provide updated information for the statistical estimation of uncollected data. Form EIA–861M, *Monthly Electric Power Industry Report* collects monthly information from a sample of electric utilities, energy service providers and distribution companies that sell or deliver or deliver electric power to end users. Data included on this form includes sales and revenue for end-use sectors—residential, commercial, industrial, and transportation. This survey is the monthly complement to the annual data collection from the universe of respondents that report on Form EIA–861 and Form EIA–861S.
- Form EIA–923 *Power Plant Operations Report* collects information from electric power plants in the United States on electric power generation, energy source consumption, end of reporting period fossil fuel stocks, as well as the quality and cost of fossil fuel receipts.

• Form EIA–930 *Balancing Authority Operations Report* collects a comprehensive set of the current day's system demand data on an hourly basis and the prior day's basic hourly electric system operating data on a daily basis. The data provide a basic measure of the current status of electric systems in the United States and can be used to compare actual system demand with the day-ahead forecast, thereby providing a measure of the accuracy of the forecasting used to commit resources. In addition, the data can be used to address smart grid related issues such as integrating wind and solar generation, improving the coordination of natural gas and electric short-term operations and expanding the use of demand response, storage, and electric vehicles in electric systems operations.

(4a) *Changes to Information Collection:*

Form EIA–411

EIA is discontinuing Form EIA–411.

(5) *Annual Estimated Number of Respondents:* 19,789:

Form EIA–63B has 55 respondents;

Form EIA–860 has 4,757 respondents;

Form EIA–860M has 312 respondents;

Form EIA–861 has 1,675 respondents;

Form EIA–861S has 1,730 respondents;

Form EIA–861M has 620 respondents;

Form EIA–923 has 10,575 respondents;

Form EIA–930 has 65 respondents.

(6) *Annual Estimated Number of Total Responses:* 75,206.

(7) *Annual Estimated Number of Burden Hours:* 170,041 hours.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $13,351,619 (170,041 burden hours times $78.52 per hour). EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on December 17, 2019.

Nanda Srinivasan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2019–28322 Filed 12–31–19; 8:45 am]

BILLING CODE 6450–01–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: ER19–456–003.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Mor-Gran-Sou Electric Cooperative Formula Rate Compliance Filing to be effective 2/1/2019.

Filed Date: 12/26/19.

Accession Number: 20191226–5028.

Comments Due: 5 p.m. ET 1/16/20.

Docket Numbers: ER20–683–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Tri-State Wholesale Electric Service Contracts to be effective 3/20/2020.

Filed Date: 12/26/19.

Accession Number: 20191226–5000.

Comments Due: 5 p.m. ET 1/16/20.

Docket Numbers: ER20–684–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–12–26_SA 3176 NSP–NSP 1st Rev GIA (J460) to be effective 12/10/2019.

Filed Date: 12/26/19.

Accession Number: 20191226–5033.

Comments Due: 5 p.m. ET 1/16/20.

Docket Numbers: ER20–685–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–12–26_SA 1634 ITC Midwest-Jeffers Wind 20 2nd Rev GIA (G442) to be effective 12/11/2019.

Filed Date: 12/26/19.

Accession Number: 20191226–5112.

Comments Due: 5 p.m. ET 1/16/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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: December 26, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28297 Filed 12–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently

received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
CP18–46–000	12–11–19	Industrial Energy Consumers of America.
Exempt:		
1. CP19–494–000	12–3–2019	FERC Staff.[1]
2. CP16–9–000	12–11–2019	U.S. Congress.[2]
3. P–2232–759	12–11–2019	U.S. Congressman Mark R. Meadows.
4. CP16–9–000	12–16–2019	U.S. Congressman Joseph P. Kennedy, III.

[1] Telephone Memorandum on December 3, 2019 with Nicholas Haus (FERC third party contractor with Merjent, Inc.) and Allen Swab Officer of Town of Hegins Zoning.
[2] U.S. Congressman Joseph P. Kennedy, III and U.S. Congressman Stephen F. Lynch.

Dated: December 26, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28299 Filed 12–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–28–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on December 17, 2019, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, filed in Docket No. CP20–28–000 a prior notice request pursuant to sections 157.203, 157.205, 157.208, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000. Columbia is requesting authorization to relocate and/or abandon segments of Columbia's existing Line SM–116 due to highwall and area surface mining to be performed by Central Appalachian Mining on their Millseat Surface Mine (Line SM–116 Forced Relocation Project or Project). The relocation and/or abandonment activities will take place in Mingo County, West Virginia. Columbia states that the new Project infrastructure will have an equivalent designed delivery capacity as the facilities being abandoned and will not result in a reduction or abandonment of service. Columbia estimates the cost of the Project to be $23.2 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Sorana Linder, Director, Modernization & Certificates, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, by telephone at (832) 320–5209, or by email at *sorana_linder@tcenergy.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: December 26, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28296 Filed 12–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–1–000]

Commission Information Collection Activities (FERC–549); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–549 (NGPA Title III Transactions and NGA Blanket Certificate Transactions) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due February 3, 2020.

ADDRESSES: Comments filed with OMB, identified by OMB Control No. 1902–0086, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov,* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC20–1–000, by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–549, NGPA Title III Transactions and NGA Blanket Certificate Transactions.

OMB Control No.: 1902–0086.

Type of Request: Three-year extension of the FERC–549 information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: On October 23, 2019, the Commission published a Notice in the **Federal Register** (84 FR 56805) in Docket No. IC20–1–000 requesting public comments. The Commission received no public comments.

FERC–549 is required to implement the statutory provisions governed by Sections 311 and 312 of the Natural Gas Policy Act (NGPA) (15 U.S.C. 3371–3372) and Section 7 of the Natural Gas Act (NGA) (15 U.S.C. 717f). The reporting requirements for implementing these provisions are contained in 18 CFR part 284.

Transportation for Intrastate Pipelines

In 18 CFR 284.102(e), the Commission requires interstate pipelines to obtain proper certification in order to ship natural gas on behalf of intrastate pipelines and local distribution companies (LDC). This certification consists of a letter from the intrastate pipeline or LDC authorizing the interstate pipeline to ship gas on its behalf. In addition, interstate pipelines must obtain from its shippers the certifications including sufficient information to verify that their services qualify under this section.

In 18 CFR 284.123(b), the Commission provides that intrastate gas pipeline companies file for Commission approval of rates for services performed in the interstate transportation of gas. An intrastate gas pipeline company may elect to use rates contained in one of its then effective transportation rate schedules on file with an appropriate state regulatory agency for intrastate service comparable to the interstate service or file proposed rates and supporting information showing the rates are cost based and are fair and equitable. It is the Commission policy that each pipeline must file at least every five years to ensure its rates are fair and equitable. Depending on the business process used, either 60 or 150 days after the application is filed, the rate is deemed to be fair and equitable unless the Commission either extends the time for action, institutes a proceeding or issues an order providing for rates it deems to be fair and equitable.

In 18 CFR 284.123(e), the Commission requires that within 30 days of commencement of new service any intrastate pipeline engaging in the transportation of gas in interstate commerce must file a statement that includes the interstate rates and a description of how the pipeline will engage in the transportation services, including operating conditions. If an intrastate gas pipeline company changes its operations or rates it must amend the statement on file with the Commission. Such amendment is to be filed not later than 30 days after commencement of the change in operations or change in rate election.

Market-Based Rates for Storage

In 2006, the Commission amended its regulations to establish criteria for obtaining market-based rates for storage services offered under 18 CFR 284.501–505. First, the Commission modified its market-power analysis to better reflect the competitive alternatives to storage. Second, pursuant to the Energy Policy Act of 2005 (EPAct 2005), the Commission promulgated rules to implement section 4(f) of the Natural Gas Act, to permit underground natural gas storage service providers that are unable to show that they lack market power to negotiate market-based rates in circumstances where market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services, and where customers are adequately protected. The revisions were intended to facilitate the development of new natural gas storage capacity while protecting customers.

Code of Conduct

The Commission's regulations at 18 CFR 284.288 and 284.403 provide that applicable sellers of natural gas adhere to a code of conduct when making gas sales in order to protect the integrity of the market. As part of this code, the Commission imposes a record retention requirement on applicable sellers to ''retain, for a period of five years, all data and information upon which it billed the prices it charged for natural gas it sold pursuant to its market based sales certificate or the prices it reported for use in price indices.'' FERC uses these records to monitor the jurisdictional transportation activities and unbundled sales activities of interstate natural gas pipelines and blanket marketing certificate holders.

The record retention period of five years is necessary due to the importance of records related to any investigation of

possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with the rule prohibiting market manipulation (regulations adopted in Order No. 670, implementing the EPAct 2005 anti-manipulation provisions) and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price data may be relevant.

Failure to have this information available would mean the Commission is unable to perform its regulatory functions and to monitor and evaluate transactions and operations of interstate pipelines and blanket marketing certificate holders.

Type of Respondents: Jurisdictional interstate and intrastate natural gas pipelines.

Estimate of Annual Burden: [1] The Commission estimates the annual burden and cost for the information collection as follows.

FERC–549—NGPA Title III Transactions and NGA Blanket Certificate Transaction [2]

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hrs. & cost ($) per response	Total annual burden hours & total annual cost ($) (rounded)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Transportation by Pipelines.[3]	53	2	106	50 hrs.; $5,331	5,300 hrs.; $565,086	$10,662
Market-Based Rates.[4]	1	1	1	350 hrs.; $37,317	350 hrs.; $37,317	37,317
Total			107		5,650 hrs.;$602,403	

Record Retention Requirements for Holders of Blanket Marketing or Unbundled Sales Certificates

Labor burden and cost	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hrs. & cost ($) per response	Total annual burden hours & total annual cost ($) (rounded)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Code of Conduct (record-keeping).[5] [6]	319	1	319	1 hr.; $33.39	319 hrs.; $10,651	$33.39
Total			319		319 hrs.; $10,651	

Storage Cost for Record Retention Requirements for Holders of Blanket Marketing or Unbundled Sales Certificates

	Total number of responses	Cost ($) per respondent	Total annual cost ($)
	(1) * (2) = (3)	(4)	(3) * (4) = (5)
Paper Storage	319	$80.75	$25,759.25
Electronic Storage	319	3.18	1,014.42
Total Storage Cost	319		26,773.67

Storage Cost: [7] In addition to the burden and cost for labor, the table above reflects an additional cost for record retention and storage:

- Paper storage costs (using an estimate of 12.5 cubic feet × $6.46 per cubic foot): $80.75 per respondent annually. Total annual paper storage cost to industry ($80.75 × 319 respondents): $25,759.25. This estimate assumes that a respondent stores 12.5 cubic feet of paper. We expect that this

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[2] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $106.62 per Hour = Average Cost per Response. The hourly average of $106.62 (for wages and benefits) assumes equal time is spent by an economist and lawyer. The average hourly cost (for wages plus benefits) is: $70.38 for economists (occupation code 19–3011) and $142.86 for lawyers (occupation code 23–0000). (The figures are taken from the Bureau of Labor Statistics, May 2018 figures at *http://www.bls.gov/oes/current/naics2_22.htm.*)

[3] The entities affected by 18 CFR 284.123(b) and (e) are intrastate pipelines. Interstate and intrastate pipelines are affected by 18 CFR 284.102(e). Since 2016, the Commission has not received any filings under 18 CFR 284.102(e).

[4] 18 CFR 284.501–505.

[5] 18 CFR 284.288 and 284.403.

[6] For the Code of Conduct record-keeping, the $33.39 hourly cost figure comes from the average cost (wages plus benefits) of a file clerk (Occupation Code 43–4071) as posted on the BLS website (*http://www.bls.gov/oes/current/naics2_22.htm*).

[7] Each of the 319 entities is assumed to have both paper and electronic record retention. Internal analysis assumes 50% paper storage and 50% electronic storage.

estimate should trend downward over time as more companies move away from paper storage and rely more heavily on electronic storage.

• Electronic storage costs: $3.18 per respondent annually. Total annual electronic storage cost to industry ($3.18 × 319 respondents): $1,014.42. This calculation estimates storage of approximately 200 MB per year with a cost of $3.18. We expect that this estimate should trend downward over time as the cost of electronic storage technology, including cloud storage, continues to decrease. For example, external hard drives of approximately 500GB are available for approximately $50. In addition, cloud storage plans from multiple providers for 1TB of storage (with a reasonable amount of requests and data transfers) are available for less than $35 per month.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 26, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28298 Filed 12–31–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–357–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 122319 Negotiated Rates—Freepoint Commodities LLC R–7250–26 to be effective 1/1/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5007.
Comments Due: 5 p.m. ET 1/6/20.
Docket Numbers: RP20–358–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 122319 Negotiated Rates—Freepoint Commodities LLC R–7250–27 to be effective 1/1/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5008.
Comments Due: 5 p.m. ET 1/6/20.
Docket Numbers: RP20–359–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Negotiated Rate Agreement Update (SoCal Feb 20) to be effective 2/1/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5052.
Comments Due: 5 p.m. ET 1/6/20.
Docket Numbers: RP20–360–000.
Applicants: Adelphia Gateway, LLC.
Description: § 4(d) Rate Filing: Adelphia Negotiated Rate and Non-conforming Agreements filing to be effective 1/3/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5095.
Comments Due: 5 p.m. ET 1/6/20.
Docket Numbers: RP20–361–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 122319 Negotiated Rates—Mercuria Energy America, Inc. R–7540–02 to be effective 1/1/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5120.
Comments Due: 5 p.m. ET 1/6/20.
Docket Numbers: RP20–362–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: List of Non-Conforming Service Agreements (Gateway) to be effective 1/1/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5148.
Comments Due: 5 p.m. ET 1/6/20.
Docket Numbers: RP20–363–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreement Update (SWG) to be effective 2/1/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5172.
Comments Due: 5 p.m. ET 1/6/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 26, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28295 Filed 12–31–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0751; FRL–10003–01]

Pesticide Registration Review; Revised Interim Registration Review Decision for Sodium Cyanide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised interim registration review decision for sodium cyanide.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT:** *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed a revised interim decision for sodium cyanide, listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of sodium cyanide, listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's revised interim registration review decisions for sodium cyanide, shown in the following table. The interim registration review decision is supported by a rationale included in the docket established for the chemical.

TABLE—REGISTRATION REVIEW REVISED INTERIM DECISION BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Sodium Cyanide (Case 8002)	EPA–HQ–OPP–2010–0752	Michelle Nolan, *nolan.michelle@epa.gov,* (703) 347–0258.

The proposed interim registration review decision for sodium cyanide was posted to the docket and the public was invited to submit any comments or new information. EPA addressed the comments and/or information received during the 60-day comment period for the proposed interim decisions in the discussion for sodium cyanide. Comments from the 60-day comment period that were received may or may not have affected the Agency's interim decision. Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemical listed in the Table will remain open until all actions required in the interim decision have been completed.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 11, 2019.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2019–28337 Filed 12–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–10002–65]

Access to Confidential Business Information by Eastern Research Group and Its Identified Subcontractor, PG Environmental

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor and subcontractor, Eastern Research Group (ERG) of Lexington, MA and PG Environmental of Golden, CO, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than January 9, 2020.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Recie Reese, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8276; fax number: (202) 564–8251; email address: *reese.recie@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003- 004 is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

Under EPA contract number EP–W–15–006, contractor and subcontractor ERG of 110 Hartwell Ave, Suite 1, Lexington, MA and PG Environmental of 1113 Washington Ave, Golden, CO will assist the Office of Pollution Prevention and Toxics (OPPT) in enforcement program implementation; enforcement case support; conducting inspections; provide laboratory support; and perform analysis.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number EP–W–15–006, ERG and PG Environmental will require

access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ERG and PG Environmental personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ERG and PG Environmental access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and ERG's site located at 14555 Avion Parkway, Suite 200, Chantilly, VA, in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until April 30, 2020. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

ERG and PG Environmental personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 5, 2019.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–28341 Filed 12–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0750; FRL–10002–92]

Pesticide Registration Review; Proposed Interim Decisions for Several Triazines; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions and opens a 60-day public comment period on the proposed interim decisions for atrazine, propazine, and simazine.

DATES: Comments must be received on or before March 2, 2020.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim decisions for all pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in Table 1, and opens a 60-day public comment period on the proposed interim registration review decisions.

TABLE 1—PROPOSED INTERIM DECISIONS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Atrazine Case	EPA–HQ–OPP–2013–0266	Linsey Walsh, *walsh.linsey@epa.gov,* 703-347-0588.
Propazine Case	EPA–HQ–OPP–2013–0250	Carolyn Smith, *smith.carolyn@epa.gov,* 703-347-8325.
Simazine Case	EPA–HQ–OPP–2013–0251	Christian Bongard, *bongard.christian@epa.gov,*703-347-0337.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in the tables in Unit IV, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in Table 1 in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Tables in Unit

IV. Comments Received After the Close of the Comment Period Will Be Marked ''Late.'' EPA Is Not Required To Consider These Late Comments

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 9, 2019.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2019–28339 Filed 12–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–10002–07]

Registration Review; Draft Human Health and/or Ecological Risk Assessments for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and/or ecological risk assessments for the registration review of chromated arsenicals; creosote; dichromic acid, disodium salt, dehydrate; and pentachlorophenol.

DATES: Comments must be received on or before March 2, 2020.

ADDRESSES: Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, are available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For pesticide specific information contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Richard Fehir, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–8101; email address: *fehir.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at

http://www.epa.gov/dockets/comments.html.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all pesticides listed in the Table in Unit IV. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's human health and/or ecological risk assessments for the pesticides shown in the following table, and opens a 60-day public comment period on the risk assessments.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Chromated Arsenicals Case, 0132	EPA–HQ–OPP–2015–0349	Daniel Halpert, *halpert.daniel@epa.gov,* (703) 347–0133.
Creosote, Case 0139	EPA–HQ–OPP–2014–0823	Daniel Halpert, *halpert.daniel@epa.gov,* (703) 347–0133.
Dichromic acid, disodium salt, dehydrate, Case 5012.	EPA–HQ–OPP–2010–0243	Daniel Halpert, *halpert.daniel@epa.gov,* (703) 347–0133.
Pentachlorophenol, Case 2505	EPA–HQ–OPP–2014–0653	Daniel Halpert, *halpert.daniel@epa.gov,* (703) 347–0133.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit IV. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

Information submission requirements. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 5, 2019.

Anita Pease,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2019–28340 Filed 12–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0050; FRL–10003–03]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period April 1, 2019 to September 30, 2019 to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the emergency exemption.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0050, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18 (7 U.S.C. 136p), EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions

A. U.S. States and Territories

Alabama

Department of Agriculture and Industries

Specific exemptions: EPA authorized the use of dinotefuran on a maximum of 175 acres of fuzzy kiwifruit fields to control brown marmorated stink bug. A time-limited tolerance in connection with this action has been established in 40 CFR 180.603(b); Effective April 25, 2019 to October 31, 2019.

EPA authorized the use of fenpropathrin on a maximum of 175 acres of fuzzy kiwifruit fields to control brown marmorated stink bug. A time-limited tolerance in connection with this action has been established in 40 CFR 180.466(b); Effective May 24, 2019 to October 31, 2019.

Arizona

Department of Agriculture

Specific exemptions: EPA authorized the use of sulfoxaflor on a maximum of 150,000 acres of cotton fields to control tarnished plant bug (*Lygus spp.*). Permanent tolerances in connection with a previous registration have been established in 40 CFR 180.668(a); Effective June 1, 2019 to October 31, 2019.

EPA authorized the use of sulfoxaflor on a maximum of 26,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective June 6, 2019 to November 30, 2019.

Crisis exemption: EPA authorized the use of zeta-cypermethrin on a maximum of 47 acres of guayule for control of pale striped flea beetle. Effective April 26, 2019 to May 10, 2019.

Arkansas

State Plant Board

Specific exemption: EPA authorized the use of flupyradifurone on a maximum of 200 acres of sweet sorghum (forage and syrup) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective June 1, 2019 to November 15, 2019.

California

Department of Pesticide Regulation

Specific exemptions: EPA authorized the use of the antibiotic streptomycin on a maximum of 23,000 acres of citrus to manage Huanglongbing (HLB), also called citrus greening disease, caused by

the bacterium *Candidatus Liberibacter Asiaticus.* Time-limited tolerances in connection with this action have been established at 40 CFR 180.245(b). Effective April 3, 2019 to April 3, 2020.

EPA authorized the use of sulfoxaflor on a maximum of 270,000 acres of cotton fields to control Western tarnished plant bug (*Lygus spp.*). Permanent tolerances in connection with a previous registration have been established in 40 CFR 180.668(a). Effective May 15, 2019 to October 31, 2019.

EPA authorized the use of methoxyfenozide on a maximum of 100,000 acres of rice to control armyworm (*Mythimna unipuncta*) and Western Yellowstriped Armyworm (*Spodoptera praefica*). A time-limited tolerance in connection with this action has been established in 40 CFR 180.544(b). Effective June 14, 2019 to October 4, 2019.

EPA authorized the use of bifenthrin on a maximum of 18,000 acres of pomegranates to control leaffooted plant bug. A time-limited tolerance in connection with this action has been established in 40 CFR 180.442(b). Effective July 23, 2019 to December 31, 2019.

Colorado

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 500,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective June 1, 2019 to September 30, 2019.

Georgia

Department of Agriculture

Specific exemption: EPA authorized the use of flupyradifurone on a maximum of 200 acres of sweet sorghum (forage and syrup) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective April 22, 2019 to November 15, 2019.

Kentucky

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 1,300 acres of sweet sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b). Effective May 3, 2019 to November 30, 2019.

Louisiana

Department of Agriculture and Forestry

Quarantine exemption: EPA authorized the use of fipronil as an expansion of the registered use, to control an invasive Caribbean crazy ant species (commonly referred to as the tawny crazy ant) around the outside of manmade structures in counties where the ant has been confirmed; Effective April 22, 2019 to April 22, 2022.

Maryland

Department of Agriculture

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 3,570 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b). Effective May 6, 2019 to October 15, 2019.

EPA authorized the use of dinotefuran on a maximum of 3,730 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b). Effective June 15, 2019 to October 15, 2019. Since this request proposed a use for which an emergency exemption has been requested for more 5 or more previous years (and supported by the Interregional Research Project Number 4 (IR–4) program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 8, 2019 (84 FR 20121) (FRL–9992–45) with the public comment period closing on May 23, 2019.

Quarantine Exemption: EPA authorized the use of potassium chloride in a quarry in Carroll County to eradicate the invasive zebra mussel. Effective May 13, 2019 to May 13, 2022. Since this request proposed a use for a new chemical which has not been registered by EPA as a pesticide, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on March 25, 2019 (84 FR 11086) (FRL–9990–83) with the public comment period closing on April 9, 2019.

Massachusetts

Department of Agriculture and Resource

Specific exemption: EPA authorized the use of pronamide on a maximum of 5,000 acres of cranberries to control dodder. A time-limited tolerance in connection with this action has been established in 40 CFR 180.317(b). Effective May 2, 2019 to June 30, 2019.

Michigan

Department of Agriculture and Rural Development

Specific exemption: EPA authorized the use of mefentrifluconazole on a maximum of 147,000 acres of sugarbeets to control cercospora leaf spot. A tolerance was established in connection with registration of this use at 40 CFR 180.705. Effective May 31, 2019 to September 25, 2019. Since this request proposed a use for a new chemical, which had not been registered by EPA as a pesticide at that time in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 9, 2019 (84 FR 20353) (FRL–9992–75) with the public comment period closing on May 24, 2019.

Quarantine exemption: EPA authorized the use of pyrethrins and piperonyl butoxide to Eradicate Red Swamp Crayfish, *Procambarus clarkii,* on a maximum of 1.88 acres across five ponds in southeast Michigan. Effective August 26, 2019 to August 26, 2022.

Mississippi

Department of Agriculture and Commerce

Specific exemption: EPA authorized the use of flupyradifurone on a maximum of 1,000 acres of sweet sorghum (forage and syrup) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective June 1, 2019 to November 15, 2019.

Quarantine exemption: EPA authorized the use of fipronil as an expansion of the registered use, to control an invasive Caribbean crazy ant species (commonly referred to as the tawny crazy ant) around the outside of manmade structures in counties where the ant has been confirmed; Effective April 22, 2019 to April 22, 2022.

Minnesota

Department of Agriculture

Specific exemption: EPA authorized the use of mefentrifluconazole on a maximum of 200,534 acres of sugarbeets to control cercospora leaf spot. A tolerance was established in connection with registration of this use at 40 CFR 180.705. Effective May 31, 2019 to September 25, 2019. Since this request proposed a use for a new chemical, which had not been registered by EPA as a pesticide at that time in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the

Federal Register on May 9, 2019 with the public comment period closing on May 24, 2019.

Montana

Department of Agriculture

Specific exemption: EPA authorized the use of indaziflam on a maximum of 55,000 acres of rangeland, pastures and areas subject to the conservation reserve program (CRP) to control medusahead and ventenata. Time-limited tolerances in connection with this action have been established in 40 CFR 180.653(b). Effective August 23, 2019 to August 1, 2020.

Nevada

Department of Agriculture

Specific exemption: EPA authorized the use of indaziflam on a maximum of 100,000 acres of rangeland, pastures and CRP to control medusahead and ventenata. Time-limited tolerances in connection with this action have been established in 40 CFR 180.653(b). Effective July 23, 2019 to March 27, 2020.

New York

Department of Environmental Conservation

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 7,521 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b). Effective July 24, 2019 to October 15, 2019.

North Carolina

Department of Agriculture and Consumer Services

Specific exemptions: EPA authorized the postharvest use of thiabendazole on a maximum of 95,000 acres of sweet potatoes to control black rot (*Ceratocystis fimbriata*). A time-limited tolerance in connection with this action has been established in 40 CFR 180.242(b). Effective April 3, 2019 to April 3, 2020.

EPA authorized the use of flupyradifurone on a maximum of 750 acres of sweet sorghum (forage and syrup) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective April 3, 2019 to November 15, 2019.

EPA authorized the use of the insecticide sulfoxaflor on a maximum of 50,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective April 3, 2019 to November 30, 2019.

EPA authorized the use of sulfoxaflor on a maximum of 425,000 acres of cotton fields to control tarnished plant bug (*Lygus lineolaris*). Permanent tolerances in connection with a previous registration action have been established in 40 CFR 180.668(a); Effective May 1, 2019 to October 31, 2019.

EPA authorized the use of bifenthrin on a maximum of 3,000 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b). Effective July 24, 2019 to October 15, 2019.

EPA authorized the use of dinotefuran on a maximum of 4,000 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b). Effective July 24, 2019 to October 15, 2019. Since this request proposed a use for which an emergency exemption has been requested for more 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 8, 2019 with the public comment period closing on May 23, 2019.

North Dakota

Department of Agriculture

Specific exemption: EPA authorized the use of mefentrifluconazole on a maximum of 28,502 acres of sugarbeets to control cercospora leaf spot. A tolerance was established in connection with registration of this use at 40 CFR 180.705. Effective May 31, 2019 to September 25, 2019. Since this request proposed a use for a new chemical, which had not been registered by EPA as a pesticide at that time in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 9, 2019 with the public comment period closing on May 24, 2019.

Oklahoma

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 300,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective May 13, 2019 to November 30, 2019.

EPA authorized the use of sulfoxaflor on a maximum of 700,000 acres of cotton fields to control tarnished plant bug (*Lygus lineolaris*). Permanent tolerances in connection with a previous registration action have been established in 40 CFR 180.668(a); Effective May 13, 2019 to October 30, 2019.

Pennsylvania

Department of Agriculture

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 24,974 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b). Effective May 24, 2019 to October 15, 2019.

EPA authorized the use of dinotefuran on a maximum of 24,974 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b). Effective June 15, 2019 to October 15, 2019. Since this request proposed a use for which an emergency exemption has been requested for more 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 8, 2019 with the public comment period closing on May 23, 2019.

South Carolina

Department of Pesticide Regulation

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 19,600 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective May 23, 2019 to November 30, 2019.

South Dakota

Department of Agriculture

Specific exemption: EPA authorized the use of pyridate on a maximum of 910 acres of double-cut mint for postemergence control of herbicide-resistant annual weeds such as Redroot pigweed, *Armaranthus retroflexus,* common lambquarters, kochia and Russian thistle. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a); July 1, 2019 to August 31, 2019.

Texas

Department of Agriculture

Specific exemption: EPA authorized the use of clothianidin on a maximum of 4,000 acres of immature citrus trees to manage the transmission of HLB disease vectored by the Asian citrus psyllid. A time-limited tolerance in connection with this action was established in 40 CFR 180.586(b); Effective May 7, 2019 to May 7, 2020.

Quarantine exemption: EPA authorized the use of fipronil as an expansion of the registered use, to control an invasive Caribbean crazy ant species (commonly referred to as the tawny crazy ant) around the outside of manmade structures in counties where the ant has been confirmed; Effective May 6, 2019 to May 6, 2022.

Virginia

Department of Agriculture and Consumer Services

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 29,000 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b). Effective May 6, 2019 to October 15, 2019.

EPA authorized the use of dinotefuran on a maximum of 29,000 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b). Effective June 15, 2019 to October 15, 2019. Since this request proposed a use for which an emergency exemption has been requested for more 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 8, 2019 with the public comment period closing on May 23, 2019.

Washington

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 22,500 acres of alfalfa grown for seed to control lygus bugs (*Lygus hesperus, Lygus elisus,* and other *Lygus spp.*). Alfalfa grown for seed in Washington is a non-food/non-feed use; Effective June 15, 2019 to August 31, 2019.

EPA authorized the use of lambda-cyhalothrin on a maximum of 7,000 acres of asparagus to control the European asparagus aphid. Effective June 15, 2019 to October 30, 2019. Since this request proposed a use for which an emergency exemption has been requested for more five or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 20, 2019 (84 FR 22840) (FRL–9992–90) with the public comment period closing on June 4, 2019.

West Virginia

Department of Agriculture

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 5,986 acres of apples, peaches, and nectarines to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b). Effective August 22, 2019 to October 15, 2019.

EPA authorized the use of dinotefuran on a maximum of 5,986 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b). Effective July 24, 2019 to October 15, 2019. Since this request proposed a use for which an emergency exemption has been requested for more 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 8, 2019 with the public comment period closing on May 23, 2019.

Wyoming

Department of Agriculture

Specific exemption: EPA authorized the use of indaziflam on a maximum of 300,000 acres of rangeland, pastures and CRP to control medusahead and ventenata. Time-limited tolerances in connection with this action have been established in 40 CFR 180.653(b). Effective September 14, 2019 to September 14, 2020.

B. Federal Departments and Agencies

Defense Department

Crisis exemption: EPA concurred upon a crisis exemption declared by the 23D Marine Regiment to treat field uniforms with etofenprox to repel ticks, during a field training exercise in an area known to harbor disease-carrying ticks. Effective August 1, 2019 to August 15, 2019.

National Aeronautics and Space Administration

Specific exemption: EPA authorized use of ortho-phthalaldehyde, immobilized to a porous resin, to treat the International Space Station (ISS) internal active thermal control system (IATCS) coolant for control of aerobic and microaerophilic water bacteria and unidentified gram-negative rods. Effective July 24, 2019 to July 24, 2020. This request was granted because without this use, the ISS would have no means of controlling microorganisms in the IATCS because there are no registered alternatives available which meet the required criteria. Since this request proposed a use of a new (unregistered) chemical, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on June 14, 2019 (84 FR 27776) (FRL–9994–52) with the public comment period closing on July 1, 2019.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 18, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2019–28333 Filed 12–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0684; FRL–10003–20]

Updated Working Approach To Making New Chemical Determinations Under the Toxic Substances Control Act (TSCA); Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of and soliciting public comment on a document entitled: ''TSCA New Chemical Determinations: A Working Approach for Making Determinations under TSCA Section 5'' (the ''Working Approach''). This document builds upon EPA's November 2017 document entitled: ''New Chemicals Decision-Making Framework: Working Approach to Making Determinations under section 5 of TSCA''. Feedback received will help inform the Agency's ongoing efforts to improve policy and processes relating to the review of new chemicals under TSCA.

DATES: Comments must be received on or before February 18, 2020.

ADDRESSES: Submit your comments, identified by docket identification ID number EPA–HQ–OPPT–2019–0684, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Ryan Schmit, Office of Pollution Prevention and Toxics (7101M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–0610; email address: *schmit.ryan@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to entities that currently or may manufacture (including import) a chemical substance regulated under TSCA (*e.g.,* entities identified under North American Industrial Classification System (NAICS) codes 325 and 324110). The action may also be of interest to chemical processors, distributors in commerce, and users; non-governmental organizations in the environmental and public health sectors; state and local government agencies; and members of the public. The Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action.

B. What action is the Agency taking?

EPA is announcing the availability of and seeking public comment on the revised document entitled ''TSCA New Chemical Determinations: A Working Approach for Making Determinations under TSCA Section 5'' (the ''Working Approach'').

C. Why is the Agency taking this action?

EPA expects the updated document will provide further clarity and detail on EPA's approaches and practices related to the review of new chemicals under TSCA, including: (1) EPA's general guiding principles and concepts for making determinations on new chemical notices submitted to EPA under TSCA section 5; (2) the decision-making logic and the key questions that EPA must address; and (3) a discussion of how EPA might apply the working approach to reach one of the five new chemical determinations in TSCA section 5(a)(3).

D. What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

EPA released an initial version of the Working Approach document for public comment in November 2017, and subsequently held a public meeting on implementing the new chemicals program under amended TSCA on December 14, 2017 (82 FR 51415, November 6, 2017) (FRL–9970–34). After consideration of comments received on the 2017 version and based on additional implementation experience, EPA updated the Working Approach. On December 10, 2019 (84 FR 64063, November 20, 2019) (FRL–10002–09), EPA held a public meeting to preview the document and to provide an update on other aspects of EPA's implementation of the new chemicals program under TSCA. EPA is now announcing the availability of the updated Working Approach for public review and comment.

Additional information on the TSCA amendments can be found at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 20, 2019.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2019–28325 Filed 12–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0075; FRL–9992–83]

Certain New Chemicals; Receipt and Status Information for September 2019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 09/01/2019 to 09/30/2019.

DATES: Comments identified by the specific case number provided in this document must be received on or before February 3, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0075, and the specific case number for the

chemical substance related to your comment, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Information Management Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 09/01/2019 to 09/30/2019. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the TSCA, 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and

exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 09/01/2019 TO 09/30/2019

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–19–0026	1	09/18/2019	CBI	(G) Production of Biofuel	(G) Biofuel-producing modified microorganism(s), with chromosomally-borne modifications.
J–19–0027	1	09/18/2019	CBI	(G) Production of Biofuel	(G) Biofuel-producing modified microorganism(s), with chromosomally-borne modifications.
P–16–0053A	2	09/03/2019	CBI	(G) Printing ink applications	(G) Acrylated polycarbonate polyol.
P–16–0225A	5	09/16/2019	International Flavors & Fragrances Inc.	(S) The notified substance will be used as a fragrance ingredient, being blended (mixed) with other fragrance ingredients to make fragrance oils that will be sold to industrial and commercial customers for their incorporation into soaps, detergents, cleaners, air fresheners, candles and other similar industrial, household and consumer products.	(S) isomer mixture of Cyclohexanol, 4-ethylidene-2-propoxy- (CAS 1631145–48–6) (35–45%) and Cyclohexanol, 5-ethylidene-2-propoxy (CAS 1631145–49–7) (45–55%).
P–16–0225A	6	09/16/2019	International Flavors & Fragrances Inc.	(S) The notified substance will be used as a fragrance ingredient, being blended (mixed) with other fragrance ingredients to make fragrance oils that will be sold to industrial and commercial customers for their incorporation into soaps, detergents, cleaners, air fresheners, candles and other similar industrial, household and consumer products.	(S) isomer mixture of Cyclohexanol, 4-ethylidene-2-propoxy- (CAS 1631145–48–6) (35–45%) and Cyclohexanol, 5-ethylidene-2-propoxy (CAS 1631145–49–7) (45–55%).
P–16–0410A	5	09/18/2019	CBI	(G) Automotive engine fluid additive	(G) Silicophosphonate-sodium silicate.
P–16–0438A	14	05/27/2019	CBI	(S) Intermediate for pesticide inert	(S) 3-Butenenitrile, 2-(acetyloxy).
P–16–0442A	6	09/04/2019	CBI	(G) Polymer for coatings	(G) Carboxylic acids, unsaturated, polymers with disubstituted amine, alkanediol, substituted alkylpropanoic acid, alkanedioic acid and substituted isocyanatocycloalkane, compds with alkylamine.
P–16–0443A	6	09/04/2019	CBI	(G) Polymer for coatings	(G) Carboxylic acids, unsaturated, hydrogenated polymers with disubstituted amine, alkanediol, substituted alkylpropanoic acid, alkanedioic acid and substituted isocyanatocycloalkane, compds with alkylamine.
P–16–0444A	6	09/04/2019	CBI	(G) Polymer for coatings	(G) Carboxylic acids, unsaturated, polymers with substituted alkanediamine, alkanediol, substituted alkylpropanoic acid, alkanedioic acid and substituted isocyanatocycloalkane, compds with alkylamine.
P–16–0445A	6	09/04/2019	CBI	(G) Polymer for coatings	(G) Carboxylic acids, unsaturated, hydrogenated polymers with substituted alkanediamine, alkanediol, substituted alkylpropanoic acid, alkanedioic acid and substituted isocyanatocycloalkane, compds with alkylamine.
P–16–0509A	11	03/26/2019	CBI	(G) For packaging application, and Resin or film/sheet for the industrial use.	(G) Modified ethylene-vinyl alcohol copolymer.
P–16–0541A	5	08/21/2019	Specialty Organics, Inc.	(S) Adhesive for wood particle/chip/fiberboard.	(S) Soybean meal, reaction products with phosphoric trichloride.
P–17–0003A	10	09/03/2019	CBI	(G) Printing ink applications	(G) Styrene(ated) copolymer with alkyl(meth)acrylate, and (meth)acrylic acid.
P–17–0016A	6	09/03/2019	CBI	(G) Polymer for coatings	(G) hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated.
P–17–0017A	6	09/03/2019	CBI	(G) Polymer for coatings	(G) hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated.
P–17–0018A	6	09/03/2019	CBI	(G) Polymer for coatings	(G) hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, Azobis[aliphatic nitrile] initiated.

TABLE I—PMN/SNUN/MCANs APPROVED* FROM 09/01/2019 TO 09/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–17–0019A	6	09/03/2019	CBI	(G) Polymer for coatings	(G) hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated.
P–17–0020A	6	09/03/2019	CBI	(G) Polymer for coatings	(G) hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated.
P–17–0021A	6	09/03/2019	CBI	(G) Polymer for coatings	(G) hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, Azobis[aliphatic nitrile] initiated.
P–17–0026A	4	09/03/2019	CBI	(G) Industrial Ink printing applications	(G) Cycloaliphatic diamine, polymer with .alpha-hydro-.omega.-hydroxypoly(oxy-alkanediyl), alpha-hydro-omega-hydroxypoly(oxy-alkanediyl), and cycloaliphatic diisocyanate.
P–17–0086A	3	09/10/2018	CBI	(G) Perfume	(G) Cycloalkyl, bis(ethoxyalkyl)-, trans-Cycloalkyl, bis(ethoxyalkyl)-, cis-
P–17–0121A	5	09/04/2019	CBI	(S) Polyurethane used in an adhesive	(G) Methylene Diphenyl Diisocyanate Terminated Polyurethane Resin.
P–17–0152A	4	08/29/2019	CBI	(G) Additive in home care products	(G) Poly-(2-methyl-1-oxo-2-propen-1-yl) ester with Ethanaminium, N,N,N-trialkyl, chloride and methoxypoly(oxy-1,2-ethanediyl).
P–17–0160A	3	09/03/2019	CBI	(G) Binder	(G) 2-Propenoic acid, alkyl-, alkyl ester, polymer with alkyl 2-propenoate, dialkyloxoalkyl-2-propenamide and alkyl 2-propenoate.
P–17–0161A	3	09/03/2019	CBI	(G) Binder	(G) 2-Propenoic acid, alkyl-, alkyl ester, polymer with alkyl 2-propenoate, dialkyloxoalkyl-2-propenamide, ethenylbenzene and alkyl 2-propenoate.
P–17–0184A	5	09/12/2019	Colonial Chemical, Inc.	(S) Firefighting foams, Personal Care Products, Shampoos, Conditioners, Facial Washes, Transportation Washes, and Industrial All-Purpose Cleaners.	(S) 1-Propanaminium, 2-hydroxy-N, N-dimethyl-N-[3-[(1-oxooctyl-amino]propyl]-3-sulfo-, inner salt.
P–17–0200A	5	09/16/2019	CBI	(S) Monomer for use to manufacture of a high performance polymer.	(G) 1,3-bis(substitutedbenzoyl)benzene.
P–17–0204A	5	09/16/2019	CBI	(S) Monomer for high performance polymer.	(G) 1,4-bis(substitutedbenzoyl)benzene.
P–17–0205A	6	09/16/2019	CBI	(S) Monomer for high performance polymer and, (G) A-n process reagent.	(G) bis(fluorobenzoyl)benzene.
P–17–0207A	5	09/03/2019	CBI	(G) Paint	(G) 2-alkenoic acid, 2 alkyl, 2 alkyl ester, polymer with alkyl alkenoate, carbomonocyle, alkyl alkenoate and alkyl alkenoate, alkyl peroxide initiated.
P–17–0233A	3	09/23/2019	Solenis LLC	(S) Creping Aid for Yankee Dryers to manufacture tissue and towel paper.	(G) Oxyalkylene modified polyalkyl amine alkyl diacid polymer with 2-(chloromethyl)oxirane.
P–17–0298A	3	09/06/2019	GE Water & Process Technologies.	(S) The notified substance is described as a hydrogen sulfide scavenger used in controlling hydrogen sulfide in the vapor space of fuel storage, shipping vessels and pipelines. It is designed to reduce the health, safety and environmental hazards of handling fuels containing H2S. The substance reacts selectively with (neutralizes) and removes H2S to help meet product and process specifications.	(S) Formaldehyde, homopolymer, reaction products with N-propyl-1-propanamine.
P–17–0329A	10	09/05/2019	CBI	(G) Intermediate used in synthesis	(G) Substituted haloaromatic trihaloalkyl-aromatic alkanone.
P–17–0346A	10	09/12/2019	CBI	(G) Destructive use	(G) Propyl Phosphonium Salt.
P–17–0347A	4	09/12/2019	Sasol Chemicals (USA) LLC.	(G) Oilfield Surfactant	(S) Oxirane, 2-methyl-, polymer with oxirane, mono(2-butyloctyl) ether.
P–17–0348A	4	09/12/2019	Sasol Chemicals (USA) LLC.	(G) Oilfield Surfactant	(S) Oxirane, 2-methyl-, polymer with oxirane, mono(2-hexyldecyl) ether.
P–17–0349A	4	09/12/2019	Sasol Chemicals (USA) LLC.	(G) Oilfield Surfactant	(S) Oxirane, 2-methyl-, polymer with oxirane, mono(2-octyldodecyl) ether.
P–17–0350A	4	09/12/2019	Sasol Chemicals (USA) LLC.	(G) Oilfield Surfactant	(S) Oxirane, 2-methyl-, polymer with oxirane, mono(2-decyltetradecyl) ether.
P–17–0351A	4	09/12/2019	Sasol Chemicals (USA) LLC.	(G) Oilfield Surfactant	(S) Oxirane, 2-methyl-, polymer with oxirane, mono(2-dodecylhexadecyl) ether.
P–17–0352A	4	09/12/2019	Sasol Chemicals (USA) LLC.	(G) Oilfield Surfactant	(S) Oxirane, 2-methyl-, polymer with oxirane, mono(2-tetradecyloctadecyl) ether.
P–17–0387A	6	09/03/2019	CBI	(G) Paint	(G) Dicarboxylic acids, polymers with alkanoic acid, alkanediol, susbtituted-alkylalkanoic acid, substituted alkyl carbomonocyle, alkanedioic acid and alkanediol, alkanolamine blocked, compds with alkanolamine.
P–17–0388A	6	09/03/2019	CBI	(G) Paint	(G) Dicarboxylic acids, polymers with alkanoic acid, alkanediol, susbtituted-alkylalkanoic acid, substituted alkyl carbomonocyle, alkanedioic acid and alkanediol, alkanolamine blocked, compds with alkanolamine.
P–17–0398A	11	03/21/2019	Nexus Fuels	(G) Wax- Component of complex formulations for blending.	(G) Branched Cyclic and Linear Hydrocarbons from Plastic Depolymerization.
P–17–0398A	13	08/22/2019	Nexus Fuels	(G) Component of complex formulations for blending.	(G) Branched Cyclic and Linear Hydrocarbons from Plastic Depolymerization.
P–17–0399A	11	03/21/2019	Nexus Fuels	(G) Stock use	(G) Alkane, Alkene, Styrenic Compounds Derived from Plastic Depolymerization.
P–17–0399A	13	08/22/2019	Nexus Fuels	(G) Stock use	(G) Alkane, Alkene, Styrenic Compounds Derived from Plastic Depolymerization.
P–18–0001A	10	03/21/2019	Nexus Fuels	(G) Additive	(G) Carbon compound derived from plastic depolymerization.

TABLE I—PMN/SNUN/MCANs APPROVED* FROM 09/01/2019 TO 09/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–18–0001A	12	08/23/2019	Nexus Fuels	(G) Additive	(G) Carbon compound derived from plastic depolymerization.
P–18–0012A	5	09/18/2019	CBI	(G) Adhesives	(G) Polyester polyol.
P–18–0018A	5	09/03/2019	Kyodo Yushi USA, Inc.	(G) Lubricant	(G) Fluorinated acrylate, polymer with alkyloxirane homopolymer monoether with alkanediol mono(2-methyl-2-propenoate), tert-Bu 2-ethylhexaneperoxoate-initiated.
P–18–0021A	3	09/03/2019	CBI	(G) Paint	(G) Dicarboxylic acids, polymers with substituted poly(substituted alkendiyl) ,3-hydroxy-2-(hydroxyalkyl)-2-alkylalkenoic acid, 5-substituted-1-(substituted alkyl)-1,3,3-trialkyl carbomonocyle, alkanediol, alkane-triol, alcohol blocked compounds with aminoalcohol.
P–18–0028A	8	08/23/2019	Nexus Fuels	(G) Feedstock, blending	(G) Branched cyclic and linear hydrocarbons from plastic depolymerization.
P–18–0049A	7	09/20/2019	CBI	(G) Coating component/processing aid	(G) Mixed metal halide.
P–18–0056A	8	09/26/2019	CBI	(S) Rubber Adhesion promoter. Use in the manufacturing process of tires. The PMN chemical improves the bonding of rubber to metal; acts as an oxygen scavenger in various applications.	(S) Cobalt Neodecanoate Propionate complexes.
P–18–0061A	4	08/29/2019	CBI	(G) Industrial coating hardners	(G) Alkyl methacrylates, polymer with alkyl acrylates, styrene hydroxyalkyl acrylates, novalac epoxy and epoxy modified acrylic salt with organic amines.
P–18–0063A	2	09/17/2019	Ethox Chemicals, LLC.	(G) This material is used as a lubricant additive for applications such as stamping, forming, cutting, drilling, or otherwise working metals.	(G) alcohol alkoxylate phosphate,.
P–18–0074A	3	08/21/2019	CBI	(S) A precursor used in the synthesis of quantum dots that are used as a component to make an optical down converter, and, Component in an optical down converter.	(G) Saturated fatty acid, reaction products with cadmium zinc selenide sulfide and polymeric amine.
P–18–0076A	2	09/03/2019	CBI	(G) Plastic additive	(G) 1,3,5-Triazine-2,4-Diamine Derivative.
P–18–0084A	7	08/14/2019	ShayoNano USA, Inc	(S) Additive for paints and coatings	(S) silicon zinc oxide.
P–18–0105A	2	09/19/2019	Reagens USA Inc	(S) This product is used in rigid and flexible PVC processing as a booster of PVC stabilisers. It improves long term stability, initial colour and the weathering performance of end products.	(S) Phosphorous acid, triisotridecyl ester.
P–18–0109A	3	08/30/2019	CBI	(G) Additive, open, non-dispersive use	(G) 2-Alkenoic acid, 2-alkyl-, alkyl ester, polymer with 2-(dialkylamino)alkyl 2-alkyl-2-alkenoate, alkyl 2-alkyl-2-alkenoate and ¿-(2-alkyl-1-oxo-2-alken-1-yl)-¿-alkoxypoly(oxy-1,2-alkanediyl), [(1-alkoxy-2-alkyl-1-alken-1-yl)oxy]trialkylsilane-initiated,.
P–18–0144A	4	09/05/2019	CBI	(G) Curing agent	(G) Formaldehyde, polymer with an alkane diamine and phenol,.
P–18–0144A	5	09/18/2019	CBI	(G) Anti-corrosive primer for outdoor industrial applications.	(G) Formaldehyde, polymer with an alkane diamine and phenol.
P–18–0152A	3	07/05/2018	CBI	(G) Intermediate for use in manufacturing	(G) Hydrolyzed Functionalized Di-amino Silanol Polymer.
P–18–0154A	7	09/03/2019	CBI	(G) Crosslinking agent for coatings	(G) Isocyanic acid, polyalkylenepolycycloalkylene ester, 2-alkoxy alkanol and 1-alkoxy alkanol and alkylene diol blocked.
P–18–0155A	4	05/03/2019	CBI	(G) Component in cement	(G) Crosslinked polymer of alkyl acrylamides, acrylate esters, and alkyl acrylamide sulfonate salt.
P–18–0155A	5	05/06/2019	CBI	(G) Component in cement	(G) Crosslinked polymer of alkyl acrylamides, acrylate esters, and alkyl acrylamide sulfonate salt.
P–18–0155A	6	08/06/2019	CBI	(G) Component in cement	(G) Crosslinked polymer of alkyl acrylamides, acrylate esters, and alkyl acrylamide sulfonate salt.
P–18–0156A	4	05/03/2019	CBI	(G) Component in cement	(G) Crosslinked polymer of alkyl acrylamides, acrylate esters, and alkyl acrylamide sulfonic acid.
P–18–0156A	5	05/06/2019	CBI	(G) Component in cement	(G) Crosslinked polymer of alkyl acrylamides, acrylate esters, and alkyl acrylamide sulfonic acid.
P–18–0156A	6	08/06/2019	CBI	(G) Component in cement	(G) Crosslinked polymer of alkyl acrylamides, acrylate esters, and alkyl acrylamide sulfonic acid.
P–18–0160A	3	02/20/2019	CBI	(G) Coating component	(G) Heteropolycyclic, halo substituted alkyl substituted- diaromatic amino substituted carbomonocycle, halo substituted alkyl substituted heteropolycyclic, tetraaromatic metalloid salt (1:1).
P–18–0170A	6	05/23/2018	CBI	(G) Textile treatment	(S) 1-Propanaminium, N,N′-(oxydi-2,1-ethanediyl)bis[3-chloro-2-hydroxy-N,N-dimethyl-, dichloride.
P–18–0172A	10	04/04/2019	CBI	(S) Category of use: by function and application i.e. a dispersive dye for finishing polyester fibers).	(S) Calcium, carbonate 2-ethylhexanoate neodecanoate propionate complex.
P–18–0172A	11	06/25/2019	CBI	(S) Category of use: by function and application i.e. a dispersive dye for finishing polyester fibers).	(S) Calcium, carbonate 2-ethylhexanoate neodecanoate propionate complex.
P–18–0172A	12	08/21/2019	CBI	(S) Category of use: by function and application i.e. a dispersive dye for finishing polyester fibers).	(S) Calcium, carbonate 2-ethylhexanoate neodecanoate propionate complex.
P–18–0192A	3	09/12/2019	Archroma U.S., Inc	(S) Optical brightener for use in paper applications.	(G) Benzenesulfonic acid, (alkenediyl)bis[[[(hydroxyalkyl)amino]-(phenylamino)-triazin-2-yl]amino]-, N-(hydroxyalkyl) derivs., salts, compds. with polyalkyl-substituted(alkanol).
P–18–0197A	3	09/04/2019	CBI	(G) Polymer composite additive	(G) Metal, alkylcarboxylate oxo complexes.
P–18–0202A	5	06/21/2018	Hexion, Inc	(G) Tackifier additives and Rubber additive	(G) Trialkyl alkanal, polymer with phenol.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 09/01/2019 TO 09/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–18–0202A	6	05/23/2019	Hexion, Inc	(G) Tackifier additives and Rubber additive	(G) Trialkyl alkanal, polymer with phenol.
P–18–0203A	5	06/21/2018	Hexion, Inc	(G) Tackifier additives and Rubber additive	(G) Trialkyl alkanal, polymer with alkylalkanal and phenol.
P–18–0203A	6	05/23/2019	Hexion, Inc	(G) Rubber additive and Tackifier additives	(G) Trialkyl alkanal, polymer with alkylalkanal and phenol.
P–18–0204A	5	06/21/2018	Hexion, Inc	(G) Tackifier additive and Rubber additive	(G) Alkyl alkanal, polymer with phenol.
P–18–0204A	6	05/23/2019	Hexion, Inc	(G) Rubber additive and Tackifier additives	(G) Alkyl alkanal, polymer with phenol.
P–18–0205A	5	06/21/2018	Hexion, Inc	(G) Rubber additive and Tackifier additive	(G) Alkyl alkanal, polymer with formaldehyde and phenol.
P–18–0205A	6	05/23/2019	Hexion, Inc	(G) Rubber additive and Tackifier additive	(G) Alkyl alkanal, polymer with formaldehyde and phenol.
P–18–0206A	5	06/21/2018	Hexion, Inc	(G) Rubber additive and Tackifier	(G) Alkanal, polymer with phenol.
P–18–0206A	6	05/23/2019	Hexion, Inc	(G) Rubber additive and Tackifier additive	(G) Alkanal, polymer with phenol.
P–18–0207A	4	09/04/2019	CBI	(G) Polymer composite additive	(G) Metal, oxo alkylcarboxylate complexes.
P–18–0223A	3	09/14/2019	Clariant Corporation	(S) Selectivity improver for catalysts used in the production of polyolefins.	(G) Alkane, bis(alkoxymethyl)-dimethyl-.
P–18–0234A	5	05/31/2019	CBI	(G) Coating component	(G) Alkenoic acid, reaction products with bis substituted alkane and ether polyol.
P–18–0237A	8	07/13/2019	CBI	(G) Use in print resins	(G) Alkanediol, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, alkylaminoalkyl methacrylate-, and dialkylheteromonocycle-blocked.
P–18–0256A	3	09/19/2019	CBI	(G) Solvent and Chemical intermediate	(S) Undecanol, branched.
P–18–0262A	5	09/16/2019	Seppic	(S) Function: Stabilizer of suspensions Applications: Detergency.	(S) 2-Propenoic acid, 2-methyl-, dodecyl ester, polymer with ammonium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), N,N-dimethyl-2-propenamide and alpha-(2-methyl-1-oxo-2-propen-1-yl)-omega-(dodecyloxy)poly(oxy-1,2-ethanediyl).
P–18–0287A	6	02/11/2019	CBI	(G) Company plans to produce ''tires, wastes, pyrolyzed, condensate oil fraction'' (hereafter referred to as syn oil) (CASRN: 1312024–02–4) from scrap tire materials. The synthetic oil fraction from tire waste pyrolysis can be used in a variety of industries. Some examples of use of synthetic oil include use as a fuel, upgraded for use as a higher quality fuel, as an additive for asphalt or other complex mixtures, used to manufacture other chemicals, etc.	(G) Synthetic oil from tires.
P–18–0287A	7	02/28/2019	CBI	(G) Company plans to produce ''tires, wastes, pyrolyzed, condensate oil fraction'' (hereafter referred to as syn oil) (CASRN: 1312024–02–4) from scrap tire materials. The synthetic oil fraction from tire waste pyrolysis can be used in a variety of industries. Some examples of use of synthetic oil include use as a fuel, upgraded for use as a higher quality fuel, as an additive for asphalt or other complex mixtures, used to manufacture other chemicals, etc.	(G) Synthetic oil from tires.
P–18–0287A	8	05/22/2019	CBI	(G) Company plans to produce ''tires, wastes, pyrolyzed, condensate oil fraction'' (hereafter referred to as syn oil) (CASRN: 1312024–02–4) from scrap tire materials. The synthetic oil fraction from tire waste pyrolysis can be used in a variety of industries. Some examples of use of synthetic oil include use as a fuel, upgraded for use as a higher quality fuel, as an additive for asphalt or other complex mixtures, used to manufacture other chemicals, etc.	(G) Synthetic oil from tires.
P–18–0289A	3	02/15/2019	CBI	(G) Gas scrubbing,) landfill deoderizing, and wastewater deoderizing.	(G) 2-(2(methylcaboxymonocyclic)amino)ethoxy)-alcohol.
P–18–0290A	3	02/15/2019	CBI	(G) Gas scrubbing, Landfill odor neutralizing, and wastewater deoderizing.	(G) Carbomonocylic-oxazolidine.
P–18–0293A	4	08/02/2019	CBI	(S) Monomer for use in emulsion polymers, formulated industrial coatings, and formulated industrial adhesives.	(S) Propanedioic acid, 2-methylene-, 1,3-dihexyl ester.
P–18–0293A	5	08/06/2019	CBI	(S) Monomer for use in emulsion polymers, formulated industrial coatings, and formulated industrial adhesives.	(S) Propanedioic acid, 2-methylene-, 1,3-dihexyl ester.
P–18–0294A	4	08/02/2019	CBI	(S) Monomer for use in emulsion polymers, formulated industrial coatings, and formulated industrial adhesives.	(S) Propanedioic acid, 2-methylene-, 1,3-dicyclohexyl ester.
P–18–0294A	5	08/06/2019	CBI	(S) Monomer for use in emulsion polymers,(S) Monomer for use in formulated industrial coatings,(S) Monomer for use in formulated industrial adhesives.	(S) Propanedioic acid, 2-methylene-, 1,3-dicyclohexyl ester.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 09/01/2019 TO 09/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–18–0295A	5	08/22/2019	CBI	(G) Ingredient in the manufacture of consumer cleaning products and use as monomer in the manufacture of resins for use in paint and coating products. (S) Use as a monomer in the manufacture of plastic products. In this process the notified substance is reacted with one or more other compounds to become part of a polymer. Depending on the reactants involved, the final polymer can be a resin used to make molded plastic products or the final polymer can be a shorter polymer used as a plasticizer.	(S) 1,3-Butanediol, (3R)-.
P–18–0295A	6	09/25/2019	CBI	(G) Ingredient in the manufacture of consumer cleaning products and use as monomer in the manufacture of resins for use in paint and coating products. (S) Use as a monomer in the manufacture of plastic products. In this process the notified substance is reacted with one or more other compounds to become part of a polymer. Depending on the reactants involved, the final polymer can be a resin used to make molded plastic products or the final polymer can be a shorter polymer used as a plasticizer.	(S) 1,3-Butanediol, (3R)-.
P–18–0323A	4	09/20/2019	KURARAY America, Inc.	(G) Raw material for polymer manufacturing.	(S) 2-Propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester.
P–18–0327A	5	09/18/2019	CBI	(G) Filler for non-dispersive resins.	(G) Mixed Metal Oxide.
P–18–0336A	4	07/12/2019	Sirrus, Inc	(S) Intermediate use	(S) Propanedioic acid, 2,2-bis(hydroxymethyl)-, 1,3-dihexyl ester.
P–18–0337A	4	07/12/2019	Sirrus, Inc	(S) Intermediate use	(S) Propanedioic acid, 2,2-bis(hydroxymethyl)-, 1,3-dicyclohexyl ester.
P–18–0358A	2	10/18/2018	Shikoku International Corporation.	(S) Used as a curing agent within carbon fiber reinforced plastics (CFRP) prepreg to expedite the hardening process during the final thermosetting operation and as a curing agent in industrial adhesives for electronics to expedite the hardening process during the final thermosetting operation.	(S) 1H-Imidazole-1-propanenitrile,2-ethyl-ar-methyl-.
P–18–0358A	3	10/18/2018	Shikoku International Corporation.	(S) Used as a curing agent within carbon fiber reinforced plastics (CFRP) prepreg to expedite the hardening process during the final thermosetting operation and as a curing agent in industrial adhesives for electronics to expedite the hardening process during the final thermosetting operation.	(S) 1H-Imidazole-1-propanenitrile,2-ethyl-ar-methyl-.
P–18–0374A	4	09/05/2019	Evonik Corporation	(S) Additive in a water-borne coating formulation, Glass fiber sizing, and Fillers, pigments and glass bead treatment.	(G) Cationic aminomodified alkylpolysiloxane.
P–18–0378A	4	08/29/2019	CBI	(G) Industrial coatings additive	(G) Acrylic and Methacrylic acids and esters, polymer with alkenylimidazole, alkyl polyalkylene glycol, alkenylbenzene, alkylbenzeneperoxoic acid ester initiated, compds. with Dialkylaminoalkanol.
P–18–0392A	2	08/22/2019	CBI	(G) Intermediate chemical	(G) Heteromonocycle, alkenyl alkyl.
P–18–0392A	3	09/13/2019	CBI	(G) Intermediate chemical	(G) Heteromonocycle, alkenyl alkyl.
P–18–0399A	6	09/02/2019	CBI	(G) Open, non-dispersive use additive for industrial use only.	(G) Rosin adduct ester, polymer with polyols, compd. with ethanolamine.
P–18–0400A	6	08/30/2019	CBI	(G) Open, non-dispersive use, additive for textile industry.	(G) Rosin adduct ester, polymer with polyols, potassium salt.
P–18–0404A	7	09/25/2019	CBI	(S) The substance is part of a mixture with other amines to act as a curative for a 2-part epoxy formulation. The intended use is the manufacture of wind turbine blades. During manufacture of the blades this substance forms part of the in mold coating system which is applied to the blade mold and further laminated with glass (or carbon) reinforced fibres (GRP). The manufactured structure is then ''cured' using heat and a chemical reaction occurs forming a solid composite structure. The PMN substance is reacted during the cure process into the solid plastic matrix and therefore not present in the finished cured part. Use of this product will enhance the life of renewable energy source provided by wind turbines therefore contributing to the reduction in fossil fuel usage.	(G) alkylmultiheteroatom,2-functionalisedalkyl-2-hydroxyalkyl-, polymer with alkylheteroatom-multialkylfunctionalised carbomonocyleheteroatom and multiglycidylether difunctionalised polyalkylene glycol.
P–18–0414A	2	09/06/2019	CBI	(G) Lubricant additive	(G) 2-alkenoic acid ester, polymer with alkyloxirane polymer with oxirane di-alkenoate, alkyloxirane polymer with oxirane mono-alkenoate, -(2-alkyl-1-oxo-2-alken-1-yl)—[(2-alkyl-1-oxo-2-alken-1-yl)oxy]poly(oxyalkanediyl), fluorinated acrylate and siloxanylalkanoate, alkylperoxoate-initiated.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 09/01/2019 TO 09/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0024A	7	08/28/2019	Sales and Distribution Services, Inc.	(S) Hot Mix Asphalt Application: The PMN compound will be used as asphalt additive for hot mix (HMA) as well as cold mix (CMA) asphalt applications. The PMN substance chemically reacts with the surface of the aggregate and changes surface characteristics of aggregate from hydrophilic to hydrophobic. This change provides stronger bonding between asphalt and aggregates and reduces the potential for stripping away asphalt binder from an aggregate due to water. Asphalt Emulsion Application: The PMN substance is water soluble and can be used as an asphalt emulsion in road construction. This additive provides better bonding with ground surface, quick drying and reduced tire pick-up of the asphalt emulsion by application equipment.	(S) 1-Octadecanaminium, N,N-dimethyl-N-[3-(trimethoxysilyl)propyl]-, chloride (1:1) , reaction products with water, Trimethoxy(propyl) silane, Trimethoxy(methyl)silane, Tetraethyl orthosilicate and ethane-1,2-diol.
P–19–0028A	8	05/14/2019	CBI	(G) Lubricating oil additive	(G) Alkyl salicylate, metal salts.
P–19–0028A	9	08/23/2019	CBI	(G) Lubricating oil additive	(G) Alkyl salicylate, metal salts.
P–19–0041A	2	09/23/2019	CBI	(G) Oil water separation	(G) Alkyl diester, polymer with (dialkylamino alkyl) amine and bis(halogenated alkyl) ether.
P–19–0042A	2	09/23/2019	CBI	(G) Oil water separation	(G) Alkyl diester, polymer with (dialkylamino alkyl) amine and bis(halogenated alkyl) ether.
P–19–0043A	2	09/23/2019	CBI	(G) Oil water separation	(G) Alkyl dicarboxylic acid, polymer with (dialkylamino alkyl) amine and bis(halogenated alkyl) ether.
P–19–0044A	2	09/23/2019	CBI	(G) Oil water separation	(G) Alkyl bis(dialkylamino alkyl) amide polymer with bis(halogenated alkyl) ether.
P–19–0048A	3	09/16/2019	CBI	(G) Coating additive	(S) Poly(oxy-1,2-ethanediyl), alpha-hydro-omega-hydroxy-, mono-C12-14-alkyl ethers, phosphates, sodium salts.
P–19–0052A	3	05/01/2019	Evonik Corporation ..	(S) Hard Surface Cleaner and Component of Laundry Detergent.	(S) Poly(oxy-1,2-ethanediyl), alpha-nonyl-omega-hydroxy-, branched and linear.
P–19–0058A	3	09/24/2019	Essential Industries, Inc.	(S) Wood Coating	(S) Butanoic acid, 3-oxo-, 2-[(2-methyl-1-oxo-2-propen-1-yl)oxy]ethyl ester, polymer with butyl 2-propenoate, ethenylbenzene, methyl 2-methyl-2-propenoate and 2-methyl-2-popenoic acid, ammonium salt.
P–19–0065A	5	04/24/2019	eScientia Technologies, LLC.	(S) Fire retardant for thermal plastics: Application: This product is the environmental protection Phosphazene flame retardant. It does not produce pollutants after burning. It is mainly used in PC and ABS resins. It has good flame retardancy on epoxy resin, it can be used to make EMC for IC Packaging, its flame retardancy is much better than Brominated flame retardant. The flame retardancy can reach UL–94V0 grade. Oxygen index could reach 33.1%. When it is used in Benzoxazine Resin glass cloth laminate, if the HPCTP is 10%, the grade of burning could reach V–0 grade, the parallel breakdown voltage is 47KV. When it is used in Polyethylene, the LOI of final flame retardancy polyethylene could reach 30–33. After used in viscose spinning solution, we could get the flame retardant viscose fiber with oxygen index 25.3–26.7. If the added amount is 12% in PC/ABS, it could pass the UL–94 V0 test. It also can be used in LED, powder coating, potting material and polymers.	(S) 2lambda5, 4lambda5, 6lambda5-1,3,5,2,4,6 Triazatriphosphorine, 2,2,4,4,6,6-hexaphenoxy -.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 09/01/2019 TO 09/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0065A	6	06/11/2019	eScientia Technologies, LLC.	(S) Fire retardant for thermal plastics: Application: This product is the environmental protection Phosphazene flame retardant. It does not produce pollutants after burning. It is mainly used in PC and ABS resins. It has good flame retardancy on epoxy resin, it can be used to make EMC for IC Packaging, its flame retardancy is much better than Brominated flame retardant. The flame retardancy can reach UL–94V0 grade. Oxygen index could reach 33.1%. When it is used in Benzoxazine Resin glass cloth laminate, if the HPCTP is 10%, the grade of burning could reach V–0 grade, the parallel breakdown voltage is 47KV. When it is used in Polyethylene, the LOI of final flame retardancy polyethylene could reach 30–33. After used in viscose spinning solution, we could get the flame retardant viscose fiber with oxygen index 25.3–26.7. If the added amount is 12% in PC/ABS, it could pass the UL–94 V0 test. It also can be used in LED, powder coating, potting material and polymers.	(S) 2lambda5, 4lambda5, 6lambda5-1,3,5,2,4,6 Triazatriphosphorine, 2,2,4,4,6,6-hexaphenoxy -.
P–19–0066A	5	04/24/2019	eScientia Technologies, LLC.	(S) Fire retardant	(S) 2lambda5, 4lambda5,- 1,3,5,2,4,6 Triazatriphosphorine, 2,2,4,4,6,6,-hexaphenoxy.
P–19–0066A	6	06/11/2019	eScientia Technologies, LLC.	(S) Fire retardant for industry use only	(S) 2lambda5, 4lambda5,- 1,3,5,2,4,6 Triazatriphosphorine, 2,2,4,4,6,6,-hexaphenoxy.
P–19–0071A	4	09/23/2019	CBI	(G) Physical property modifier for polymers.	(G) Trimethylolpropane, alkenoic acid, triester.
P–19–0077A	7	09/23/2019	CBI	(G) Agricultural	(G) alkenylamide.
P–19–0099A	4	08/29/2019	Essential Industries Inc.	(S) Clear coat for wood	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with dimethyl carbonate, 1,2-ethanediamine, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 1,6-hexanediol and 1,1′-methylenebis[4-isocyanatocyclohexane], compd. with N,N-diethylethanamine.
P–19–0117A	5	09/18/2019	CBI	(G) Additive	(G) Polycyclic amine, reaction products with polyalkylalkene, polymers.
P–19–0118A	3	08/30/2019	CBI	(G) Component of lubricant	(G) Substituted polyalkylenepoly, reaction products with alkene polymer.
P–19–0120A	2	08/30/2019	CBI	(G) Component of ink	(G) Alkenoic acid, polymer with alkanediyl bis substituted alkylene bis heteromonocycle, substituted carbomonocycle and (alkylalkenyl) carbomonocycle, alkali metal salt.
P–19–0121A	3	09/24/2019	H.B. Fuller Company	(S) Industrial Adhesives	(G) Plant based oils, polymer with 1,1′-methylenebis[4-isocyanatobenzene], pentaerythritol, phthalic esters, polypropylene glycol and polypropylene glycol ether with glycerol (3:1).
P–19–0130A	4	09/16/2019	CBI	(G) Dye	(G) Aminohydroxy naphthalenesulfonic acid, coupled with diazotized[(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino[[(sulfooxy)ethyl]sulfonyl]benzenesulfonic acid, salts.
P–19–0130A	5	09/20/2019	CBI	(G) Dye	(G) Aminohydroxy naphthalenesulfonic acid, coupled with diazotized[(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino[[(sulfooxy)ethyl]sulfonyl]benzenesulfonic acid, salts.
P–19–0130A	6	09/20/2019	CBI	(G) dye	(G) Aminohydroxy naphthalenesulfonic acid, coupled with diazotized[(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino[[(sulfooxy)ethyl]sulfonyl]benzenesulfonic acid, salts.
P–19–0135	3	08/26/2019	CBI	(G) Lubricant Additive	(G) Alkyl polyoxyethylene ethers, carboxymethylated,.
P–19–0140A	2	09/25/2019	CBI	(G) Intermediate	(G) Perfluorodioxaalkyl vinyl ether.
P–19–0141	3	09/19/2019	CBI	(S) For use in metal treatment coatings for lubrication and corrosion protection.	(S) Phosphoric Acid, manganese(2+) salt (2:3); Phosphoric acid, manganese(2+) salt (4:5).
P–19–0143A	3	09/10/2019	Aditya Birla Chemicals (USA), LLC.	(S) A crosslinking agent for use in epoxy resin for water-based coating for a variety of substrates and civil applications in commercial and consumer usages.	(G) Aldehyde, polymer with mixed alkanepolyamines, 2,2′-[1,4-alkanediylbis(oxyalkylene)] bis[oxirane], 2-(alkoxyalkyloxirane, 4,4′-(1-alkylidene)bis[phenol], 2,2′-[(1-alkylidene)bis(4,1-alkyleneoxyalkylene)]bis[oxirane] and 2-(aryloxyalkyl)oxirane, acetate (salt).
P–19–0144A	3	09/11/2019	Aditya Birla Chemicals (USA), LLC.	(S) A crosslinking agent in epoxy based self-leveling floor coatings.	(G) Alkanedioic Acid, compds. With substituted arylalkylamine- arylalcohol disubstituted alkane—the diglycidyl ether of a arylalcohol disubstituted alkane—epichlorohydrin-aldehyde-2,2′-[(1-alkylidene)bis[4,1-aryleneoxy(alkyl-2,1-alkanediyl)oxyalkylene]]bis[oxirane]-alkanepolyamine polymer-1-[[2-[(2-aminoalkyl)amino]alkyl]amino]-3-aryloxy-2-alcohol reaction products.
P–19–0147A	3	09/09/2019	CRODA, INC	(G) cleaning additive	(G) alkoxylated butyl alkyl ester.
P–19–0153A	3	09/24/2019	Wego Chemical Group.	(S) Raw material in Flame Retardant product.	(G) Dibromoalkyl ether Tetrabromobisphenol A.

TABLE I—PMN/SNUN/MCANS APPROVED* FROM 09/01/2019 TO 09/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0155	3	09/18/2019	Huntsman International, LLC.	(S) Adjuvant for agrochemical formulations	(S) Amides, from C8-18 and C18-unsatd. glycerides and diethylenetriamine, ethoxylated.
P–19–0156	3	09/18/2019	Huntsman International, LLC.	(S) Adjuvant for agrochemical formulations	(S) Amides, from diethylenetriamine and palm kernel-oil, ethoxylated.
P–19–0157	3	09/18/2019	Huntsman International, LLC.	(S) Adjuvant in agrochemical formulations	(S) Amides, from coconut oil and diethylenetriamine, ethoxylated.
P–19–0158	2	09/16/2019	Ashland, Inc	(G) Adhesive	(G) Alkenoic acid polymer with 2-ethyl-2-(hdroxymethyl)-1,3-alkyldiol, 1,1′-methylenebis(4-isocyantocarbomonocycle) and 3-methyl-1,5-aklydiol.
P–19–0158A	3	09/25/2019	Ashland, Inc	(G) Adhesive	(G) Alkenoic acid polymer with 2-ethyl-2-(hdroxymethyl)-1,3-alkyldiol, 1,1′-methylenebis(4-isocyantocarbomonocycle) and 3-methyl-1,5-aklydiol.
P–19–0159	2	09/03/2019	CBI	(G) As Catalyst in Industrial sector	(G) Titanium (4+) hydroxy-alkylcarboxylate salt complex.
P–19–0159A	4	09/17/2019	CBI	(G) As Catalyst in Industrial sector	(G) Titanium (4+) hydroxy-alkylcarboxylate salt complex.
P–19–0160	1	09/06/2019	CBI	(S) Component of a UV curable printing ink.	(G) Alkanesulfonic acid, 2-[(2-aminoethyl)heteroatom-substituted]-, sodium salt (1:1), polymer with alpha-[2,2-bis(hydroxymethyl)butyl]-omega-methoxypoly(oxy-1,2-ethanediyl) and 1,1′-methylenebis[4-isocyanatocyclohexane], acrylic acid-dipenthaerythritol reaction products- and polypropylene glycol ether with pentaerythritol (4:1) triacrylate-blocked.
P–19–0161	1	09/07/2019	CBI	(S) Organic amine salt mixture used as a foaming agent in the production of urethanes.	(G) Alkano1 amine salt mixture.
P–19–0162	1	09/11/2019	CBI	(G) Component in Oil Production	(G) fatty acid alkyl amide, (dialkyl) amino alkyl, alkyl quaternized, salts.
P–19–0163	1	09/19/2019	CBI	(G) Well performance tracer	(G) halogenated sodium benzoate.
P–19–0163A	2	09/25/2019	CBI	(G) Well performance tracer	(G) halogenated sodium benzoate.
P–19–0164	1	09/20/2019	Allnex USA, Inc	(S) Site limited intermediate for coating resin manufacture.	(G) Bis-alkoxy substituted alkane, polymer with aminoalkanol.
P–19–0165	1	09/23/2019	Arboris, LLC	(G) Plasticizer in rubber and Coating in minerals.	(G) Tall oil pitch, fraction, sterol-low.
P–19–0166	1	09/25/2019	Fujifilm Electronic Materials USA Inc.	(G) Photoacid generator (PAG)	(G) Triarylsulfonium alkylestersulfonate,.
P–19–0167	1	09/25/2019	Santolubes Manufacturing LLC.	(S) Synthetic engine, gear and lubricating oils and greases.	(S) Poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-, hexanoate.
P–19–0168	2	09/26/2019	CBI	(G) Well performance tracer	(G) Halogenated alkylbenzoic acid.
P–19–0169	2	09/26/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0170	1	09/25/2019	CBI	(S) Coupling agent in elastomer-based formulations that will be used in molding operations to manufacture different types of rubber articles including but not limited to rubber tires.	(G) Heteroatom-substituted alkyl triethoxysilane, reaction products with methylated formaldehyde-melamine polymer.
P–19–0175	1	09/25/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0176	1	09/25/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0177	1	09/25/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0178	1	09/25/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0179	1	09/25/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
SN–18–0009A	5	02/11/2019	CBI	(G) XX plans to produce carbon char from tires pyrolysis using scrap tire materials.	(G) Carbon char from tires.
SN–18–0009A	6	02/28/2019	CBI	(G) XX plans to produce carbon char from tires pyrolysis using scrap tire materials.	(G) Carbon char from tires.
SN–19–0002A	3	04/10/2019	CBI	(G) Friction and wear stabilizer in certain solid composite articles.	(G) Potassium Titanate.
SN–19–0002A	4	04/12/2019	CBI	(G) Friction and wear stabilizer in certain solid composite articles.	(G) Potassium Titanate.
SN–19–0004A	8	09/13/2019	CBI	(S) A lubricating agent used in the production of automotive disc brakes.	(G) pitch coke.
SN–19–0004A	9	09/19/2019	CBI	(S) A lubricating agent used in the production of automotive disc brakes.	

*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90-day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED* FROM 09/01/2019 TO 09/30/2019

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J–19–0019	09/25/2019	09/17/2019	N	(G) Genetically modified microorganism.

TABLE II—NOCS APPROVED* FROM 09/01/2019 TO 09/30/2019—Continued

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–07–0023	09/04/2019	08/30/2019	N	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2-ethyl-2-(hydroxylmethyl)-1,3-propanediol, hydrazine, alpha-hydro-omega-hydroxypoly (oxy-1,4-butanediyl) and 1,1′-methylenebis[4-isocyanatocyclohexane], caprolactam- and polyethylene glycol mono-me ether-blocked, compds, with triethylamine.
P–16–0225A	09/16/2019	07/07/2019	Withdrew CBI claim.	(S) Cyclohexanol, 4-ethylidene-2-propoxy- Cyclohexanol, 5-ethylidne-2-propoxy.
P–16–0396	09/03/2019	08/12/2019	N	(G) Alkylaminium hydroxide.
P–16–0572	09/26/2019	09/19/2019	N	(G) Polyamine polyacid adducts.
P–17–0200	09/26/2019	09/21/2019	N	(G) 1,3-bis(substitutedbenzoyl)benzene.
P–17–0204	09/26/2019	09/21/2019	N	(G) 1,4-bis(substitutedbenzoyl)benzene.
P–17–0205	09/26/2019	09/21/2019	N	(G) Bis(fluorobenzoyl)benzene.
P–17–0393	09/03/2019	08/30/2019	N	(G) Alkanediamine, dialkyl-, polymer with alpha-hydro-omega-[(1-oxo-2-propen-1-yl)oxy]poly(oxy-1,2-ethanediyl) ether with substituted alkyl-substitutedalkanediol, reaction products with alkyl-alkanamine.
P–18–0177	09/16/2019	09/03/2019	N	(S) Waxes and waxy substances, rice bran, oxidized.
P–18–0230	09/16/2019	09/03/2019	N	(S) Waxes and waxy substances, rice bran, oxidized, calcium salts.
P–18–0235	08/29/2019	08/03/2019	N	(G) Naphtha oils.
P–19–0047	09/20/2019	09/11/2019	N	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, a-hydro-w-hydroxypoly(oxy-1,4-butanediyl), a-hydro-w-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and 1,1′-methylenebis[4-isocyanatobenzene], Pr alc.-blocked where a = alpha and w = omega.
P–19–0061	09/12/2019	09/11/2019	N	(S) Alkanes, C16–20-branched and linear.
P–19–0085	09/12/2019	09/09/2019	N	(S) Alkanes, C16–18-branched and linear.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 09/01/2019 TO 09/30/2019

Case No.	Received date	Type of test information	Chemical substance
P–00–0281	9/3/2019 9/16/2019 9/30/2019	A 48-hour static acute ..... Toxicity test with the cladoceran (daphnia magna), Acute Immobilization Test (OECD Test Guideline 202), Fish, Acute Toxicity Test (OECD Test Guideline 202), Surface Tension of Aqueous Solutions (OECD Test Guideline 115), Analytical Method Validation for Algae, CMC Protocol Testing, Water Solubility Identification, non cbi a 96-hour toxicity test with the freshwater alga (raphidocelis subcapitata), Solubility Trial Report.	(G) Alkylaryl sulfonic acid, sodium salts.
P–13–0270	9/5/2019	Determination of toxicity of [claimed CBI] against Chironomus riparius Meigen in a sediment spiked system (OECD 218).	(G) Aromatic dibenzoate.
P–14–0627	9/23/2019	Prenatal developmental toxicity study (OECD 414)	(S) 1-Butylpyrrolidin-2-one.
P–16–0289	9/11/2019	Particle size and concentration	(G) Benzene dicarboxylic acid, polymer with alkane dioic acid and aliphatic diamine.
P–16–0313	8/29/2019	Toxicity Test on Early-life Stages of Zebrafish Danio rerio (OECD 210), Daphnia magna Reproduction Test (OECD 211).	(S) Tar acids (shale oil), C6–9 fraction, alkylphenols, low-boiling.
P–16–0410	9/18/2019	Skin Irritation (OECD 439) and Skin Corrosion (OECD 431) ..	(G) Phosphonic acid, [(hydroxycyclosiloxanediyl) alkanediyl] dialkyl ester, alkali metal salt, reaction products with alkali metal silicate.
P–16–0539	9/17/2019	Ready Biodegradability (OECD 301B)	(G) Organic sulfonate compound.
P–16–0543	9/26/2019	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P–17–0343	9/09/2019	Combined repeated dose toxicity with the reproduction/development toxicity screening test (OECD 422), Classification of reproductive toxicity [claimed CBI].	(G) Heteropolycyclic-alkanol, carbomonocycle-alkanesulfonate.

TABLE III—TEST INFORMATION RECEIVED FROM 09/01/2019 TO 09/30/2019—Continued

Case No.	Received date	Type of test information	Chemical substance
P–18–0150	9/4/2019	Developmental Toxicity Study in Rats After Inhalation	(G) Tertiary amine, compounds with amino sulfonic acid blocked aliphatic isocyanate homopolymer.
P–18–0351	9/3/2019	2- week dose range finding study by the oral route (Gavage) in rats, ISO MTS cytotoxicity test, Activated Sludge Respiration Inhibition Test (OECD 209), In Vitro Human Lymphocyte Micronucleus Assay (OECD 487).	(G) Acrylic acid, tricyclo alkyl ester.
P–19–0036	8/29/2019	Solubility Method, Environmental Controls	(S) 1,4-Benzenedicarboxylic acid, 1,4-bis(2-phenoxyethyl) ester.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 10, 2019.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–28338 Filed 12–31–19; 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 indicated. The applications will also be available for inspection at the offices of the Board of Governors. 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 and Constitution Avenue NW, Washington DC 20551–0001, not later than January 17, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Apple River State Bank Employee Ownership Plan, Apple River State Bank, trustee;* to acquire voting shares of First Apple River Corporation and thereby indirectly acquire voting shares of Apple River State Bank, all of Apple River, Illinois.

B. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *John E. Babcock, Anoka, Minnesota;* to retain voting shares of Metro North Bancshares, Inc. and thereby indirectly retain voting shares of The Bank of Elk River, both of Elk River, Minnesota.

Board of Governors of the Federal Reserve System, December 27, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–28302 Filed 12–31–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 indicated. The applications will also be available for inspection at the offices of the Board of Governors. 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 and Constitution Avenue, NW, Washington, DC 20551–0001, not later than January 15, 2020.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The JK Durfee Family Revocable Trust, James R. Durfee and Kimberly K. Durfee, as co-trustees, all of Sundance Wyoming;* to acquire voting shares of Sundance Bankshares, Inc., and thereby indirectly acquire voting shares of Sundance State Bank, both also of Sundance, Wyoming.

Board of Governors of the Federal Reserve System, December 26, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–28279 Filed 12–31–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

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 indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on whether the proposed transaction

complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Unless otherwise noted, 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 January 15, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *1895 Bancorp of Wisconsin, MHC, and 1895 Bancorp of Wisconsin, Inc., both of Greenfield, Wisconsin;* a savings and loan holding company and a mid-tier savings and loan holding company, respectively, to engage de novo in holding, managing, or liquidating assets owned or acquired from a savings association, in connection with the transfer of branch property to 1895 Bancorp of Wisconsin, Inc.

Board of Governors of the Federal Reserve System, December 26, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–28281 Filed 12–31–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 20, 2020.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *The Toronto-Dominion Bank, Toronto, Ontario, Canada, and TD Group US Holdings, LLC, Wilmington, Delaware;* to acquire equity securities of The Charles Schwab Corporation, San Francisco, California, and thereby indirectly acquire equity securities of its subsidiary savings associations, Charles Schwab Bank, Charles Schwab Premier Bank, and Charles Schwab Trust Bank, all of Henderson, Nevada, pursuant to section 4(c)(8) of the BHC Act.

Board of Governors of the Federal Reserve System, December 26, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–28280 Filed 12–31–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The 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 indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than January 30, 2020.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Reliable Community Bancshares, Inc., Perryville, Missouri;* to acquire Bolivar Bancshares, Inc., and thereby indirectly acquire Bank of Bolivar, both of Bolivar, Missouri. In addition, Bolivar Acquisition Corp., Perryville, Missouri, to become a bank holding company by acquiring Bolivar Bancshares and thereby indirectly acquire Bank of Bolivar.

Board of Governors of the Federal Reserve System, December 27, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–28303 Filed 12–31–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Commission on Childhood Vaccines

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Commission on Childhood Vaccines (ACCV) will hold public meetings for the 2020 calendar year (CY). Information about ACCV, agendas, and materials for these meetings can be found on the ACCV website at *https://www.hrsa.gov/advisory-committees/vaccines/index.html.*

DATES: ACCV meetings will be held on:

- March 5–6, 2020;
- June 4–5, 2020;
- September 3–4, 2020; and
- December 3–4, 2020.

These meetings will be held from 9:00 a.m.–5:00 p.m. Eastern Time.

ADDRESSES: Meetings may be held in-person, by teleconference, and/or Adobe Connect webinar. In-person ACCV meetings will be held at 5600 Fishers Lane, Rockville, Maryland 20857. Instructions for joining the meetings either in-person or remotely will be posted on the ACCV website 30 business days before the date of the meeting. For meeting information

updates, go to the ACCV website at *https://www.hrsa.gov/advisory-committees/vaccines/index.html.*

FOR FURTHER INFORMATION CONTACT: Annie Herzog, Division of Injury Compensation Programs, HRSA, 5600 Fishers Lane, 08N186B, Rockville, Maryland 20857; 301–443–6634; or *aherzog@HRSA.gov.*

SUPPLEMENTARY INFORMATION: The ACCV provides advice and recommendations to the Secretary of HHS on policy, program development, and other issues related to implementation of the National Vaccine Injury Compensation Program (VICP) and concerning other matters as described under section 2119 of the Public Health Service Act (42 U.S.C. 300aa–19).

Agenda items and meeting times are subject to change as priorities dictate. Refer to the ACCV website listed above for any meeting updates that may occur. For CY 2020 meetings, agenda items may include, but are not limited to updates from: (1) The Division of Injury Compensation Programs; (2) Department of Justice; (3) Office of Infectious Disease and HIV/AIDS Policy (HHS); (4) Immunization Safety Office (Centers for Disease Control and Prevention); (5) National Institute of Allergy and Infectious Diseases (National Institutes of Health); and, (6) Center for Biologics, Evaluation and Research (Food and Drug Administration). Refer to the ACCV website listed above for all current and updated information concerning the CY 2020 ACCV meetings, including draft agendas and meeting materials that will be posted 5 calendar days before the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting(s). Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to ACCV should be sent to Annie Herzog using the contact information above at least 5 business days before the meeting date(s).

Individuals who need special assistance or another reasonable accommodation should notify Annie Herzog using the contact information listed above at least 10 business days before the meeting(s) they wish to attend. Since all in person meetings will occur in a federal government building, attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–28294 Filed 12–31–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD5198NI DS61100000 DNINR0000.000000 DX61104]

Exxon Valdez Oil Spill Public Advisory Committee; Call for Nominations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The *Exxon Valdez* Oil Spill Trustee Council is soliciting nominations for the Public Advisory Committee to fill three membership vacancies that represent sport hunting/fishing, science/technology, and conservation/environmental interests. The Public Advisory Committee advises the Trustee Council on decisions related to the planning, evaluation, funds allocation, and conduct of injury assessment and restoration activities related to the T/V *Exxon Valdez* oil spill of March 1989. Public Advisory Committee members will be selected and appointed by the Secretary of the Interior to serve a two-year term.

DATES: All nominations must be received by February 3, 2020.

ADDRESSES: A complete nomination package should be submitted by hard copy or via email to Elise Hsieh, Executive Director, *Exxon Valdez* Oil Spill Trustee Council, 4230 University Drive, Suite 220, Anchorage, Alaska 99508–4650, or at *elise.hsieh@alaska.gov.* Also please copy Shiway Wang, Science Director, on any correspondence, at *shiway.wang@alaska.gov.*

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Cherri Womac, *Exxon Valdez* Oil Spill Trustee Council, 4230 University Drive, Suite 220, Anchorage, Alaska 99508–4650, (907) 278–8012 or (800) 478–7745 or via email at *cherri.womac@alaska.gov;* or Dr. Philip Johnson, Designated Federal Officer, U.S. Department of the Interior, Office of Environmental Policy and Compliance, 1689 C Street, Suite 119, Anchorage, Alaska 99501–5126, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The *Exxon Valdez* Oil Spill Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The Public Advisory Committee was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities, or other use of natural resource damage recoveries obtained by the government.

The Trustee Council consists of representatives of the U.S. Department of the Interior, U.S. Department of Agriculture, National Oceanic and Atmospheric Administration, Alaska Department of Fish and Game, Alaska Department of Environmental Conservation, and Alaska Department of Law.

The Public Advisory Committee consists of 10 members to reflect balanced representation from each of the following principal interests: Aquaculture/mariculture, commercial tourism, conservation/environmental, recreation, subsistence use, commercial fishing, native landownership, sport hunting/fishing, science/technology, and public-at-large.

Nominations for membership may be submitted by any source.

Nominations should include a résumé providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Public Advisory Committee and permit the Department of the Interior to contact a potential member.

Authority: 5 U.S.C. Appendix 2.

Philip Johnson,

Regional Environmental Officer, Office of Environmental Policy and Compliance.

[FR Doc. 2019–28284 Filed 12–31–19; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–29524; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before December 14, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by January 17, 2020.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 14, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ARKANSAS

Baxter County

Mountain Home Cemetery-Historic Section, 147 East 11th St., Mountain Home, SG100004895

Craighead County

Patteson House, 2801 Harrisburg Rd., Jonesboro vicinity, SG100004898

Desha County

Dante House, 501 Court St., Dumas, SG100004905

Hot Spring County

Lono Gymnasium (New Deal Recovery Efforts in Arkansas MPS), 11702 AR 222, Lono, MP100004896

Phillips County

Lee Grocery Store (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), 100 Main St., Elaine, MP100004897

Pulaski County

Shiloh Missionary Baptist Church, 1200 Hanger St., Little Rock, SG100004893

Maumelle River Bridge (Historic Bridges of Arkansas MPS), Old AR 300 over the Maumelle River, Natural Steps vicinity, MP100004894

Downs Historic District, 4206, 4208, 4210, 4212, 4214, 4216 & 4218 Fairview Rd.; 4201 South Lookout Rd., and 4207, 4209, 4211 & 4213 Wait St., Little Rock, SG100004903

Alexander House, 24 East Palisades Dr., Little Rock, SG100004904

Saline County

Bennett House, 503 First St., Benton, SG100004906

FLORIDA

Bay County

Panama Grammar School, 101 East Seventh St., Panama City, SG100004888

Hernando County

Weeki Wachee Springs, 6131 Commercial Way, Spring Hill, SG100004890

Washington County

Craven, Dr. James B. and Virginia, House, 912 FL 277, Chipley, SG100004889

GEORGIA

Chatham County

Abrahams, Edmund and Mildred, Raised Tybee Cottage, 4 Eighth St., Tybee Island, SG100004900

Screven County

Brier Creek Battlefield, Address Restricted, Sylvania vicinity, SG100004899

ILLINOIS

Champaign County

Champaign Downtown Commercial District, Former ICRR & Main St.; Neil St.; Taylor, Bailey, University; and ICRR, Champaign, SG100004912

NEW JERSEY

Middlesex County

Freeman, Mary Wilkins, House, 207 Lake Ave., Metuchen, SG100004886

NEW YORK

Chenango County

North Guilford Cemetery, 158 Whites Hill Rd., North Guilford, SG100004911

Essex County

Asgaard Farm, 74 Asgaard Way, Au Sable Forks, SG100004907

Kings County

Lewis Avenue Congregational Church, 275 Lewis Ave., 574 Madison St., Brooklyn, SG100004908

Niagara County

Forsyth-Warren Farm, 5182 Ridge Rd., Lockport vicinity, SG100004910

Ulster County

Accord Historic District, Devoe Ln., Granite Rd., Main St., Scenic Rd. Schoolhouse Rd., Tobacco Rd., Tow Path Rd., Accord, SG100004909

Additional documentation has been received for the following resource:

ARKANSAS

Pulaski County

Capitol View Neighborhood Historic District (Additional Documentation), Roughly bounded by Riverview Dr., S. Schiller St., W. Seventh St. and Woodrow St., Little Rock, AD00000813

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

PUERTO RICO

Rio Grande Municipality

Baño de Oro (New Deal Era Constructions in the Forest Reserves in Puerto Rico), PR191, km 12.1, Rio Grande vicinity, MP100004891

Authority: Section 60.13 of 36 CFR part 60.

Dated: December 16, 2019.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2019–28292 Filed 12–31–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1132 and 1134 (Second Review)]

Polyethylene Terephthalate Film, Sheet, and Strip From China and the United Arab Emirates 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 polyethylene terephthalate (''PET'') film, sheet, and strip from China and the United Arab Emirates 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 January 2, 2020. To be assured of consideration, the deadline for responses is February 3, 2020. Comments on the adequacy of responses may be filed with the Commission by March 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 November 10, 2008, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of PET film, sheet, and strip from China and the United Arab Emirates (73 FR 66595). Following the first five-year reviews by Commerce and the Commission, effective February 6, 2015, Commerce issued a continuation of the antidumping duty orders on imports of PET film, sheet, and strip from China and the United Arab Emirates (80 FR 6689). The Commission is now conducting second 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 the United Arab Emirates.

(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, and its full first five-year review determinations, the Commission defined a single *Domestic Like Product* 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 all U.S. producers of the *Domestic Like Product,* except a certain producer by which the Commission determined in the original investigations that appropriate circumstances existed to exclude from the *Domestic Industry* as a related party. In its full first five-year reviews, the Commission defined the *Domestic Industry* as all domestic producers of the *Domestic Like Product.*

(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 section 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 section 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 section 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 section 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 February 3, 2020. Pursuant to section 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 March 16, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 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).

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. 19–5–453, expiration date June 30, 2020. 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 section 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 section 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 section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(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 2019, 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 2019 (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 2019 (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 2013, 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 section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 20, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–28082 Filed 12–31–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1153 (Second Review)]

Certain Tow-Behind Lawn Groomers and Parts Thereof From China Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on certain tow-behind lawn groomers and parts thereof 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 January 2, 2020. To be assured of consideration, the deadline for responses is February 3, 2020. Comments on the adequacy of responses may be filed with the Commission by March 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 3, 2009, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of certain tow-behind lawn groomers and parts thereof from China (74 FR 38395). Following the first five-year reviews by Commerce and the Commission, effective February 4, 2015, Commerce issued a continuation of the antidumping duty order on imports of certain tow-behind lawn groomers and parts thereof from China (80 FR 6049). The Commission is now conducting a second 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 China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first five-year review determination, the Commission defined a single *Domestic Like Product* encompassing the continuum of certain tow-behind lawn groomers and parts thereof 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 determination, the Commission defined the *Domestic Industry* as all domestic producers of certain tow-behind lawn groomers and parts thereof, with the exception of one producer, which was excluded from the domestic industry as a related party. Certain Commissioners defined the *Domestic Industry* differently. In its expedited first five-year review, the Commission defined the *Domestic Industry* as all domestic producers of certain tow-behind lawn groomers and parts thereof.

(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 section 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 section 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 section 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 section 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 February 2, 2020. Pursuant to section 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 March 16, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 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).

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. 19–5–454, expiration date June 30, 2020. 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 section 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 section 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 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 order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in China that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(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 2019, except as noted (report quantity data in units 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 2019 (report quantity data in units 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 2019 (report quantity data in units 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* after 2013, 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 section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 20, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–28038 Filed 12–31–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–511 and 731–TA–1246 and 1247 (Review)]

Certain Crystalline Silicon Photovoltaic Products 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 countervailing and antidumping duty orders on certain crystalline silicon photovoltaic products from China and the antidumping duty order on certain crystalline silicon photovoltaic products from 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 January 2, 2020. To be assured of consideration, the deadline for responses is February 3, 2020. Comments on the adequacy of responses may be filed with the Commission by March 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 February 18, 2015, the Department of Commerce (''Commerce'') issued countervailing and antidumping duty orders on certain crystalline silicon photovoltaic products from China, and an antidumping duty order on imports of certain crystalline silicon photovoltaic products from Taiwan (80 FR 8592 and 8596). 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 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, the Commission defined a single *Domestic Like Product* consisting of crystalline silicon photovoltaic cells and modules, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of crystalline silicon photovoltaic cells and modules, but also found that circumstances warranted the exclusion of certain domestic producers from the *Domestic Industry* as related parties.

(5) The *Order Date* is the date that the countervailing and antidumping duty orders under review became effective. In these reviews, the *Order Date* is February 18, 2015.

(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 section 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 section 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 section 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 section 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 February 3, 2020. Pursuant to section 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 March 16, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 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).

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. 19–5–451, expiration date June 30, 2020. 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 section 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 section 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: 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 countervailing and 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 section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in kilowatts 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 2019 (report quantity data in kilowatts 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 2019 (report quantity data in kilowatts and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 20, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–28080 Filed 12–31–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–986 and 987 (Third Review)]

Ferrovanadium From China and South Africa; 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 ferrovanadium from China and South Africa 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 January 2, 2020. To be assured of consideration, the deadline for responses is February 3, 2020. Comments on the adequacy of responses may be filed with the Commission by March 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 January 28, 2003, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of ferrovanadium from China and South Africa (68 FR 4168 and 4169). Following the first five-year reviews by Commerce and the Commission, effective December 19, 2008, Commerce issued a continuation of the antidumping duty orders on imports of ferrovanadium from China and South Africa (73 FR 77609). Following the second five-year reviews by Commerce and the Commission, effective February 18, 2015, Commerce issued a continuation of the antidumping duty orders on imports of ferrovanadium from China and South Africa (80 FR 8607). The Commission is now conducting third 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 these five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and South Africa.

(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 and its full first and second five-year review determinations, the Commission found a single *Domestic Like Product* consisting of ferrovanadium of all grades 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 and its full first and second five-year review determinations, the Commission defined the *Domestic Industry* as all U.S. producers of the *Domestic Like Product.* The Commission did not include tollees in the *Domestic Industry* in its original determinations or full first and second five-year review determinations but considered the information provided by tollees to measure U.S. shipments, U.S. consumption, inventories, and pricing of the *Domestic Like Product.* One Commissioner defined a different domestic industry in the original investigations.

(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 section 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 section 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 section 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 section 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 February 3, 2020. Pursuant to section 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 March 16, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 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).

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. 19–5–452, expiration date June 30, 2020. 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 section 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 section 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 section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(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 2019, except as noted (report quantity data in pounds of 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 any *Subject country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data pounds of 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 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 2019 (report quantity data in pounds of 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 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 2013, 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 section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 20, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–28081 Filed 12–31–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1020 (Third Review)]

Barium Carbonate From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on barium carbonate 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 January 2, 2020. To be assured of consideration, the deadline for responses is February 3, 2020. Comments on the adequacy of responses may be filed with the Commission by March 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 October 1, 2003, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of barium carbonate from China (68 FR 56619). Following the first five-year reviews by Commerce and the Commission, effective March 17, 2009, Commerce issued a continuation of the antidumping duty order on imports of barium carbonate from China (74 FR 11348). Following the second five-year reviews by Commerce and the Commission, effective February 17, 2015, Commerce issued a continuation of the antidumping duty order on imports of barium carbonate from China

(80 FR 8286). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its expedited first five-year review determination, and its full second five-year review determination, the Commission defined one *Domestic Like Product* consisting of all barium carbonate, regardless of form or grade, 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 determination, its expedited first five-year review determination, and its full second five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of barium carbonate, regardless of form or grade, coextensive with Commerce's scope.

(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 section 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, 2013), 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 section 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 section 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 section 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 February 3, 2020. Pursuant to section 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 March 16, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 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).

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. 19–5–450, expiration date June 30, 2020. 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 section 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 section 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 Merchandis*e, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(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 2019, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping 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 2019 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal

operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2013, 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 section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 20, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–28039 Filed 12–31–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[Docket No. 2019R–04]

Commerce in Explosives; 2019 Annual List of Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); Department of Justice.

ACTION: Notice of List of Explosive Materials.

SUMMARY: This notice publishes the 2019 List of Explosive Materials, as required by law. The 2019 list is the same as the 2018 list published by ATF, except that the 2019 list adds four explosives not previously listed.

DATES: The list becomes effective January 2, 2020.

FOR FURTHER INFORMATION CONTACT: Krissy Carlson, Chief; Firearms and Explosives Industry Division; Bureau of Alcohol, Tobacco, Firearms, and Explosives; United States Department of Justice; 99 New York Avenue NE, Washington, DC 20226; (202) 648–7120.

SUPPLEMENTARY INFORMATION: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department of Justice must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as ''explosive materials'' in 18 U.S.C. 841(c).

Each material listed, as well as all mixtures containing any of these materials, constitute ''explosive materials'' under 18 U.S.C. 841(c). Materials constituting blasting agents are marked by an asterisk. Explosive materials are listed alphabetically, and, where applicable, followed by their common names, chemical names, and/or synonyms in brackets. This list supersedes the List of Explosive Materials dated December 12, 2018 (Docket No. 2018R–03, 83 FR 63906).

The 2019 List of Explosive Materials is a comprehensive list, but is not all-inclusive. The definition of ''explosive materials'' includes ''[e]xplosives, blasting agents, water gels and detonators. Explosive materials, include, but are not limited to, all items in the 'List of Explosive Materials' provided for in § 555.23.'' 27 CFR 555.11. Accordingly, the fact that an explosive material is not on the annual list does not mean that it is not within coverage of the law if it otherwise meets the statutory definition of ''explosives'' in 18 U.S.C. 841. Subject to limited exceptions in 18 U.S.C. 845 and 27 CFR 555.141, only Federal explosives licensees and permitees may possess and use explosive materials, including those on the annual list.

Pursuant to its obligation to revise the list of explosives determined to be within the coverage of chapter 40 as set forth in 18 U.S.C. 841(d), the Department is adding four explosives to the 2019 List of Explosive Materials. The four explosives being added to the 2019 list, in alphabetical order, are: (1) ''dipicryl sulfide'' and its synonym ''hexanitrodiphenyl sulfide''; (2) ''nitrotriazolone'' and its synonym ''3-nitro-1,2,4-triazol-5-one''; (3) ''trinitrobenzenesulfonic acid'' and its synonym ''picryl sulfonic acid''; and (4) ''trinitrofluorenone.'' None of these four explosives previously appeared on the list under other names.

The Explosives Research and Development Division (ERDD) at ATF's National Center for Explosives Training and Research (NCETR) performs research and analysis on materials that may be characterized as explosives materials. Upon a comprehensive review of literature on the relevant material and comprehensive research to determine if the material is synonymous or has structural correspondence with other listed explosives, including review of the Department of Transportation's Hazardous Materials Table, the National Oceanic and Atmospheric Administration's CAMEO database, and other explosives community accepted materials, ATF determined that each of these substances is an explosive under 18 U.S.C. 841(d). The addition of these four explosives to ATF's annual list codifies ATF's determination that these are explosive materials regulated under 27 CFR part 555.

Furthermore, the addition of these four explosives to the annual list of explosive materials creates interagency consistency with the classification of these materials as regulated materials by ATF, the Department of Homeland Security (DHS), and the Department of Transportation (DOT). All of these substances are listed on DHS's Chemical Facility Antiterrorism Standards (CFATS) Appendix A: Chemicals of Interest (COI) List, *see* 6 CFR part 27 Appendix A; and DOT's Hazardous Materials Table, *see* 49 CFR 172.101. Therefore, for purposes of clarity and consistency, ATF is adding these explosives to the annual list.

As stated, the annual list of explosive materials is a comprehensive list, but is not all-inclusive. Businesses or others subject to the federal explosives

regulations at 27 CFR part 555 should not be impacted by the addition of these explosive materials to the annual list because all explosive materials, including those not on the annual list (with the exception of certain materials noted in exemptions at 18 U.S.C. 845 and the implementing regulations at 27 CFR 555.141), already are regulated under this part. These materials are subject to the restrictions and regulations in this part regarding the requirements for manufacture, storage, distribution, use, and licensing or permitting. Any person who receives explosive materials is already required to be licensed as an importer, manufacturer, or dealer in explosive materials, or to hold a permit as an explosives user. For persons who already hold a license or permit under the explosives laws, no further action on their part would be required for them to acquire newly-added explosive materials.

Notice of the 2019 Annual List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as ''explosive materials'' covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
* Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate explosive mixtures (excluding ammonium perchlorate composite propellant (APCP)).
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
* ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
Black powder substitutes.
* Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfide [hexanitrodiphenyl sulfide].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].

Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrotriazolone [3-nitro-1,2,4-triazol-5-one].
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
Pyrotechnic fuses.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzenesulfonic acid [picryl sulfonic acid].
Trinitrobenzoic acid.
Trinitrocresol.
Trinitrofluorenone.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthomonas hydrophilic colloid explosive mixture.

Date approved: December 27, 2019.

Marvin G. Richardson,

Associate Deputy Director.

[FR Doc. 2019–28316 Filed 12–31–19; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under the Workforce Innovation and Opportunity Act.

DATES: The meeting will begin at 9:00 a.m., (Eastern Daylight Time) on Tuesday, February 11, 2020, and continue until 5:00 p.m. The meeting will reconvene at 9:00 a.m., on Wednesday, February 12, 2020 and adjourn at 5:00 p.m. The period from 3:00 p.m., to 5:00 p.m., on February 12, 2020 is reserved for participation and comment by members of the public.

ADDRESSES: The meeting will be held at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW, Executive Room C–5515, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and Section 166(i)(4) of the Workforce Innovation and Opportunity Act (WIOA) [29 U.S.C. 3221(i)(4))], notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under WIOA.

Council members and members of the public are encouraged to arrive early to allow for security clearance into the Frances Perkins Building.

Security Instructions: Meeting participants should use the visitors' entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C Streets NW. For security purposes, meeting participants must:

1. Present a valid photo ID to receive a visitor badge.

2. Know the name of the event being attended: The meeting event is the Native American Employment and Training Council (NAETC).

Visitor badges are issued by the security officer at the visitor entrance located at 3rd and C Streets NW after the visitor proceeds through the security screening. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk. Laptops and other electronic devices may be inspected and logged for identification purposes. Due to limited parking options, DC Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building.

The meeting will be open to the public.

Members of the public not present may submit a written statement by February 7, 2020, to be included in the record of the meeting. Statements are to be submitted to Athena R. Brown, Designated Federal Officer (DFO), U.S. Department of Labor, 200 Constitution Avenue NW, Room S–4209, Washington, DC 20210. Persons who need special accommodations should contact Carl Duncan (202) 693–3384, at least two business days before the meeting. The formal agenda will focus on the following topics: (1) Training and Technical Assistance; (2) Administrative and Financial Reporting and Performance Indicators; (3) Update on Public Law 102–477; (4) Updates on New Initiatives; (5) Census Update; (6) Council and Workgroup Updates and Recommendations; (7) New Business and Next Steps; and (8) Public Comment.

FOR FURTHER INFORMATION CONTACT: Athena R. Brown, DFO, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room C–4311, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

Signed at Washington, DC.

John Pallasch,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2019–28308 Filed 12–31–19; 8:45 am]

BILLING CODE 4501–FR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Job Corps Health Questionnaire

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), Employment Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled ''Job Corps Health Questionnaire.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 2, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Lawrence Lyford by telephone at 202–693–3121 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Lyford.Lawrence@dol.gov.*

Submit written comments about or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Job Corps, 200 Constitution Avenue NW, Room N–4507, Washington, DC 20210; by email: *Lyford.Lawrence@dol.gov;* or by Fax 202–693–3113.

FOR FURTHER INFORMATION CONTACT: Contact Lawrence Lyford by telephone at 202–693–3121 (this is not a toll free number) or by email at *Lyford.Lawrence@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. The Economic Opportunity Act established Job Corps in 1964 and it currently operates under the authority of the Workforce Innovation and Opportunity Act (WIOA) of 2014. For over 55 years, Job Corps has helped prepare over 3 million at-risk young people between the ages of 16 and 24 for success in our nation's workforce. With 121 centers in 50 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including High School Diplomas (HSD) and/or High School Equivalency (HSE), and career technical training credentials, including industry-recognized certifications, state licensures, and pre-apprenticeship credentials.

Job Corps is a national program administered by DOL through the Office of Job Corps and six regional offices. DOL awards and administers contracts for the recruiting and screening of new students, center operations, and the

placement and transitional support of graduates and former enrollees. Large and small corporations manage and operate 95 Job Corps centers under contractual agreements with DOL. These contract center operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations. The remaining 24 Job Corps centers, called Civilian Conservation Centers, are operated by the U.S. Department of Agriculture Forest Service, via an interagency agreement. DOL has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0033.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Job Corps Health Questionnaire.

Forms: ETA Form–653.

OMB Control Number: 1205–0033.

Affected Public: Job Corps applicants.

Estimated Number of Respondents: 66,630.

Frequency: Once per applicant.

Total Estimated Annual Responses: 66,630.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 8,884.

Total Estimated Annual Other Cost Burden: $0.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2019–28315 Filed 12–31–19; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Job Corps Placement and Assistance Record

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), Employment Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled ''Job Corps Placement and Assistance Record.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 2, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Lawrence Lyford by telephone at 202–693–3121 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Lyford.Lawrence@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Job Corps, 200 Constitution Avenue NW, Room N–4507, Washington, DC 20210; by email: *Lyford.Lawrence@dol.gov;* or by Fax 202–693–3113.

FOR FURTHER INFORMATION CONTACT: Lawrence Lyford by telephone at 202–693–3121 (this is not a toll free number) or by email at *Lyford.Lawrence@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. The Economic Opportunity Act established Job Corps in 1964 and it currently operates under the authority of the Workforce Innovation and Opportunity Act (WIOA) of 2014. For over 55 years, Job Corps has helped prepare over 3 million at-risk young people between the ages of 16 and 24 for success in our nation's workforce. With 121 centers in 50 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including High School Diplomas (HSD) and/or High School Equivalency (HSE), and career technical training credentials, including industry-recognized certifications, state licensures, and pre-apprenticeship credentials.

Job Corps is a national program administered by DOL through the Office of Job Corps and six regional offices. DOL awards and administers contracts for the recruiting and screening of new students, center operations, and the placement and transitional support of

graduates and former enrollees. Large and small corporations manage and operate 95 Job Corps centers under contractual agreements with DOL. These contract center operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors, in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations. Two centers are operated under demonstration grant arrangements. The remaining 24 Job Corps centers, called Civilian Conservation Centers, are operated by the U.S. Department of Agriculture Forest Service via an interagency agreement. DOL has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0035.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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).

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Job Corps Placement and Assistance Record.

Forms: ETA Form 678.

OMB Control Number: 1205–0035.

Affected Public: Job Corps records staff and career transition specialists.

Estimated Number of Respondents: 34,000.

Frequency: Once placements occur.

Total Estimated Annual Responses: 34,000.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 4,210.

Total Estimated Annual Other Cost Burden: $125,015.

Authority: 44 U.S.C. 3506(c)(2)(A).

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2019–28309 Filed 12–31–19; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Federal-State Unemployment Insurance Program Data Exchange Standardization

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Federal-State Unemployment Insurance Program Data Exchange Standardization.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 2, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Jagruti Patel by telephone at (202) 693–3059 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *patel.jagruti@dol.gov*.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4524, 200 Constitution Avenue NW, Washington, DC 20210; by email: *patel.jagruti@dol.gov;* or by Fax (202) 693–3975.

FOR FURTHER INFORMATION CONTACT: Contact Jagruti Patel by telephone at (202) 693–3059 (this is not a toll-free number) or by email at *patel.jagruti@dol.gov*.

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

On February 22, 2012, the President signed the Middle Class Tax Relief and Job Creation Act of 2012 (the Act). Section 2104 of the Act amends Title IX, SSA by adding a new section 911 (42 U.S.C. 1111), which requires the Department to issue rules, developed in consultation with an interagency workgroup established by the OMB, that establish data exchange standards for certain functions related to administration of the unemployment insurance (UI) program. The rule designates XML (eXtensible Markup Language) as the data exchange standard for the real-time applications on the Interstate Connection Network (ICON) and for State Information Data Exchange System (SIDES). States are required to conform to the XML data exchange standard for these applications. DOL's

regulations implementing this Act, codified in 20 CFR part 619, authorize this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0510.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Federal-State Unemployment Insurance Program Data Exchange Standardization.

Form: Not Applicable.

OMB Control Number: 1205–0510.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 25.

Frequency: Once per incident.

Total Estimated Annual Responses: 25.

Estimated Average Time per Response: 120 hours.

Estimated Total Annual Burden Hours: 3,000 hours.

Total Estimated Annual Other Cost Burden: $0.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2019–28310 Filed 12–31–19; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0024]

Proposed Extension of Information Collection; Application for Waiver of Surface Facilities Requirements

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Application for Waiver of Surface Facilities Requirements.

DATES: All comments must be received on or before March 2, 2020.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2019–0045.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL—Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Title 30 CFR 71.400 through 71.402 and 75.1712–1 through 75.1712–3 require coal mine operators to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. If the operator is unable to meet any or all of the requirements, the operator may apply for a waiver. Title 30 CFR 71.403, 71.404, 75.1712–4, and 75.1712–5 provide procedures by which an operator may apply for and be granted a waiver. Applications must be submitted to the MSHA District Manager for the district in which the mine is located and must contain the name and address of the mine operator, name and location of the mine, and a detailed statement of the grounds on which the waiver is requested.

Waivers for surface mines may be granted by the District Manager for a period not to exceed one year. If the waiver is granted, surface mine operators may apply for annual extensions of the approved waiver. Waivers for underground mines may be granted by the District Manager for the period of time requested by the underground mine operator as long as the circumstances that were used to justify granting the waiver remain in effect. Waivers are not transferable to a successor coal mine operator.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Application for Waiver of Surface Facilities Requirements. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL—Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Application for Waiver of Surface Facilities Requirements. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0024.

Affected Public: Business or other for-profit.

Number of Respondents: 525.

Frequency: On occasion.

Number of Responses: 525.

Annual Burden Hours: 232 hours.

Annual Respondent or Recordkeeper Cost: $2,625.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2019–28314 Filed 12–31–19; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before February 3, 2020.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Roslyn B. Fontaine, Deputy Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *fontaine.roslyn@dol.gov* (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2019–070–C.

Petitioner: Ramaco Resources, LLC, P.O. Box 219, Verner, WV 25650.

Mines: Eagle Seam Deep Mine, MSHA I.D. No. 46–09495, Stonecoal Branch Mine No. 2, MSHA I.D. No. 46–08663, No. 2 Gas, MSHA I.D. No. 46–09541, located in Logan County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers, in or inby the last open crosscut.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) The operator utilizes the continuous mining method. Accurate surveying is critical to the safety of the miners at the mine.

(3) Mechanical surveying equipment has been obsolete for a number of years. Such equipment of acceptable quality is

not commercially available. Further, it is difficult, if not impossible, to have such equipment serviced or repaired.

(4) Electronic surveying equipment is, at a minimum, 8 to 10 times more accurate than mechanical equipment.

(5) Application of the existing standard would result in a diminution of safety to miners. Underground mining by its nature, size, and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The operator may use the following total stations and theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater in or inby the last open crosscut, subject to this petition:

—Sokkia–CX–105LN

(b) The nonpermissible electronic surveying equipment is low-voltage or battery-powered nonpermissible total stations and theodolites. All nonpermissible electronic total stations and theodolites will have an IP 66 or greater rating.

(c) The operator will maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(d) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by the person who operates the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. The result of these examinations will be recorded in the logbook and will include:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(e) The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook and will be maintained for at least 1 year.

(f) The operator will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

(g) The nonpermissible electronic surveying equipment used in or inby the last open crosscut will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.

(h) Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn outby the last open crosscut. All requirements of 30 CFR 75.323 will be complied with prior to entering in or inby the last open crosscut.

(i) Prior to setting up and energizing nonpermissible electronic surveying equipment within in or inby the last open crosscut, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rocked-dusted prior to energizing the nonpermissible electronic surveying equipment.

(j) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing nonpermissible electronic surveying equipment in or inby the last open crosscut, methane tests will be made in accordance with 30 CFR 75.323(a). Nonpermissible electronic surveying equipment will not be used in or inby the last open crosscut when production is occurring.

(l) Prior to surveying, the area will be examined according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

(m) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment in or inby the last open crosscut. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew must become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

(n) Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air outby the last open crosscut. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using nonpermissible electronic surveying equipment in or inby the last open crosscut, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, in or inby the last open crosscut is at least the minimum quantity that is required by the mine's ventilation plan.

(p) Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

(q) All members of the surveying crew will receive specific training on the terms and conditions of the petition before using nonpermissible electronic surveying equipment in or inby the last open crosscut. A record of the training will be kept with the other training records.

(r) If the petition is granted, the operator will submit within 60 days after the petition is final, proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the petition. When training is conducted on the terms and conditions in the petition, an MSHA Certificate of Training (Form 5000–23) will be completed and will indicate that it was surveyor training.

(s) The operator will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the petition becoming final. Within 3 years of the date that the petition becomes final, the operator will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the petition becomes final or any total station or other electronic surveying equipment identified in this petition and acquired more than 10 years prior to the date that the petition becomes final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from the date of manufacture.

(t) The operator will ensure that all surveying contractors hired by the operator are using nonpermissible electronic surveying equipment in accordance with the terms and conditions of this petition. The conditions of use in the petition will apply to all nonpermissible electronic surveying equipment used in or inby the last open crosscut, regardless of whether the equipment is used by the operator or by an independent contractor.

(u) The petitioner states that it may use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

—On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

—Production may continue while nonpermissible electronic surveying equipment is used, if such equipment is used in a separate split of air from where production is occurring.

—Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

—If, while surveying, a surveyor must disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

—Any disruption in ventilation will be recorded in the logbook required by the petition. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

—All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition within 60 days of the date the petition becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

—The operator will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2019–071–C.

Petitioner: Ramaco Resources, LLC, P.O. Box 219, Verner, WV 25650.

Mines: Eagle Seam Deep Mine, MSHA I.D. No. 46–09495, Stonecoal Branch Mine No. 2, MSHA I.D. No. 46–08663, No. 2 Gas, MSHA I.D. No. 46–09541, located in Logan County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers, in return airways.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200(a), use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to miners. Underground mining by its nature, size, and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The operator may use the following total stations and theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater in return airways, subject to this petition:

—Sokkia–CX–105LN

(b) The nonpermissible electronic surveying equipment is low-voltage or battery-powered nonpermissible total stations and theodolites. All nonpermissible electronic total stations and theodolites will have an IP 66 or greater rating.

(c) The operator will maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(d) All nonpermissible electronic surveying equipment to be used in return airways will be examined by the person who operates the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. The result of these examinations will be recorded in the logbook and will include:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(e) The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook and will be maintained for at least 1 year.

(f) The operator will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

(g) The nonpermissible electronic surveying equipment used in return airways will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.

(h) Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn out of return airways. All requirements of 30 CFR 75.323 will be complied with prior to entering in return airways.

(i) Prior to setting up and energizing nonpermissible electronic surveying equipment in return airways, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rocked-dusted prior to energizing the nonpermissible electronic surveying equipment.

(j) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing nonpermissible electronic surveying equipment in return airways, methane tests will be made in accordance with 30 CFR 75.323(a). Nonpermissible electronic surveying equipment will not be used in return airways when production is occurring.

(l) Prior to surveying, the area will be examined according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

(m) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment in return airways. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew must become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

(n) Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air out of return airways. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using nonpermissible electronic surveying equipment in return airways, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, in return airways is at least the minimum quantity that is required by the mine's ventilation plan.

(p) Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

(q) All members of the surveying crew will receive specific training on the terms and conditions of the petition before using nonpermissible electronic surveying equipment in return airways. A record of the training will be kept with the other training records.

(r) If the petition is granted, the operator will submit within 60 days after the petition is final, proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the petition. When training is conducted on the terms and conditions in the petition, an MSHA Certificate of Training (Form 5000–23) will be completed and will indicate that it was surveyor training.

(s) The operator will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the petition becoming final. Within 3 years of the date that the petition becomes final, the operator will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the petition becomes final or any total station or other electronic surveying equipment identified in this petition and acquired more than 10 years prior to the date that the petition becomes final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from the date of manufacture.

(t) The operator will ensure that all surveying contractors hired by the operator are using nonpermissible electronic surveying equipment in accordance with the terms and conditions of this petition. The conditions of use in the petition will apply to all nonpermissible electronic surveying equipment used in return airways, regardless of whether the equipment is used by the operator or by an independent contractor.

(u) The petitioner states that it may use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

—On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

—Production may continue while nonpermissible electronic surveying equipment is used, if such equipment is used in a separate split of air from where production is occurring.

—Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

—If, while surveying, a surveyor must disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

—Any disruption in ventilation will be recorded in the logbook required by the petition. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

—All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition within 60 days of the date the petition becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

—The operator will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2019–072–C.

Petitioner: Ramaco Resources, LLC, P.O. Box 219, Verner, WV 25650.

Mines: Eagle Seam Deep Mine, MSHA I.D. No. 46–09495, Stonecoal Branch Mine No. 2, MSHA I.D. No. 46–08663, No. 2 Gas, MSHA I.D. No. 46–09541, located in Logan County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers, within 150 feet of pillar workings and longwall faces.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372, 75.1002(a), and 75.1200, use of the most practical and accurate surveying equipment is necessary. It is necessary to determine the exact location and extent of mine workings to ensure the safety of miners in active mines and to protect miners in future mines which may mine in close proximity to the active mines.

(2) Application of the existing standard would result in a diminution of safety to miners. Underground mining by its nature, size, and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The operator may use the following total stations and theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater within 150 feet of pillar workings or longwall faces subject to this petition:

—Sokkia–CX–105LN

(b) The nonpermissible electronic surveying equipment is low-voltage or battery-powered nonpermissible total stations and theodolites. All nonpermissible electronic total stations and theodolites will have an IP 66 or greater rating.

(c) The operator will maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(d) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces will be examined by the person who operates the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. The result of these examinations will be recorded in the logbook and will include:

(i) Checking the instrument for any physical damage and the integrity of the case;

(ii) Removing the battery and inspecting for corrosion;

(iii) Inspecting the contact points to ensure a secure connection to the battery;

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(v) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(e) The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook and will be maintained for at least 1 year.

(f) The operator will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

(g) The nonpermissible electronic surveying equipment used within 150 feet of pillar workings or longwall faces

will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.

(h) Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn further than 150 feet from pillar workings and longwall faces. All requirements of 30 CFR 75.323 will be complied with prior to entering within 150 feet of pillar workings or longwall faces.

(i) Prior to setting up and energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rocked-dusted prior to energizing the nonpermissible electronic surveying equipment.

(j) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings and longwall faces, methane tests will be made in accordance with 30 CFR 75.323(a). Nonpermissible electronic surveying equipment will not be used within 150 feet of pillar workings or longwall faces when production is occurring.

(l) Prior to surveying, the area will be examined according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

(m) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment within 150 feet of pillar workings and longwall faces. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew must become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

(n) Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings or longwall faces. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, within 150 feet of pillar workings or longwall faces is at least the minimum quantity that is required by the mine's ventilation plan.

(p) Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

(q) All members of the surveying crew will receive specific training on the terms and conditions of the petition before using nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces. A record of the training will be kept with the other training records.

(r) If the petition is granted, the operator will submit within 60 days after the petition is final, proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the petition. When training is conducted on the terms and conditions in the petition, an MSHA Certificate of Training (Form 5000–23) will be completed and will indicate that it was surveyor training.

(s) The operator will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the petition becoming final. Within 3 years of the date that the petition becomes final, the operator will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the petition becomes final or any total station or other electronic surveying equipment identified in this petition and acquired more than 10 years prior to the date that the petition becomes final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from the date of manufacture.

(t) The operator will ensure that all surveying contractors hired by the operator are using nonpermissible electronic surveying equipment in accordance with the terms and conditions of this petition. The conditions of use in the petition will apply to all nonpermissible electronic surveying equipment used within 150 feet of pillar workings or longwall faces, regardless of whether the equipment is used by the operator or by an independent contractor.

(u) The petitioner states that it may use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

—On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

—Production may continue while nonpermissible electronic surveying equipment is used, if such equipment is used in a separate split of air from where production is occurring.

—Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

—If, while surveying, a surveyor must disrupt ventilation, the surveyor will

cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

—Any disruption in ventilation will be recorded in the logbook required by the petition. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

—All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition within 60 days of the date the petition becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

—The operator will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2019–28312 Filed 12–31–19; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0019]

Proposed Extension of Information Collection; Slope and Shaft Sinking Plans, 30 CFR 77.1900 (Pertains to Surface Work Areas of Underground Coal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Slope and Shaft Sinking Plans, 30 CFR 77.1900 (pertains to surface work areas of underground coal mines).

DATES: All comments must be received on or before March 2, 2020.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2019–0051.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL—Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Title 30 CFR 77.1900 requires underground coal mine operators to submit for approval a plan that will provide for the safety of workmen in each slope or shaft that is commenced or extended from the surface to the underground coal mine. Each slope or shaft sinking operation is unique in that each operator uses different methods and equipment and encounters different geological strata which make it impossible for a single set of regulations to ensure the safety of the miners under all circumstances. This makes an individual slope or shaft sinking plan necessary. The plan must be consistent with prudent engineering design. Plans include the name and location of the mine; name and address of the mine operator; a description of the construction work and methods to be used in construction of the slope or shaft, and whether all or part of the work will be performed by a contractor; the elevation, depth and dimensions of the slope or shaft; the location and elevation of the coalbed; the general characteristics of the strata through which the slope or shaft will be developed; the type of equipment which the operator proposes to use; the system of ventilation to be used; and safeguards for the prevention of caving during excavation.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Slope and Shaft Sinking Plans, 30 CFR 77.1900 (pertains to surface work areas of underground coal mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including 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.

MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

All documents related to the information collection will be available at *http://www.regulations.gov.* The public may also examine publicly available documents at USDOL—Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Slope and Shaft Sinking Plans, 30 CFR 77.1900 (pertains to surface work areas of underground coal mines). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0019.

Affected Public: Business or other for-profit.

Number of Respondents: 35.

Frequency: On occasion.

Number of Responses: 91.

Annual Burden Hours: 1,820 hours.

Annual Respondent or Recordkeeper Cost: $55.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2019–28313 Filed 12–31–19; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0224]

RIN 3150–AJ67

Advanced Power Reactor 1400 (APR1400) Design Certification

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Office of Management and Budget approval of information collection.

SUMMARY: On May 22, 2019, the U.S. Nuclear Regulatory Commission (NRC) published a direct final rule to certify the Advanced Power Reactor 1400 (APR1400) standard design. The direct final rule contained changes to the information collections in NRC's regulation that needed approval from the Office of Management and Budget (OMB). This document provides notice that OMB has approved the information collection changes associated with the APR1400 direct final rule. The OMB Control Number is 3150–0236.

DATES: The information collection was approved by OMB on September 12, 2019.

ADDRESSES: Please refer to Docket ID NRC–2015–0224 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2015–0224. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *David.Cullison@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC published a direct final rule for the certification of the Advanced Power Reactor 1400 (APR1400) standard plant design on May 22, 2019 (84 FR 23439). The direct final rule became effective on September 19, 2019. The direct final rule indicated that OMB had not yet approved the information collection requirements in the rule under the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3501–3520) and stated that an agency may not conduct or sponsor, and persons are not required to respond to, a collection of information that does not display a valid OMB control number, which OMB assigns upon approving an information collection. Consistent with the PRA–95 and OMB's PRA–95 implementing regulations in part 1320 of title 5 of the *Code of Federal Regulations,* the direct final rule stated that the NRC would publish another document in the **Federal Register** at a later date to provide notice of the effective date of the information collections in the rule or, if approval were denied, to provide notice of what action the NRC planned to take.

On July 2, 2019, the NRC submitted the APR1400—Design Certification information collection request for the direct final rule to OMB for approval in accordance with the PRA–95. On September 12, 2019, OMB approved the collections of information contained in the direct final rule and assigned the collections of information OMB Control

Number 3150–0236, titled ''Information Collections Contained in the Appendix F to 10 CFR part 52 Design Certification Rule for the APR1400 Design.'' The approval for collecting the information expires on September 30, 2022. Accordingly, the information collection requirements in the direct final rule are now in effect.

Dated at Rockville, Maryland, this 27th day of December, 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–28287 Filed 12–31–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0229]

Methodology for Modeling Transient Fires in Nuclear Power Plant Fire Probabilistic Risk Assessments

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG entitled, ''Methodology for Modeling Transient Fires in Nuclear Power Plant Fire Probabilistic Risk Assessments'' (NUREG–2233/EPRI 3002016054). This report is a joint product of the NRC and the Electric Power Research Institute (EPRI) collaborating under a memorandum of understanding for fire research. This report contains a methodology to increase the realism in the modeling of transient ignition sources in fire probabilistic risk assessment (FPRA). Additionally, the report develops a method for the detailed modeling of transient fires that includes fire growth and decay parameters, yields of minor products of combustion, heat of combustion, and the physical size and effective elevation of the fire.

DATES: Submit comments by February 18, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0229. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David W. Stroup, Office of Nuclear Regulatory Research, telephone: 301–415–1649, email: *David.Stroup@nrc.gov;* or Nicholas Melly, Office of Nuclear Regulatory Research, telephone: 301–415–2392, email: *Nicholas.Melly@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0229 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0229.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG on ''Methodology for Modeling Fire Growth and Suppression Response of Electrical Cabinet Fires in Nuclear Power Plants'' is available in ADAMS under Accession No. ML19357A270.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0229 in your comment submission.

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

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

II. Discussion

In 2005, the Electric Power Research Institute (EPRI) and the NRC's Office of Nuclear Regulatory Research (RES) issued a joint technical report titled, EPRI/NRC–RES, Fire PRA Methodology for Nuclear Power Facilities, EPRI 1011989, NUREG/CR–6850. This publication documented state-of-the-art methods, tools, and data for conducting a fire probabilistic risk assessment (FPRA) for a commercial nuclear power plant (NPP) application. Following this publication, many utilities developed FPRAs using the guidance in NUREG/CR–6850 to support risk informed applications, including the transition to an NFPA 805 licensing basis, among others. The results obtained from the FPRA models have suggested specific elements in the fire scenario analysis where improved methods and/or guidance could reduce conservatism and increase realism in the risk estimates. Consequently, over the past fifteen years, FPRA research covering the areas of fire ignition frequencies, fire modeling, human reliability analysis and spurious operations have been published. These research results have improved realism for the ignition sources identified in NUREG/CR–6850 except for transient combustibles. The research in this report addresses that gap.

The research documented in this report was developed by a working group that included members of both the regulator and the nuclear power industry and consisted of two phases. For the first phase, an extensive set of experiments measuring the heat release rate and other fire characteristics of transient fires was conducted to supplement the existing data in NUREG/CR–6850/EPRI 1011989. The test report for this set of experiments, NUREG–2232/EPRI 3002015997, ''Heat Release Rate and Fire Characteristics of Fuels Representative of Typical Transient Fire Events in Nuclear Power Plants,'' contains details on all the fuel packages tested; the test method including selection of fuel packages and ignition sources; the methods used to process the collected test data; and the collected and derived data including heat release rate, fire diameter, zones of influence, fire growth and decay parameters, and the combustion properties of the fuel packages. The test report is available from EPRI at *https://www.epri.com/#/pages/product/*

3002015997/. The second phase, documented in this report, combined the data collected in the first phase with data from previous experimental programs, developed a methodology for weighting the combined dataset based on industry experience with transient fires, and used the weighted combined dataset to create improved probabilistic distributions for use in modeling transient fires in FPRA. Additionally, this report presents detailed guidance for modeling the time-dependence and defining the combustion characteristics of transient fires.

Dated at Rockville, Maryland, this 27th day of December 2019.

For the Nuclear Regulatory Commission.

David W. Stroup,

Acting Branch Chief, Fire and External Hazards Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2019–28323 Filed 12–31–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. NPF–91 and NPF–92, issued to Southern Nuclear Operating Company, for the Vogtle Electric Generating Plant (VEGP), Units 3 and 4. The proposed amendment requests changes to the VEGP Units 3 and 4 Cyber Security Plan (CSP) to identify the VEGP Units 1 and 2 CSP for cyber security protection of digital assets in common systems, to align language in the VEGP Units 3 and 4 CSP with the corresponding elements of the NRC-endorsed CSP template contained in Nuclear Energy Institute (NEI) 08–09, Revision 6, including Addendum 1, and to enhance certain controls for the VEGP Units 3 and 4 protection and safety monitoring system. For this amendment request, the NRC proposes to determine that it involves no significant hazards consideration. Because this amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Submit comments by February 3, 2020. Requests for a hearing or petition for leave to intervene must be filed by March 2, 2020. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by January 13, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001; telephone: 301–415–5848, email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252, Vogtle Electric Generating Plant, Units 3 and 4, Docket Numbers 52–0025 and 52–0026, December 20, 2019, ''Cyber Security Plan Changes (LAR–19–020),'' when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2008–0252.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ''Cyber Security Plan Changes (LAR–19–020),'' license amendment request is available in ADAMS under Accession No. ML19354B986.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0252, Vogtle Electric Generating Plant, Units 3 and 4, Docket Numbers 52–0025 and 52–0026, December 20, 2019, ''Cyber Security Plan Changes (LAR–19–020),'' in your comment submission.

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

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

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–91 and NPF–92, issued to Southern Nuclear Operating Company, for operation of the VEGP, Units 3 and 4, located in Burke County, Georgia.

The proposed amendment requests changes to the VEGP Units 3 and 4 CSP to identify the VEGP Units 1 and 2 CSP for cyber security protection of digital assets in common systems, to align language in the VEGP Units 3 and 4 CSP with the corresponding elements of the NRC-endorsed CSP template contained in NEI 08–09, Revision 6, including Addendum 1, and to enhance certain controls for the VEGP Units 3 and 4 protection and safety monitoring system.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of the 10 CFR, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes would revise the Vogtle Electric Generating Plant (VEGP) Units 3&4 Cyber Security Plan (CSP) do not involve any new accident. The changes are programmatic in nature and do not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structure, system, or component (SSC) accident initiator or initiating sequence of events. The changes do not impact the design, construction, or operation of any mechanical and fluid systems. The changes do not involve or interface with any SSC accident initiator or initiating sequence of events, so the probabilities of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR) are not affected. Consequently, the plant response to previously evaluated accidents or external events is not adversely affected, nor do the proposed changes create any new accident precursors.

There is no change to the predicted radioactive releases due to postulated accident conditions. Because the change does not involve any safety-related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of systems or equipment that may initiate a new or different kind of accident or alter any SSC such that a new accident initiator or initiating sequence of events is created.

Therefore, the proposed amendment does not create the possibility of a new or different king of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to expand the VEGP Units 1 & 2 CSP to include the common systems of the VEGP Units 3 & 4 applies to cyber security controls to Units 3 and 4 under a Plan that is fully implemented with the required program elements and cyber security controls are in place. Each of the proposed CSP changes has been evaluated and determined to not constitute a decrease in safeguards effectiveness of the CSP. The proposed changes to elements of the VEGP 3&4 CSP do not alter any safety-related equipment, applicable design codes, code compliance, design function, or safety analysis. Consequently, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus the margin of safety is not reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of

the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to

MSHD.Resource@nrc.gov, or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated December 20, 2019.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Victor Hall.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. *Review of Denials of Access.*

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. *Review of Grants of Access.* A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 27th of December, 2019.

For the Nuclear Regulatory Commission.

Russell E. Chazell,

Acting Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2019–28311 Filed 12–31–19; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rules 17Ad–22—Standards for Clearing Agencies; SEC File No. 270–646, OMB Control No. 3235–0695

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–22 (17 CFR 240.17Ad–22) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*).

Rule 17Ad–22 was adopted to strengthen the substantive regulation of clearing agencies, promote the safe and reliable operation of covered clearing agencies, and improve efficiency, transparency, and access to covered clearing agencies.[1] The total estimated annual burden of Rule 17Ad–22 is 8,091 hours, and the total estimated annual cost is $13,397,120.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov* ; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 27, 2019.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28317 Filed 12–31–19; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* 17 CFR 240.17Ad–22; *see also* Exchange Act Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219, 66225–26 (Nov. 2, 2012).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Regulation D Rule 504(b)(3)—Felons and Other Bad Actors Disclosure Statement; SEC File No. 270–798, OMB Control No. 3235–0746

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation D Rule 504(b)(3) provides that no exemption under Rule 504 shall be available for the securities of any issuer if such issuer would be subject to disqualification under Rule 506(d) of Regulation D on or after January 20, 2017; provided that disclosure of prior ''bad actor'' events shall be required in accordance with Rule 506(e) of Regulation D. Rule 504(b)(3) requires the issuer in a Rule 504 offering to furnish to each purchaser, a reasonable time prior to sale, a written description of any disqualifying events that occurred before effectiveness of the amendments to Rule 504 (*i.e.,* before January 20, 2017) and within the time periods described in the list of disqualification events set forth in Rule 506(d)(1) of Regulation D, for the issuer or any other ''covered person'' associated with the offering.

Approximately 800 issuers relying on Rule 504 of Regulation D will spend on average one additional hour to conduct a factual inquiry to determine whether any covered persons had a disqualifying event that occurred before the effective date of the amendments for a total of 800 hours. In addition, approximately eight issuers (or approximately 1% of 800 issuers) will spend ten hours to prepare a disclosure statement describing matters that would have triggered disqualification under Rule 504(b)(3) of Regulation D had they occurred on or after the effective date of the amendments (January 20, 2017) for total burden 80 hours (8 issuers × 10 hours per response).

For Purposes of the PRA, we estimate the total paperwork burden for all affected Rule 504 issuers to comply with Rule 504(b)(3) requirements would be approximately 808 issuers and a total of 880 burden hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 27, 2019.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28318 Filed 12–31–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87858; File No. SR–NSCC–2019–004]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Municipal Bonds

December 26, 2019.

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 December 13, 2019, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NSCC's Rules & Procedures (''Rules'')[4] in order to enhance NSCC's haircut-based volatility charge applicable to municipal bonds (the ''Bond Haircut''). References to the Bond Haircut in this document refer only to that charge as applied to municipal bonds. The proposed changes are described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSCC is proposing a number of enhancements to NSCC's Bond Haircut, as described in greater detail below.

The Required Fund Deposit and the Bond Haircut

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposit for each Member and monitoring its sufficiency, as provided for in the Rules.[5] The Required Fund Deposit serves as each Member's margin. The objective of a Member's Required Fund Deposit is to mitigate potential losses to NSCC associated with liquidation of the Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a ''default'').[6] The aggregate of all Members' Required Fund Deposits, together with certain other deposits required under the Rules, constitute the Clearing Fund of NSCC, which it would access should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio.

Pursuant to the Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV.[7] Generally, the largest component of Members' Required Fund Deposits is the volatility component. The volatility component is designed to calculate the amount of money that could be lost on a portfolio over a given period of time assumed necessary to liquidate the portfolio, within a 99% confidence level.

NSCC has two methodologies for calculating the volatility component. For the majority of Net Unsettled Positions,[8] NSCC calculates the volatility component as the greater of (1) the larger of two separate calculations that utilize a parametric Value at Risk (''VaR'') model, (2) a gap risk measure calculation based on the largest non-index position in a portfolio that exceeds a concentration threshold, and (3) a portfolio margin floor calculation based on the market values of the long and short positions in the portfolio (''VaR Charge'').[9] Pursuant to Sections I(A)(1)(a)(ii) and I(A)(2)(a)(ii) of Procedure XV, certain positions in certain classes of securities, including municipal bonds, are excluded from the calculation of the VaR Charge and are instead charged a haircut-based volatility component that is calculated by multiplying the absolute value of such positions by a percentage designated by NSCC which shall not be less than 2%.[10]

Existing Municipal Bond Haircut Methodology

The existing methodology for calculating the Bond Haircut is described in Sections I(A)(1)(a)(iii)(B) and I(A)(2)(a)(iii)(B) of Procedure XV.[11] In order to determine the current Bond Haircut, municipal bonds are categorized into tenor-based groups (*i.e.,* based on remaining time to maturity) and separately categorized by municipal sector. Sections I(A)(1)(a)(iii)(B) and I(A)(2)(a)(iii)(B) of Procedure XV provide that NSCC shall establish a percentage applicable to each tenor-based group and pursuant to those sections NSCC has established a percentage (which is not less than 2%) for each tenor-based group which is used to calculate the haircut-based charge applicable to that group.[12] For municipal bonds rated higher than BBB+, NSCC has established a tenor-based haircut for each tenor-based group. For example, a municipal bond rated above BBB+ with 3 years to maturity and $10MM short position, will be subject to the 2–5 years tenor-based group haircut (5%) which will be applied to the absolute market value of the positions resulting in $500K haircut-based charge.

Sections I(A)(1)(a)(iii)(B) and I(A)(2)(a)(iii)(B) of Procedure XV provide that NSCC shall assign each municipal sector a risk factor.[13] For municipal bonds rated lower than a pre-determined threshold, which shall be no lower than BBB+, and non-rated municipal bonds, NSCC has established a percentage based on a sector-based risk factor which is also applied to the tenor-based haircut. For example, a municipal bond in the healthcare sector,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 13, 2019, NSCC filed this proposed rule change as an advance notice (SR–NSCC–2019–801) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules (''Procedure XV''), *supra* note 4. NSCC's market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4).

[6] The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. *See* Rule 46 (Restrictions on Access to Services) of the Rules, *supra* note 4.

[7] Procedure XV, *supra* note 4.

[8] ''Net Unsettled Positions'' and ''Net Balance Order Unsettled Positions'' refer to net positions that have not yet passed their settlement date, or did not settle on their settlement date, and are referred to collectively in this filing as Net Unsettled Positions. NSCC does not take into account any offsets, such as inventory held at other clearing agencies, when determining Net Unsettled Positions for the purpose of calculating the volatility component. *See* Procedure XV, *supra* note 4.

[9] Sections I(A)(1)(a)(i) and I(A)(2)(a)(i) of Procedure XV, *supra* note 4.

[10] Sections I(A)(1)(a)(ii) and I(A)(2)(a)(ii) of Procedure XV, *supra* note 4.

[11] Sections I(A)(1)(a)(iii)(B) and I(A)(2)(a)(iii)(B) of Procedure XV, *supra* note 4.

[12] *Id.*

[13] *Id.*

rated BBB+ or lower with 3 years to maturity and $10MM short position, will be subject to the 2–5 years tenor-based group haircut (5%) multiplied by the sector-based factor (1.2), resulting in 6% haircut-based charge of $600K. This additional sector-based risk factor is added because variable risk factors exist between municipal sectors based on the various industries in which the bonds are issued and the source of repayment for the bonds. For instance, general obligation bonds are typically backed by the taxing power of their issuer and repaid from general taxes whereas transportation or healthcare-related bonds may be repaid from funds from a specific project based on the revenues of the project. Such risk factor is based on the sector index's spread to a benchmark index.[14] NSCC uses a vendor to match bonds to particular sectors. If a municipal bond does not fit within any particular sector, the highest sector-based risk factor is applied to such municipal bond. Currently, the highest sector-based risk factor is 2.6 used for bonds in the housing sector.

Enhancements to Municipal Bond Haircut Methodology

NSCC regularly assesses its market and liquidity risks, as such risks are related to its margining methodologies, to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market. In connection with such regular reviews, NSCC has determined based on impact studies that, under current market conditions, the current margin levels with respect to municipal bonds using the current methodology exceed the levels necessary to offset the risks with respect to these securities. Based on impact studies, NSCC has determined that changes to its current methodology for municipal bonds would result in margin levels that are lower and more commensurate with the risk attributes of those securities. In particular, as described below, NSCC is proposing to replace the municipal sector-based risk factor for lower rated municipal bonds with a percentage derived using the historical returns of applicable benchmark indices.

NSCC is proposing the following enhancements to the methodology used for calculating the Bond Haircut.

First, NSCC is proposing to re-calibrate the Bond Haircut not less frequently than annually. Sections I(A)(1)(a)(iii)(B) and I(A)(2)(a)(iii)(B) of Procedure XV currently provide that each municipal sector is assigned a risk factor no less frequently than annually.[15] As discussed above and below, the enhanced methodology for calculating Bond Haircuts would no longer include the straight risk factor by sector. The re-calibration of the Bond Haircut not less frequently than annually would replace the assignment of a straight risk factor no less frequently than annually. NSCC believes that the periodic re-calibration would help ensure that NSCC is reviewing the Bond Haircut with enough regularity to ensure that the margin levels are commensurate with the particular risk attributes of municipal bonds.

While the proposed rule change would provide that NSCC would re-calibrate not less frequently than annually, NSCC would initially re-calibrate the Bond Haircut on a quarterly basis. NSCC could change how often it recalibrates from time to time based on its regular review of margining methodologies; provided, that it would recalibrate not less frequently than annually pursuant to the proposed rule change. Changes to the frequency of calibration would be subject to NSCC's risk management practices which would require, among other things, approval by the DTCC Model Risk Governance Committee (''MRGC'').[16]

Second, municipal bonds would be grouped into tenor-based groups and by credit rating, and municipal bonds that are rated BBB+ or lower, or that are not rated, would also be separately categorized by municipal sector. NSCC would then establish a percentage haircut for each group based on the (1) the historical returns of applicable benchmark indices, such as tenor-based indices (*i.e.,* based on time to maturity), municipal bond sector-based indices, and high-yield indices; (2) a pre-determined look-back period, which shall not be shorter than 10 years; and (3) a pre-determined calibration percentile, which shall not be less than 99%.

For municipal bonds that are rated higher than BBB+, NSCC is proposing to use a tenor-based index (*i.e.,* based on time to maturity) as the applicable benchmark index. While the proposed rule change would provide that NSCC would base such percentage for bonds that are rated higher than BBB+ on historical returns of applicable benchmark indices, such as tenor-based indices (*i.e.,* based on time to maturity), municipal bond sector-based indices, and high-yield indices; NSCC would initially base the percentage derived from a benchmark municipal tenor-based index over a 3-day price return from the index. NSCC could change which applicable benchmark indices it uses and the applicable period for the price return used in the calculation from time to time based on its regular review of margining methodologies. Changes to the frequency of calibration would be subject to NSCC's risk management practices which would require, among other things, approval by the MRGC.[17]

For municipal bonds that are rated BBB+ or lower, or are not rated, NSCC is proposing to use a percentage derived from the maximum of the applicable tenor-based index, municipal bond sector-based indices and a high-yield index. Rather than multiply the tenor-based haircut by a straight risk factor for each municipal sector, as is done under the current methodology, the Bond Haircut for these lower rated or non-rated municipal bonds would be determined by using the maximum percent derived from either the applicable tenor-based index, the municipal bond sector-based indices or a high yield index. The enhancement would account for risks represented by the tenor, sector and high-yield characteristics that may be presented by these municipal bonds by using the maximum percent that is derived from either a tenor-based index, sector-based indices or a high yield index, rather than addressing these risks by multiplying the percent derived from a tenor-based index by a straight sector-based risk factor. Based on analysis of the impact studies, NSCC believes that the use of a risk factor based on the tenor-based index, municipal bond sector-based indices and a high-yield index would result in lower margins with respect to these securities that are sufficient to offset the risks with respect to these securities.

While the proposed rule change would provide that NSCC would base

[14] The ''spread'' is the difference in the yield curve of the sector index to the yield curve of a benchmark index which is indicative of the added risk presented by the sector.

[15] Sections I(A)(1)(a)(iii)(B) and I(A)(2)(a)(iii)(B) of Procedure XV, *supra* note 4.

[16] *See* Securities Exchange Act Release No. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (File No. SR–NSCC–2017–008) (describes the adoption of the Clearing Agency Model Risk Management Framework (''Model Risk Management Framework'') of NSCC which sets forth the model risk management practices of NSCC) and Securities Exchange Act Release No. 84458 (October 19, 2018), 83 FR 53925 (October 25, 2018) (File No. SR–NSCC–2018–009) (amends the Model Risk Management Framework). The Model Risk Management Framework describes the model management practices adopted by NSCC, which have been designed to assist NSCC in identifying, measuring, monitoring, and managing the risks associated with the design, development, implementation, use, and validation of ''models'' which would include the methodology for the Bond Haircut. *Id.*

[17] *See* note 16.

such percentage on historical returns of applicable benchmark indices, such as tenor-based indices (*i.e.,* based on time to maturity), municipal bond sector-based indices, and high-yield indices; NSCC would initially base the percentage derived from a tenor-based index, municipal bond sector-based indices and a high-yield index over a 3-day price return from the indices. NSCC could change which applicable benchmark indices it uses and the applicable period for the price return used in the calculation from time to time based on its regular review of margining methodologies in accordance with its risk management practices which would require, among other things, approval by the MRGC.[18]

In extraordinary circumstances, a certain municipality or issuer may present unique risks beyond the calibrated tenor, sector and high-yield factors. For example, the market price risk for issues of a municipality facing technical default following a natural disaster may not be fully captured due to the liquidity profile of municipal securities. Therefore, NSCC would reserve the right to apply the highest haircut of all municipal bonds to a specific issuer in such instances. NSCC would apply the highest haircut in accordance with its risk management practices, including approval by an officer of NSCC in the risk management department, following a review of the circumstances facing the municipality and a finding that the market price movement raises risks that are not accounted for by the Bond Haircut methodology.

Finally, the recalibration of the Bond Haircut would apply a pre-determined look-back period. NSCC would initially apply a look-back period of a 10-year rolling window plus a one calendar year ''worst case scenario'' stress period. NSCC believes this look-back period is appropriate because it would capture relevant data and is adequate to cover enough market activity, while not diluting the ''tail'' with an abundance of data.[19]

While the proposed rule change would provide that NSCC would apply a pre-determined look-back period, which shall not be shorter than 10 years, NSCC would initially apply a look-back period of a 10-year rolling window plus a one calendar year ''worst case scenario'' stress period. NSCC could change the look-back period from time to time based on its regular review of margining methodologies in accordance with its risk management practices which would require, among other things, approval by the MRGC.[20]

Proposed Rule Changes to Procedure XV

In order to implement the proposed enhancements to the Bond Haircut methodology described above, Sections I(A)(1)(a)(iii)(B) and I(A)(2)(a)(iii)(B) of Procedure XV would be revised to provide that: (i) Municipal bonds would be grouped by both ''remaining time to maturity'' and credit rating, and municipal bonds that are BBB+ or lower, or that are not rated, would be separately categorized by municipal sector, (ii) NSCC would establish the Bond Haircut percentages no less frequently than annually, (iii) the Bond Haircut percentage to be applied to municipal bonds would apply to each grouping of municipal bonds and (iv) the Bond Haircut percentage to be applied to municipal bonds would be based on (1) the historical returns of applicable benchmark indices, such as tenor-based indices (*i.e.,* based on time to maturity), municipal bond sector-based indices, and high-yield indices; (2) a pre-determined look-back period; and (3) a pre-determined calibration percentile, which shall not be less than 99%. In addition, Sections I(A)(1)(a)(iii)(B) and I(A)(2)(a)(iii)(B) of Procedure XV would be revised to remove the references to the municipal sector factor and the current application of the municipal sector factor in the last four sentences in Sections I(A)(1)(a)(iii)(B) and I(A)(2)(a)(iii)(B) of Procedure XV. A sentence would also be added to Sections I(A)(1)(a)(iii)(B) and I(A)(2)(a)(iii)(B) of Procedure XV to provide that in extraordinary circumstances where NSCC determines that a certain municipality or issuer of municipal bonds presents unique risks that are not captured by the grouping set forth in those subsections, NSCC may, in its discretion, apply the highest percentage being applied to any municipal bond group pursuant to those subsections to municipal bonds issued by such municipality or issuer.

2. Statutory Basis

NSCC believes that the proposed changes described above are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act,[21] and Rules 17Ad–22(e)(4)(i), (e)(6)(i) and (e)(6)(v), each promulgated under the Act,[22] for the reasons described below.

Section 17A(b)(3)(F) of the Act[23] requires that the Rules be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. NSCC believes the proposed changes are designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because they are designed to enable NSCC to more accurately calculate the necessary margin relating to Net Unsettled Positions in municipal bonds while continuing to limit its exposure to Members in the event of a Member default.

NSCC believes that the proposed changes to (i) re-calibrate the Bond Haircut no less frequently than annually, (ii) apply a risk factor based on multiple benchmark indices for lower rated or non-rated municipal bonds rather than a straight sector-based risk factor, (iii) calibrate the percent to a pre-determined percentile that would not be less than 99% level and (iv) apply a pre-determined look-back period, would help ensure that the margin levels with respect to municipal bonds would be commensurate with the particular risk attributes of municipal bonds. Backtesting results conducted by NSCC have shown that the current methodology for calculating the Bond Haircut, using a straight municipal sector factor by sector, at times, results in coverage of 100%. NSCC has determined based on impact studies that, under current market conditions, the current margin levels with respect to municipal bonds using the current methodology exceed the levels necessary to offset the risks with respect to these securities. Backtesting results conducted by NSCC indicated that using the highest percentage from applicable benchmark indices in the enhanced methodology rather than the straight municipal sector factor as in the current methodology would result in the desired margin coverages to offset risk while reducing the average Required Fund Deposit for Members. In addition, by reserving the right to apply the highest risk factor in certain circumstances, NSCC would be protected from extraordinary circumstances where NSCC determines that the percentage to be applied to a

[18] *See* note 16.

[19] NSCC believes that a 10-year window with a one-year stress period is typically long enough to capture at least two recent market cycles. NSCC believes that data over a longer period will ''flatten'' out the results because recent volatile periods will be offset by non-volatile periods, making the more recent volatility appear less significant.

[20] *See* note 16.

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i), (e)(6)(v).

[23] 15 U.S.C. 78q–1(b)(3)(F).

particular grouping of municipal bonds does not fully capture the risks represented by that municipality or issuer. In this way, the haircut-based volatility charge for Net Unsettled Positions in municipal bonds would be calculated to help enable NSCC to collect margin at levels that better reflect the risk presented by these Net Unsettled Positions to help NSCC limit its exposure to Members.

The Clearing Fund is composed of Members' Required Fund Deposits that include the volatility component and is a key tool that NSCC uses to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event of Member default. Therefore, NSCC believes that each of the proposed changes listed above would help enable NSCC to more accurately calculate the necessary margin relating to Net Unsettled Positions in municipal bonds while continuing to limit its exposure to Members such that, in the event of Member default, NSCC's operations would not be disrupted and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rules are designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible and therefore consistent with Section 17A(b)(3)(F) of the Act.[24]

Rule 17Ad–22(e)(4)(i) under the Act [25] requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.

As described above, NSCC believes that the proposed changes would help enable it to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. More specifically, the proposed changes to the methodology for Bond Haircuts to apply a risk factor based on multiple benchmark indices for lower rated or non-rated municipal bonds rather than a straight risk factor by sector would help allow NSCC to more accurately identify the credit exposure relating to Net Unsettled Positions in municipal bonds for purposes of applying an appropriate margin charge and to help provide NSCC with a more effective measure of the risks that may be presented to NSCC by positions in the securities. The proposed changes to (i) re-calibrate the Bond Haircut no less frequently than annually, (ii) calibrate the percent to a pre-determined percentile that would not be less than 99% level, and (iii) apply a pre-determined look-back period would enable NSCC to apply the proposed enhanced methodology discussed above and to better monitor its credit exposure relating to Net Unsettled Positions in municipal bonds. By providing that NSCC would be required to re-calibrate the Bond Haircut no less frequently than annually, the proposed rule change would help ensure that NSCC would periodically review the Bond Haircut to ensure that it continued to accurately reflect the risks presented by municipal bonds. Finally, by reserving the right to apply the highest group factor in extraordinary circumstances, NSCC would help protect itself in circumstances where the assigned factor does not adequately account for risks presented by extraordinary events, such as natural disasters.

Based on backtesting results in which the proposed methodology was applied, NSCC believes that the proposed changes would help allow it to collect Required Fund Deposits that are more accurate to offset the risks presented by municipal bonds and provide a better method of managing risks presented by those securities. Therefore, NSCC believes that the proposed changes would help enhance NSCC's ability to effectively identify, measure, monitor and manage its credit exposures and would help enhance its ability to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. As such, NSCC believes the proposed changes are consistent with Rule 17Ad–22(e)(4)(i) under the Act.[26]

Rule 17Ad–22(e)(6)(i) under the Act [27] requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.

The Required Fund Deposit is made up of risk-based components (as margin) that are calculated and assessed daily to limit NSCC's credit exposures to Members. NSCC is proposing changes that are designed to more effectively address risk characteristics of Net Unsettled Positions in municipal bonds by capturing risks more accurately by applying multiple indices. Rather than multiply the tenor-based haircut for lower rated bonds by a straight risk factor for each municipal sector, the Bond Haircut for lower rated or non-rated municipal bonds would be determined by using the maximum percent derived from either the tenor-based index, the municipal bond sector-based indices or a high yield index. Based on backtesting results, NSCC believes that deriving the percent using a maximum of the indices more accurately captures the risk of such municipal bonds that may be presented by tenor, sector and the higher yield of these securities compared to the present use of a straight sector-based risk factor. Based on such results, NSCC believes that these changes would help enable NSCC to produce margin levels that are more commensurate with the particular risk attributes of these securities. These proposed changes are designed to assist NSCC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of portfolios relating to municipal bonds, including risks and attributes related to tenor, municipal sector and higher yields. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad–22(e)(6)(i) under the Act.[28]

Rule 17Ad–22(e)(6)(v) under the Act [29] requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. NSCC is proposing to enhance the Bond Haircut because NSCC believes that the proposed methodology would help provide NSCC with a more effective measure of the credit exposure presented by municipal bonds. In particular, as described above, NSCC believes that the enhancements would result in a more effective measure of the tenor, sector and higher yield risks presented by municipal bonds that are rated BBB+ or lower, or are not rated.

[24] *Id.*

[25] 17 CFR 240.17Ad–22(e)(4)(i).

[26] *Id.*

[27] 17 CFR 240.17Ad–22(e)(6)(i).

[28] *Id.*

[29] 17 CFR 240.17Ad–22(e)(6)(v).

Therefore, NSCC believes the proposed change is consistent with Rule 17Ad–22(e)(6)(v) under the Act.[30]

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed changes to the Bond Haircut would have an adverse impact, or impose any burden, on competition. Based on impact studies, NSCC believes that the proposed changes to the Bond Haircut would result in a reduction in the Required Fund Deposit with respect to every Member with Net Unsettled Positions in municipal bonds. NSCC believes that this impact would promote competition for Members that have Net Unsettled Positions in municipal bonds by reducing the amount of the Required Fund Deposit for such Members while continuing to appropriately limit NSCC's exposure to Members in the event of a Member default. In addition, NSCC does not believe that the proposed rule changes would disproportionally impact any Members.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2019–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2019–004. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2019–004 and should be submitted on or before January 23, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28276 Filed 12–31–19; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 240.17Ad–22(e)(6)(v).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87860; File No. SR–NYSE–2019–071]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Add Certain Recently Adopted Trading Rules To the List of Minor Rule Violations in Rule 9217

December 26, 2019.

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 December 16, 2019, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add certain recently adopted trading rules to the list of minor rule violations in Rule 9217. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add certain recently adopted trading rules to the list of minor rule violations in Rule 9217. As discussed below, the rules the Exchange proposes to add to Rule 9217 are based on the rules of its affiliate NYSE Arca, Inc. (''NYSE Arca'') or on rules the Exchange adopted in connection with its transition to Pillar, which were based on legacy Exchange rules governing auctions in Exchange-listed securities. In both cases, substantively similar rules to those the Exchange proposes to add are minor fine eligible rules.

Background

On January 29, 2015, the Exchange announced the implementation of Pillar, an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange and its affiliates.[3] The Exchange underwent a multi-phase transition to Pillar that culminated with Exchange-listed securities transitioning to Pillar in August 2019. In order to support the transition of Exchange-listed securities to Pillar, the Exchange adopted trading and other rules including rules to conduct auctions in Pillar that were substantively based on the auction rules then in effect.[4] As discussed below, violations of some of those legacy rules are already eligible for minor rule violations under Rules 9216 and 9217.[5]

Proposed Rule Change

Rule 9217 sets forth the list of rules under which a member organization or covered person may be subject to a fine under a minor rule violation plan as described in proposed Rule 9216(b). The Exchange proposes to add the following rules to the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b):

- Rule 7.16 (Short Sales)
- Rule 7.35A(d) (Pre-Opening Indications)
- Rule 7.35B (Cancellation of limit-at-the-close (''LOC'') and market-at-the-close (''MOC'') orders)
- Rule 7.35A (Requirements relating to openings, re-openings, delayed openings, and trading halts)

Rule 7.16 (Short Sales) establishes requirements relating to short sales for trading on the Pillar trading platform. Rule 7.16 is based on NYSE Arca Rule 7.16–E and incorporates text from Rule 440B relating to Exchange-listed securities.[6] NYSE Arca Rule 7.16–E is eligible for NYSE Arca's Minor Rule Plan.[7]

Rules 7.35A and 7.35B, adopted in 2019, were based on legacy Rule 15 (Pre-Opening Indications and Opening Order Imbalance Information), Rule 123C (The Closing Procedures), and Rule 123D (Openings and Halts in Trading). Each of these rules are already eligible for minor fines under NYSE Rule 9217.

Specifically, Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) sets forth DMM responsibilities for the opening and reopening of securities, and is based on legacy Rule 123D with minor modifications.[8] Rule 123D is on the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b).

Similarly, Rule 7.35A(d) and its subparagraphs are based on Rule 15(a)–(f) relating to pre-opening indications with non-substantive differences.[9] Rule 15 is also on the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b).

Rule 7.35B (DMM-facilitated Closing Auctions) sets forth DMM responsibilities for the closing of securities, and is based in part on legacy Rules 123C and 123D.[10] The entry and cancellation procedures for MOC and LOC Orders set forth in Rule 7.35B are based on legacy Rule 123C,[11] which is also on the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

Summary fines provide a meaningful sanction for minor or technical violations of rules. The Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of its rules where similar conduct is currently eligible for a minor rule fine where more formal disciplinary action may not be warranted or appropriate. In addition, the Exchange believes that adding a rule based on the rules of its affiliate to the Exchange's minor rule plan would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of a substantially similar rule that is eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct.

The Exchange also believes that adding rules based on legacy Exchange rules that are eligible for a minor rule fine also is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to be able to continue issuing minor rule fines for violations of rules involving the same or similar conduct.

The Exchange further believes that the proposed amendments to Rule 9217 are consistent with Section 6(b)(6) of the Act,[14] which provides that members and persons associated with members shall be appropriately disciplined for

[3] *See* Trader Update dated January 29, 2015, available here: *www.nyse.com/pillar.*

[4] *See* Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553 (March 29, 2018) (SR–NYSE–2017–36) (''Release No. 82945''); Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR–NYSE–2019–05) (''Release No. 85962'').

[5] Although the Exchange is adding the Pillar equivalent rules to the list of rules eligible for a minor rule fine in Rule 9217, the Exchange is not proposing to delete the legacy rules from Rule 9217 at this time.

[6] *See* Release No. 82945, 83 FR at 13565; Release No. 85962, 84 FR at 26221. Rule 440B (Short Sales) is not applicable to trading on the Pillar trading platform.

[7] *See* NYSE Arca Rule 10.12(i)(1) (NYSE Arca Rule 7.16–E); NYSE Arca Rule 10.9217(f)(1). NYSE Arca Rule 10.12 is NYSE Arca's legacy minor rule plan and applies only to matters for which a written statement was served under Rule 10.12 prior to May 27, 2019; thereafter, Rules 10.9216(b) and 10.9217 apply. *See generally* NYSE Arca Rules 10.0 (preamble) and 10.9001.

[8] *See* Release No. 85962, 84 FR at 26202.

[9] *See id.* at 26204–05.

[10] *See id.* at 26209–17.

[11] *See id.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(6).

violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations pursuant to the Exchange's rules to deter the same or violative activity that is already eligible for a minor rule fine.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–071 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–071. 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–NYSE–2019–071 and should be submitted on or before January 23, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[17] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[18] which governs minor rule violation plans. The Commission notes that the Exchange merely proposes to add to its minor rule violation plan Pillar rules that are identical to the provisions already included in the plan. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[19] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds Pillar rules, which are substantively based on legacy rules already in the Exchange's minor rule violation plan. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[20] and Rule 19d–1(c)(2) thereunder,[21] that the proposed rule change (SR–NYSE–2019–71) be, and hereby is, approved and declared effective on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28278 Filed 12–31–19; 8:45 am]

BILLING CODE 8011–01–P

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[18] 17 CFR 240.19d–1(c)(2).

[19] 15 U.S.C. 78s(b)(2).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 240.19d–1(c)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 0–4; SEC File No. 270–569, OMB Control No. 3235–0633

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a

request for approval of the collection of information discussed below.

Rule 0–4 (17 CFR 275.0–4) under the Investment Advisers Act of 1940 (''Act'' or ''Advisers Act'') (15 U.S.C. 80b–1 *et seq.*) entitled ''General Requirements of Papers and Applications,'' prescribes general instructions for filing an application seeking exemptive relief with the Commission. Rule 0–4 currently requires that every application for an Order for which a form is not specifically prescribed and which is executed by a corporation, partnership or other company and filed with the Commission contain a statement of the applicable provisions of the articles of incorporation, bylaws or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the application is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions must be attached as an exhibit to or quoted in the application. Any amendment to the application must contain a similar statement as to the applicability of the original statement of authorization. When any application or amendment is signed by an agent or attorney, rule 0–4 requires that the power of attorney evidencing his authority to sign shall state the basis for the agent's authority and shall be filed with the Commission. Every application subject to rule 0–4 must be verified by the person executing the application by providing a notarized signature in substantially the form specified in the rule. Each application subject to rule 0–4 must state the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the Act and rules thereunder, the name and address of each applicant, and the name and address of any person to whom any questions regarding the application should be directed. Rule 0–4 requires that a proposed notice of the proceeding initiated by the filing of the application accompany each application as an exhibit and, if necessary, be modified to reflect any amendment to the application.

The requirements of rule 0–4 are designed to provide Commission staff with the necessary information to assess whether granting the Orders of exemption are necessary and appropriate in the public interest and consistent with the protection of investors and the intended purposes of the Act.

Applicants for Orders under the Advisers Act can include registered investment advisers, affiliated persons of registered investment advisers, and entities seeking to avoid investment adviser status, among others. Commission staff estimates that it receives up to 4 applications per year submitted under rule 0–4 of the Act seeking relief from various provisions of the Advisers Act and, in addition, up to 3 applications per year submitted under Advisers Act rule 206(4)–5, which addresses certain ''pay to play'' practices and also provides the Commission the authority to grant applications seeking relief from certain of the rule's restrictions. Although each application typically is submitted on behalf of multiple applicants, the applicants in the vast majority of cases are related entities and are treated as a single respondent for purposes of this analysis. Most of the work of preparing an application is performed by outside counsel and, therefore, imposes no hourly burden on respondents. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required. Based on conversations with applicants and attorneys, the cost for applications ranges from approximately $13,600 for preparing a well-precedented, routine (or otherwise less involved) application to approximately $212,800 to prepare a complex or novel application. We estimate that the Commission receives 1 of the most time-consuming applications annually, 3 applications of medium difficulty, and 3 of the least difficult applications subject to rule 0–4.[1] This distribution gives a total estimated annual cost burden to applicants of filing all applications of $392,500 [(1 × $212,800) + (3 × $46,300) + (3 × $13,600)]. The estimate of annual cost burden is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The requirements of this collection of information are required to obtain or retain benefits. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 27, 2019.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28319 Filed 12–31–19; 8:45 am]

BILLING CODE 8011–01–P

[1] The estimated 3 least difficult applications include the estimated 3 applications per year submitted under Advisers Act rule 206(4)–5.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87859; File No. SR–ICC–2019–012]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures

December 26, 2019.

I. Introduction

On November 1, 2019, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the ICC Treasury Operations Policies and Procedures (''Treasury Policy''). The proposed rule change was published for comment in the **Federal Register** on November 21, 2019.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC proposes to revise its Treasury Operations Policies and Procedures to make clarification updates related to its use of a committed repurchase (''repo'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures; Exchange Act Release No. 34–87549 (Nov. 15, 2019); 84 FR 64379 (Nov. 21, 2019) (''Notice'').

facility, acceptable forms of United States (''US'') Treasury collateral, and its collateral valuation process.[4]

A. Committed Repo Facility

ICC proposes amendments to the 'Funds Management' section of the Treasury Policy with respect to its use of a committed repo facility. Specifically, ICC proposes to clarify that the committed repo facility can be used to generate temporary liquidity through the sale and agreement to repurchase securities pledged by ICC Clearing Participants to satisfy their Initial Margin (''IM'') and Guaranty Fund (''GF'') requirements. ICC proposes to include that, when applicable, the facility can be used to rehypothecate sovereign debt from overnight repo investments in the event of a counterparty default. ICC also proposes to note that the facility can be used to sell, with the agreement to repurchase, sovereign debt securities that are held by ICC pursuant to direct investments in such securities.

B. Acceptable Collateral

ICC proposes to update the 'Custodial Assets' section of the Treasury Policy regarding acceptable forms of US Treasury collateral. Specifically, under the Treasury Policy, acceptable forms of non-cash collateral for IM and GF are limited to US Treasury securities. ICC proposes to specify that Floating Rate Notes and STRIPS are not acceptable forms of US Treasury collateral for IM and GF.

C. Collateral Valuation

ICC also proposes to add language stating that, with respect to its collateral valuation process, Euros that are used to cover a US Dollar denominated product requirement is first converted to the USD value and that the USD value is haircut at the Euro currency haircut.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[5] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[6] and Rules 17Ad–22(b)(3)[7] and 17Ad–22(d)(3)[8] thereunder.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act[9] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

As described above, the proposed rule change would clarify the additional ways that ICC can utilize the committed repo facility to generate liquidity when needed such as during a default. The Commission believes that these changes enhance and strengthen ICC's financial condition by giving it additional ways to generate needed liquidity. This in turn would help ensure that ICC has the money to continue to clear and settle trades even during defaults.

Additionally, the Commission believes that ICC's proposal to revise its Treasury Policy to state that Floating Rate Notes and STRIPS are not acceptable forms of US Treasury collateral for IM and GF enhances ICC's documentation as to what securities meet its criteria for acceptable collateral and facilitates its ability to accept only such securities as collateral. The Commission believes that this in turn would enhance ICC's financial position by ensuring it holds sufficiently liquid collateral to meet its IM and GF needs. This in turn would help ensure that ICC can liquidate collateral as needed in a prompt manner so that it has the funds to continue to clear and settle trades.

Further, the Commission believes that by adding language stating that, with respect to its collateral valuation process, Euros used to cover a US Dollar denominated product requirement will be subject to a haircut, ICC ensures that it is following its process for collateral valuation and discounting for native market and related currency risk. The Commission believes that this too would help strengthen ICC's financial condition by facilitating the accurate valuation of its financial resources, which in turn would help ensure that ICC can monitor its collateral and know whether it needs to bolster these resources so that they are enough to meet ICC's obligations to clear and settle trades.

Therefore, for the reasons stated above, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[10]

B. Consistency With Rule 17Ad–22(b)(3)

Rule 17Ad–22(b)(3)[11] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two Clearing Participant (''CP'') families to which it has the largest exposures in extreme but plausible market conditions. Because the committed repo facility can be used to support its clearance and settlement obligations by offering ways to generate cash when a default makes the sale of securities on a timely basis or same-day basis difficult, the Commission believes that the revisions to the Treasury Policy, which clarify various additional ways that that the committed repo facility can be used to generate temporary liquidity in the event of a default, enhances ICC's ability to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures. Additionally, the Commission believes that the revisions to what is considered acceptable collateral will strengthen ICC's financial resources by ensuring that it only holds sufficiently liquid securities that it can sell to meet its financial obligations and exclude those securities that are not as easily liquidated.

Therefore, for the reasons stated above, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(b)(3).[12]

C. Consistency With Rule 17Ad–22(d)(3)

Rule 17Ad–22(d)(3)[13] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed, as applicable, to hold assets in a manner that minimizes risk of loss or of delay in its access to them and to invest assets in instruments with minimal credit, market, and liquidity risks.

[4] The description herein is substantially excerpted from the Notice, 84 FR 64379.

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(b)(3).

[8] 17 CFR 240.17Ad–22(d)(3).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(b)(3).

[12] *Id.*

[13] 17 CFR 240.17Ad–22(d)(3).

The Commission believes that in clarifying that the committed repo facility can be used to generate temporary liquidity through sale and agreement to repurchase pledged securities, to rehypothecate sovereign debt from overnight repos, and to sell, with the agreement to repurchase, sovereign debt held by ICC pursuant to direct investments in such securities, ICC is strengthening its ability to hold assets in a manner that minimizes delay in access to them by describing ways to utilize securities to quickly generate cash when the sale of those securities cannot otherwise be accomplished in a timely manner due to a clearing participant default. Further, the Commission believes that because ICC can use the facility to sell, with the agreement to repurchase, sovereign debt held by ICC pursuant to direct investments in such securities, it is lowering the liquidity risk of this particular sovereign debt.

Therefore, for the reasons stated above, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(d)(3).[14]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[15] and Rules 17Ad–22(b)(3) and (d)(3) thereunder.[16]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[17] that the proposed rule change (SR–ICC–2019–012), be, and hereby is, approved.[18]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28277 Filed 12–31–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 22c–1; SEC File No. 270–793, OMB Control No. 3235–0734

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 22c–1 (17 CFR 270.22c–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'' or ''Act'') enables a fund to choose to use ''swing pricing'' as a tool to mitigate shareholder dilution. Rule 22c–1 is intended to promote investor protection by providing funds with an additional tool to mitigate the potentially dilutive effects of shareholder purchase or redemption activity and a set of operational standards that allow funds to gain comfort using swing pricing as a means of mitigating potential dilution.

The respondents to amended rule 22c–1 are open-end management investment companies (other than money market funds or exchange-traded funds) that engage in swing pricing. Compliance with rule 22c–1(a)(3) is mandatory for any fund that chooses to use swing pricing to adjust its NAV in reliance on the rule.

While we are not aware of any funds that have engaged in swing pricing,[1] we are estimating for the purpose of this analysis that 5 fund complexes have funds that may adopt swing pricing policies and procedures in the future pursuant to the rule. We estimate that the total burden associated with the preparation and approval of swing pricing policies and procedures by those fund complexes that would use swing pricing will be 280 hours.[2] We also estimate that it will cost a fund complex $43,406 to document, review and initially approve these policies and procedures, for a total cost of $217,030.[3]

Rule 22c–1 requires a fund that uses swing pricing to maintain the fund's swing policies and procedures that are in effect, or at any time within the past six years were in effect, in an easily accessible place.[4] The rule also requires a fund to retain a written copy of the periodic report provided to the board prepared by the swing pricing administrator that describes, among other things, the swing pricing administrator's review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including the impact on mitigating dilution and any back-testing performed.[5] The retention of these records is necessary to allow the staff during examinations of funds to determine whether a fund is in compliance with its swing pricing policies and procedures and with rule 22c–1. We estimate a time cost per fund complex of $292.[6] We estimate that the total for recordkeeping related to swing pricing will be 20 hours, at an aggregate cost of $1,460, for all fund complexes that we believe include funds that have adopted swing pricing policies and procedures.[7]

Amortized over a three-year period, we believe that the hour burdens and time costs associated with rule 22c–1, including the burden associated with the requirements that funds adopt policies and procedures, obtain board approval, and periodic review of an annual written report from the swing pricing administrator, and retain certain records and written reports related to swing pricing, will result in an average aggregate annual burden of 113.3 hours, and average aggregate time costs of $73,803.[8]

These estimates of average costs are made solely for the purposes of the

[14] 17Ad–22(d)(3).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(b)(3) and 17 CFR 240.17Ad–22(d)(3).

[17] 15 U.S.C. 78s(b)(2).

[18] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

[1] No funds have engaged in swing pricing as reported on Form N–CEN as of August 14, 2019.

[2] This estimate is based on the following calculation: (48 + 2 + 6) hours × 5 fund complexes = 280 hours.

[3] These estimates are based on the following calculations: 24 hours × $201 (hourly rate for a senior accountant) = $4,824; 24 hours × $463 (blended hourly rate for assistant general counsel ($433) and chief compliance officer ($493)) = $11,112; 2 hours (for a fund attorney's time to prepare materials for the board's determinations) × $340 (hourly rate for a compliance attorney) = $680; 6 hours × $4,465 (hourly rate for a board of 8 directors) = $26,790; ($4,824 + $11,112 + $680 + $26,790) = $43,406; $43,406 × 5 fund complexes = $217,030. The hourly wages used are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The staff previously estimated in 2009 that the average cost of board of director time was $4,000 per hour for the board as a whole, based on information received from funds and their counsel. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately $4,465.

[4] *See* rule 22c–1(a)(3)(iii).

[5] *See id.*

[6] This estimate is based on the following calculations: 2 hours × $58 (hourly rate for a general clerk) = $116; 2 hours × $88 (hourly rate for a senior computer operator) = $176. $116 + $176 = $292.

[7] These estimates are based on the following calculations: 4 hours × 5 fund complexes = 20 hours. 5 fund complexes × $292 = $1,460.

[8] These estimates are based on the following calculations: (280 hours (year 1) + (3 × 20 hours) (years 1, 2 and 3)) ÷ 3 = 113.3 hours; ($217,030 (year 1) + (3 × $1,460) (years 1, 2 and 3)) ÷ 3 = $73,803.

Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

This collection of information is necessary to obtain a benefit and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 27, 2019.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28320 Filed 12–31–19; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36375]

Norfolk Southern Railway Company—Trackage Rights Exemption—Canton Railroad Company

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for the acquisition of local trackage rights over an approximately 0.98-mile line of railroad of Canton Railroad Company (Canton Railroad) between the connection of Canton Railroad East Main Track and the NSR Bear Creek Branch at or near NSR milepost BV 1.569 and Seagirt Marine Terminal Port of Baltimore (Seagirt) in Baltimore, Md.[1]

The verified notice states that the trackage rights will permit NSR to provide direct service to Seagirt.

The transaction may be consummated on or after January 16, 2020, the effective date of the exemption (30 days after the verified notice of exemption was filed).

As a condition to this exemption, any employees affected by the acquisition of trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by January 9, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36375, must be filed with the Surface Transportation Board, either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on NSR's representative, Garrett D. Urban, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

According to NSR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c), and from historic reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 26, 2019.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2019–28291 Filed 12–31–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of the Final Environmental Assessment and Finding of No Significant Impact and Record of Decision for the Proposed Eastgate Air Cargo Facility, San Bernardino International Airport, San Bernardino County, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for the Final Environmental Assessment and Finding of No Significant Impact and Record of Decision.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that it has published the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and Record of Decision (ROD) signed by the FAA that evaluated proposed Eastgate Air Cargo Facility project at San Bernardino International Airport (SBD), San Bernardino, San Bernardino County, California.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Regional Environmental Protection Specialist, AWP–610.1, Office of Airports, Federal Aviation Administration, Western-Pacific Region, 777 South Aviation Boulevard, Suite 150, El Segundo, California 90245, Telephone: 424–405–7315.

SUPPLEMENTARY INFORMATION: The FAA as lead agency, has completed and is publishing the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and Record of Decision (ROD) for the proposed Eastgate Air Cargo Facility at San Bernardino International Airport (SBD). The FONSI/ROD was prepared under Title 40, Code of Federal Regulations § 1505.2.

FAA signed Final Environmental Assessment (EA) for this proposed project on December 20, 2019. The Final EA was prepared by pursuant to the National Environmental Policy Act of 1969 and assessed the potential impact of the proposed Eastgate Air Cargo Facility as well as the No Action Alternative where the proposed air cargo facility at the airport would be made.

In the FONSI and ROD, the FAA identified the Eastgate Air Cargo Facility as the preferred alternative in meeting the purpose and need to accommodate an unmet demand for air cargo facilities at the airport. The Eastgate Air Cargo Facility the following components: Construction of a 658,500-square-foot (sf) sort, distribution, and office building (Air Cargo Sort Building); Construction of about 31 acres of taxilane and aircraft parking apron to support 14 aircraft concurrently ranging from Boeing-737 to Boeing-767 aircraft; Construction of approximately 12 acres of ground support equipment (GSE) parking and operational support areas; Construction of two separate 25,000-sf GSE maintenance buildings; Construction of an about 2000 employee auto parking stalls and 380 semi-trailer parking stalls; Construction of two new

[1] A redacted version of the agreement between NSR and Canton Railroad was filed with NSR's verified notice of exemption. NSR simultaneously filed a motion for a protective order to protect the confidential and commercially sensitive information in the unredacted version of the agreement, which NSR submitted under seal. That motion will be addressed in a separate decision.

driveways into the project site would include two clear-span bridges crossing the City Creek Bypass Channel; Construction of Third Street modifications to tie-in road gradients and turning lanes with bridge entrances; Installation of new security fencing, vehicle and pedestrian gates and a guard shack; Installation of pole-mounted and/or building-mounted exterior lights for vehicle and truck parking lots, Air Cargo Sort Building, and aircraft parking apron; Installation of appropriate airfield lights and signage for the aircraft parking apron and taxilanes; Land clearing, demolition, excavation, embankment, and grading; Extension of utilities to the Proposed Project including electrical, natural gas, water, sanitary sewer, communications, and other related infrastructure; Installation of stormwater management systems and infrastructure; landscaping, Project Commitment 1: Require Use of Electric Ground Support Equipment. With the exception of the fuel trucks and lavatory service trucks, which are assumed to operate on diesel fuel, the SBIAA will require the use of ground support equipment that can operate on electric battery power, and Project Commitment 2: Construct a Second Eastbound Left Turn Land and a Second Westbound Left Turn Lane at Victoria Avenue and Third Street. SBIAA shall be responsible for constructing a second eastbound left turn land and a second westbound left turn late at Victoria Avenue. and Third Street.

Copies of the Final EA and FONSI/ROD are available for public review at the following locations during normal business hours:

- U.S. Department of Transportation, Federal Aviation Administration, Western-Pacific Region, Office of Airports, 777 S. Aviation Boulevard, Suite 150, El Segundo, California 90245
- San Bernardino International Airport Authority Administration Offices, 1601 East Third Street, San Bernardino, California 92408

The Final EA may be viewed at San Bernardino International Airport's website: *http://www.sbiaa.org/.*

The FONSI and ROD may also be viewed at FAA's website: *https://www.faa.gov/airports/environmental/records_decision/* and the SBIAA's website.

Copies of the Final EA and FONSI and ROD are also available at the following libraries:

- Highland Sam J. Racadio Branch Public Library and Environmental Learning Center, 7863 Central Ave, Highland, California 92346
- San Bernardino County Library, Lake Arrowhead Branch, 27235 Highway 189, Blue Jay, California 92317
- Norman F. Feldheym Public Library, 555 W 6th St., San Bernardino, California 92410

Questions on the Final EA and FONSI/ROD may be directed to the individual above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in El Segundo, California on December 23, 2019.

Mark A. McClardy,

Director, Office of Airports, Western—Pacific Region, AWP–600.

[FR Doc. 2019–28346 Filed 12–31–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Restoration and Enhancement Grants Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO or notice); extension and supplemental funding notice.

SUMMARY: FRA is adding funding to and extending the application submittal period for its NOFO for the Restoration and Enhancement Grants Program (R&E Program) published on November 6, 2019. The basis for the funding increase and extension is the appropriation of additional amounts for the Restoration and Enhancement Grants Program in Fiscal Year 2020 together with the government's goal of efficiently administering such funds.

DATES: The original due date for applications was January 6, 2020. The period for submitting applications to the NOFO published on November 6, 2019 (84 FR 59907) *https://www.govinfo.gov/content/pkg/FR-2019-11-06/pdf/2019-24225.pdf,* is extended. Applications must now be submitted by 5:00 p.m. eastern on February 5, 2020.

FOR FURTHER INFORMATION CONTACT: For further information regarding the R&E Program and projects, please contact Ruthie Americus, Office of Policy and Planning, Federal Railroad Administration,1200 New Jersey Avenue SE, Room W36–403, Washington, DC 20590; email: *ruthie.americus@dot.gov;* phone: 202–493–0431. Grant application submission and processing questions should be addressed to Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov;* phone: 202–493–0303.

SUPPLEMENTARY INFORMATION:

Amendment

FRA amends its NOFO for the Restoration and Enhancement Grants Program published on November 6, 2019 (84 FR 59907) *https://www.govinfo.gov/content/pkg/FR-2019-11-06/pdf/2019-24225.pdf* by: (1) Adding an additional $1,918,600 for a total of $26,337,600 and (2) extending the period for submitting applications to February 5, 2020.

Issued in Washington, DC.

Ronald L. Batory,

Administrator, Federal Railroad Administration.

[FR Doc. 2019–28305 Filed 12–31–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, AMENDED Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under Federal Advisory Committee Act that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board (JBL/CS SMRB) will be held on the dates below from 8:00 a.m. to 5:00 p.m. (unless otherwise listed) at the 20 F Conference Center, 20 F Street NW, Washington, DC 20001, the Phoenix Park Hotel, 520 North Capitol Street NW, Washington, DC 20001, and at the Office of Research and Development, 1100 First Street NE, Washington, DC 20002:

Meeting	Date(s)
BL/CS R&D Surgery Subcommittee	November 12, 2019.
BL/CS R&D Pulmonary Medicine Subcommittee	November 13, 2019.
BL/CS R&D Infectious Diseases-B Subcommittee	November 14, 2019.

Meeting	Date(s)
BL/CS R&D Oncology-A/D Subcommittee	November 14, 2019.
BL/CS R&D Hematology Subcommittee	November 15, 2019.
BL/CS R&D Oncology-C Subcommittee	November 15, 2019.
BL/CS R&D Cellular & Molecular Medicine Subcommittee	November 18, 2019.
BL/CS R&D Oncology-B/E Subcommittee	November 18, 2019.
BL/CS R&D Mental Health & Behavioral Sciences-P	November 19, 2019.
BL/CS R&D Immunology & Dermatology-A Subcommittee	November 20, 2019.
BL/CS R&D Mental Health & Behavioral Sciences-C Subcommittee	November 20, 2019.
BL/CS R&D Cardiovascular Studies-A Subcommittee	November 21, 2019.
BL/CS R&D Endocrinology-A Subcommittee	November 21, 2019.
BL/CS R&D Neurobiology-C Subcommittee	November 21, 2019.
BL/CS R&D Neurobiology-E Subcommittee	November 22, 2019.
BL/CS R&D Endocrinology-B Subcommittee	November 25, 2019.
BL/CS R&D Mental Health & Behavioral Sciences-A Subcommittee	December 3, 2019.
BL/CS R&D Nephrology Subcommittee	December 3, 2019.
BL/CS R&D Neurobiology-B Subcommittee	December 3, 2019.
BL/CS R&D Infectious Diseases-A Subcommittee	December 4, 2019.
BL/CS R&D Neurobiology-F Subcommittee	December 4, 2019.
BL/CS R&D Cardiovascular Studies-B Subcommittee	December 5, 2019.
BL/CS R&D Gastroenterology Subcommittee	December 5, 2019.
BL/CS R&D Neurobiology-P Subcommittee	December 5, 2019.
BL/CS R&D Neurobiology-R Subcommittee	December 5, 2019.
BL/CS R&D Neurobiology-A Subcommittee	December 6, 2019.
BL/CS R&D Neurobiology-D Subcommittee	December 6, 2019.
BL/CS R&D Gulf War Research Subcommittee	December 6, 2019.
BL/CS R&D VA Psychiatrist Development Award Subcommittee	January 8, 2020.
Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board.	January 8, 2020.
BL/CS R&D Eligibility Subcommittee	January 17, 2020.

The purpose of the subcommittees is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review evaluation. Proposals submitted for review include various medical specialties within the general areas of biomedical, behavioral and clinical science research.

The subcommittee meetings will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals. However, the JBL/CS SMRB teleconference meeting will be open to the public. Members of the public who wish to attend the open JBL/CS SMRB teleconference may dial 1–800–767–1750, participant code 50064#. Members of the public who wish to make a statement at the JBL/CS SMRB meeting must notify Dr. Holly Krull via email at *holly.krull@va.gov* by January 6, 2020.

These subcommittee meetings will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals, which involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the subcommittee meetings is in accordance with Title 5 U.S.C. 552b(c)(6) and (9)(B).

Those who would like to obtain a copy of the minutes from the closed subcommittee meetings and rosters of the subcommittee members should contact Holly Krull, Ph.D., Manager, Merit Review Program (10X2B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 632–8522 or email at *holly.krull@va.gov*.

Dated: December 27, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–28282 Filed 12–31–19; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removing the Hawaiian Hawk From the Federal List of Endangered and Threatened Wildlife; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2007–0024; 92220–1113–0000–C6]

RIN 1018–AU96

Endangered and Threatened Wildlife and Plants; Removing the Hawaiian Hawk From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), are removing the Hawaiian hawk (io) (*Buteo solitarius*) from the Federal List of Endangered and Threatened Wildlife. This determination is based on a thorough review of the best available scientific and commercial data, including comments received, which indicates the Hawaiian hawk no longer meets the definition of an endangered species or a threatened species under the Act. Our review of the status of this species shows that the rangewide population estimates have been stable for at least 30 years, and that the species is not currently, nor is likely to become again, an endangered species within the foreseeable future in all or a significant portion of its range.

DATES: This rule is effective February 3, 2020.

ADDRESSES: This final rule and the post-delisting monitoring plan are available on the internet at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2007–0024. Comments, materials received, and supporting documentation used in preparation of this final rule will be available for public inspection, by appointment, during normal business hours, at the Service's Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Katherine Mullett, Acting Field Supervisor, telephone: 808–792–9400. Direct all questions or requests for additional information to: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species may be added to the Lists of Endangered and Threatened Wildlife and Plants (Lists) if it is endangered or threatened throughout all or a significant portion of its range. Adding a species to the Lists (''listing'') or removing a species from the Lists (''delisting'') can only be accomplished by issuing a rule.

What this document does. This rule removes the Hawaiian hawk (io, *Buteo solitarius*) from the Federal List of Endangered and Threatened Wildlife. This rule also makes available the final post-delisting monitoring plan for the Hawaiian hawk.

Basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We may delist a species if the best scientific and commercial data indicate the species is neither endangered nor threatened. We have determined that the Hawaiian hawk has recovered and no longer meets the definition of an endangered species or a threatened species under the Act.

Threats to the Hawaiian hawk identified at the time of listing in 1967 included low number of individuals and loss and degradation of habitat. We reviewed all available scientific and commercial information pertaining to the five factors in our status review of the Hawaii hawk, and the results are summarized below.

- We consider the Hawaiian hawk not threatened by a low number of individuals, habitat loss, or degradation because this hawk has a stable population, estimated at approximately 3,000 individuals. The population is well distributed in both native and nonnative habitat from sea level to 8,530 feet (2,600 meters) elevation across the island of Hawaii. At the time of listing it was thought that only several hundred Hawaiian hawks were in existence, and that they depended solely on native habitat. Since then, studies have shown that Hawaiian hawks nest, breed, and feed in both native and nonnative habitats, and eat a variety of nonnative prey (*e.g.,* rats, and mongooses). Additionally, many Hawaiian hawks exist on public lands managed for fish and wildlife conservation.
- The threat of harassment and shooting of Hawaiian hawks may exist as noted in the recovery plan; however, we do not find this a significant threat. The Hawaiian hawk has retained a stable population over decades and there is much public support for protecting Hawaiian hawks for cultural reasons because it is widely recognized as an aumakua or familial guardian spirit in Hawaiian culture.
- Studies have shown that Hawaiian hawks are not threatened by predation from rats, mongooses, or cats, nor are they threatened by bird diseases (*i.e.,* avian malaria, and avian pox) or environmental contaminants.
- We do not consider effects related to climate change to be a substantial threat to the species at this time, and we do not expect climate change effects to rise to the magnitude or severity such that the species will be likely to become an endangered species within the foreseeable future. While we recognize that climate change effects, such as rising ambient atmospheric temperature, increased drought, intensified hurricanes, and shift in native and nonnative species' ranges, may have potential effects on Hawaiian hawks and their habitat, the best available information does not indicate that such effects will significantly impact Hawaiian hawks or the habitat upon which they depend, now or in the foreseeable future. We expect that the Hawaiian hawk's susceptibility to climate change effects is low into the foreseeable future given the range and diversity of habitats occupied by the species, the adaptability of the species, and its resistance to bird diseases such as avian malaria and avian pox virus. The species' resistance to bird diseases is important because studies show that the range of mosquitos (the vectors of avian malaria), which is currently limited to lower, warmer elevations, will expand to higher elevations due to increased temperatures associated with climate change.
- We do not consider rapid ohia death (ROD) to be a substantial threat to the Hawaiian hawk at this time, and we do not expect the impacts from ROD to rise to the magnitude or severity such that the species will be likely to become an endangered species within the foreseeable future. While we recognize that ROD is a threat to the integrity of native ohia forests and species solely dependent on ohia trees, Hawaiian hawks are not solely dependent on native forests and are highly adaptable. We believe it is reasonable to conclude that the Hawaiian hawk will likely

adapt to future changes and maintain viability into the foreseeable future. Additionally, there is more forested area on the island of Hawaii than in the recent past. There are increased reforestation and conservation efforts, and the timber industry is shifting from nonnative to native trees, as well as using harvesting techniques that are more Hawaiian hawk and forest bird friendly.

Therefore, we find that delisting the Hawaiian hawk is warranted, and we are removing this taxon from the Federal List of Endangered and Threatened Wildlife. We prepared a final post-delisting monitoring plan to monitor the Hawaiian hawk after delisting to verify that the species remains secure.

Peer review and public comment. We sought comments on the proposed delisting rule from independent specialists to ensure that this rule is based on scientifically sound data, assumptions, and analyses. We also considered all comments and information we received during all comment periods.

Previous Federal Actions

The Hawaiian hawk was added to the U.S. Department of the Interior's list of endangered species on March 11, 1967 (32 FR 4001), in accordance with section 1(c) of the Endangered Species Preservation Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa(c)). Its status as an endangered species was retained under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). A final recovery plan for the Hawaiian hawk was completed in 1984 (USFWS 1984).

The Service published a proposed rule to reclassify the Hawaiian hawk from endangered to threatened on August 5, 1993 (58 FR 41684), based on a population estimate suggesting the number of Hawaiian hawks had increased from the low hundreds reported at the time of listing (Griffin 1985, p. 25) to between 1,400 and 2,500 birds. New research had shown that although there was extensive destruction of native forests, and therefore a reduction in quality of available native habitat (USFWS 1984, pp. 10–11), the Hawaiian hawk had adapted to occupy, and nest in, nonnative forests and had exploited nonnative prey species (Berger 1981, p. 79; Griffin 1985, pp. 70–71; Scott *et al.* 1986, pp. 78–79). Further, Hawaiian hawks were reportedly not threatened by disease or contaminants (Griffin 1985, pp. 104–107, 194). During the public comment period for that 1993 proposed rule, several commenters expressed concerns that the population data used in the proposal were not current and that the hawk's breeding success was insufficiently known to warrant reclassification. Based on these comments, the Service funded an island-wide survey in 1993 to provide a contemporary rangewide assessment of the distribution and population status of the hawk, which determined the Hawaiian hawk population to be between 1,200 and 2,400 birds (Morrison *et al.* 1994, p. 23; Hall *et al.* 1997, pp. 13–14). The decision regarding whether or not to reclassify the Hawaiian hawk from endangered to threatened status was postponed.

On February 3, 1997, the Service received a petition from the National Wilderness Institute to delist the Hawaiian hawk, and we responded to that petition in a letter dated June 19, 1998, indicating that we could not immediately work on the petition due to higher priority listing and delisting actions. Also in 1997, the Service formed the Io Recovery Working Group (IRWG), the mission of which was to provide advice on aspects of the recovery of the Hawaiian hawk. Following its first meeting in December 1997, the IRWG forwarded a report to the Service, in which they recommended that, rather than focusing primarily on abundance to assess the Hawaiian hawk's overall status, field studies should look at hawk numbers in combination with trends (IRWG 1998, p. 4).

The Service funded a detailed ecological and demographic study of the Hawaiian hawk and an island-wide survey in 1998–1999 (Klavitter 2000, entire). Upon review of the study results (Klavitter 2000, entire) and other existing information, the IRWG recommended that the Hawaiian hawk be delisted due to the lack of evidence of a decline in numbers, survival rates, or productivity, and lack of evidence of current substantial loss or degradation of preferred nesting or foraging habitats (IRWG 2001, p. 3). The IRWG identified nesting and foraging habitat loss as a potential significant threat to the species and recommended that regular population and habitat monitoring take place to assess factors that may produce future declines (IRWG 2001, p. 2).

The Service funded a third island-wide survey of Hawaiian hawks that was completed in the summer of 2007, to determine if there had been any population change since the 1998–1999 surveys (Klavitter 2000, entire) and to better determine differences in hawk density by region and habitat (Gorresen *et al.* 2008, entire). There was no change in the estimated number of individuals in the population, the range was not contracting, and that Hawaiian hawks occurred in both native and nonnative habitats. The results prompted the Service to publish a proposed rule to delist the Hawaiian hawk, due to recovery and new information, on August 6, 2008 (73 FR 45680), with a 60-day comment period that closed October 6, 2008. This proposed rule constituted our 90-day finding and 12-month finding on the February 3, 1997, National Wilderness Institute's petition. The proposed delisting was based on rangewide population estimates (Griffin 1985, entire; Hall *et al.* 1997, entire; Klavitter *et al.* 2003, entire; Gorresen *et al.* 2008, entire) and demographic modeling (Klavitter *et al.* 2003, entire).

The Service reopened the comment period for the August 6, 2008, proposed delisting rule and made available a draft post-delisting monitoring plan (draft PDM plan) for the Hawaiian hawk on February 11, 2009 (74 FR 6853); the reopened comment period lasted 60 days, ending April 13, 2009 (USFWS 2008, entire). We again reopened the proposed rule's comment period, and published a schedule of public hearings on the proposed rule, on June 5, 2009 (74 FR 27004); this reopened comment period also lasted 60 days, ending August 4, 2009. We held public hearings on June 30, 2009, in Hilo, Hawaii, and on July 1, 2009, in Captain Cook, Hawaii.

We subsequently reopened the proposed rule's comment period twice: On February 12, 2014, we reopened the proposed rule's comment period for a third time (79 FR 8413), with a 60-day comment period that closed on April 14, 2014; and on October 30, 2018, we reopened the proposed rule's comment period for a fourth time (83 FR 54561), with a 30-day comment period that closed on November 29, 2018.

In total, we accepted public comments on the proposed delisting of the Hawaiian hawk for 270 days.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered all comments we received during all five comment periods from the peer reviewers, State, and public on the proposed delisting rule. We have not made substantive changes in this final delisting rule based on the comments we received during the five comment periods on the August 6, 2008, proposed rule (73 FR 45680). Based on peer review, State, and public comments, we incorporated text and information into this final rule in order to clarify some of the language in the proposed rule.

These minor changes are outlined below, and discussed under Summary of Comments and Recommendations or Summary of Factors Affecting the Species. This final rule incorporates the following changes, based on comments we received on our proposed rule:

(1) The proposed rule stated the elevation range of the Hawaiian hawk was 1,000 to 8,530 feet (ft) (300 to 2,600 meters (m)). Due to a peer review comment, and subsequent literature review, we changed the elevation range to sea level to 8,530 ft (2,600 m).

(2) Due to comments we received, we conducted a preliminary in-house population viability assessment (PVA) and updated or expanded upon discussions regarding drought, hurricanes, climate change, the nonnative invasive plant strawberry guava (*Psidium cattleianum*), ROD, feral ungulates, urban development and land subdivisions, biofuel crops, rodenticides, shooting, disease, and the forestry industry in this rule (see *Recovery Plan Implementation,* Summary of Factors Affecting the Species, and Summary of Comments and Recommendations).

(3) Due to a peer review comment requesting that we provide additional information and clarification regarding the Hawaiian hawk's current and past population abundance estimates to avoid any potential confusion over apparent changes, we modestly revised the species description under *Species Information.*

(4) We incorporated the new information provided in the 2014 and 2018 notices of the reopening of the comment period on the proposed delisting rule (79 FR 8413, February 12, 2014; 83 FR 54561, October 30, 2018) under *Species Information* and Summary of Factors Affecting the Species. This includes information on trends pertaining to human population growth, land subdivisions, development, and urbanization; ROD, ohia dieback, and ohia rust; strawberry guava biocontrol; environmental impacts associated with climate change; shooting; Hawaiian hawk population viability; volcanic activity, and myriad conservation efforts.

Background

Species Information

The following discussion contains information updated from that presented in the proposed rule to remove the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife, which published in the **Federal Register** on August 6, 2008 (73 FR 45680). A thorough discussion of the species' description, population density, and abundance is also found in that proposed rule.

Species Description and Life History

The Hawaiian hawk is a small, broad-winged hawk endemic to (found only in) the Hawaiian islands, and is the only extant (still in the wild) member of the family Accipitridae endemic to the Hawaiian islands (Berger 1981, p. 83; Olson and James 1982, p. 35). The Hawaiian hawk occurs in light and dark color morphs, with intermediate plumages and much individual variation (Griffin 1985, p. 46). The light morph is dark brown above and white below, with brown flecks on the upper breast. The dark morph is dark brown above and below. The legs, feet, and cere (fleshy area between the eye and bill) are yellow in adults and bluish-green in juveniles (Griffin 1985, pp. 58–63).

The Hawaiian hawk occurs over much of the island of Hawaii, from sea level to 8,530 ft (2,600 m) elevation, and occupies a variety of habitat types, including native forest, secondary forest consisting primarily of nonnative plant species, agricultural areas, and pastures (Banko 1980, pp. 2–9, 15–16; Scott *et al.* 1986, pp. 78–79; Hall *et al.* 1997, p. 14; Griffin *et al.* 1998, p. 661; Klavitter 2000, pp. 2, 38, 42–45; Klavitter *et al.* 2003, pp. 169–170, 172, 173; VanderWerf 2008, in litt.).

Hawaiian hawks are monogamous and defend their territories year-round (Griffin 1985, pp. 119–121; Griffin *et al.* 1998, p. 660; Clarkson and Laniawe 2000, pp. 6–7). Their breeding distribution is restricted to the island of Hawaii, but there have been at least eight observations of vagrant individuals on the islands of Kauai, Oahu, and Maui since 1778 (Banko 1980, pp. 1–9), and fossil remains have been found on the islands of Molokai (Olson and James 1982, p. 35) and Kauai (Olson and James 1996, pp. 65–69; Burney *et al.* 2001, pp. 628–629). They may have once completed their life history on other islands; however, since written records, Hawaiian hawks have only been known to breed on the island of Hawaii (Banko 1980, p. 2). Egg laying generally occurs from March to June, hatching from May to July, and fledging from July to September (Griffin 1985, p. 110; Griffin *et al.* 1998, p. 656). Clutch size is usually one egg (Griffin 1985, p. 76; Griffin *et al.* 1998, p. 657; Klavitter *et al.* 2003, p. 170), but there are a few records of two or three young per nest (Griffin 1985, pp. 75, 80, Appendix 1). Hawaiian hawks take about 3 years to obtain adult plumage (Clarkson and Laniawe 2000, p. 13); however, there are few data available on the age at which Hawaiian hawks first breed. Although one researcher documented a 3-year-old female pairing with a male of unknown age and building a nest, no eggs were laid. Another researcher documented the formation of a pair bond between a 3-year-old male and a female with immature plumage. In this case, no nesting attempts were documented (Clarkson and Laniawe 2000, p. 10). Based on this information, we believe that the Hawaiian hawk first breeds at 3 or 4 years of age.

The first detailed study of the ecology and life history of the Hawaiian hawk was conducted from 1980 to 1982 (Griffin 1985, entire). During this study, researchers found no significant difference in nest success between habitats dominated by native versus nonnative vegetation (Griffin 1985, pp. 102–103; Scott *et al.* 1986, pp. 78–79). However, of 113 Hawaiian hawk nests found during a demographic study in 1998 to 1999, 81 percent were in native ohia (*Metrosideros polymorpha*) trees (Klavitter *et al.* 2003, p. 170). Additionally, Griffin (1998, p. 661) found little evidence the Hawaiian hawk was adversely affected by bird disease (avian pox and avian malaria) (Griffin 1998, p. 661). There was also no evidence the hawk was affected by introduced mammalian predators, such as cats, rats, or mongoose, or environmental contaminants such as dichloro-diphenyl-trichloroethane (DDT) (Griffin 1985, pp. 104–107, 194; Griffin *et al.* 1998, pp. 658, 661).

The Hawaiian hawk is adaptable and versatile in its feeding habits and preys on a variety of rodents, birds, and large insects (Munro 1944, p. 48; Griffin 1985, pp. 142–145, Appendix 5; Griffin *et al.* 1998, p. 659). Hawaiian hawks use still-hunting to capture prey by perching in trees or other vegetation and stooping on its prey with its wings tucked and talons forward (Clarkson and Laniawe 2000, p. 3). Of 52 successful hunting bouts observed, 48 (92 percent) were by this method, only four (8 percent) were by the hawk soaring or hovering then flying down to grasp their prey (Griffin 1985, p. 162).

Based on food items delivered by hawks to nestlings, 32 percent of the Hawaiian hawk's diet is birds and 37 percent is small mammals of two species (rats (*Rattus* spp.) and house mouse (*Mus musculus*)); the remaining proportion of food items included mongoose (*Herpestes auropunctatus*), insects, and unidentified prey items (some of which were mammals) (Griffin 1985, pp. 143–144).

Demographics

Observations made at Sia, The Comanche Nation Ethno-Ornithological Initiative, a permitted Native American raptor aviary in Oklahoma, show the lifespan of Hawaiian hawks is at least 21 years in captivity (Volker 2018, pers. comm.). This is several years more than the previously reported captive lifespan of 17 years (Clarkson and Laniawe 2000, p. 10; U.S. Department of Agriculture–Natural Resources Conservation Service (NRCS) 2007, p. 1). Sia received the two birds in 2015 from the Memphis Zoo, and in 2016, the Hawaiian hawk pair produced the first-ever Hawaiian hawk chick to hatch in captivity (USFWS 2017, in litt.; Volker 2018, pers. comm.). Sia attributes their success to their feeding methods. Staff at Sia realized the metabolism of Hawaiian hawks is much more active than other raptors of the same size, so they increased the Hawaiian hawk's food supply substantially. They found that the female Hawaiian hawk eats as much daily as a male bald eagle in captivity. The Hawaiian hawk pair are nesting again at 21 years of age, showing not only that Hawaiian hawks can live for at least 21 years, but may also reproduce at that age in captivity.

In all successful nests monitored (n=113), only one young fledged per nest (Klavitter *et al.* 2003, entire). Annual survival of juveniles and adults was high (0.50 (± 0.10) and 0.94 (± 0.04), respectively), and fecundity (fertility) was 0.23 (± 0.04) female young/breeding female in all habitats combined. Nest success in native habitat tended to be slightly higher than in exotic habitats, but juvenile survival was higher in exotic habitats than in native forest (Klavitter *et al.* 2003, p. 170). There was no significant difference in fecundity or population growth rate between native and mixed, native and exotic, or mixed and exotic habitats (Klavitter 2000, pp. 39, 56; Klavitter *et al.* 2003, pp. 170–171). The overall rate of population growth based on data from all habitat areas was 1.03 (± 0.04), which is not significantly different than 1.0, indicating that there was no detectable change in population size across habitat types from 1998 to 1999 (Klavitter 2000, pp. 40, 56; Klavitter *et al.* 2003, pp. 170–171).

We developed a preliminary in-house female-specific stochastic PVA model for the Hawaiian hawk (Vorsino and Nelson 2016, unpublished data) using the mean and variance values of age-specific survival and fecundity in native, mixed, and exotic habitats (Gorresen *et al.* 2008, p. 15; Klavitter *et al.* 2003, p. 170). Population viability was assessed for optimal (*i.e.,* areas with high hawk density: Native forest with grass understory, mature native forest, native-exotic forest, and orchards) and sub-optimal habitats (*i.e.,* areas with moderate to low hawk densities: Degraded due to strawberry guava, coffee planting, and urban expansion), where population partitioning was based on Hawaiian hawk densities within the habitat types (optimal/sub-optimal) reported in Gorresen *et al.* (2008, p. 15). The effect of catastrophic weather events on the viability of Hawaiian hawks in these various habitat types was also projected and assessed. None of the projected PVAs showed a Hawaiian hawk population that declined to either zero, or below a quasi-extinction threshold of 50 individuals, when projected over 30 years across 500 model iterations. At 30 years, an approximate doubling of the population in optimal habitat was projected, whereas the population in sub-optimal habitat decreased by approximately one third. This reduction in the sub-optimal habitats population was the result of habitat degradation and reduced habitat carrying capacity for areas affected by strawberry guava invasion, coffee planting, and urban expansion. Of the habitat threats identified in this PVA, invasion by strawberry guava of mixed native-exotic and mature native forest had the most negative impact on Hawaiian hawk habitat. This PVA provides insight regarding Hawaiian hawk viability with respect to the quality of different habitat types in relation to impacts from strawberry guava, coffee farming, urban development, and an increase in extreme weather events due to climate change. Although it does not consider any potentially positive impacts resulting from the new strawberry guava biocontrol efforts or the increase in conservation actions and acreage of land set aside for conservation in perpetuity since the Hawaiian hawk's 1967 listing, we feel it continues to be useful in our analysis. We included this PVA in our analysis of strawberry guava under our Factor A discussion, below (also see *Recovery Plan Implementation,* below).

Abundance and Distribution

At the time of listing in 1967, it was thought that the Hawaiian hawk population was in the low hundreds; however, there was little information pertaining to Hawaiian hawk abundance and distribution prior to listing, so this estimate has been questioned. Since listing, several population abundance and distribution studies have been conducted. The first preliminary population estimate of 1,400 to 2,500 birds (Griffin 1985, p. 25) was based on home range size from radio telemetry data and distribution data from island-wide bird surveys. Surveys conducted from December 1993 to February 1994 showed the Hawaiian hawk widely distributed in both native and nonnative habitats and provided a population estimate of 1,600 birds, made up of 1,120 adults, or 560 pairs (Morrison *et al.* 1994, p. 23; Hall *et al.* 1997, pp. 13–14). A detailed ecological and demographic study of the Hawaiian hawk was conducted from 1998 to 1999; this study found that Hawaiian hawks were broadly distributed throughout the island of Hawaii, and that 58.7 percent of the island (2,372 square miles (sq mi) (6,143 square kilometers (sq km))) contained habitat for the hawk. State and Federal forests, parks, and refuges, totaling 754 sq mi (1,954 sq km), supported 469 hawks, and made up 32 percent of the species' habitat (Klavitter *et al.* 2003, p. 170). The total Hawaiian hawk population in this study was estimated to be 1,457 (± 176.3 birds) (Klavitter 2000, pp. 38, 96; Klavitter *et al.* 2003, p. 170).

The most recent island-wide survey was completed in the summer of 2007 (Gorresen *et al.* 2008, entire). The researchers used updated vegetation maps and methods to calculate population and density estimates for the 1998–1999 survey data and the 2007 survey data. Using consistent maps and methods, they were then able to compare population size and density over time to see if there had been significant changes. They found that, in reanalyzing the 1998–1999 data (Klavitter 2000, entire) with the new method, the Hawaiian hawk population actually numbered 3,239 (95 percent confidence interval (CI)=2,610 to 3,868) birds in 1998, which was more than double the original estimate of 1,457 (± 176.3 birds) from 1998–1999 (Klavitter 2000, pp. 38, 96; Klavitter *et al.* 2003, p. 170). Using the 2007 survey data, they estimated the population to number 3,085 hawks (95 percent CI=2,496 to 3,680). There was no significant difference in densities found in 1998 and 2007, and no evidence that the Hawaiian hawk's spatial distribution had changed (Gorresen *et al.* 2008, p. 6). Using these new analytic methods not available during past Hawaiian hawk population surveys, the Hawaiian hawk's population size was consistently about 3,000 individuals between 1997 and 2007 (Gorresen *et al.* 2008, entire). The differences in population estimates from the earlier surveys were not actual differences but were due only to differences in analytic methods. All

available data indicate that the Hawaiian hawk population had remained relatively constant over a nearly 30 year period (approximately 1980 through 2008) (Griffin 2008, in litt.). Based on our 5-factor analysis under section 4 of the Act (see Summary of Factors Affecting the Species, below), we conclude there has not been any significant change in the Hawaiian hawk's population trend over the past 10 or more years (2008 through 2019).

Recovery Planning and Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: ''Objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.'' However, revisions to the List (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should help indicate when we would anticipate that an analysis of the five threat factors under section 4(a)(1) would result in a determination that the species is no longer an endangered species or threatened species because of any of the five statutory factors (see Summary of Factors Affecting the Species, below).

While recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of, or remove a species from, the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and the species is robust enough to remove from the List. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be discovered that was not known at the time the recovery plan was finalized. The new information may change the extent to which criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

Recovery Planning

The Hawaiian hawk was listed as an endangered species in 1967 (32 FR 4001; March 11, 1967) based on a perceived low population number, purported range contraction from several Hawaiian islands to just one (the island of Hawaii), and habitat loss and degradation of native forests from agriculture, logging, and commercial development (Orenstein 1968, pp. 21–27; Berger 1981, p. 79; USFWS 1984, pp. 1–13; Klavitter *et al.* 2003, p. 165). Additionally, at the time of listing, raptors around the world were declining due to contaminants such as DDT (Newton 1979, *in* Newton 2017, p. 101).

The final recovery plan for the Hawaiian hawk was published in 1984, 17 years after listing (USFWS 1984, entire). Between 1967 (the year the Hawaiian hawk was listed as endangered) and 1984, substantial research was conducted on the life history, behavior, and habitat requirements of Hawaiian hawks (USFWS 1984, p. 24). The recovery plan notes that the results from the research studies conducted on Hawaiian hawks between 1967 and 1984 were used to develop the recovery recommendations, many of which had already been implemented and completed (USFWS 1984, p. 1). Field biologists had already documented Hawaiian hawk abundance and distribution, and had assessed several factors that were thought to be limiting Hawaiian hawk population abundance (*i.e.,* illegal shooting, habitat loss and degradation), all of which are recovery criteria to downlist the Hawaiian hawk from endangered status to threatened status, as outlined under *Recovery Plan Implementation,* below.

The Hawaiian hawk population in 1983 was estimated to be between 1,400 and 2,500 birds, based on reproductive parameters, home range, measures of forest and agricultural habitats, and distribution information collected during island-wide forest bird surveys that included hawk sightings and audio detections (Griffin 1985, p. 25; Klavitter *et al.* 2003, p. 165). Hawaiian hawks were distributed across the island of Hawaii and occupied virtually all forest types, native and nonnative, except for the extremely arid parts of the island (*e.g.,* grasslands of the northwest part of the island and Kau desert) (Scott *et al.* 1986, pp. 78–79). A subsequent 1989 publication provided an updated population estimate of 2,700 Hawaiian hawks containing 900 breeding pairs (Griffin 1989, p. 160). These population and distribution data indicated that Hawaiian hawks were more common than previously thought (Griffin 1985, entire; Scott *et al.* 1986, entire; Griffin 1989, entire; USFWS 1984, p. 8).

The primary recovery objective of the Hawaiian hawk recovery plan is to ''ensure a self-sustaining Hawaiian hawk population in the range of 1,500 to 2,500 adult birds in the wild, as distributed in 1983, and maintained in stable, secure habitat'' (USFWS 1984, p. 25). No explanation for the recovery goal of 1,500 to 2,500 birds is provided in the recovery plan, but these numbers are presumably based on the earliest population estimate (Griffin 1985, entire). A population abundance between 1,400 and 2,500 hawks was considered sufficient to maintain a self-sustaining wild Hawaiian hawk population (USFWS 1984, p. 24). The plan also states that ''for the purposes of tracking the progress of recovery, 2,000 will be used as a target to reclassify to threatened status,'' and that ''criteria for complete delisting will be further developed'' (USFWS 1984, p. 25). The recovery plan was never updated to include criteria for delisting the Hawaiian hawk.

In 1997, the Service formed the IRWG, the mission of which was to provide advice on aspects of the recovery of the Hawaiian hawk. The IRWG included scientific experts from universities and the U.S. Geological Survey (USGS), and a Service biologist. Following its first meeting in December 1997, the IRWG forwarded a report to the Service, in which they recommended that, rather than focusing primarily on abundance to assess the Hawaiian hawk's overall status, field studies should look at hawk numbers in combination with trends

(IRWG 1998, p. 4). The Service funded a detailed ecological and demographic study of the Hawaiian hawk and island-wide survey in 1998–1999 (Klavitter 2000, entire). Upon review of the 2000 study results (Klavitter 2000, entire) and other existing information, the IRWG recommended that the Hawaiian hawk be delisted due to the lack of evidence of a decline in numbers, survival rates, or productivity, and the lack of evidence of current substantial loss or degradation of preferred nesting or foraging habitats (IRWG 2001, p. 3). The IRWG identified nesting and foraging habitat loss as a potential significant threat to the species and recommended that regular population and habitat monitoring take place to assess factors that may produce future declines (IRWG 2001, p. 2). The IRWG stopped meeting after submitting their final recommendation to the Service (Nelson 2018, in litt.).

The collective survey data, including rangewide population estimates (Griffin 1985; Hall *et al.* 1997; Klavitter *et al.* 2003; Gorresen *et al.* 2008) and demographic modeling (Klavitter *et al.* 2003), indicate that the Hawaiian hawk population was, and continues to be, stable; Hawaiian hawks use both native and nonnative habitats for breeding and hunting; the species' range is not contracting; and there is no evidence of threat from environmental contaminants.

Recovery Plan Implementation

Our knowledge of the Hawaiian hawk has improved since it was listed as endangered in 1967. Although contemporary population abundance estimates may be lower than that of historical Hawaiian hawk population abundance, and the Hawaiian hawk's current range may have contracted from that of its historical range, there is no known existing data to quantify such declines. Instead, data show that the Hawaiian hawk has had a stable population that covers large areas on the island of Hawaii in varying habitat types and elevations for at least the past 30 years. The following criteria for downlisting the Hawaiian hawk have all been met or exceeded as described in the recovery plan:

(1) *Determine present distribution and abundance of the Hawaiian hawk on the island of Hawaii:* As described above, the data collected (Griffin 1985, entire; Griffin 1989, entire), Scott *et al.* (1986, entire), Hall *et al.* (1997, entire), Klavitter *et al.* (2000, entire; 2003, entire), and Gorresen *et al.* (2008, entire) have determined the present distribution and abundance of the Hawaiian hawk on the island of Hawaii. We currently estimate that the Hawaiian hawk breeding range (2,222 sq mi (5,755 sq km)) supports a population of approximately 3,000 Hawaiian hawks (Gorresen *et al.* 2008, p. 1).

(2) *Determine Hawaiian hawk habitat requirements:* Hawaiian hawks are well distributed throughout forest and adjacent habitat on the island of Hawaii (Griffin 1985, p. 70; Scott *et al.* 1986, p. 79; Hall *et al.* 1997, entire; Klavitter 2000, pp. 13, 37; Klavitter 2003, pp. 165, 167, 169–172; Gorresen *et al.* 2008, pp. 25, 39). Hawaiian hawk population density varies among habitat type and region. For example, Hawaiian hawk densities in Kau and Hamakua regions were highest in the native-exotic forest habitat, but in Kona, Hawaiian hawk density was highest in mature native forests with grass understory, followed by mature native forests, and then native-exotic (Gorresen *et al.* 2008, p. 47). While Hamakua and Kau had relatively high Hawaiian hawk densities in orchard forests (0.78 ± 0.27 and 0.58 ± 0.27 hawks per square kilometer (km^2)), respectively), Puna's highest Hawaiian hawk density was in shrubland ($0.40 + 0.12$ hawks per km^2) (Gorresen *et al.* 2008, p. 47). Hawaiian hawks prefer forests that are only modestly dense so that they have an accessible understory where prey can be seen more easily (Gorresen *et al.* 2008, p. 25).

(3) *Identify factors limiting the Hawaiian hawk population:* No factors are considered to be currently limiting the Hawaiian hawk population (USFWS 1984, p. 8; IRWG 2001, pp. 1–4; Gorresen *et al.* 2008, pp. 22–26). Factors that were considered as potential limiting factors include: Loss of nesting and foraging habitat (*e.g.,* canopy loss and conversion of forest habitats to open grassland, logging, agriculture, human population growth and associated urbanization), nonnative plants (*i.e.,* strawberry guava), effects due to climate change (*e.g.,* drought and hurricanes), ohia dieback, ROD), harassment and shooting, predation, bird disease, and environmental contaminants.

(4) *Minimize or eliminate identified detrimental factors:* Because the Hawaiian hawk has had a stable population for at least 30 years, and occupies both native and nonnative habitat, habitat loss and degradation are not currently considered a threat to the survival of Hawaiian hawks. Additionally, as noted in the document we published in the **Federal Register** on October 30, 2018 (83 FR 54561), there are ongoing and increasingly productive conservation actions, such as:

- Restoration and reforestation actions that have increased the amount of habitat for the Hawaiian hawk (*e.g.,* Hawaii Legacy Reforestation initiative, Sustainable Hawaii Initiative, Hawaii Plant Extinction Prevention Program, Hawaii Invasive Species Council, Hawaii Rare Plant Program);
- The installation of ungulate exclusion fencing;
- Landowner partnerships (*e.g.,* Three Mountain Alliance Watershed Partnership (TMA), Kohala Watershed Partnership (KWP), Mauna Kea Watershed Alliance (MKWA));
- An increase in the amount of land set aside for conservation in perpetuity (*e.g.,* The Nature Conservancy's (TNC) Kona Hema Preserve, Hakalau National Wildlife Refuge (NWR) (both Hakalau and Kona Units), and the addition of the Kahuku Unit at Hawaii Volcanoes National Park (NP)).

Additional activities implemented by the public and private organizations and partnerships on the island of Hawaii include programs that implement fencing inspections and necessary replacements, native species surveys, greenhouse and native plant propagation, prevention of the spread of ROD, and outreach. Hawaiian hawks benefit from native forest protection and restoration because it provides breeding, nesting, and foraging habitat. For more details regarding conservation measures, please see the Factor A discussion, below.

Research regarding the potential impacts of environmental pollutants (*e.g.,* heavy metals and pesticides) on Hawaiian hawk reproductive success has been evaluated (USFWS 1984, p. 21; Spiers et al. 2018, entire). In the early 1980s, abandoned Hawaiian hawk eggs and dead hawks were tested for organochlorine compounds (*e.g.,* DDT) and heavy metals. None or only trace amounts of these contaminants were found (USFWS 1984, p. 21). In 2015 and 2016, carcasses of Hawaiian hawks were tested for both first and second generation anticoagulating rodenticide exposure (Spiers et al. 2018, entire). Fifteen Hawaiian hawk carcasses were tested. No detectable levels of first generation anticoagulating rodenticides (FGARs) were found in liver, whole carcass, or kidney tissue; however, detectable levels of second generation anticoagulating rodenticides (SGARs) were found in either the whole body, liver, or kidney tissue (or a combination of these three) of all 15 Hawaiian hawk carcasses (Spiers et al. 2018, entire). Four Hawaiian hawk carcasses had detectable levels of bromadiolone, 12 had detectable levels of brodifacoum, and 4 had detectable levels of difethialone; one carcass had detectable levels of all three SGARs, and 5

carcasses had detectable levels of two SGARs. The highest and second highest residue values were for brodifacoum in Hawaiian hawk liver samples (768 nanograms per gram (ng/g) (0.768 milligrams per kilogram (mg/kg)) and 141 ng/g (0.141 mg/kg), respectively).

Although research has not been conducted on Hawaiian hawks to determine the specific effects of secondary poisoning resulting from their consumption of rodents killed by rodenticides (*e.g.,* zinc phosphide, diphacinone, chlorophacinone, bromethalin, fumarin, FGARs, and SCARs), elsewhere, owls fed rats killed with fumarin appear to be unaffected (Mendenhall and Pank 1980, p. 313), and zinc phosphide is considered relatively safe for non-target species due to its rapid decomposition into harmless products (Hood 1972, p. 86; Gervais *et al.* 2011, in litt.). Multiple wild avian species exposed to both first and second generation anticoagulating rodenticides did not test positive for the more commonly used FGARs (warfarin, diphacinone, and chlorophacinone); however, many tested positive for SGARs (brodifacoum, bromadiolone, and difethialone), including various hawk species (California Department of Pesticide Regulation (DPR) 2013, pp. 10; 47). Due to their lethal impact on non-target animals (either directly (*i.e.,* bleed to death) or indirectly (*e.g.,* they get sick and subsequently either get hit by a car or become an easier target for depredation by other animals), SGARs were banned in the consumer market in 2008, with an effective date of June 4, 2011 (EPA 2008, pp. 7–8, 12–13, 26); however, they are still allowed for certain commercial uses in specific quantities and designated areas (*e.g.,* within and around agricultural buildings). There are 73 products containing SGARs (bromadiolone, brodifacoum, or difethialone) and 42 products containing FGARs (warfarin, chlorophacinone, or diphacinone) registered for use in Hawaii, and one product containing warfarin (*National Pesticide Information Retrieval System*-State of Hawaii 2019, entire). In 2011, the revised use law went into effect. Hawaiian hawks are likely to benefit from the reduced risk of secondary poisoning because of decreased use of SGARs. We believe the Hawaiian hawk population is robust enough to maintain viability into the foreseeable future even if some mortalities occur now or in the future resulting from SGARs, because despite the broader use of SGARs before 2008, the Hawaiian hawk population remained stable with approximately 3,000 individuals.

The human population growth predictions for Hawaii County from 2010 to 2040 were projected to be 1.6 percent growth annually; however, the annual average growth rate thus far (2010 through 2017) is just 1.1 percent (Hawaii Department of Business, Economic Development and Tourism (DBEDT) 2018, in litt.). It is predicted to briefly increase to 1.3 percent in the early 2020s, but is then anticipated to remain at 1.0 to 1.1 percent through 2045 (DBEDT 2018, p. 2). Further, new housing subdivisions within known Hawaiian hawk habitat on the island of Hawaii tapered off around 2011, with little to no change through 2018 (Amidon 2019, unpublished data). Additionally, the logging industry has adopted harvesting practices that avoid clear cutting and maintain continuous habitat (Koch and Walter 2018, in litt.). Further, although ohia dieback still exists, and we recognize that ROD is a threat to ohia forests, there is no evidence that either has altered the Hawaiian hawk's population abundance or its life-history needs.

Nonnative plants, such as strawberry guava, are not anticipated to alter Hawaiian hawk population abundance in the foreseeable future; however, we recognize that monostands of guava are not conducive to Hawaiian hawk foraging. With warming of the atmosphere due to climate change, the range of strawberry guava may shift to higher elevations and negatively impact Hawaiian hawks (Vorsino *et al.* 2014, p. 2). Our preliminary PVA indicates that if not abated, strawberry guava may impact Hawaiian hawk distribution in 30 or more years (Vorsino and Nelson 2016, unpublished data). However, since the successful deployment in 2012 of a biocontrol agent for strawberry guava (the Brazilian scale insect, *Tectococcus ovatus*) in two demonstration plots on the island of Hawaii (Chaney and Johnson in HCC 2013, p. 74), the State of Hawaii and other partners have been working to establish *Tectococcus ovatus* in strawberry guava-invaded forests throughout the islands (Chaney and Johnson 2018, in litt.; Kerr 2018, pers. comm.). *Tectococcus ovatus* is a highly host-specific, leaf-galling insect. By 2017, these efforts have resulted in established, self-reproducing insect populations on strawberry guava at multiple forest sites on five islands (Hawaii, Kauai, Lanai, Maui, and Oahu) (Chaney and Johnson 2018, in litt.). Under favorable conditions, *Tectococcus ovatus* populations have increased rapidly and spread within 33 to 262 ft (10 to 80 m) from site of application in a period of several months (Chaney and Johnson 2018, in litt.). *Tectococcus ovatus* typically weakens the trees through its feeding, reducing the ability of the tree to fruit and set seed, thereby limiting its spread (U.S. Forest Service (USFS) 2016, in litt.). *Tectococcus ovatus* is not expected to kill already established trees (Hawaii Department of Agriculture 2011, in litt.). Galling at the Waiakea site (on Hawaii island) has increased to a level that is beginning to reduce strawberry guava fruiting, although full impacts are not yet apparent. It is too early to know what effect this may have on guava tree vigor and rate of spread; however, infestations of *Tectococcus ovatus* are expected to spread gradually on the target plant, reaching damaging levels within a few years at each release site (Kerr 2018, pers. comm.). The USFS will continue to provide technical assistance and monitor the impacts of this biocontrol agent. It is expected that a noticeable decrease in the spread of strawberry guava will be observed over a period of years (Kerr 2018, pers. comm.). At this time, impacts from strawberry guava have not been shown to alter Hawaiian hawk population abundance or any stage of the species' life history.

Harassment and shooting do unfortunately occur. According to our Office of Law Enforcement's records, there have been seven documented cases that involve Hawaiian hawk gunshot wounds between 2013 and 2018. Four of these occurred in 2018.

However, shooting is not considered a significant threat because Hawaiian hawks have maintained a population of approximately 3,000 individuals over several decades and are revered in Hawaiian culture as an aumakua or familial guardian spirit. Additionally, the public has shown much support for keeping Hawaiian hawks on the State list of endangered and threatened species.

Shooting of Hawaiian hawks is not a new threat, and despite its occurrence over time, the Hawaiian hawk population has maintained a stable population. On the effective date of this rule (see **DATES**, above), shooting of Hawaiian hawks will remain illegal under both the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–712) and Hawaii State law.

Predation has not been shown to impact the Hawaiian hawk at any life stage. Most of the nonnative species in Hawaii that are considered predators are actually prey to Hawaiian hawks (*e.g.,* rats, mice, mongooses). Cats are an exception; however, cats have not been shown to be a limiting factor of

Hawaiian hawk abundance and survival. Lastly, bird disease (*i.e.,* avian pox and avian malaria) and environmental contaminants are not known to negatively impact the Hawaiian hawk. If West Nile virus appears on Hawaii, however, relisting the Hawaiian hawk may be warranted (for more information, see our Factor C discussion, below).

(5) *Monitor Hawaiian hawk population status:* Monitoring of Hawaiian hawk population status occurred intermittently from the late 1960s through 2008.

(6) *Develop and implement a public information program to inform public agencies and private citizens about the Hawaiian hawk:* Collaborative outreach was conducted in the late 1970s and early 1980s by the Service, State, University of Hawaii College of Tropical Agriculture and Human Resources, local businesses, and nongovernmental organizations, including, but not limited to, the Conservation Council of Hawaii. Colorful brochures and posters were distributed to the public and schools. In 1982, every school in the State received Hawaiian hawk posters for National Wildlife Week. Also during this time, several news articles on the Hawaiian hawk appeared in local newspapers. In the 1990s, the Peregrine Fund (Fund) had an un-releasable, rehabilitated Hawaiian hawk that was blinded by an injury. The Fund used that hawk for public outreach events and took it to schools. The Panaewa Zoo on the island of Hawaii, near Hilo, has a permanent resident Hawaiian hawk on public display that is used for educational purposes; this zoo also works closely with permitted Hawaiian hawk rehabilitators. The Hawaii Wildlife Center and Three Ring Ranch both rehabilitate injured Hawaiian hawks and conduct public educational programs. Additionally, there is a Hawaiian hawk pair at Sia, The Comanche Nation Ethno-Ornithological Initiative, a permitted Native American raptor aviary in Oklahoma (Volker 2018, pers. comm.). These 21-year-old Hawaiian hawks are used by Sia for educational purposes (Volker 2018, pers. comm.).

(7) *Determine appropriate status of this species and downlist or delist:* The IRWG, Service, and all three peer reviewers concur that delisting is the appropriate status for Hawaiian hawks. We have considered each of the five factors, and we have determined that the Hawaiian hawk is not currently at risk of extinction throughout all or a significant portion of its range (*i.e.,* endangered), nor is it likely to become an endangered species in the foreseeable future (*i.e.,* threatened). If post-delisting monitoring shows a significant decline in Hawaiian hawk population abundance or detects that the habitat quality or quantity is being altered or destroyed such that it does not or will not properly support a self-sustaining, viable Hawaiian hawk population, a relisting may be warranted.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the ''species'' is determined, we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of an endangered or threatened species. Determining whether a species is recovered requires consideration of the same five statutory factors specified in section 4(a)(1) of the Act. For species that are already listed as an endangered or threatened species, this analysis is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future, as well as any conservation actions or regulations that ameliorate those threats.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range, and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Following this 5-factor analysis we evaluated the status of the Hawaiian hawk.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The 1993 proposed rule to reclassify the Hawaiian hawk from endangered to threatened (58 FR 41684; August 5, 1993), the 2001 IRWG report (IRWG 2001, p. 3), Klavitter *et al.* (2003, p. 173), and Gorresen *et al.* (2008, pp. 9–11) all identified loss of preferred nesting and foraging habitats as a potential threat to the Hawaiian hawk. Although their specific concerns were variously stated, the causes all fit into one of the following categories: (1) Urbanization/lack of secure habitat; (2) conversion of sugarcane fields to unsuitable habitat; (3) increase in fire frequency; (4) invasion of plant species in the understory that degrade foraging habitat by concealing prey; and (5) environmental fluctuations. Below, we address the first four of these specific threats to Hawaiian hawk habitat. We discuss environmental fluctuations under Factor E.

Urbanization/Lack of Secure Habitat

The Hawaiian hawk is broadly distributed on the island of Hawaii, and 58.7 percent of the island (2,372 sq mi (6,144 sq km)) contains habitat for the hawk. Of this habitat, 55 percent is zoned for agriculture, and 44.7 percent is zoned for conservation. Approximately 754 sq mi (1,953 sq km), or 32 percent, of the Hawaiian hawk's habitat is located on protected lands in the form of State and Federal forests, parks, and refuges, and less than 1 percent is rural or urban-zoned land that has the potential to be impacted by or subjected to future development (Klavitter 2000, p. 38; Klavitter *et al.* 2003, p. 170; State of Hawaii 2007, in litt.).

The amount of urban land or land subject to potential future urbanization is generally localized in areas surrounding existing cities (County of Hawaii 2005a as amended 2014, pp. 14–2, 14–9, 14–11—Land Use Pattern Allocation Guide Map (LUPAG) 1–25), and represents less than 1 percent of Hawaiian hawk habitat on the island. Changes in zoning from one category to another (*e.g.,* agricultural to urban) are made through petitions to the State Land Use Commission. There are currently no pending petitions that would change current agriculture, conservation, or rural zones to urban on the island of Hawaii (State of Hawaii Land Use Commission 2018, in litt.). Similarly, no amendments are currently proposed to the County of Hawaii General Plan (2005a, as amended, entire) that would reflect projected

future urban growth beyond what was projected in the original 2005 plan. Additionally, because the Hawaiian hawk is broadly distributed on the island and can use a variety of habitats, the potential future conversion of a relatively small amount of its habitat (less than 1 percent) surrounding existing urban uses is not a threat to the viability of the species.

We examined trends in human population, urban and exurban growth, and land subdivision over the past three decades for Hawaii County to better understand the history of habitat change on Hawaii and the potential effects of these factors on Hawaiian hawk habitat and density in the future. Previously, in 2012, the Hawaii DBEDT projected the population of Hawaii County to grow 1.6 percent annually from 2010 to 2040, a 32 percent population increase over 20 years (DBEDT 2012, pp. 1–2). However, the actual population growth for Hawaii County between 2010 and 2017 was only 1.1 percent annually (DBEDT 2018, in litt.). A brief increase to 1.3 is anticipated in the early 2020s; however, the population growth is predicted to remain between 1.0 and 1.1 percent from 2018 through 2045 (DBEDT 2018, p. 2). The number of private residential construction permits issued annually by Hawaii County for single-family dwellings more than doubled from 1995 to 2007, from 908 to 1,852 permits (County of Hawaii 2010, table 16.7). The total number of housing units built nearly doubled from 1984 to 2007, from 39,164 to 77,650 units (County of Hawaii 2010, tables 16.9 and 16.10). The pace of home construction was most rapid in the Puna and North Kona districts, with increases of 105.6 and 67.7 percent, respectively, in the total number of housing units built from 1990 to 2000 (County of Hawaii 2010, table 16.13). By 2014, there were approximately 85,173 housing units on the island of Hawaii, with 4,811 building permits issued, the highest level since 2006 (County of Hawaii 2015, p. 144). Of the 4,811 building permits, 958 were private housing, with the remaining going to nonresidential, additions, and alterations (County of Hawaii 2015, pp. 145–146). Between 2000 and 2008, the number of new single family homes on the island of Hawaii built per year oscillated between 1,000 and 2,700 new homes (County of Hawaii 2015, p. 146). This range dropped between 2009 and 2013, oscillating between 580 and 700 new homes built per year (County of Hawaii 2015, p. 146). Hilo and Kailua-Kona remain the areas with the most development (County of Hawaii 2015, p. 150). We expect residential and exurban construction for Hawaii County to continue at a similar pace in the foreseeable future as indicated by expected human population growth for Hawaii County and home construction for the island of Hawaii for the last three decades (County of Hawaii 2010, tables 16.1–16.13; County of Hawaii 2015, pp. 144–146, 149–150; DBEDT 2018, in litt.; DBEDT 2018, pp. 2–3).

We also analyzed tax-map keys (TMKs) for the years 1996 and 2009, to better understand land subdivision on Hawaii and how this might relate to potential changes in Hawaiian hawk habitat (Nelson and Metevier 2010, unpublished data). Over this time period, the number of land parcels less than 1 acre (ac) (0.4 hectare (ha)) in size increased almost three-fold from 25,925 to 74,620 parcels. This equates to an approximate three-fold increase in the land area for parcels of this size, from 7,680 ac (3,107 ha or 12 square miles (sq mi) (31 square kilometers (sq km)) to 24,458 ac (9,897 ha or 38 sq mi (100 sq km)) and is equal to approximately 1.7 percent of the hawk's current range. Overall, the largest increase in subdivisions occurred in the Puna region. Parcels of 1 ac or less in size do not require a grubbing permit if grubbing (*i.e.,* vegetation clearing) does not alter the general and localized drainage pattern with respect to abutting properties (County of Hawaii 2005b, p. 10–2).

In response to several comments made during the fourth reopened comment period (83 FR 54561; October 30, 2018), we expanded upon Nelson and Metevier's (2010, unpublished data) analysis. Amidon (2019, unpublished data) found that the number of 1 ac or smaller parcels on the island of Hawaii increased by 2,000 parcels between 2009 to 2011, but then leveled off to approximately 69,000 parcels of that size from 2011 to 2018. The overall decrease in parcels of this size is due to landowners merging smaller parcels into larger parcels. Subdivision of large land parcels in to smaller parcels is often viewed as synonymous with development. With a plateau, if not decline, in both human population growth and parcel splitting, we do not see a huge push for development on Hawaii island nor find development on Hawaii island an imminent threat to Hawaiian hawk habitat, now or in the foreseeable future.

Although trends in urban and exurban growth show upward movement, the rate of growth has slowed, and trends in subdivisions have plateaued. The human population annual growth rate on the island has also decreased. Most urban and exurban growth is occurring in or adjacent to already developed areas. The rates of subdivision, development, and human population growth in the Puna region may slow even more due to the scope of impacts to the area resulting from Kilauea's 2018 eruption (USGS 2019, in litt.).

Conversion of Sugarcane Fields to Unsuitable Habitat

Sugarcane was historically an important crop on the island of Hawaii, and Hawaiian hawks have adapted to use these croplands for foraging where nest trees and perching structures were available. With the demise of the sugarcane industry on the island in the 1990s, sugarcane plantations were primarily converted to a diversity of agricultural uses (County of Hawaii 2005a, as amended 2014, pp. 1–8, 1–11), some of which (*e.g.,* large, patchily distributed monocultures of eucalyptus or macadamia nut trees with little edge) are not compatible with Hawaiian hawk nesting or foraging (Klavitter *et al.* 2003, p. 172). We anticipate that in these localized, patchily distributed areas where eucalyptus plantations are established, Hawaiian hawks will not be able to effectively forage or nest. It remains unclear if hawks will use these areas immediately following a harvest or at the time of initial planting. However, given the short-rotation times planned for these plantations (5 to 8 years) and the rapid growth-rate of eucalyptus on Hawaii (Whitesell *et al.* 1992, pp. ii, 2), these areas might be suitable only briefly for hawk foraging.

Conversion of agricultural lands to eucalyptus forests is an ongoing threat to the Hawaiian hawk, but the scope of this threat is limited primarily to the Hamakua coastline (County of Hawaii 2005a, as amended 2014, p. 14–20). These eucalyptus monocultures are patchily distributed, with mixed agricultural and residential uses in the surrounding areas. Approximately 24,000 ac (9,712 ha) (less than 2 percent of Hawaiian hawk habitat island-wide) of former sugarcane fields were being cultivated for eucalyptus production and ''thousands of additional acres'' were being planned as of 2005 (County of Hawaii 2005a, as amended 2014, pp. 2–4, 2–20). More recently, the forest industry is shifting away from nonnative tree species to native tree species such as koa (Koch and Walter 2018, in litt.). However, even if all 80,000 ac (32,375 ha) of the potential lands for cultivating forests in the Hamakua coast were converted to eucalyptus trees (County of Hawaii 2005a, as amended 2014, p. 14–20) in the foreseeable future, that would

represent less than 5 percent of Hawaiian hawk habitat island-wide. For comparison, the Hamakua District contains 235,212 ac (95,187 ha) (59 percent) of lands designated for conservation thus far and in the foreseeable future (County of Hawaii 2005a, as amended 2014, p. 14–11). The amount of forested area on the island of Hawaii has increased in recent years due to restoration, conservation, and a shift in forestry practices toward native trees and more sustainable harvesting methods (Koch and Walter 2018, in litt.).

At a regional scale, we do not anticipate significant changes in hawk densities in response to this threat because many of the plantations are patchily distributed among areas with suitable habitat for foraging, perching, and nesting (*e.g.,* small agricultural operations, fallow sugarcane fields, riparian areas, and native and nonnative forest). The total amount of habitat converted (24,000 ac (9,712 ha)) represents less than 2 percent of all available habitat (Klavitter *et al.* 2003, p. 167). Furthermore, the amount of native forest areas on the island of Hawaii is actually increasing (Koch and Walter 2018, in litt.). Therefore, while conversion of sugarcane fields has reduced the total amount of suitable habitat along the Hamakua coast, the conservation actions across the island have increased suitable habitat (see ''Urbanization/Lack of Secure Habitat,'' above). Additionally, the scope and extent of this conversion is not likely to significantly impact the distribution or density of the Hawaiian hawk in such a way that would affect its viability.

Another potential threat is the conversion of current agricultural lands to crops for biodiesel fuel production (Gorresen *et al.* 2008, p. 10). Up to 185,000 ac (74,000 ha) of agricultural lands on the island of Hawaii would be suitable for such crop production (Poteet 2006, pp. 27–28), which represents up to 13 percent of the Hawaiian hawk's breeding range (Gorresen *et al.* 2008, p. 10). Some of the potential crops for renewable energy include sunflowers (herb) and *Jatropha curcas* (large shrub to small trees) from which oils are extracted. However, only a small fraction of the total acreage potentially usable for biofuels has supported biofuel crop production, most of which has been phased out (Pacific Biodiesel 2013, in litt.; Tummons 2013, pp. 1–2; Long 2018, pers. comm.). Additionally, the potential biofuel crops vary in terms of their feasibility and potential impacts to the Hawaiian hawk. Some biofuel crops will continue to provide suitable foraging areas while others may not. Further, all of the areas identified as potential sites for biofuel production are either fallow sugarcane fields or are currently being used for crop production, grazing, or forestry production (*e.g.,* eucalyptus) (Poteet 2006, pp. 27–28).

The U.S. Navy and University of Hawaii's Natural Energy Institute partnered around 2014 to explore the production and use of biofuels on the island of Hawaii through the Hawaii Military Biofuels Crop Assessment Program (Rivertop Solutions and Pacific Biodiesel Technologies 2015, entire); however, they have not since shown interest in further pursuit (Long 2018, pers. comm.). Additionally, as of 2018, there remains only one biodiesel plant on the island of Hawaii (Pacific Biodiesel Technologies), and the company has no plans to acquire or lease additional agriculture lands at this time (Long 2018, pers. comm.). The industry operations have diversified and now include processing imperfect macadamia nuts for oil used in cosmetics (Long 2018, pers. comm.). There are currently no farms dedicated solely to biofuel production on the island of Hawaii (Long 2018, pers. comm.). In 2008, there was one small (approximately 750 ac) family-owned farm that grew *Jatropha curcas* on 250 ac for the purpose of biofuel (Gima 2010, in litt.; Long 2018, pers. comm.); however, the *Jatropha curcas* production was phased out, and Pacific Biodiesel has since purchased the farm and now grows papaya on it (Long 2018, pers. comm.). Conversion of current agricultural lands to crops for biodiesel fuel production is not a threat to Hawaiian hawk habitat at this time, nor is it likely to become a threat in the foreseeable future.

Invasive Plant Species, Drought, and Increase in Fire Frequency

Historically, fires on the island of Hawaii were infrequent (Smith and Tunison 1992, pp. 395–397). In some areas, primarily mesic and dry habitats, the fire regime has changed dramatically with an accumulation of fine fuels, primarily alien grasses, which spread in the 1960s and 1970s (Smith and Tunison 1992, pp. 397–398). Increased fire frequency facilitates the spread of alien grass, which increases fine fuel loads, further increasing the likelihood of more frequent and larger fires (Smith and Tunison 1992, pp. 398–399). This positive feedback loop can inhibit the establishment of tree species if fires are too frequent (Smith and Tunison 1992, p. 399).

Because Hawaiian hawks rely on forests for nesting and perching, loss of these structural components would result in the loss of habitat. Approximately 26 percent (370,658 ac (150,000 ha)) of the Hawaiian hawk's breeding range is within mesic to dry forest habitat areas that are particularly susceptible to fire (Gorresen *et al.* 2008, p. 11). The average size of 58 fires that burned in Volcanoes NP from 1968 to 1991 was 507 ac (205 ha) (Smith and Tunison 1992, p. 398). This is roughly the size of the average home range of the Hawaiian hawk (Griffin 1985, p. 173). Therefore, large fires could remove habitat in one or a few hawk territories at one time, but we expect that hawks would maintain their territory if sufficient prey and forest structure remained such that they could still hunt, nest, and perch. At a regional scale and in the foreseeable future, we do not anticipate significant changes in hawk densities in response to this threat because most fires are expected to have a patchy distribution on the landscape such that some forest structure will continue to be present around or within these burned areas (Perry *et al.* 2011, p. 704; Bond and Keane 2017, p. 6; Pyne 2010, p. 4).

Only if large-scale changes to dry forests occurred, eliminating nesting and perching areas across large swaths of the leeward portion of the island, would the viability of the species potentially be at risk. Hawaii has experienced extreme droughts for extended time periods of time (National Oceanic and Atmospheric Administration (NOAA) 2011, in litt., p. 9; U.S. Drought Monitor 2011, in litt.; U.S. Drought Monitor-Hawaii Data 2019, entire), which exacerbate the risk of fire; however, the Hawaiian hawk population has remained stable and viable.

The available information on Hawaiian hawk distribution and habitat does not suggest that dry forests on the island of Hawaii are losing trees essential for Hawaiian hawk nesting and perching, or that such loss is likely to occur in the foreseeable future (*e.g.,* Puu Waawaa watershed, see ''Urbanization/Lack of Secure Habitat,'' above). Although drought frequency and duration may increase in Hawaii due to climate change (Chu *et al.* 2010, p. 4897; Diaz and Giambelluca 2011, p. 7; Timm *et al.* 2015, p. 92), the combination of the Hawaiian hawk's demonstrated adaptability with an increase in habitat restoration efforts (*e.g.,* Puuwaawaa Forest Reserve, Puuwaawaa Forest Bird Sanctuary, TMA, TNC's Kona Hema Preserve) leads us to conclude that Hawaiian hawks will remain stable and viable for the foreseeable future.

Therefore, while an increase in fire frequency due to alien plants and drought may reduce the amount of available habitat for nesting and perching, even when we consider increased drought frequency and duration due to climate change (for which models are highly variable and associated with uncertainty (Gregg 2018, p. 21)), we conclude that the maximum scope and extent of this habitat alteration that we can reasonably anticipate is not likely to have a significant impact on the distribution or density of the Hawaiian hawk in such a way that would affect its viability in the foreseeable future.

Environmental Changes in Response to Climate Change

The ongoing and projected changes in climate, and the impacts of global climate change and increasing temperatures on Hawaii ecosystems, are the subjects of active research. Analysis of the historical record indicates the surface temperature in Hawaii has been increasing since the early 1900s, with relatively rapid warming over the past 30 years. The average increase since 1975 has been 0.48 degrees Fahrenheit (°F) (0.27 degrees Celsius (°C)) per decade for annual mean temperature at elevations above 2,600 ft (800 m) and 0.16 °F (0.09 °C) per decade for elevations below 2,600 ft (800 m) (Giambelluca *et al.* 2008, pp. 3–4). Based on models using climate data downscaled for Hawaii, the ambient temperature is projected to increase by 3.8 to 7.7 °F (2.1 to 4.3 °C) over the 21st century, depending on elevation and which of the four Representative Concentration Pathway (RCP) emissions scenarios (RCP 2.6, 4.5, 6, and 8.5) are considered (Liao *et al.* 2015, p. 4344; van Vuuren et al. 2011, p.5; Intergovernmental Panel on Climate Change 2014, p. 8). Environmental conditions in tropical montane habitats can be strongly influenced by changes in sea surface temperature and atmospheric dynamics (Loope and Giambelluca 1998, pp. 504–505; Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248; Giambelluca and Luke 2007, pp. 13–15). On the main Hawaiian Islands, predicted changes associated with increases in temperature include a shift in vegetation zones upslope, a similar shift in animal species' ranges, changes in mean precipitation with unpredictable effects on local environments, increased occurrence of drought cycles, and increases in intensity and numbers of hurricanes (tropical cyclones with winds of 74 miles per hour or higher) (Loope and Giambelluca 1998, pp. 514–515; Vecchi and Soden 2007, pp. 1068–1069, Figures 2 and 3; U.S. Global Change Research Program (US–GCRP) 2009, pp. 10, 12, 17–18, 32–33; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1371, Figure 14; Giambelluca 2013, p. 6).

Since 1871, eight hurricanes, or remnants thereof, have caused substantial damage in Hawaii. The island of Hawaii, like the island chain, has fortunately evaded most hurricanes due to the surrounding cool water. In response to climate change, such environmental conditions are changing. With a projected shift in the path of the subtropical jet stream northward, away from Hawaii, more storms will be able to approach and reach the Hawaiian Islands from an easterly direction, with Hurricane Iselle in 2014 being an example (Murakami *et al.* 2013, p. 751). Although Hurricane Iselle morphed into a tropical storm before making landfall on the island, it caused extensive canopy loss in some regions of the island (Federal Emergency Management Agency (FEMA) 2014, in litt.). Hurricane or tropical storm Iselle is the strongest tropical storm to make landfall on the island of Hawaii in recorded history. Subsequently, in 2016, Hurricane Darby made landfall on the island of Hawaii but as a much weaker tropical storm.

Although changes in environmental conditions are anticipated in response to climate change, the cumulative data suggests the Hawaiian hawk will likely be able to adapt to these changes and that the range of the Hawaiian hawk, which spans much of the island of Hawaii, will provide the species with the redundancy and resiliency necessary to maintain viability under such a stochastic or catastrophic event. In addition, Hawaiian hawks have demonstrated the ability to maintain a viable, steady population through prolonged periods of drought (Gorresen et al. 2008, entire; U.S. Drought Monitor-Hawaii Data 2019, entire), the introduction of nonnative plants and animals, changes in forest species composition, changes in prey species, and ongoing human development and agricultural practices (Gorresen et al. 2008). We acknowledge that there may be unanticipated impacts on the Hawaiian hawk associated with climate change; however, as outlined in our Post Delisting Monitoring Plan, we will be monitoring the Hawaiian hawk and its habitat for five 5-years cycles, which will begin in 2024. If post-delisting monitoring detects a significant decline in the Hawaiian hawk population, or a significant change in habitat so that it would not support a self-sustaining Hawaiian hawk population, relisting may be warranted. For additional discussion, see Future Conservation Measures, below.

Invasive Species (Nonnative Feral Ungulates)

Feral ungulates, particularly pigs, goats, and feral cattle, degrade ohia and other forest habitats by spreading nonnative plant seeds, grazing and trampling native vegetation, and contributing to erosion (Cuddihy and Stone 1990, pp. 59–67, 74; Vitousek *et al.* 1997, p. 6). An increase in conservation measures across the island of Hawaii (see below and *Recovery Plan Implementation,* above), which include feral pig and other ungulate control and removal, benefit the Hawaiian hawks by decreasing the spread of nonnative plants reducing erosion. Because of the ongoing conservation measures, and the fact that Hawaiian hawks nest and hunt in a variety of native and nonnative habitats, we do not consider impacts from ungulates a population-level threat to the species.

Invasive Species (Concealing Prey)

Vegetative cover can be more important than prey abundance in the selection of hunting sites by raptors (Bechard 1982, p. 158). The Hawaiian hawk typically uses still-hunting to capture prey by perching in trees or other vegetation (Griffin 1985, p. 162; Clarkson and Laniawe 2000, p. 3). Hunting is thought to be inhibited in areas with close-standing trees that limit the Hawaiian hawk's ability to maneuver in flight and areas where there is dense understory where prey can hide. In addition, tree monocultures may not provide sufficient structural complexity and plant species diversity to support adequate prey abundances (Felton *et al.* 2016, p. S128). However, exotic tree, shrub, and grass habitats had similar hawk densities to some native habitats (*e.g.,* mature native forest), but were lower than densities recorded in native forests with an understory of grass (Klavitter *et al.* 2003, p. 169). The relationship between cover and demographic variables is likely to be complex given that a Hawaiian hawk's home range may span several habitat types and that the effect of various invasive species on total vegetation cover has not been well studied.

Strawberry guava (*Psidium cattleianum*), a small to medium-sized tree native to Brazil, is considered a potential threat to Hawaiian hawk habitat and the species' foraging abilities (State of Hawaii 2011, p. 46; Gorresen *et al.* 2008, p. 24). Since its introduction in the early 19th century,

strawberry guava has expanded into most of the native lowland forests of Hawaii, becoming the dominant species in these areas (State of Hawaii 2011, pp. 2–4). Strawberry guava forms impenetrable stands of close-standing trees to the exclusion of all native species up to elevations of 2,100 ft (640 m) in some areas in the Hamakua region of Hawaii and has begun to invade native forests on Hawaii to elevations as high as 3,200 ft (975 m) (HDOA 2011, in litt.; USFS 2016, p. 2). Land area covered by closed strawberry guava forest is 39.4 sq mi (102.14 sq km) or 1.77 percent of the Hawaiian hawk's range (Gorresen 2008, unpublished data). Projected temperature and precipitation change in Hawaii will facilitate the continued spread of strawberry guava from its present distribution in low- and middle-elevation, wet and mesic forests, into higher elevation montane forests dominated by native species (Denslow 2008, p. 1). Based on predicted temperature and precipitation changes over the next 100 years (State of Hawaii 2011, p. 4; McDermott 2009, p. 1; Price *et al.* 2009, slides 22 and 23), strawberry guava could invade native forests on Hawaii to an elevation of approximately 6,000 ft (1,828 m), encompassing virtually all current middle- and high-elevation montane native forest with large ohia trees. Our preliminary PVA indicates that if not abated, strawberry guava may impact Hawaiian hawk distribution in 30 or more years (Vorsino and Nelson 2016, unpublished data). However, as discussed below, there are measures in place to slow, if not cease, the spread of strawberry guava on Hawaii Island and across the State.

As noted under *Recovery Plan Implementation,* above, a biocontrol agent for strawberry guava was released in 2012, and the most recent data (2018) shows the scale is spreading and beginning to weaken strawberry guava trees by reducing fruiting. At this time, impacts from strawberry guava have not been shown to alter the Hawaiian hawk's population abundance or any stage of its life history. The best available data indicate that, despite the introduction of a variety of invasive plant species on the island of Hawaii, the population size and distribution of the Hawaiian hawk has remained relatively unchanged for the past 30 years.

Invasive Species (Nonnative Pathogens of Native Forest Pillar Species)

Rapid ohia death (ROD), a fungal pathogen infecting ohia, one of Hawaii's dominant forest trees, is currently spreading across the State; ROD first appeared on the island of Hawaii around 2013 (University of Hawaii College of Tropical Agriculture and Human Resources-Rapid Ohia Death 2019, entire). In 2018, ROD was detected on the island of Kauai. ROD is caused by two species of Ceratocystis fungi, *C. huliohia* and *C. lukuohia,* the latter being the more virulent pathogen (Barnes *et al.* 2018, entire; University of Hawaii College of Tropical Agriculture and Human Resources-Rapid Ohia Death 2019, entire). With rapid spread and high stand mortality, all indications thus far suggest that this particular ohia stressor could alone, or in conjunction with other stressors, have far-reaching negative consequences for ohia forests. Humans and the abundant wood boring ambrosia beetle (*Xyleborus* spp.) are thought to be the two primary vectors causing the rapid spread of ROD by inadvertently spreading spores (College of Tropical Agriculture and Human Resources (CTAHR) 2019, in litt.; University of Hawaii College of Tropical Agriculture and Human Resources-Rapid Ohia Death 2019, entire). Thousands, if not tens-of-thousands, of ohia trees (135,000 ac (54,633 ha)) have been infected with ROD in just the past few years, and openings in the tree canopy in affected areas may encourage the spread of invasive, nonnative plants, further contributing to ohia forest decline. Because Hawaiian hawks occupy both native and nonnative habitats, and reportedly do well in mixed-exotic forests (Berger 1981, p. 79; Griffin 1985, pp. 70–72), the impact of ROD on Hawaiian hawks is yet to be determined. While we recognize that ROD is a severe threat to the integrity of native ohia forests and species solely dependent on ohia trees, because Hawaiian hawks do not solely depend on native forests and are highly adaptable, it is reasonable to conclude that the Hawaiian hawk will adapt to future changes in forest tree composition and maintain its viability in the foreseeable future. Additionally, habitat monitoring is included in the PDM plan.

The primary factor behind ohia dieback is the species' trait of experiencing synchronized generational turnover following senescence of same-age trees (Mueller-Dombois 1985, p. 150; Akashi and Mueller-Dombois 1995, pp. 449–450). Ohia dieback in itself does not appear to be a significant threat in native forest areas; however, dieback events in some cases may create conditions for nonnative plants to gain a foothold in native forests. Because Hawaiian hawks have maintained a stable population of approximately 3,000 individuals over decades, despite the presence of ohia dieback, we do not consider ohia dieback a threat to the survival of Hawaiian hawks.

Ohia rust is a plant pathogen caused by the fungus species *Puccinia psidii,* which affects hundreds of plants in the Myrtaceae family including *Eucalyptus* spp., *Melaleuca* spp., and Hawaii's native ohia. The strain of ohia rust currently present in Hawaii likely causes very little impact to ohia trees. Risk to Hawaiian hawks, however, includes the possibility of a more potent strain being introduced, and/or the possibility of ohia rust acting in concert with other ohia stressors such as drought, the effects of climate change, or ohia wilt to compound cumulative effects resulting in overall ohia forest decline. However, because Hawaiian hawks have maintained a stable population of approximately 3,000 individuals over at least three decades, despite the presence of ohia rust, we do not consider ohia rust a threat to the survival of Hawaiian hawks.

Conservation Actions That Benefit the Hawaiian Hawk and its Habitat

Since the Hawaiian hawk was listed as an endangered species (32 FR 4001; March 11, 1967), there has been a marked increase in protection of native forests, lands set aside for conservation in perpetuity, and ongoing on-the-ground conservation efforts. Cumulatively, these actions have resulted in increased protection for the Hawaiian hawk by securing potential nesting, breeding, and hunting habitat (Gorresen *et al.* 2008, p. 26). Multiple landscape-scale conservation efforts are, or have been, implemented across the island of Hawaii by Federal, State, and private landowners, often in collaborative efforts. For example, in the north Kona region, conservation actions (*e.g.,* outplanting native plants, nonnative species removal, and fencing) have been, and continue to be, implemented by myriad partners in Waimea (8 ac (3.2 ha)), the Lai Opua Dryland Preserve (70 ac (28 ha)), the Kaupulehu dryland forest (76 ac (31 ha)), the Palamanui Dry Forest Preserve (72 ac (29 ha), and the Puu Waawaa watershed (*e.g.,* the multi-agency 38,885-ac (15,736-ha) Hawaii Experimental Tropical Forest, and the 3,800-ac (1,538-ha) forest bird sanctuary) (Hawaii Forest Institute 2019, entire; Kaahahui O Ka Nahelehe 2019, entire; U.S. Forest Service-Pacific Southwest Research Station 2019, entire; DLNR 2003, p. 70).

The 32,733-ac (13,247-ha) Hakalau Forest NWR (north Hilo region) was

established by the Service in 1985, with the primary purpose of promoting the recovery of endangered forest birds and their habitat. The 5,300-ac (2,145-ha) Kona Forest Unit was added to the Hakalau Forest NWR in 1997. The Hakalau Forest NWR now provides 38,033 ac (15,391 ha) of habitat for endangered forest birds and the Hawaiian hawk, as well as numerous threatened and endangered plants, insects, and the Hawaiian hoary bat (opeapea, *Lasiurus cinereus semotus*). In 2003, Hawaii Volcanoes NP, in collaboration with TNC, added the 115,828-ac (46,874-ha) Kahuku Unit (previously Kahuku Ranch), increasing the park's size by 50 percent (Martin 2003, in litt.). The Nature Conservancy also established the 8,089-ac (3,274-ha) Kona Hema Preserve (south Kona region) between 1999 and 2003. Additionally, in a collaborative effort, Hawaii DLNR's Division of Forestry and Wildlife (DOFAW) and the USFS' Institute of Pacific Island Forestry established the protected Laupahoehoe natural area reserve (12,300 ac (4,979 ha)) along the Hamakua Coast, which is part of the Hawaii Experimental Tropical Forest Project (U.S. Forest Service 2018, in litt.).

The KWP has been removing nonnative species (primarily plants, rodents, and ungulates) and actively restoring forested watershed habitat on the island of Hawaii since 2003. The MKWA and TMA have been conducting similar work since 2008. Combined, these efforts have improved over 19,000 ac (7,689 ha) of forested watershed habitat on the island of Hawaii (DLNR 2011, p. 16). Collectively, these three watershed partnerships encompass approximately 1,668,300 ac (675,137 ha) (Hawaii Association of Watershed Partnerships 2019, entire). The TMA is the largest watershed partnership in Hawaii, encompassing 45 percent of the island of Hawaii. Within the land area covered by the TMA lies some of the largest expanses of intact native forests remaining in the islands, equating to approximately 50 percent of the State's remaining native habitat (Hawaii Association of Watershed Partnerships 2019, entire). The overall mission for all three of these island of Hawaii-based watershed partnerships (32 partners in total) is to increase the effective management and protection of upper elevation watershed areas. The TMA's management goals for native forests damaged by ungulate browsing and grazing are to restore ecosystem structure to improve and maintain watershed values and promote native species diversity (TMA 2007, p. 26).

The State of Hawaii's initiative, The Rain Follows the Forest, identified priority watersheds and outlined on-the-ground actions and projects required to sustain Hawaii's critical water sources (DLNR 2011, p. 1). At the time of inception, only 10 percent of the priority watershed areas were protected; however, The Rain Follows the Forest sought to double the amount of protected watershed areas, including some areas on island of Hawaii, in just 10 years. This initiative has been replaced by the Sustainable Hawaii Initiative discussed below.

In response to the 2016 World Conservation Congress Legacy Commitment, the Governor of Hawaii initiated the Sustainable Hawaii Initiative: 30 by 30 Watershed Forests Target, which seeks to protect 30 percent (253,000 ac (102,385 ha)) of Hawaii's highest priority watershed forests by 2030 (Sustainable Hawaii Initiative 2019, entire). Building upon the conservation efforts conducted under The Rain Follows the Forest, watershed efforts accelerated, and by 2017, approximately 15 percent of priority areas had a high level of protection (Sustainable Hawaii Initiative 2019, entire); State of Hawaii 2017, in litt.). This initiative includes, among other objectives, fencing priority areas, control of ungulates and other invasive species, planting native tree and shrub species, and limiting the spread of ROD.

Forest restoration programs like the Hawaiian Legacy Reforestation Initiative, USDA's Forestry Program, and Hawaii's Forest Stewardship Program also benefit the Hawaiian hawk through restoration of relatively intact native forests and reforestation of pasture areas. The focus of these programs over the last few decades has been the development of a native hardwoods forestry industry with native koa (*Acacia koa*) as the species of primary interest. Many nonnative timber plantations are switching to native timber species post-harvest (Koch and Walter 2018, in litt.; Walter 2018, pers. comm.). Although suitability of koa plantations for Hawaiian hawk foraging and nesting has not been studied, and hawk use of these areas may be variable, koa plantations may be suitable depending upon the age of koa stands, stand density, and overstory characteristics related to harvest methods used. More research is needed, as such characteristics of koa plantations likely vary.

Overall, State and private foresters report that the forested area on the island of Hawaii is increasing, particularly in native forest cover (Koch and Walter 2018, in litt.). Starting at the turn of the century, several large landowners (private, Federal, and State) ended their pastoral leases and have been steadily promoting natural regeneration to take the place of old pastures (Koch and Walter 2018, in litt.). The State is moving away from planting exotic timber tree species and toward native species when economically feasible (Koch and Walter 2018, in litt.). Additionally, through the Hawaii Forest Stewardship Program, small (*e.g.,* 18 ac (7 ha)) private landowners are working with the State to convert old pasture land to native forest (DLNR 2017, in litt.).

The ongoing conservation actions across the island of Hawaii provide Hawaiian hawks potential breeding, nesting, and foraging habitat. The above-mentioned actions highlight many of the landscape-scale efforts underway that benefit Hawaiian hawks; however, there are many more conservation efforts on the island (too numerous to list here) that also contribute to the conservation of Hawaiian hawks.

Summary of Factor A

A comparison of island-wide survey data in 2007 to similar data from 1998 to 1999 indicates that the population numbers, densities, and spatial distribution of Hawaiian hawks on the island of Hawaii did not significantly change over the span of a decade. Also, the best available data indicate that the population size and distribution of the Hawaiian hawk remained relatively unchanged for 30 or more years despite being exposed to myriad threats (Service 1984; Griffin 1985, p. 25; Scott *et al.* 1986, p. 79; Morrison *et al.* 1994, p. 23; Hall *et al.* 1997, pp. 13–14; Klavitter 2000, pp. 38, 96; Klavitter *et al.* 2003, p. 170; Gorresen *et al.* 2008, p. 6). Although new information shows some potentially negative habitat trends due to urbanization, nonnative plant species invasion, climate change, and ROD, there are myriad conservation efforts and lands that have been set aside for conservation in perpetuity that benefit the Hawaiian hawk by providing potential breeding, nesting, and foraging habitat. Although some habitat loss is expected in the future, this loss is likely to be a small percentage of the Hawaiian hawk's habitat and is likely to be patchily distributed such that hawks are expected to continue to be widely distributed on Hawaii.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, some Hawaiian hawks were taken for scientific collection (*e.g.,* Henshaw 1902, pp. 197–198; Banko

1980, p. 2) and may also have been taken by the early Hawaiians for either food or feathers (Clarkson and Laniawe 2000, p. 12). Neither of these factors is known to currently threaten the Hawaiian hawk.

Shooting was considered among the primary factors contributing to a suspected population decline of the Hawaiian hawk, but there has been no data that would suggest that shooting was the primary factor for the population decline (Berger 1981, p. 79; Griffin 1985, p. 108). People shot Hawaiian hawks because they mistakenly believed that the hawks were ''chicken hawks'' (note: In the past, a dead Hawaiian hawk (cause of death unknown) was used as a ''scarecrow'' to discourage predation on domestic poultry flocks sometime in the late 1960s or early 1970s (Banko 1980, p.6)).

According to our Office of Law Enforcement's records, seven Hawaiian hawks were shot between 2013 and 2018, most occurring in the Puna region. Four of these cases occurred in 2018. Incidences of Hawaiian hawk shootings have occurred for decades yet the Hawaiian hawk population remained stable despite such incidences. There is little evidence that shooting is a current threat to the Hawaiian hawk at a regional scale. With increased community outreach regarding the Hawaiian hawk's status on the island of Hawaii, there no longer appears to be a substantive threat to the species from shooting (Mello 2007, pers. comm.).

C. Disease or Predation

Neither disease nor predation is currently known to substantively affect the Hawaiian hawk population (Griffin 1985, pp. 104–107, 194; Griffin *et al.* 1998, pp. 658, 661; Klavitter 2000, p. 45). Introduced mammalian predators (*i.e.,* rats, cats, and mongooses) could potentially prey on Hawaiian hawks or their eggs and are known to have serious impacts on other species of native Hawaiian birds (Atkinson 1977, pp. 120–122, 127–130; Scott *et al.* 1986, pp. 363–364; VanderWerf and Smith 2002, pp. 77–80). However, there is no evidence of predation by these species on Hawaiian hawks or their eggs. There is evidence, on the other hand, that introduced mammalian species are a food resource for the hawk (Munro 1944, p. 48; Griffin 1985, pp. 142–145, Appendix 1; Griffin *et al.* 1998, p. 659).

Although the Hawaiian hawk population is not currently known to be substantively affected by any diseases, there has been observation of ''pox-like'' lesions on 2 of 44 captured hawks (Griffin 1985, pp. 104–105). No bacteriological or virological samples were collected; therefore, these lesions were not confirmed as avian pox.

Disease has been identified as a potential factor that might lead to a decline in the size of the Hawaiian hawk population by reducing future reproduction and survival. In their report (IRWG 2001, p. 3), they state, ''disease could have a serious negative impact on [the] Hawaiian hawk as the population does not appear to be separated into disjunct subpopulations that could more easily evade an outbreak. The panmictic nature of the population (*i.e.,* a population where all individuals are potential partners) may also limit genetic variability that could contribute to pockets of disease resistance, although genetic attributes have not been directly studied.''

The Hawaiian hawk does not appear to be susceptible to diseases currently established on the island of Hawaii, such as avian pox or malaria, that have devastated many other endemic Hawaiian forest birds (Griffin 1985, pp. 104–106; Griffin *et al.* 1998, pp. 658, 661).

Emergent diseases, such as West Nile virus, have the potential to influence Hawaiian hawk viability in the future, but we cannot predict if or when that may occur. West Nile virus (WNV), which is primarily transmitted by infected mosquitoes, has been reported in all of the 48 conterminous United States and is potentially fatal to many species of birds, including members of the genus *Buteo* (Centers for Disease Control and Prevention (CDC) 2005, in litt.; 2007, in litt.). Transmission of WNV to Hawaii could occur via the arrival of migrating bird species; via transport of infected mosquitoes on boats and planes; and through infected birds, animals, and humans.

Through 2013, Hawaii and Alaska were the only two States with no reported occurrences (human or bird) of WNV (State of Hawaii 2006, in litt.; CDC 2007, in litt.; CDC 2017, in litt.; CDC 2019, in litt.). By the end of 2014, the CDC received one human WNV disease case reported by the State of Hawaii (CDC 2017, in litt.); however, this incidence originated through exposure outside of the State, and there has not been a subsequent report (State of Hawaii Department of Health 2018, in litt.; CDC 2019, in litt.). Surveillance for WNV in Hawaii from 2002 to 2009, during which over 10,000 individual birds were tested, found no infected birds.

To help prevent WNV from spreading to Hawaii, the State's Department of Agriculture has established a pre-arrival isolation requirement and a Poultry and Bird Import Permit issued through the Livestock Disease Control Branch for all birds entering the State. Furthermore, the Hawaii State Department of Health has an ongoing, multi-agency WNV surveillance program in place on all of the main Hawaiian Islands, which involves surveillance for infected mosquitoes and dead birds, as well as live-bird surveillance at major ports of entry, equine surveillance, and human surveillance (State of Hawaii 2006, in litt.).

To date, no cases of WNV have been reported in Hawaii; however, there is currently no certainty that the disease can be prevented from arriving and spreading. Should this disease arrive on the island of Hawaii, native birds may be particularly susceptible, as they are likely to be immunologically naive to arboviruses such as WNV, and because they evolved in the absence of biting insects (van Riper *et al.* 1986, p. 340). Furthermore, there are a number of introduced birds (*e.g.,* house sparrows and house finches) and mosquitoes (*e.g., Culex quinquefasciatus*) that could support WNV amplification in Hawaii and transport it from low to middle to high elevations (Marra *et al.* 2004, p. 398) throughout the range of the Hawaiian hawk. Nevertheless, the short- and long-term impacts of WNV on wildlife are uncertain (Marra *et al.* 2004, p. 394), and it is uncertain whether the virus will ever arrive on the island of Hawaii. Since the arrival of WNV on the west coast of the United States in 2002 it has not been detected in Hawaii, which suggests Hawaii's isolation from areas where WNV is already established may provide some level of protection to its introduction in Hawaii.

If WNV or another pathogenic avian disease for which mosquitos are vectors reaches Hawaii, pig rooting will aid in the transmission of disease. Rooting pigs create wallows and other optimal breeding sites for mosquitoes that transmit bird disease. Although the Hawaiian hawk does not appear to be affected by avian malaria or avian pox, should a novel disease such as West Nile virus be introduced to Hawaii, risk of disease spread would be enhanced in areas with feral pig activity. Emerging technology may help to reduce mosquito abundance and thereby also reducing the prevalence of the diseases the mosquitoes transmit. An increase in conservation measures across the island of Hawaii (also see *Recovery Plan Implementation,* above), which include feral pig control and removal, benefit the Hawaiian hawk by decreasing the spread of mosquito breeding habitat.

Summary of Factor C

Neither predation nor bird diseases currently established on Hawaii are known to threaten the Hawaiian hawk. West Nile virus and other emergent bird diseases have the potential to affect the species if they become established on Hawaii. However, it is uncertain whether such diseases will ever arrive. The State is currently implementing a prevention program to reduce the risk of WNV arrival. The State is also implementing a surveillance program so that it can detect the virus if it arrives, and take appropriate and timely action.

D. The Inadequacy of Existing Regulatory Mechanisms

A variety of regulatory mechanisms, managed by State and Federal resource agencies, are in place to protect the Hawaiian hawk and the habitats upon which it depends. Although we are delisting the Hawaiian hawk as of the effective date of this final rule (see **DATES**, above), the Hawaiian hawk will still be protected by the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–712). The MBTA and its implementing regulations (50 CFR parts 20 and 21) prohibit take, possession, import, export, transport, sale, purchase, barter, or offering for sale, purchase, or barter, of any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit (50 CFR 21.11).

The Hawaiian hawk and its habitat will continue to benefit from the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57, October 9, 1997) that established the protection of biodiversity as the primary purpose of the NWR System. This has led to various management actions to benefit federally listed species, including development of comprehensive conservation plans (CCPs) on NWRs. The CCPs typically set goals and list needed actions to protect and enhance populations of key wildlife species on NWR lands. Where Hawaiian hawks occur on NWR lands (Hakalau Forest), their habitats in these areas are protected from large-scale loss or degradation due to the Service's mission ''to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans'' (16 U.S.C. 668dd(a)(2)).

The Hawaiian hawk and its habitat will also continue to benefit from the Hawaii National Park Act of 1916. Congress established Hawaii National Park (later to become, separately, Hawaii Volcanoes National Park and Haleakala National Park) on August 1, 1916 (39 Stat. 432), ''for the benefit and enjoyment of the people of the United States'' (16 U.S.C. 391) and to provide for, ''the preservation from injury of all timber, birds, mineral deposits, and natural curiosities or wonders within said park, and their retention in their natural condition as nearly as possible'' (16 U.S.C. 394). Since that time, the enabling legislation of the park has been modified several times, both to establish the national parks on the islands of Hawaii and Maui as separate parks and to expand the boundary of Hawaii Volcanoes National Park. Hawaii Volcanoes National Park protects 330,086 ac (133,581 ha) of public land on Mauna Loa and Kilauea volcanoes on the southeastern side of Hawaii Island (NPS 2017, p. 3).

Although we are not aware of any intent to use Hawaiian hawks for falconry, regulations at 50 CFR 21.29 and 21.30 specifically authorize the issuance of permits to take, possess, transport, and engage in commerce with raptors for falconry purposes and for propagation purposes. Certain criteria must be met prior to issuance of these permits, including a requirement that the issuance will not threaten a wildlife population (50 CFR 13.21(b)(4)).

Another regulatory mechanism that will continue to provide protection to the Hawaiian hawk is the requirement that pesticides be registered with the Environmental Protection Agency (EPA). Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*), the Environmental Protection Agency requires environmental testing of all new pesticides. Testing the effects of pesticides on representative wildlife species prior to pesticide registration is specifically required. Only pesticides that have been determined not to pose unreasonable adverse effects on the environment may be used in the United States. This protection from effects of pesticides will not be altered by delisting the Hawaiian hawk.

On June 28, 1979, the Hawaiian hawk was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This treaty was established to prevent international trade that may be detrimental to the survival of plants and animals. International trade is regulated through a system of CITES permits and certificates. CITES permits and certificates may not be issued if trade will be detrimental to the survival of the species or if the specimens being imported or exported were not legally acquired. This protection will not be altered by delisting the Hawaiian hawk.

Federal delisting of the Hawaiian hawk will automatically remove this species from the State of Hawaii threatened and endangered species lists under Hawaii Revised Statute (HRS) 195D–4. However, as a native species, the hawk will continue to be afforded the protection of the State in accordance with HRS 195–1, which states that (1) the State of Hawaii possesses unique natural resources, such as geological and volcanological features and distinctive marine and terrestrial plants and animals, many of which occur nowhere else in the world, that are highly vulnerable to loss by the growth of population and technology; (2) these unique natural assets should be protected and preserved, both for the enjoyment of future generations, and to provide base lines against which changes which are being made in the environments of Hawaii can be measured; (3) in order to accomplish these purposes the present system of preserves, sanctuaries and refuges must be strengthened, and additional areas of land and shoreline suitable for preservation should be set aside and administered solely and specifically for the aforesaid purposes; and (4) that a statewide natural area reserves system should be established to preserve in perpetuity specific land and water areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawaii. [L 1970, c 139, pt of § 1] Under State of Hawaii Administrative Rules (HAR), it is prohibited to ''catch, possess, injure, kill, destroy, sell, offer for sale, or transport'' any indigenous wildlife, as well as to export any such species (HAR 13–124–3), unless authorized by permit (HAR 13–124–4).

Multiple regulatory mechanisms protect the Hawaiian hawk, and these regulatory mechanisms (*i.e.,* the MBTA, National Wildlife Refuge System Improvement Act of 1997, Hawaii National Park Act of 1916, EPA, CITES, HRS 195–1, 50 CFR 21.29 and 21.30, and the State's HAR 13–124–3 and HAR 13–124–4) will continue to provide protection to the Hawaiian hawk in the future after delisting. Approximately 754 sq mi (1,953 sq km), or 32 percent, of the Hawaiian hawk's habitat is located on protected lands in the form of State and Federal forests, parks, and refuges.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Single Island Endemism

Species that are endemic to a single island, such as the Hawaiian hawk, are inherently more vulnerable to extinction than widespread species because of the higher risks posed to a single population by random demographic fluctuations and localized catastrophes such as fires, hurricanes, and disease outbreaks (IRWG 2001, p. 3). However, the Hawaiian hawk is adaptable to a variety of habitats and is relatively abundant and widespread in suitable habitat on much of the island, making it resilient to random demographic fluctuations or localized catastrophes (*e.g.,* volcanic eruption). Even a large-scale catastrophe such as a major hurricane or fire is unlikely to cause the extinction or endangerment of a hawk that can effectively use regenerating forests as foraging areas and can nest in relatively small patches of older forests that are likely to remain intact following such an event.

Wind Facilities

There are currently three wind facilities on the island of Hawaii: Hawi, located near Hawi (16 wind turbine generators), Pakini Nui, lnear South Point (14 turbines), and Lalamilo near Kamuela, (5 turbines). While wind turbines kill numerous bird and bat species across the United States (Hutchins 2016, in litt.; USFWS 2017, in litt.), including in Hawaii, we have no reports of Hawaiian hawk fatalities caused by wind turbine collision. Canine-assisted, standardized compliance monitoring for fatalities is conducted at Pakini Nui at 7-day intervals, but the Lalamilo and Hawi projects do not currently have a standardized monitoring program at this time. To our knowledge, only one Hawaiian hawk has been observed among all three Hawaii island wind facilities. In 2013, one Hawaiian hawk was observed at the Hawi wind facility. A draft Habitat Conservation Plan (HCP) framework for Hawi included a request for an incidental take permit to coverage for up to three Hawaiian hawks (*e.g.,* adult, egg, fledgling) over a period of 20 years; however, the project does not currently have an HCP nor has an application for an HCP been submitted. We consider the potential impacts from Lalalimo and Pakini Nui wind facilities on Hawaiian hawks to be negligible, while Hawi has the potential to impact individual Hawaiian hawks. Lalamilo is in the draft stage of State and Federal HCP preparation and Pakini Nui is in the process of finalizing an HCP and incidental take permit; however, neither HCP include Hawaiian hawks as they are not anticipate to cause take of Hawaiian hawks. Considering only a single observation of a Hawaiian hawk has been reported over the last decade, we do not consider wind turbines to pose a threat to the Hawaiian hawk's viability at this time. Monitoring at Hawi will keep us informed if more Hawaiian hawks are observed in the area and most certainly if a Hawaiian hawk is harmed. Hawaiian hawks will continue to be protected by the Migratory Bird Treaty Act (see Factor D, above).

The cumulative data show that the Hawaiian hawk has a low sensitivity to environmental fluctuations and the Hawaiian hawk viability is not currently jeopardized by the location of the three current wind farms on Hawaii island. The Hawaiian hawk has maintained a stable, self-reproducing population through fluctuations in human population growth, urban and exurban development, forestry practices, conservation actions, type of prey, and pesticide use. An individual's sensitivity to environmental changes contributes substantially to its fitness, where a reduced sensitivity increases the fitness (Melbinger and Vergassola 2015, p. 2). We conclude that Hawaiian hawk viability is not currently at risk from environmental fluctuations. Similarly, despite broad use of pesticides, including SGARs, and detection of SCARs in Hawaiian hawk tissue, Hawaiian hawks maintained a stable self-reproducing population during a time period when SCARS were more commonly used (see Recovery Plan Implementation, above).

Cumulative Effects

We examined each of the five factors above individually and have determined that none of these threats is substantive and none of these threats jeopardizes the survival of the Hawaiian hawk. We also examined the potential for the cumulative impact of such unsubstantive threats to be greater than the impact from each individual threat. The Hawaiian hawk has maintained a stable, self-sustaining population of between 2,500 and 3,000 individuals for decades, with the most recent population estimate at 3,000 individuals sustained over at least 10 years. The Hawaiian hawk has maintained viability while experiencing varying degrees of habitat destruction or modification (urbanization, agriculture, nonnative plant and animal species, fire, drought, climate change, volcanic eruption, and ROD); overutilization of the species for commercial, recreational, scientific, or educational purposes (shooting); disease (avian pox and avian malaria) or predation (nonnative rats, mice, mongoose, cats, and dogs); inadequate regulatory mechanisms; and other natural or manmade factors (small range, single-island endemism, wind turbines, and contaminants and pesticides). Therefore, considering the potential impacts from any number of combinations of the threats outlined in this rule, we find that the viability of the Hawaiian hawk is not at risk from cumulative effects. Post-delisting monitoring will monitor the status of the Hawaiian hawk population and its habitat to detect any changes in status that may result from removing the Hawaiian hawk from the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)).

Summary of Comments and Recommendations

In total, we received 195 comment letters on the proposal to delist the Hawaiian hawk and the draft post-delisting monitoring (PDM) plan. Four comments were from peer reviewers, three of these on the proposed rule and one on the PDM plan. Seven comment letters were from offices of the State of Hawaii, one comment letter was from the County of Hawaii, and 183 comments were from the general public. All substantive information provided during the comment periods has been incorporated directly into this final determination (see Summary of Changes from the Proposed Rule, above) or is addressed below.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we received expert opinion from four knowledgeable individuals with scientific expertise that included familiarity with the Hawaiian hawk and its habitat, biological needs, and threats.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the proposed delisting of the Hawaiian hawk. The peer reviewers generally agreed with our analysis in the proposed rule and provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final determination as appropriate.

Peer Review Comments

(1) *Comment:* All three of the peer reviewers who commented on the proposed rule agreed with the analysis used for proposing delisting. Reasons they provided for supporting our analysis include the lack of evidence

that the species' range is contracting, survey information indicates the Hawaiian hawk population has been stable over the last 20 to 30 years, and Hawaiian hawks use both native and nonnative habitats for breeding and hunting. Two of the peer reviewers stated that although ongoing threats to habitat continue, this is not of sufficient magnitude that Hawaiian hawk would become endangered or threatened in the foreseeable future (defined as 20 years in the proposed rule). One peer reviewer stated that the rule could be substantially improved in several ways to make our analysis more clear. Suggestions were to clarify that the most current population analysis (Gorresen *et al.* 2008, entire), which used updated methodology, corrected for errors in past abundance estimates and showed the population abundance of Hawaiian hawks has been approximately 3,000 birds for the past 30 years; and to better convey the severity of the threats associated with loss or degradation of habitat, WNV, and conversion of agricultural land to eucalyptus. Another peer reviewer commented they were not convinced eucalyptus would be incompatible with Hawaiian hawk foraging and nesting; rather, the size, juxtaposition, and density of the woodland will determine the use by Hawaiian hawks.

Our Response: We concur that there is no evidence that the Hawaiian hawk's range is contracting, that data indicate the species' population is stable, and that Hawaiian hawks breed and forage in both native and nonnative habitats. In addition, we have modified our language under Summary of Factors Affecting the Species to better clarify the potential threats. We concur that it is important to ensure this rule clearly explains that the most current data show the Hawaiian hawk population has remained stable with a population abundance of approximately 3,000 birds for the past 30 or more years. We also agree that the forest structure is an important component of Hawaiian hawk habitat.

(2) *Comment:* One peer reviewer commented conducting surveys along roadways and using audio playback recordings may have biased Hawaiian hawk population survey results.

Our Response: During the 1998 to 1999 surveys, movements by Hawaiian hawks in response to playback recordings were observed. A correction factor for undetected movements was developed based on distances at which Hawaiian hawks were first seen or heard by paired observers. This correction factor was used for the analysis of all 1998 to 1999 and 2007 survey data (Klavitter and Marzluff 2007, entire; Gorresen et al. 2008, entire). The 2007 surveys (Gorresen *et al.* 2008, entire) closely followed the same routes and locations as were counted in 1998–1999 (Klavitter 2000, entire). While stations mostly followed roads due to the need to survey many widely dispersed stations throughout the range of the Hawaiian hawk, counts were conducted at locations away from the road to ensure traffic noise was limited. Stations located along transects that did not follow roads were also included in both surveys. Thus, any potential bias in the analysis that could exist from the survey point locations would be the same in both datasets, allowing for direct comparison of population trend between the two counts. No significant difference in densities was found between years at either regional or island-wide scales. Thus, the population trend appears to be stable.

(3) *Comment:* One peer reviewer suggested we conduct a population viability assessment (PVA) to better understand demographic patterns and Hawaiian hawk population trajectory for the foreseeable future.

Our Response: A preliminary PVA that evaluated variations in survival and breeding success for female Hawaiian hawks was developed (Vorsino and Nelson 2016, unpublished data) for native, mixed, and exotic habitat (Gorresen *et al.* 2008, p. 15; Klavitter *et al.* 2003, p. 170). Although valuable data resulted from the PVA with respect to Hawaiian hawk viability in specific habitats over 30 years, it did not include all of the threats outlined in the proposed rule or this final rule, nor did it consider ongoing conservation successes (*e.g.,* strawberry guava biocontrol efforts, an increase in conservation actions, and an increase in overall acreage on which conservation occurs and lands are set aside for conservation in perpetuity (see *Recovery Plan Implementation,* above)). Therefore, we have incorporated this PVA into the relevant analyses, but have not based our decision solely on it, based on its limited scope and uncertainty. For details regarding the PVA, please see ''Demographics,'' above.

State Comments

(4) *Comment:* We received four comment letters from the State of Hawaii Department of Land and Natural Resources (DLNR), three regarding the proposed rule and one regarding the draft PDM plan. In 2008, the DLNR supported delisting the Hawaiian hawk, but stressed the importance of adequate monitoring to detect any potential changes in the population status of Hawaiian hawks in a timely way. In 2009, the DLNR stated their appreciation to the Service for developing the PDM plan to adequately monitor the Hawaiian hawk once removed from the Federal List of Endangered and Threatened Wildlife. In 2014 and 2018, the DLNR supported reclassifying the species as threatened (not delisting) and stated concern regarding the possible introduction of WNV. The DLNR also stated concern that it is unclear given current information whether the small Hawaiian hawk population is sufficient to ensure genetic viability into the future, and recommended determining genetic attributes of the species.

Our Response: We agree that regular population monitoring is important to detect any changes to the Hawaiian hawk population and to quickly identify the presence of new threats (*e.g.,* WNV) or the worsening of currently minor threats. We recognize the existence of potential future threats such as WNV (see Factor C discussion, above); however, to our knowledge, WNV is not present in Hawaii and, therefore, not currently a threat. The PDM plan includes conducting island-wide surveys every 5 years through 2044 to monitor for changes in the species' status. We have no evidence that the Hawaiian hawk population is suffering from small population effects such as inbreeding depression. The population of Hawaiian hawks is stable, and has been stable for the past several decades.

(5) *Comment:* We received two comments from the State of Hawaii Office of Hawaiian Affairs (OHA). In these, OHA stated the cultural significance of the Hawaiian hawk to the Hawaiian people. Office of Hawaiian Affairs also stated concern regarding the amount of agriculturally zoned and non-protected Hawaiian hawk habitat and instances in which agriculturally zoned parcels have been rezoned for subdivisions and large residential lots, which may have an adverse effect on Hawaiian hawks. In addition, OHA stated concern that the current population of approximately 3,000 Hawaiian hawks was inadequate to delist the species at least partially due to the species' vulnerability to a single large catastrophic event given Hawaiian hawks currently exist only on Hawaii. Office of Hawaiian Affairs suggested reintroducing Hawaiian hawks to other islands as a way to reduce risk from a large-scale catastrophic event.

Our Response: We acknowledge and greatly appreciate the cultural significance of Hawaiian hawks to the Hawaiian people. We believe that the

recovery of the hawk was made possible by the collective ongoing conservation actions implemented by the private, State, and federal partners outlined under *Recovery Plan Implementation* and Factor A, above. According to State and private foresters, forest areas on the island have increased, particularly native forest areas.

There have not been substantial changes in zoning designations from conservation lands to agriculture in recent decades. However, there have been many instances of applications for administrative approval for zoning changes from larger agricultural acreage to smaller agricultural acreage, agricultural to single family residential, and single family residential to general commercial. Building of subdivisions on agriculture lands will likely have adverse effects on Hawaiian hawks because of loss of trees for nesting and perching, and possible effects of human disturbance. However, there are also many conservation efforts to protect habitat on the island of Hawaii (see *Recovery Plan Implementation* and the Factor A discussion, above), and our analysis considers those.

We acknowledge the current population of approximately 3,000 Hawaiian hawks may be considered small and is possibly vulnerable to a single large catastrophic event, such as an extremely large hurricane directly hitting the island or the introduction of WNV; however, we do not believe that it is likely that a hurricane will occur at a scale that would endanger the Hawaiian hawk in the foreseeable future, nor is it likely that WNV will arrive on Hawaii island due to the efforts being made to prevent the introduction of WNV. In determining whether a species in danger of extinction within the foreseeable future, we need to be able to reasonably determine that both the future threats and the species' responses to those threats are likely. We placed primary emphasis for our five-factor analysis on threats currently present and those we could reliably predict to occur in the foreseeable future. In part because of potential threats (*e.g.,* a major hurricane or new disease) we intend to monitor the status of the Hawaiian hawk, in cooperation with DOFAW, the NPS, and USGS–BRD, through periodic (every 5 years starting in 2024) island-wide surveys. The Act requires post delisting monitoring for no less than 5 years. If data from these surveys or from some other source indicates significant declines in Hawaiian hawk distribution and abundance, the Service will consider initiating procedures to re-list the Hawaiian hawk.

While we agree reintroducing Hawaiian hawks to other islands is a way to reduce risk to Hawaiian hawks from a large-scale catastrophic event, because breeding populations of Hawaiian hawks have not occurred on other islands in Hawaii for hundreds of years (if ever), establishing Hawaiian hawks on other islands must be considered with caution as it could disrupt ecosystems on other islands (*e.g.,* predator-prey relationships).

(6) *Comment:* We received one comment from the Council of the County of Hawaii containing a resolution in support of maintaining the Hawaiian hawk on the Federal List of Endangered and Threatened Wildlife based on concerns about the limited range (only the island of Hawaii) of the Hawaiian hawk; broad-scale loss of nesting, fledgling, and perching habitat for the hawk; development of agricultural lands; cutting of native forests; and urbanization.

Our Response: We evaluated the County's concerns and addressed them in our threats analysis and throughout the preamble of this rule (see *Recovery Plan Implementation* and Factor A discussion, above).

Public Comments

(7) *Comment:* Several commenters provided evidence of loss of Hawaiian hawk habitat to housing development. Several commenters said they saw fewer Hawaiian hawks than previously in areas with recent development.

Our Response: We examined the evidence and conducted further research on degradation and loss of Hawaiian hawk habitat as a result of housing development, agriculture, and urban development under Factor A of our threats analysis. Mean Hawaiian hawk density in native forests is almost four times greater than Hawaiian hawk density in areas with housing development (Gorresen *et al.* 2008, pp. 10–11, 47). The reason for higher densities of Hawaiian hawks in native forest is greater abundance of prey and nest sites and lack of human disturbance or harassment (Klavitter 2000, p. 14). While some studies on other *Buteo* species found evidence of reduced reproductive rates in areas with human habitation (Bosakowski *et al.* 1992, p. 444; England *et al.* 1995, p. 179), other studies on *Buteo* species outside of Hawaii have found that reproductive success was not affected by the degree of urbanization around nest sites, and that reproductive rates of *Buteo* species in areas of human habitat were not affected by urbanization (Rottenborn 2000, p. 18; Dyukstra *et al.* 2000, p. 401).

Despite the steady urbanization of coastal and lowland dry ecosystem areas on the island of Hawaii over the past 30 years, Hawaiian hawks have maintained a stable, viable population. Additionally, the human population growth rate on the island of Hawaii is less than previously anticipated and expected to level off in the early 2020s, and subdivisions on the island have plateaued (see *Recovery Plan Implementation* and Factor A discussion, above). Further, there are many ongoing conservation efforts to restore native habitats on the island of Hawaii that benefit Hawaiian hawks by providing potential breeding, nesting, and foraging habitat (*e.g.,* perches). To better explain these conservation efforts, we added information under our Factor A discussion, above.

(8) *Comment:* Several commenters provided information on applications for administrative approval for zoning changes from agricultural to residential and for subdivision of agricultural lands. These commenters stated concern that this will encourage housing development.

Our Response: We agree that zoning changes from agricultural to residential and subdivision of agricultural lands will encourage housing or other development in these areas, which may negatively affect Hawaiian hawk habitat. However, despite such zoning changes occurring steadily over the past several decades, Hawaiian hawks have maintained a stable and viable population for at least 30 years. See *Recovery Planning Implementation* and our Factor A discussion, above, as well as our response to Comment (7).

(9) *Comment:* Several commenters provided information on forest clearing in the Puna and Kona regions, and provided evidence of the building of large home-type dwellings in the Kona region in areas zoned for agricultural use.

Our Response: We examined information on forest loss, forest gain, and percentage of forest cover for Hawaii County, which was gathered using high-resolution satellite imagery, for the years 2000 to 2012 (Hansen *et al.* 2013, entire), to better understand potential effects of forest clearing on Hawaiian hawk habitat. Satellite images revealed many small areas of recent forest clearing in both the Puna and Kona regions. Most of this was within already existing suburban areas; however, some was in adjacent mixed native-exotic and mature native forest. Some forest loss in the Kona region was in areas zoned for agricultural use, and large residential-type homes were built in recently cleared areas. In general, we

found forest clearing to negatively affect Hawaiian hawk habitat through the removal of trees that the Hawaiian hawk uses for perching and nesting, but these effects are to individual birds who can move to new territories and not to the population as a whole. In 2018, both State and private foresters on the island of Hawaii reported that forested areas on the island have increased, particularly native forest areas. We address forest loss and gain further and provide information on related conservation actions under our Factor A discussion, above.

(10) *Comment:* Many commenters suggested agricultural practices may be having a negative effect on Hawaiian hawk habitat.

Our Response: Agricultural practices have a negative effect on Hawaiian hawk habitat when the result is a net loss of forest and nesting habitat and fewer perching sites from which the hawk may hunt (Gorresen *et al.* 2008, p. 23; Klavitter and Marzluff 2007, p. 172). Approximately 55 percent of the land area within the Hawaiian hawk's range is designated for intensive agriculture, and a small portion of this for industrial and urban use. The remaining 45 percent is designated for conservation (County of Hawaii 2005a, as amended, pp. 14–3–14–6; Gorresen *et al.* 2008, pp. 22, 44).

In the past, agricultural practices have resulted in a net loss of forest and nesting habitat and fewer perching sites from which the Hawaiian hawk may hunt. However, as of 2018, both State and private foresters report there is an increase in forested areas on the island, particularly native forest areas, and that many old pasturelands are slowly being converted to native forests (see *Recovery Plan Implementation* and Factor A discussion, above). Large orchards have lower hawk densities than smaller orchards because these have fewer trees for perching and from which to hunt. Orchard areas in the Kona region had significantly lower Hawaiian hawk density than native forest and mixed native exotic forest for the same region. Approximately 2.1 percent (47 sq mi (121 sq km)) of the Hawaiian hawk's range is in orchards planted in coffee, papaya, and macadamia nuts (Melrose and Delparte 2012, p. 34). Based on the best available information for acreage trends for coffee, papaya, and macadamia nuts, and State and private forester reports of increased forest areas (particularly native forest) across the island, we expect only a small increase (less than 0.5 percent) in areas of intensive agriculture in the foreseeable future. We consider such an increase would have discountable impacts to Hawaiian hawks and their habitat.

(11) *Comment:* Some commenters stated concerns that cattle grazing may cause forest degradation that is harmful to Hawaiian hawks.

Our Response: Open canopy native forest with a grass understory supports the highest densities of Hawaiian hawks because it provides many large ohia trees for perching and nesting, ample small prey for food, and open forest understory that provides fewer places for prey to hide (Gorresen *et al.* 2008, p. 47). Intensive cattle grazing in dry and mesic forest leads to a reduction of overstory canopy and the conversion over time of native forest to open grassland that is unusable by Hawaiian hawks because of the lack of trees for perching, nesting, and hunting (Blackmore and Vitousek 2000, pp. 625, 627, 629; Klavitter 2003, p. 170). However, starting at the turn of the century, several large landowners (private, Federal, and State) ended their pastoral leases and are steadily promoting natural regeneration to take the place of old pastures (Koch and Walter 2018, in litt.). Further, State and private foresters report that there is actually an increase in forested areas on the island, particularly native forest areas (see *Recovery Plan Implementation* and Factor A discussion, above).

(12) *Comment:* Several commenters stated concerns that commercial forestry, particularly eucalyptus, may negatively affect Hawaiian hawk habitat by replacing moderate quality agricultural lands, which provide large trees for perching and open sites for hunting, with forest monocultures.

Our Response: We examined the extent of commercial forestry in Hawaii County and the quality of commercial forest in providing hunting and nesting opportunities for Hawaiian hawks. Large monocultures of eucalyptus are only marginally usable habitat for Hawaiian hawks because forest monocultures do not provide the complex forest structure that likely supports greater prey abundance and the more open understory the Hawaiian hawk needs for hunting. Approximately 11.6 sq mi (30 sq km) of mostly fallow agricultural lands have been converted to forestry plantations on Hawaii since the year 2000. More and more timber plantations are shifting their cultivation to native trees, mostly koa (*Acacia koa*), and harvest timber in patchwork patterns versus clear cutting to maintain habitat for native birds such as the Hawaiian hawk. Additionally, the State is moving away from planting exotic timber tree species and toward planting native species when economically feasible (Koch and Walter 2018, in litt.). Island-wide, there has been an increase in forested areas, particularly native forest areas (Koch and Walter 2018, in litt.). The shift in forestry practices listed above, in conjunction with the increase in conservation measures and lands set aside for conservation in perpetuity (see *Recovery Plan Implementation* and Factor A discussion, above), leads us to conclude that current forestry practices do not threaten the continued survival of Hawaiian hawks.

(13) *Comment:* Several commenters stated concerns that planned growth for renewable energy production in Hawaii County may negatively affect Hawaiian hawk habitat and that wind energy production by on-shore wind turbines could cause Hawaiian hawk mortality.

Our Response: We examined current renewable energy production in Hawaii County and potential effects of renewable energy on Hawaiian hawks and their habitat. Potential sources of renewable energy on Hawaii primarily include biofuel and wind energy production. Some of the potential crops for renewable energy include sunflowers (herb) and *Jatropha curcas* (large shrub to small trees) from which oils are extracted. All of the lands considered for biofuel crop production are already zoned for agriculture. Examples include fallow sugarcane fields and areas currently being used for diversified agriculture, grazing, and timber production. Some renewable biofuel (crops/lands) may continue to provide suitable habitat for Hawaiian hawks, whereas, depending on the crop, others may not. There is currently only one biofuel plant on the island of Hawaii, and we are unaware of plans for additional biofuel plants. Further, of the total available lands on the island that meet the minimum requirements for biofuel crop production (757,518 ac), only 11 percent (82,000 ac) are suitable (Hawaii Military Biofuels Crop Program (Task 6) 2015, p. 18). As of 2018, there are no farms on the island of Hawaii dedicated solely to biofuel production (Long 2018, pers. comm.) (see also ''Conversion of Sugarcane Fields to Unsuitable Habitat,'' above). There are three on-shore wind farms on Hawaii that generate energy using wind turbines. All downed endangered or threatened birds and bats are reported to our office. We are unaware of any downed Hawaiian hawks resulting from wind turbines. Therefore, we do not consider biofuel production (crops or facilities) or wind turbines to be a threat to Hawaiian hawks.

(14) *Comment:* Several commenters stated concerns that drought and invasion of fire-tolerant nonnative grasses pose a threat to Hawaiian hawk habitat by increasing fire frequency and intensity. Some of these commenters also commented that climate change will increase drought frequency and intensity.

Our Response: We address the risk of fire and drought under ''Invasive Plant Species, Drought, and Increase in Fire Frequency,'' above. We also added a discussion on drought to our fire risk analysis. Additionally, we examined the effects of a drying climate and drought on Hawaiian hawk habitat, as discussed in our October 30, 2018, **Federal Register** publication (83 FR 54561) to reopen the proposed delisting rule's comment period, and have subsequently added to our discussions in this rule under ''Invasive Plant Species, Drought, and Increase in Fire Frequency'' and ''Invasive Species (Concealing Prey)'' as it pertains to strawberry guava. Although fire and drought pose risks to Hawaiian hawks and their habitat, fires and prolonged periods of droughts have occurred on the island of Hawaii, including between survey periods (Hawaii Wildfire Management Organization 2019, in litt.; U.S. Drought Monitor 2019, in litt.), and the Hawaiian hawk population remained stable. Therefore, at this time, we conclude that neither drought nor fire is a risk to the survival of Hawaiian hawks.

(15) *Comment:* Many commenters stated concerns that Hawaiian hawk habitat is threatened by invasion of nonnative, ecosystem-altering plant species, such as strawberry guava.

Our Response: We examine effects of nonnative plant species on Hawaiian hawk habitat under ''Invasive Plant Species, Drought, and Increase in Fire Frequency'' and ''Invasive Species (Concealing Prey),'' above. Additionally, we added to this rule a discussion regarding the potential impacts of strawberry guava under ''Demographics,'' *Recovery Plan Implementation,* and ''Invasive Species (Concealing Prey).'' Although nonnative species and other factors may potentially impact Hawaiian hawks and their habitat, many ongoing conservation actions taking place counter such negative impacts (see our Factor A discussion, above). Additionally, forest habitat (particularly native forest areas) is increasing now on the island of Hawaii (Koch and Walter 2018, in litt.).

(16) *Comment:* Several commenters stated concerns that Hawaiian hawk habitat may be negatively affected by volcanic gas (vog).

Our Response: According to the USGS (2019, in litt.), ''the sulfuric acid droplets in vog have the corrosive properties of dilute battery acid. When vog mixes directly with moisture on the leaves of plants it can cause severe chemical burns, which can damage or kill plants. Sulfur dioxide gas can also diffuse through leaves and dissolve to form acid conditions within plant tissues.'' The USGS also reports that farmers on the island of Hawaii, particularly in the Kau district, have reported loss of agricultural crops and flowers as a result of sulfur dioxide emissions from a gas vent at Kilauea's summit. Most agricultural damage occurs just down slope of the volcano (*e.g.,* Kau) (Nelson and Sewake 2008, p. 1), as well as in the Kona area (Kratky 1997, in litt.; USGS 2019, in litt.).

Some agricultural crops have demonstrated resistance to vog (Nelson and Sewake 2008, p. 2; USGS 2019, in litt.). Native plants in Kilauea and surrounding areas have evolved to live with frequent volcanic eruptions and associated vog (Nelson and Sewake 2008, p. 2). Ohia, one of the dominant forest trees across the main Hawaiian Islands, can close its stomata (gas exchange cells) during periods of high sulfur dioxide exposure to protect itself from vog damage (USGS 2019, in litt.). Additionally, the nonnative plants that provide or contribute toward Hawaiian hawk habitat have become established species despite the active volcano and associated vog. Because both native and nonnative plants persist despite multiple eruptions and periods of high vog emissions, we conclude that vog is not detrimental to plant species that contribute toward or support (*e.g.,* native-mixed forest) Hawaiian hawks and, therefore, does not constitute not a threat to the survival of the Hawaiian hawk.

(17) *Comment:* Many commenters stated concerns that Hawaiian hawk habitat may be destroyed by lava flows.

Our Response: The majority of Hawaiian hawk habitat is on the active volcanoes of Mauna Loa, Kilauea, and Hualalai. The land area covered by lava during past volcanic eruptions for these volcanoes has been as much as 1 percent of the Hawaiian hawk's range.

Kilauea is one of the most active volcanoes in the world. Kilauea had nearly continuous activity during the 19th century and early part of the 20th century, and since 1952, there have been 34 eruptions (USGS 2018, in litt.). In 1983, an eruption along the East Rift Zone of Kilauea began and has not stopped to this day (Rubin 2018, in litt.). Periodically since 1983, both natural and human habitats in and around Kilauea have been destroyed by lava. Kilauea's most recent increase in activity began in May 2018, and by mid-August 2018, the increase in activity decreased in some areas and ceased in others. During its most recent activity, Kilauea exuded enough lava to cover hundreds of human-made structures and approximately half of the Malama Ki Forest Reserve (1,514 ac (613 ha)) (DLNR 2018, in litt.; West Hawaii Today 2018, in litt.). Half of the Malama Ki Forest Reserve makes up only a fraction of Hawaiian hawk habitat.

Hawaiian forests have evolved alongside Kilauea. Once lava cools, native plants quickly recolonize through a process called primary succession, which refers to the progressive establishment of vegetation on a barren substrate (*e.g.,* lava flow or glacial retreat). On the island of Hawaii, primary succession usually starts with lichens and fungi, followed by ferns and then ohia trees and other native plants (Kitayama *et al.* 1995, pp. 215–219; Muller-Dombois and Boehmer 2013, entire).

Although ongoing volcanic eruptions have the potential to destroy much or all of the habitat in Hawaii Volcanoes National Park and surrounding areas, Hawaiian hawks have evolved alongside volcanic activity on the island of Hawaii, and despite past volcanic activity, Hawaiian hawks have maintained a stable population of approximately 3,000 individuals for at least 30 years. We conclude that the recent increase in Kilauea's activity is not a threat to the survival of the Hawaiian hawk.

(18) *Comment:* Many commenters felt we had not adequately addressed potential impacts of hurricanes on Hawaiian hawks, especially because current data suggest that Hawaii will have more frequent and intense hurricanes due to climate change.

Our Response: Large portions of the Hawaiian hawk's range on Hawaii are in montane upland areas that are potentially more vulnerable to damage from hurricanes, Should the eye of a powerful hurricane strike the island of Hawaii it would cause widespread damage to ohia trees and other trees Hawaiian hawks use for nesting and perching, which would create conditions that may allow for expansion of nonnative, ecosystem-disrupting plants. A strong hurricane would not only alter Hawaiian hawk habitat, it would likely cause an increase in mortality of nestlings and young birds for a period of time. However, despite current data indicating an increase in frequency and intensity of hurricanes in Hawaii, it is unknown when or if a

major hurricane will occur on the island of Hawaii on a scale that would decrease the viability of the species. Additionally, the cumulative data indicates that the range of the Hawaiian hawk, which spans much of the island of Hawaii, will provide the species with the redundancy and resiliency necessary to maintain viability under such a stochastic or catastrophic event. Please also see Factor A, above.

(19) *Comment:* Several commenters felt we had not adequately addressed potential impacts of disease and feral ungulates to ohia.

Our Response: In response to these comments, we examined a number of factors affecting ohia, including effects of feral ungulates, ohia dieback, ohia rust, and rapid ohia death (ROD). While nonnative feral ungulates and the aforementioned diseases do impact ohia forest habitat, the Hawaiian hawk has adapted to use both native, nonnative, and mixed forest habitats for both nesting and hunting. Further, despite the presence of ohia dieback and ohia rust, Hawaiian hawk numbers have remained stable. For further details of this analysis, please see Factor A, above.

(20) *Comment:* Many commenters noted they had heard of Hawaiian hawks being shot by farmers and hunters. Several of these commenters reported Hawaiian hawks were shot because they are considered a threat to poultry.

Our Response: We have evaluated gunshot wound cases under *Recovery Plan Implementation* and our Factor B discussion, above. According to our records, there have been seven documented cases that involve Hawaiian hawk gunshot wounds between 2013 and 2018. Four of these occurred in 2018. This information shows some level of persecution; however, it appears this is not occurring over a large scale or affecting large numbers of Hawaiian hawks. Outreach to farmers and hunters regarding the State-protected status of the Hawaiian hawks and their cultural importance may help reduce negative perceptions and subsequent incidence of persecution. When this rule is effective (see **DATES**, above), shooting of Hawaiian hawks will remain illegal under both the MBTA and Hawaii State law.

(21) *Comment:* Several commenters thought at least one motivation for proposed delisting was to remove protections in order to allow greater latitude to manage Hawaiian hawks should one attack an endangered Hawaiian crow (alala; *Corvus hawaiiensis*) that is planned for reintroduction.

Our Response: We are delisting the Hawaiian hawk because the species no longer meets the definition of an endangered species or a threatened species under the Act. The Io Recovery Working Group (IRWG), in a report submitted to the Service in 2001 (IRWG 2001, pp. 2–3), stated neither Hawaiian hawk behavioral modification nor Hawaiian hawk removal will be a successful strategy to reduce predation on alala; therefore, we do not anticipate Hawaiian hawk management to be a viable method for recovering the alala.

(22) *Comment:* Several commenters stated concern that delisting Hawaiian hawks would remove the protections of the Endangered Species Act; therefore, Hawaiian hawks would be hunted and suffer other forms of persecution. One of these commenters specified that pigeon fanciers may want to harm or harass Hawaiian hawks to prevent Hawaiian hawks from killing pigeons. One commenter reported hearing ''air rifles'' when pigeon fanciers were flying birds and Hawaiian hawks were in the air.

Our Response: After the effective date of this rule (see **DATES**, above), the Hawaiian hawk will still be protected under the MBTA, the Hawaii Revised Statute (HRS) 195–1, and the Hawaii Administrative Rules (HAR) 13–124–3. The MBTA and its implementing regulations (50 CFR parts 20 and 21) prohibit take (killing or harming), possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit (50 CFR 21.11). The HAR 13–124–3 provides similar protections. HRS 195–1 requires the State to protect and preserve indigenous species of marine and terrestrial animals and plants.

(23) *Comment:* Several commenters noted a threat to Hawaiian hawks from the possible introduction of novel bird diseases including West Nile virus (WNV) and the importance of environmental screening for these threats.

Our Response: Hawaiian hawks do not appear to be susceptible to diseases currently established on the island of Hawaii, such as avian pox or avian malaria. Since 2002, the State has implemented an active WNV surveillance program at all ports, and no WNV has been detected in Hawaii to date. The State's Department of Agriculture has established a pre-arrival isolation requirement and a Poultry and Bird Import Permit issued through the Livestock Disease Control Branch for all birds entering the State. Furthermore, the Hawaii State Department of Health has an ongoing, multi-agency WNV surveillance program in place on all of the main Hawaiian Islands, which involves surveillance for infected mosquitoes and dead birds, as well as live-bird surveillance at major ports of entry, equine surveillance, and human surveillance (State of Hawaii 2006, in litt.). See our discussion above under Factor C for further details. Because WNV is not currently in Hawaii, we do not consider it a threat to the survival of Hawaiian hawks.

(24) *Comment:* Some commenters stated concerns that Hawaiian hawks might be poisoned by rodenticides and the broad-scale killing of rats may result in less food for Hawaiian hawks.

Our Response: Rodenticides are widely used in agriculture and residential areas to prevent crop and property damage and to protect human health. These rodenticides vary in their toxicity to the natural environment and risk to non-target animal exposure. A recent study was commissioned by the Service to quantify the exposure of a bat and several bird species, including Hawaiian hawks, to rodenticides in Hawaii. Some of the Hawaiian hawk carcasses tested positive for rodenticides; however, as of 2011, the most environmentally toxic rodenticides (SGARs) have been banned except for specific uses (*e.g.,* around agricultural buildings). For more information on the study and its results, see *Recovery Plan Implementation,* above. Killing rats may reduce available food for Hawaiian hawks in some areas; however, there are other foods available for the Hawaiian hawk including birds and insects. Because Hawaiian hawks have maintained a stable population of approximately 3,000 individuals over at least three decades, despite the more widespread use of SGARs prior to 2011, we do not consider rodenticides to be a threat to the survival of the Hawaiian hawk.

(25) *Comment:* Several commenters felt because the Hawaiian hawk population is small, the species should not be delisted. Some of these also commented that Hawaiian hawk females typically only produce one to three eggs per year, and most frequently only one.

Our Response: The Hawaiian hawk population of approximately 3,000 individuals has been stable for at least 30 years. Although historical sightings and fossil records show the Hawaiian hawk may have once bred on adjacent islands in Hawaii, there are no quantitative data to show an actual range contraction or decrease in population abundance. The Hawaiian hawk still occupies its entire historical range. The Hawaiian hawk does have a slow reproductive rate, often producing

only one offspring per year; however, despite this slow reproductive rate, the Hawaiian hawk has maintained a viable, stable population. After assessing the best available information, we concluded the Hawaiian hawk does not meet the definition of an endangered or threatened species.

(26) *Comment:* Many commenters expressed concern that the Hawaiian hawk's range is limited to a single island. Some of these commenters felt because the Hawaiian hawk's range once may have included other Hawaiian islands, it should be reestablished on these islands before being considered for future status change.

Our Response: Although the Hawaiian hawk may have once occurred on other Hawaiian islands, there are no quantitative data to show an actual range contraction or decrease in population abundance. Additionally, there is no evidence that a breeding population of Hawaiian hawks once existed on another island, and introducing a predator to an ecosystem in which it was not naturally occurring may result in negative consequences to other native species. See also our responses to Comments (5) and (25). Because we do not believe that the historical range of the Hawaiian hawk included other islands, we do not find it appropriate to reintroduce Hawaiian hawks outside of its known native range. In addition, the species no longer meets the definition of an endangered species or a threatened species.

(27) *Comment:* Several commenters stated that because of differences among population estimates, and the wide confidence intervals for these, that Hawaiian hawks should not be considered for delisting.

Our Response: Although the earliest surveys were conducted using some methods that may have contributed to inaccuracies in the population estimates and later surveys have wide confidence intervals, early population survey results consistently indicate the Hawaiian hawk population remained between 2,000 and 2,500 individuals between 1983 and 1997, while the more recent survey data from 1998 and 2007–2008 indicate that the Hawaiian hawk has maintained a self-sustaining population of approximately 3,000 individuals for approximately 10 years. In order to clarify the trends in population status, we added language under *Species Information.* Additionally, we based our analysis on the five factors outlined in section 4 of the Act, as discussed in this rule under Summary of Factors Affecting the Species.

(28) *Comment:* Several commenters said the Hawaiian hawk is an aumakua, or family guardian, for some Hawaiian families. Many commenters felt it inappropriate to delist the Hawaiian hawk because it is culturally important to native Hawaiians and should, therefore, retain protections under the Act.

Our Response: We acknowledge and appreciate the cultural importance of the Hawaiian hawk to the Hawaiian people. Although the cultural and spiritual significance of a species listed under the Act is not part of the five-factor analysis we must employ when evaluating species for a possible change in listing status, we carefully assess the best scientific and commercial data available regarding the status of the species to make our listing determination.

(29) *Comment:* Many commenters stated that there are insufficient data to delist the Hawaiian hawk.

Our Response: After reviewing the best available scientific and commercial data, we conclude that the Hawaiian hawk has recovered such that it does not meet the definition of a threatened species or endangered species. The Hawaiian hawk was likely more abundant at the time of listing than data at that time indicated, and the species has maintained a stable population of approximately 3,000 individuals for decades. Additionally, there are increasingly more conservation efforts that have been implemented on the island of Hawaii and across the State, as well as increasingly more lands set aside for conservation in perpetuity. The Hawaiian hawk will continue to be monitored as outlined in the PDM plan, which has been updated after undergoing peer review.

(30) *Comment:* A few commenters stated that this rule is arbitrary and capricious.

Our Response: We based our proposed rule and this rule on the best scientific and commercially available data, and we sought peer review and public comment on the proposed rule during five comment periods, over a total of 270 days. The cumulative data suggest that the Hawaiian hawk's viability is not currently threatened by any of the five factors outlined in section 4(a)(1) of the Act and currently maintains a self-sustaining population.

(31) *Comment:* Two commenters stated the PDM plan is weak, one noting further that it does not address delisting criteria.

Our Response: Based on peer review and other relevant comments, we have revised the PDM plan to include habitat monitoring. According to the updated 2018 PDM plan guidance co-authored by the Service and the National Oceanic Atmospheric Administration, post-delisting monitoring refers to activities undertaken to verify that a species delisted due to recovery remains secure from risk of extinction after the protections of the Act no longer apply. The primary goal is to monitor the species to ensure the status does not deteriorate, and if a substantial decline in the species (number of individuals or populations) or an increase in threats is detected, to take measures to halt the decline so that re-proposing it as endangered or threatened is not needed.

The Act does not require the development of a formal PDM plan. However, the Service finds that planning documents substantially contribute to the effective implementation of section 4(g) of the Act by guiding collection and evaluation of pertinent information over the monitoring period and articulating the associated funding needs. If post-delisting monitoring detects a significant decline in the Hawaiian hawk population, or a significant change in habitat so that it would not support a self-sustaining Hawaiian hawk population, relisting may be warranted. For additional discussion, see Future Conservation Measures, below. For information on how to view the updated PDM plan, see *Post-Delisting Monitoring Plan Overview,* below.

(32) One commenter stated there is not enough biosecurity in Hawaii to protect the Hawaiian hawk from introduced harmful nonnative species and diseases.

Our Response: Biosecurity is an ongoing challenge in Hawaii; however, biosecurity is not currently considered a threat to the Hawaiian hawk. See our discussions in this rule under *Recovery Plan Implementation,* Factor C, and Factor D.

(33) *Comment:* One commenter expressed concern over predation of Hawaiian hawks by nonnative animals such rats, mice, cats, and mongooses.

Our Response: Hawaiian hawks are top predators, and most nonnative species that are predators of other native animal species are actually prey to Hawaiian hawks (*e.g.,* rats, mice, mongoose). Cats (domestic and feral) are the exception; however, data indicate that cats are not currently a factor impeding Hawaiian hawk population success. Please see our discussion above under Factor C.

(34) *Comment:* One commenter stated that there are inadequate regulatory mechanisms, and therefore, the Hawaiian hawk should not be delisted.

Our Response: Regulatory mechanisms are only needed if other factors are found to threaten the continued existence of the species. Because we have determined that no threats remain that would endanger the Hawaiian hawk, either now or in the future, we find that the existing regulatory mechanism are adequate to protect the Hawaiian hawk in the absence of the Act's protections. Please see our discussion above under Factor D.

(35) *Comment:* One commenter expressed concern that little fire ants are blinding Hawaiian hawks.

Our Response: The nonnative little fire ant has spread across the island of Hawaii (Lee *et al.* 2015, p. 100; Hawaii Invasive Species Council. 2019b), and little fire ants are known to cause significant injuries and developmental problems in adults and chicks of ground-nesting seabirds and other species of ground-nesting birds (Plentovich 2019, in litt.). Because little fire ants climb, and sometimes nest, in trees, they could potentially harm a Hawaiian hawk. However, we are unaware of any blinding of Hawaiian hawks by little fire ants, or any other harm to hawks caused by little fire ants. The post-delisting status of Hawaiian hawks will be monitored as outlined in the PDM plan.

(36) *Comment:* One commenter stated that the Migratory Bird Treaty Act (MBTA) is not as efficient as the Endangered Species Act and expressed concern that decreased protections for Hawaiian hawks will result in intentional harm to them.

Our Response: The MBTA implements various treaties and conventions between the United States and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the MBTA, taking, killing, or possessing migratory birds is unlawful. Unless allowed by regulations, the MBTA provides that it is unlawful to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured.

To enforce the MBTA, authorized Department of the Interior employees may: Without a warrant, arrest a person violating the MBTA in the employee's presence or view; execute a warrant or other process issued by an officer or court to enforce the MBTA; and search any place with a warrant. All birds, parts, nests or eggs that are captured, killed, taken, offered or sold, bartered, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the MBTA will be seized and, upon conviction of the offender or upon court judgment, be forfeited to the United States and disposed of by the Secretary (see 16 U.S.C. 706).

According to the MBTA at 16 U.S.C. 707, a person, association, partnership, or corporation that violates the MBTA or its regulations is guilty of a misdemeanor and subject to a fine of up to $15,000, jail up to 6 months, or both. Anyone who knowingly takes a migratory bird and intends to, offers to, or actually sells or barters the bird is guilty of a felony, with fines up to $2,000, jail up to 2 years, or both. All guns, traps, nets, vessels, vehicles, and other equipment used in pursuing, hunting, taking, trapping, ensnaring, capturing, killing, or any attempt on a migratory bird in violation of the MBTA with the intent to sell or barter, must be forfeited to the United States and may be seized and held pending prosecution of the violator. The property is to be disposed of and accounted for by the Secretary.

(37) *Comment:* One commenter expressed concern that Hawaiian hawks will be negatively impacted by sea level rise resulting from climate change.

Our Response: Hawaiian hawks occur across the island of Hawaii, which is the largest of all the Hawaiian islands. Hawaii is so large that all of the other Hawaiian islands could fit into the boundaries of the island. Hawaiian hawks nest in forested areas, which are usually away from the coastline (approximately between 100 ft (30 m) above sea level to 5,578 ft (1,700 m) elevation) (Griffin 1985, p. 69–71). Further, under a scenario in which sea-level rise reaches 6 ft (1.8 m), we estimate only 0.1 percent (1830 ac (741 ha) of 1,422,132 ac (575517 ha) of Hawaiian hawk habitat will be lost (Harrington 2019, in litt.). Although Hawaiian hawks may forage near the coast, it is unlikely that sea level rise will have any negative impacts on Hawaiian hawks in the foreseeable future.

(38) *Comment:* One commenter stated that the recovery plan criteria have not been met, and that the Service never produced delisting criteria in the recovery plan or PDM plan. This commenter also stated that we did not adhere to either the Act or Administrative Procedure Act.

Our Response: As discussed under *Recovery Plan Implementation,* the recovery criteria for downlisting have all been met. Although criteria for delisting were not included in the recovery plan, a species may be delisted if it no longer meets the definition of an endangered species or a threatened species under the Act, whether or not all of the recovery criteria or action items in a PDM plan are completed. Further, recovery plans and PDM plans are guidance documents. The Hawaiian hawk is more abundant than previously thought at the time of listing. More refined survey, modeling, and other analytical computer programs have enhanced our understanding of the Hawaiian hawk population. Although the Hawaiian hawk occurs on a single island, it is a very large island and the hawk's range encompasses most of it. We held five comment periods, the most recent in 2018, to obtain new information to inform our final determination. We did not receive any new data, from any of the five comment periods or two public hearings, that indicate the Hawaiian hawk's status meets the Act's definition of endangered species or the Act's definition of threatened species. If future data or event(s) change this status, we will re-evaluate the status of the Hawaiian hawk. Otherwise, we will monitor the species as described in the final PDM plan.

Determination of Hawaiian Hawk Status

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or

manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we reviewed the information available in our files and other available published and unpublished information, and we consulted with recognized experts and other Federal, State, and Native Hawaiian organizations. Due to implementation of recovery actions and other conservation efforts that have facilitated a better understanding of the Hawaiian hawk's ecology and threats, we have learned that the Hawaiian hawk is broadly distributed throughout the island of Hawaii, has been stable in number for at least 30 years, nests and forages successfully in both native and altered habitats, and has large areas of habitat in protected status. The Hawaiian hawk is not currently threatened by habitat loss or degradation, overutilization, disease, predation, lack of adequate regulatory mechanisms, or other factors. Thus, after assessing the best available information, we conclude that the Hawaiian hawk is not in danger of extinction throughout all of its range.

Having found that the Hawaiian hawk is not in danger of extinction throughout its range, we next evaluated whether the species is in danger of extinction in the foreseeable future throughout its range. Under the Act, a threatened species is any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' 15 U.S.C. 15532(20).

The Act does not define the term ''foreseeable future.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework within which we evaluate the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. Analysis of the foreseeable future uses the best scientific and commercial data available and considers the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. While historically Hawaiian hawk have been affected by various threats, as outlined, under the Summary of Factors Affecting the Species, most of the threats have been ameliorated or are no longer thought to be threats.

The threats with the potential to cause population declines relate to habitat loss due to human population growth and its associated development, and invasive plants, such as strawberry guava. Hawaii County projected human growth rate from 2010 to 2040 to be 1.6 percent growth annually; however, the annual average growth rate from 2010 through 2017 was just 1.1 percent (Hawaii Department of Business, Economic Development and Tourism (DBEDT) 2018, in litt.). We found this level of population growth and associated development not to be an imminent threat. In addition, the current successful management of strawberry guava which involves use of the biocontrol agent, *Tectococcus ovatus* is expected to result in a noticeable decrease in the spread of strawberry guava in the future. We conclude there is a reasonable likelihood of these trends continuing at least over the next 20 years, which we consider the foreseeable future for the Hawaiian hawk.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range (SPR). Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language.

Having determined that the Hawaiian hawk is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in an SPR. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the species' range for which there is substantial information indicating that: (1) The portion may be significant; and (2) the species may be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. We emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the SPR prongs: (1) The portion is significant; and (2) the species is, in that portion, either in danger of extinction or likely to become so in the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both SPR prongs would the species warrant listing because of its status in a significant portion of its range.

At both stages in this process—the stage of screening potential portions to identify any portions that warrant further consideration and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the ''significance'' question or the ''status'' question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

For the Hawaiian hawk, we chose to evaluate the status question (*i.e.,* identifying portions where the Hawaiian hawk may be in danger of extinction or likely to become so in the foreseeable future) first. To conduct this screening, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale.

We examined the following threats: Habitat destruction or modification (urbanization, agriculture, nonnative plant and animal species, fire, drought, climate change, ROD); overutilization of the species for commercial, recreational, scientific, or educational purposes (shooting); disease (avian pox, avian malaria) or predation (nonnative rats, mice, mongoose, cats, dogs); inadequate regulatory mechanisms; and other natural or manmade factors (small range, single island endemism, contaminants and pesticides), including cumulative effects. We found no concentration of threats in any portion of the Hawaiian hawk's range at a biologically meaningful scale.

If both (1) a species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range and (2) the threats to the species are essentially uniform throughout its range, then the species could not be in danger of extinction or likely to become so in the foreseeable future in any biologically meaningful portion of its range. For the Hawaiian hawk, we found both: The species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, and there is no geographical concentration of threats so the threats to the species are essentially uniform throughout its range. Therefore, no portions warrant further consideration through a more detailed analysis, and the species is not in danger of extinction or likely to become so in the foreseeable future in any significant portion of its range. Our approach to analyzing SPR in this determination is consistent with the court's holding in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Hawaiian hawk does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we are delisting the Hawaiian hawk from the List of Endangered and Threatened Wildlife.

Future Conservation Measures

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. Although section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of post-delisting monitoring (PDM). We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation, post-delisting. The purpose of this PDM is to verify that a species remains secure from risk of extinction after the protections of the Act are removed, by developing a program that detects the failure of any delisted species to sustain itself. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act.

Post-Delisting Monitoring Plan Overview

The Service developed a final PDM plan in cooperation with the Hawaii DLNR, DOFAW. In addition, DOFAW, the National Park Service (NPS), and USGS agreed to cooperate with us in the implementation of the PDM plan. The PDM plan is designed to verify that the Hawaiian hawk remains secure from the risk of extinction after delisting by detecting changes in its status and habitat throughout its known range. The final PDM plan consists of: (1) A summary of the species' status at the time of delisting; (2) an outline of the roles of PDM cooperators; (3) identification of what will be monitored (*e.g.,* demographics, threats, species' response to threats); (4) a description of monitoring methods; (5) an outline of the frequency and duration of monitoring; (6) an outline of data compilation and reporting procedures; and (7) a definition of thresholds or triggers for potential monitoring outcomes and conclusions of the PDM effort.

The PDM plan guides monitoring of the Hawaiian hawk population following the same sampling protocol used by the Service prior to delisting. Monitoring will consist of three components: Hawaiian hawk distribution and abundance, potential adverse changes to Hawaiian hawk habitat due to environmental or anthropogenic factors, and the distribution of nonnative plants in Hawaiian hawk habitats. The PDM period consists of five 5-year cycles, which will begin in 2024. Monitoring through this time period will allow us to address any possible negative effects to Hawaiian hawks associated with changes to their habitat. As funding allows, we will collect data on Hawaiian hawks across the island of Hawaii, which will allow time to observe fluctuations in population abundance that may be attributed to residual stressors.

The PDM plan identifies measurable management thresholds and responses for detecting and reacting to significant changes in Hawaiian hawk habitat, distribution, and persistence. If monitoring detects declines equaling or exceeding these thresholds, the Service in combination with other PDM participants will investigate causes of these declines, including considerations of habitat changes, substantial human persecution, stochastic events, or any other significant evidence. Such investigation will determine if the Hawaiian hawk warrants expanded monitoring, additional research, additional habitat protection, or relisting as an endangered or a threatened species under the Act. If relisting the Hawaiian hawk is warranted, emergency procedures to relist the species may be followed, if necessary, in accordance with section 4(b)(7) of the Act.

We will post the final PDM plan and any future revisions on *http://www.regulations.gov* under Docket No. FWS–R1–ES–2007–0024 and on the Pacific Islands Fish and Wildlife Office's website (*http://www.fws.gov/pacificislands/*).

Effects of the Rule

This rule revises 50 CFR 17.11(h) by removing the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife. As such, as of the effective date of this rule (see **DATES**), the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, no longer apply to this species (including those contained in any existing conservation agreements, all safe harbor agreements, and all biological opinions for this species). There are no habitat conservation plans related to the Hawaiian hawk. Removal of the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife relieves Federal agencies from the need to consult with us under section 7 of the Act to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species. There is no critical habitat designated for this species.

The Hawaiian hawk continues to be protected under the Migratory Bird Treaty Act (16 U.S.C. 703–712), CITES (Article IV), and State of Hawaii law (HRS 195–1).

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2007–0024, or upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this rule are staff members of the Service's Pacific Islands Fish and Wildlife Office (see **ADDRESSES**) and Pacific Regional Office, Portland, Oregon.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Hawk, Hawaiian'' under BIRDS from the List of Endangered and Threatened Wildlife.

Dated: November 21, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–27339 Filed 12–31–19; 8:45 am]

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Regulations Relating to Withholding and Reporting Tax on Certain U.S. Source Income Paid to Foreign Persons; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9890]

RIN 1545–BN73, 1545–BN74, 1545–B023, 1545–BN79, 1545–BO30

Regulations Relating to Withholding and Reporting Tax on Certain U.S. Source Income Paid to Foreign Persons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on certain due diligence and reporting rules applicable to persons making certain U.S. source payments to foreign persons, and guidance on certain aspects of reporting by foreign financial institutions on U.S. accounts. The final regulations affect persons making certain U.S.-related payments to certain foreign persons and foreign financial institutions reporting certain U.S. accounts.

DATES:

Effective date. These regulations are effective on January 2, 2020.

Applicability date. For dates of applicability, see §§ 1.1441–1(f)(1) and (3), 1.1441–2(f)(2), 1.1441–6(i)(1) and (3), 1.1441–7(g), 1.1471–4(j)(2), and 1.6049–6(e).

FOR FURTHER INFORMATION CONTACT: John Sweeney at (202) 317–6942 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2017, the Department of the Treasury (Treasury Department) and the IRS published final and temporary regulations (the chapter 3 temporary regulations) under chapter 3 of subtitle A of the Internal Revenue Code (the Code) and chapter 61 of subtitle F of the Code (TD 9808) in the **Federal Register** (82 FR 2046, as corrected at 82 FR 29719). On the same date, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–134247–16) in the **Federal Register** (82 FR 1645, as corrected at 82 FR 43314 and 82 FR 49549) cross-referencing the temporary regulations (the chapter 3 proposed regulations). Also on January 6, 2017, the Treasury Department and the IRS published final and temporary regulations (the chapter 4 temporary regulations) under chapter 4 of subtitle A of the Code (TD 9809) in the **Federal Register** (82 FR 2124, as corrected at 82 FR 27928). On the same date, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–103477–14) in the **Federal Register** (82 FR 1629, as corrected at 82 FR 43314) that cross-referenced the temporary regulations and included other proposed regulations.[1] The proposed regulations cross-referencing the chapter 4 temporary regulations (redesignated as REG–132857–17) are referred to in this preamble as the chapter 4 proposed regulations.

On September 25, 2017, the Treasury Department and the IRS issued Notice 2017–46, 2017–41 I.R.B. 275, and on March 5, 2018, the Treasury Department and the IRS issued Notice 2018–20, 2018–12 I.R.B. 444. These notices provide that the Treasury Department and the IRS intend to amend certain provisions in the chapter 3 temporary regulations to narrow the scope of certain documentation requirements and provide a phase-in for implementation of those rules in response to comments. Notices 2017–46 and 2018–20 provide that taxpayers may rely on the guidance provided in these notices until they are incorporated into final regulations. These notices are further described in Part I of the Summary of Comments and Explanation of Revisions section of this preamble.

On December 18, 2018, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–132881–17) in the **Federal Register** (83 FR 64757) that proposed amendments to the regulations under chapters 3 and 4 to reduce burden under those regulations (the 2018 proposed regulations). The 2018 proposed regulations respond to Executive Orders 13777 and 13789, which instructed the Secretary of the Treasury to reduce regulatory burdens on taxpayers. The 2018 proposed regulations proposed modifications to certain provisions that are also in the chapter 3 temporary regulations and the chapter 4 temporary regulations. Certain of the proposed modifications relate to the requirement that a withholding certificate or treaty statement provided with documentary evidence by a treaty claimant that is an entity identify the applicable limitation on benefits provision that the entity meets in order to be eligible for treaty benefits. See §§ 1.1441–1(e)(4)(ii)(A)(*2*) and 1.1441–6(c)(5)(i) of the 2018 proposed regulations. Other proposed modifications relate to the documentation that a withholding agent may rely on to treat an address provided by an account holder that is subject to a hold mail instruction as a permanent residence address for purposes of an account holder's claim of foreign status or benefits under an income tax treaty. See §§ 1.1441–1(c)(38) and 1.1471–1(b)(62) and (99) of the 2018 proposed regulations. As discussed further in Parts V and VI of the Summary of Comments and Explanation of Revisions section of this preamble, these final regulations incorporate the modifications included in the 2018 proposed regulations with respect to those requirements. The Treasury Department and the IRS intend to finalize the remaining provisions of the 2018 proposed regulations in separate guidance at a future date.

No public hearing was requested or held with respect to the chapter 3 proposed regulations or the chapter 4 proposed regulations, though written comments were received and are available at *www.regulations.gov* or upon request. A public hearing was held with respect to the 2018 proposed regulations, but the topics raised in the hearing do not relate to the provisions in the 2018 proposed regulations that are finalized in this Treasury Decision. Written comments on the 2018 proposed regulations were received and are available at *www.regulations.gov* or upon request. After consideration of the comments received, the chapter 3 proposed regulations and the chapter 4 proposed regulations are adopted, with modifications (including the modifications generally described in the preceding paragraph to take into account certain provisions in the 2018 proposed regulations), as final regulations in this Treasury Decision, and the corresponding temporary regulations are removed.

This document also includes a limited number of technical corrections and conforming changes to final regulations under chapters 3, 4, and 61.

Summary of Comments and Explanation of Revisions

I. Requirement for a Withholding Agent To Obtain a Foreign Taxpayer Identification Number and Date of Birth

Section 1.1441–1T(e)(2)(ii)(B) provides that, beginning January 1, 2017, a beneficial owner withholding certificate provided to document an account that is maintained at a U.S. branch or office of a financial institution is required to contain the account holder's foreign taxpayer identification

[1] The notice of proposed rulemaking also included proposed regulations under chapter 4 relating to certain requirements for sponsoring entities, which regulations were finalized on March 25, 2019, in a Treasury Decision (TD 9852) published in the **Federal Register** (84 FR 10976).

number (foreign TIN) and, in the case of an individual account holder, the date of birth, in order for the withholding agent to treat such withholding certificate as valid. A withholding certificate that does not contain the account holder's date of birth will not be invalid if the withholding agent has the account holder's date of birth in its files. If an account holder does not have a foreign TIN, the account holder is required to provide a reasonable explanation for its absence. A foreign TIN obtained by a withholding agent is required to be reported on Form 1042–S (Foreign Person's U.S. Source Income Subject to Withholding).

After publication of the chapter 3 temporary regulations, the Treasury Department and the IRS received comments about the difficulty of obtaining foreign TINs and dates of birth from account holders by January 1, 2017. Several comments requested a delay of one or two years before the foreign TIN and date of birth requirements apply. One comment requested a one-year extension of the validity period for withholding certificates that are scheduled to expire on or before December 31, 2017 (unless there is a change in circumstance). Several comments noted that the requirement to obtain additional information from customers who had recently provided a withholding certificate to a withholding agent may damage the withholding agent's customer relationships, and suggested transitional rules to ease the redocumentation burden. These comments suggested various phase-in rules that would allow a withholding agent to treat a withholding certificate provided before the foreign TIN and date of birth requirements apply that would otherwise be valid as continuing to be valid until the withholding certificate otherwise expires. For example, for withholding certificates that have a three-year validity period, comments suggested that a withholding agent be required to obtain a foreign TIN and date of birth at the end of the three-year period. For withholding certificates that are valid indefinitely, comments suggested that withholding agents be allowed two or three years to collect new withholding certificates with a foreign TIN and date of birth.

Comments requested that a withholding certificate not be treated as invalid if the withholding agent obtains an account holder's foreign TIN and date of birth in any manner (for example, orally, in a written statement, or otherwise in account files). Comments also requested clarifications of terms used in § 1.1441–1T(e)(2)(ii)(B). Additionally, comments requested clarification of what constitutes a reasonable explanation for the absence of a foreign TIN.

Two comments requested that a withholding agent's failure to obtain an account holder's foreign TIN or date of birth not cause a withholding agent to treat a withholding certificate as invalid and withhold on payments made to the account holder. One comment suggested that an information reporting penalty apply instead. Another comment requested that the IRS waive penalties for a failure to include a foreign TIN on Form 1042–S for 2017 and 2018 under sections 6721 and 6722 (relating to penalties for failing to file correct information returns or to furnish correct payee statements, respectively).

In response to these comments, the Treasury Department and the IRS issued Notice 2017–46, which provides that the Treasury Department and the IRS intend to amend § 1.1441–1T(e)(2)(ii)(B) to generally narrow its application and provide additional time for a withholding agent to collect a foreign TIN (or a reasonable explanation for the absence of a foreign TIN) and date of birth from an account holder. Notice 2017–46 provides a one-year delay in the implementation of the foreign TIN and date of birth requirements for payments made on or after January 1, 2018 (rather than payments made on or after January 1, 2017). Notice 2017–46 also provides transitional rules that phase in the requirement to obtain a foreign TIN for withholding certificates provided before January 1, 2018. These transitional rules generally allow a withholding agent to continue to treat an otherwise valid withholding certificate as valid even if it does not contain a foreign TIN (or a reasonable explanation for the absence of a foreign TIN) until January 1, 2020 (provided there is no change in circumstance and the withholding certificate does not expire). For payments made on or after January 1, 2020, the transitional rules permit a withholding agent to treat a withholding certificate obtained before January 1, 2018, as valid if the withholding agent obtains the account holder's foreign TIN on a written statement or if the withholding agent otherwise has the account holder's foreign TIN in the withholding agent's files (provided there is no change in circumstance that requires a revised withholding certificate and the withholding certificate does not expire). These transitional rules were intended to align with the transitional period (the end of 2019, as also provided in Notice 2017–46) permitted for reporting Model 1 FFIs to obtain and report required U.S. TINs for their preexisting accounts that are U.S. reportable accounts.

Notice 2017–46 also includes exceptions for an account holder that is (i) resident in a jurisdiction identified by the IRS on a list of jurisdictions that do not issue foreign TINs, (ii) a government, international organization, foreign central bank, or resident of a U.S. territory, or (iii) resident in a jurisdiction with which the United States does not have an agreement relating to the exchange of tax information in force. In addition, the notice limits the requirement to obtain a foreign TIN and date of birth to payments of U.S. source income reportable on Form 1042–S.

Consistent with § 1.1441–1T(e)(2)(ii)(B), Notice 2017–46 provides that the foreign TIN and date of birth requirements apply for purposes of determining the validity of a withholding certificate. These final regulations do not adopt the comment suggesting that an information reporting penalty that is imposed on the withholding agent should apply rather than treating the withholding certificate as invalid and thereby requiring that withholding at the full 30-percent rate be applied on payments to the account holder that are reportable on Form 1042–S. The Treasury Department and the IRS determined that it is more appropriate to apply the consequences of noncompliance to the account holder that remains insufficiently documented rather than imposing a penalty on the withholding agent. Further, the amount that may be assessed based on a penalty for incorrect information reporting is in general small compared to the withholding that would result from an invalid withholding certificate and therefore is unlikely to be a sufficient incentive for an account holder to provide the missing information in many cases.

After the publication of Notice 2017–46, some jurisdictions with laws that restrict the collection or disclosure of foreign TINs of their residents requested that their residents not be required to provide foreign TINs to withholding agents for purposes of § 1.1441–1T(e)(2)(ii)(B). In response to those requests, the Treasury Department and the IRS issued Notice 2018–20, which provides that the IRS intends to expand its list of jurisdictions that do not issue foreign TINs to their residents to include jurisdictions that request to be included on the list, even if the jurisdiction issues foreign TINs to its residents. The list of jurisdictions for which a withholding agent is not required to collect a foreign TIN of a resident in such jurisdiction is available

at *https://www.irs.gov/businesses/corporations/list-of-jurisdictions-that-do-not-issue-foreign-tins* (or at any successor website or as provided in subsequent published guidance).

These final regulations incorporate the chapter 3 temporary regulations and the provisions in Notice 2017–46 and Notice 2018–20 with minor changes. Comments received after the publication of those notices are described in the following paragraphs.

Several comments requested that withholding agents be permitted to obtain a foreign TIN through other means (such as orally, on a statement, or from the withholding agent's files) when it is not provided on a withholding certificate signed on or after January 1, 2018 (rather than only withholding certificates signed before January 1, 2018, as provided in Notice 2017–46). One of those comments noted that a foreign TIN in a withholding agent's files may have been collected orally. While withholding agents may rely on foreign TINs in their files for withholding certificates signed before January 1, 2018 without investigating whether they were obtained orally, the Treasury Department and the IRS have determined that this allowance should be limited to the transition period because an oral statement does not provide adequate assurance of accuracy and may raise recordkeeping concerns. However, to provide flexibility for withholding agents, the Treasury Department and the IRS have determined that a separate written statement is an acceptable way for a withholding agent to collect an account holder's foreign TIN, provided that the account holder represents its foreign TIN in a signed written statement that acknowledges that such statement is a part of the withholding certificate and the withholding agent associates the statement with the account holder's withholding certificate. While the Treasury Department and the IRS expect that withholding agents will generally obtain foreign TINs on withholding certificates, this allowance permits withholding agents to cure incomplete withholding certificates by obtaining the foreign TIN on a separate statement rather than having to obtain a new withholding certificate. The requirement that the signed written statement include an acknowledgment that such statement is part of the withholding certificate ensures that the statement is subject to penalties of perjury to the same extent as any other information provided on the withholding certificate.

A comment requested an exception to the foreign TIN requirement for ''onshore accounts that would, by analogy, qualify as excluded financial accounts.'' These final regulations define the term ''account'' for purposes of § 1.1441–1(e)(2)(ii)(B) by cross-referencing the definition of a financial account under § 1.1471–5(b), thereby incorporating the exceptions provided in that paragraph. Therefore, the Treasury Department and the IRS do not believe that additional changes are needed to the definition.

The same comment requested the elimination of the foreign TIN requirement for a beneficial owner withholding certificate of a foreign financial institution (FFI) because jurisdictions with a reciprocal Model 1 IGA may not need the foreign TINs of financial institutions. This comment is not adopted because there is no exception for an account held by a financial institution in the Model 1 IGA jurisdiction in the definition of the term ''FATCA partner reportable account'' (which defines accounts with respect to which the United States provides information to the partner jurisdiction).

These final regulations clarify the application of the exception to the requirement that a withholding certificate include a foreign TIN for an account holder that is a government, international organization, foreign central bank, or resident of a U.S. territory by adding an example specifying that an account holder may claim foreign government status either under section 892 or otherwise when the withholding agent may rely upon a claim of exemption either under § 1.1441–8 (generally on an IRS Form W–8–EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting) or under § 1.1441–7 (generally on an IRS Form W–8BEN–E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)).

These final regulations also clarify the standard of knowledge applicable to a date of birth by providing that a withholding agent may rely on a date of birth provided on a withholding certificate unless it knows or has reason to know that the date of birth is incorrect. This is the same standard of knowledge applicable to foreign TINs. Finally, these final regulations incorporate the allowance in the instructions for Form W–8 that a reasonable explanation may be provided on a separate attached statement associated with the withholding certificate.

II. Nonqualified Intermediary Withholding Statements

Under the chapter 3 regulations, a nonqualified intermediary is generally required to provide to a withholding agent a Form W–8IMY (Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting), a withholding statement, and the documentation for each payee for which the intermediary receives a payment. A withholding statement must allocate the payment to each payee and provide each payee's name, address, TIN (if any), type of documentation provided, and type of recipient (applying the recipient category codes listed on Form 1042–S). Because this information may also be included on a payee's documentation that is associated with the withholding statement, the chapter 3 temporary regulations provide that a nonqualified intermediary may provide a withholding statement that does not include all of the information described in the preceding sentence, provided that this information can be found on withholding certificates associated with the nonqualified intermediary withholding statement and certain other requirements are met. One of those requirements is that the nonqualified intermediary represent to the withholding agent that the information on the withholding certificates associated with the withholding statement is not inconsistent with any other account information the nonqualified intermediary has for purposes of determining the withholding rate applicable to each payee.

A comment requested clarification of the standard of knowledge applicable to a nonqualified intermediary for purposes of the representation that the information on the payees' withholding certificates is not inconsistent with any other account information the nonqualified intermediary has for purposes of determining the withholding rate applicable to each payee. These final regulations clarify that the general standards of knowledge that are applicable to withholding agents apply to a nonqualified intermediary for reliance on payee documentation for purposes of making the representation described in the preceding sentence.

As noted in the first paragraph of this Part II, a nonqualified intermediary must provide on its withholding statement the recipient category code for each payee. A comment noted that nonqualified intermediaries generally

do not have familiarity with determining the appropriate chapter 4 recipient code for Form 1042–S reporting purposes because nonqualified intermediaries generally do not file Form 1042–S and the chapter 4 recipient categories listed on Form 1042–S differ from the chapter 4 status categories listed on a Form W–8 that may be provided by a payee. Because a withholding agent making a payment to the nonqualified intermediary is required to file Form 1042–S, the comment suggested that the withholding agent is better able to determine the appropriate chapter 4 recipient code than a nonqualified intermediary. The comment recommended that the requirement for chapter 4 recipient codes be eliminated for certain withholding statements or that the IRS provide information on the relationship between chapter 4 recipient status on Forms W–8 and Form 1042–S. The Treasury Department and the IRS have determined that it is important to continue to obtain chapter 4 recipient codes but agree with the comment that withholding agents may be better able to determine the appropriate chapter 4 recipient code than a nonqualified intermediary. In response to the comment, these final regulations provide that a nonqualified intermediary may provide a withholding statement that does not include a chapter 4 recipient code for one or more payees if the withholding agent is able to determine the appropriate recipient code based on other information included on, or associated with, the withholding statement or that is otherwise contained in the withholding agent's records with respect to the payee. *See* § 1.1441–1(e)(3)(iv)(C)(*3*)(*ii*).

The provisions described in this Part II also apply to nonqualified intermediary withholding statements associated with withholdable payments under chapter 4 by cross-reference to § 1.1441–1(e)(3)(iv)(C)(*3*). *See* § 1.1471–3(c)(3)(iii)(B)(*5*).

III. Electronic Signatures for Purposes of Chapters 3 and 4

Section 1.1441–1T(e)(4)(i)(B) permits a withholding agent to accept an electronically signed withholding certificate if the withholding certificate reasonably demonstrates to the withholding agent that it has been electronically signed by the recipient identified on the form or a person authorized by the recipient to sign the form. The regulation includes an example that illustrates when a withholding agent may treat a withholding certificate as validly signed based on a review of a withholding certificate that reasonably demonstrates that it has been electronically signed (as opposed to appearing to have a typed name as a signature). This provision applies in addition to the allowance provided under § 1.1441–1(e)(4)(iv) for a withholding agent to establish its own system for a beneficial owner or payee to electronically furnish to the withholding agent (and sign electronically) a Form W–8. A comment requested that the example be removed because it could be interpreted as providing a minimum standard for accepting an electronically signed withholding certificate and may become inconsistent with future changes in technology for providing electronic signatures. Two comments also requested that the final regulations allow reliance on an electronically signed Form W–9 (Request for Taxpayer Identification Number and Certification), and one comment requested that a withholding agent be permitted to rely on a withholding certificate collected through an electronic system maintained by a nonqualified intermediary or flow-through entity if the nonqualified intermediary or flow-through entity provides a written statement confirming that the electronic system meets the requirements of § 1.1441–1(e)(4)(iv), as described in Notice 2016–08, 2016–6 I.R.B. 304.

The Treasury Department and the IRS are of the view that a clear illustration of when a withholding agent can readily determine that a withholding certificate is electronically signed under current technology that is frequently used in the industry is warranted as it demonstrates the difference between an acceptable electronic signature in contrast to merely having a printed name or unrecognizable notation in place of a name. Further, § 1.1441–1T(e)(4)(i)(B) clearly states that this illustration is simply an example of one set of facts that satisfies the rule. Thus, this example is retained in these final regulations. To provide additional flexibility, these final regulations permit a withholding agent to consider, in addition to the withholding certificate itself, other documentation or information the withholding agent has that supports that a withholding certificate was electronically signed, provided that the withholding agent does not have actual knowledge that the documentation or information is incorrect. These final regulations do not add a specific allowance for Form W–9 in § 1.1441–1(e)(4)(i)(B) because rules regarding reliance on an electronically signed Form W–9 are provided in separate guidance, such as the Requestor Instructions to Form W–9. Additionally, in light of the general rule in § 1.1441–1(e)(4) that provides that the rules in such paragraph are applicable to Form W–8, Form 8233, and certain documentary evidence, the specific exclusion in § 1.1441–1T(e)(4)(i)(B) for Form W–9 is unnecessary and therefore not included in these final regulations.

The provisions described in this Part III also apply to chapter 4 by cross-reference to § 1.1441–1(e)(4)(i)(B). *See* § 1.1471–3(c)(3)(i).

IV. Withholding Certificates and Withholding Statements Furnished Through a Third Party Repository for Purposes of Chapters 3 and 4

Section 1.1441–1T(e)(4)(iv)(E) provides the circumstances under which a withholding certificate (and in certain circumstances a withholding statement) received electronically by a withholding agent from a third party repository will be considered furnished to the withholding agent by the person whose name is on the certificate. These circumstances include that a withholding agent be able to associate a withholding certificate received from a third party repository with a specific request for the withholding certificate and a specific authorization from the person (or agent of the person) providing the certificate with respect to each specific payment or each specific obligation maintained by the withholding agent. A comment requested clarification on whether a specific request and specific authorization is required each time a withholding agent makes a payment. The standards for requiring a separate request and separate authorization to obtain a withholding certificate from a third party repository were not intended to deviate from the standards for when a withholding agent may continue to rely on a withholding certificate furnished directly by the person providing the withholding certificate (or such person's agent). Therefore, these final regulations clarify that a separate request and separate authorization to obtain a withholding certificate from a third party repository is not required for each payment made by a withholding agent when the withholding agent is otherwise permitted to rely on the withholding certificate on an obligation-by-obligation basis or as otherwise permitted under § 1.1441–1(e)(4)(ix).

Other comments requested that § 1.1441–1T(e)(4)(iv)(E) specifically provide that a withholding agent may rely on a Form W–9 obtained from a third party repository. However, the

validity requirements for reliance on a Form W–9 are contained in the section 3406 regulations (and related guidance under that section) and are not generally amended solely for purposes of a withholding agent's reliance in the case of a payment subject to withholding under section 1441. As a result, these final regulations are not amended to add an allowance for a withholding agent's reliance on a Form W–9 obtained from a third party repository, and taxpayers should continue to refer to the other guidance applicable to reliance on a Form W–9. Additionally, the specific exclusion in § 1.1441–1T(e)(4)(iv)(E) for Form W–9 is not included in these final regulations for the same reason that the exclusion for Form W–9 is not included in § 1.1441–1(e)(4)(i)(B), as described in Part III of this Summary of Comments and Explanation of Revisions of this preamble.

As the final chapter 4 regulations adopted by this Treasury Decision cross reference the final chapter 3 regulations for when a withholding agent may treat a withholding certificate received from a third party repository as provided by a payee, the above-described modifications to § 1.1441–1T(e)(4)(iv)(E) also apply to a withholding certificate or withholding statement relied upon for chapter 4 purposes.

V. Limitation on Benefits for Treaty Claims on Withholding Certificates and Treaty Statements Provided With Documentary Evidence for Purposes of Chapter 3

Under the regulations under chapter 3, in order for a withholding agent to apply a reduced rate of withholding based on an entity's claim for benefits under a tax treaty, the withholding agent must obtain either (i) a withholding certificate that includes a treaty claim on the certificate, or (ii) documentary evidence and a separate treaty statement. Under the chapter 3 temporary regulations, a treaty statement must, among other things, identify the specific limitation on benefits (LOB) provision of the applicable treaty on which the beneficial owner relies to claim the treaty benefit. Section 1.1441–6(b)(1) provides that generally, absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if the withholding agent can reliably associate the payment with a beneficial owner withholding certificate, or, in the case of a payment made outside the United States with respect to an offshore obligation, documentary evidence and a treaty statement. This general standard of knowledge is modified in two situations in the chapter 3 temporary regulations. First, § 1.1441–6T(b)(1)(ii) provides that a withholding agent's reason to know that a beneficial owner's claim to a reduced rate of withholding under an income tax treaty is unreliable or incorrect includes when the beneficial owner claims benefits under an income tax treaty that does not exist or is not in force, and that a withholding agent may determine whether a tax treaty exists or in force by checking a list maintained on the IRS website. Second, § 1.1441–6T(b)(1)(i) provides that a withholding agent may rely on a beneficial owner's claim regarding its reliance on a specific LOB provision absent actual knowledge that such claim is unreliable or incorrect.

The chapter 3 temporary regulations also add a validity period of three years for a treaty statement provided with documentary evidence in order to provide parity with the validity period for a withholding certificate containing a treaty claim, enhance the reliability and increase the accuracy of the claims, and help ensure that information is updated when ownership thresholds or activity requirements in a particular treaty have changed. The chapter 3 temporary regulations provide a transitional rule under which accounts opened and documented with documentary evidence and a treaty statement prior to January 6, 2017 (preexisting accounts) will expire on January 1, 2019.

A comment requested that the standard of knowledge applicable to a LOB provision should be limited to determining whether a tax treaty exists and is in force. The Treasury Department and IRS are of the view that such limitation would be inappropriate because a determination of whether a treaty exists and is in force is a general rule applicable to a treaty claim and not specifically related to a limitation on benefits provision. Moreover, the actual knowledge standard applicable to a limitation on benefits provision is already sufficiently limited as it should not generally require a withholding agent to obtain facts it does not normally request or render a conclusion it could not readily make from the information it already has otherwise collected. Thus, this comment is not adopted, and these final regulations adopt the standard of knowledge in the chapter 3 temporary regulations for reliance on a LOB provision associated with a treaty claim made on a withholding certificate without modification. *See* § 1.1441–6(b)(1)(i) and (ii).

Comments also noted the burden of complying with the new LOB requirement for treaty statements associated with documentary evidence, including difficulties in obtaining new treaty statements by the January 1, 2019, expiration date given the large number of account holders providing treaty statements before January 6, 2017. The comments requested an additional one-year period for withholding agents to obtain new treaty statements with LOB representations to replace treaty statements obtained before January 6, 2017. A comment also requested a further explanation of the reasoning for the three-year validity period for a treaty statement.

In response to these comments, the 2018 proposed regulations include revisions to the LOB requirement and validity period for treaty statements in the chapter 3 temporary regulations. The 2018 proposed regulations extend the time for withholding agents to obtain treaty statements with the specific LOB provisions identified for preexisting accounts to January 1, 2020 (rather than the January 1, 2019 date included in the chapter 3 temporary regulations). These final regulations incorporate this extension for preexisting accounts.

The 2018 proposed regulations also add an exception to the three-year validity period for treaty statements associated with documentary evidence provided by tax-exempt organizations (other than tax-exempt pension trusts or pension funds), governments, and publicly traded corporations. With this exception, the validity period for treaty statements is more closely aligned with the validity period for treaty claims on withholding certificates. The Treasury Department and the IRS have also determined that, apart from this exception, three years is an appropriate validity period for treaty statements and treaty claims because it requires the entity to periodically redetermine whether it continues to meet the LOB provision.

A comment to the 2018 proposed regulations requested that the exception to the three-year validity period for treaty statements provided by tax-exempt organizations, governments, and publicly traded corporations, be extended to apply to withholding certificates used by such entities to make treaty claims. However, a withholding certificate contains not only a treaty claim, but also information and representations about the entity making the treaty claim (including representations relevant for chapter 4 purposes). Therefore, it is not appropriate for this exception to be

extended to withholding certificates used to make treaty claims. Therefore, these final regulations do not adopt this comment and generally incorporate the same exception to the three-year validity period for treaty statements that is provided in the 2018 proposed regulations. However, these final regulations do not include the record retention requirement included in the 2018 proposed regulations for treaty statements from publicly traded corporations because the Treasury Department and the IRS have determined that a retention requirement in this case is unnecessary for information that is publicly available.

These final regulations also include the same modification included in the 2018 proposed regulations to correct an inadvertent omission of the applicable standard for a withholding agent's reliance on the beneficial owner's identification of a LOB provision on a treaty statement, incorporating the same actual knowledge standard that applies to a withholding certificate used for a treaty claim.

A qualified intermediary, withholding foreign partnership, and withholding foreign trust may rely on the amendments described in this Part V until they are incorporated into the applicable withholding agreement.

VI. Permanent Residence Address Subject To Hold Mail Instruction for Purposes of Chapters 3 and 4

Sections 1.1441–1T(c)(38)(ii) and 1.1471–1T(b)(99) allow a withholding agent to treat an address provided by a beneficial owner or account holder as that person's permanent residence address even if the address is subject to a hold mail instruction, provided that the withholding agent obtains documentary evidence establishing the person's residence in the country in which the person claims to be a resident for tax purposes. Comments requested that the hold mail rule be eliminated, and if it is not eliminated that a withholding agent be allowed to rely on documentary evidence establishing a person's foreign status (rather than the person's residency in a particular country) unless the person is claiming treaty benefits, and requested clarification on the definition of the term ''hold mail instruction'' and the categories of documentary evidence that can be relied upon.

The Treasury and the IRS have determined that the hold mail rule is necessary in order to ensure that taxpayers identify a true permanent residence address. In response to the other comments, the 2018 proposed regulations included proposed modifications to the requirements for reliance on an address subject to a hold mail instruction. The 2018 proposed regulations provide that the documentary evidence required in order to treat an address that is provided subject to a hold mail instruction as a permanent residence address is documentary evidence that supports the person's claim of foreign status or, for a person claiming treaty benefits, documentary evidence that supports the person's residence in the country where the person claims treaty benefits. Regardless of whether the person claims treaty benefits, the 2018 proposed regulations allow a withholding agent to rely on documentary evidence described in § 1.1471–3(c)(5)(i), without regard to whether the documentation contains a permanent residence address.

A comment also requested the removal of any limitations on reliance on a permanent residence address subject to a hold mail instruction because many account holders prefer to receive electronic correspondence rather than paper mail. In response to this comment, the 2018 proposed regulations added a definition of a hold mail instruction to clarify that a hold mail instruction does not include a request to receive all correspondence (including account statements) electronically. Because no comments were received on the 2018 proposed regulations specific to the modified requirements for reliance on an address subject to a hold mail instruction, those provisions of the 2018 proposed regulations are included in these final regulations. A qualified intermediary, withholding foreign partnership, and withholding foreign trust may rely on the amendments described in this Part VI until they are incorporated into the applicable withholding agreement.

VII. Technical Corrections, Conforming Change, and Applicability Dates

The final regulations in TD 9808 modified § 1.1441–1(e)(3)(iv)(B) (general requirements for withholding statements provided by nonqualified intermediaries) and (f)(1) (applicability date) of the chapter 3 regulations. The last sentence of modified § 1.1441–1(e)(3)(iv)(B) and the first sentence of (f)(1), however, include typographical errors, which are corrected in these final regulations. In addition, the final regulations in TD 9808 modified § 1.1461–1(c)(1)(i) to allow a withholding agent to furnish a recipient copy of Form 1042–S electronically. These final regulations make a conforming change to § 1.6049–6(e)(4) to allow a payor to furnish a recipient copy of Form 1042–S electronically to a nonresident alien individual that is paid deposit interest reportable under § 1.6049–4(b)(5). To clarify that the 90-day grace period applies to a change in circumstance that results from a jurisdiction ceasing to be treated as having an IGA in effect, the text in § 1.1471–3T(c)(6)(ii)(E)(*4*) is moved to § 1.1471–3(c)(6)(ii)(E)(*3*) (which provides the 90-day period for changes in circumstance). Finally, these final regulations make ministerial changes to the applicability date provision in § 1.1441–1(f) to combine the applicability dates of these final regulations with regulations issued under section 871(m) that previously were contained in § 1.1441–1(f)(3) and (f)(5) in § 1.1441–1(f)(3), and clarify the applicability dates of §§ 1.1441–2 (with respect to certain payments) and 1.1441–6 (with respect to identification of limitation on benefits provisions).

Special Analyses

I. Regulatory Planning and Review

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

These final regulations reduce certain information collection burdens that were included in the chapter 3 temporary regulations. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), these reductions in reporting burdens will be reflected in the PRA submissions associated with Forms W–8 and 1042–S.

In response to comments on the chapter 3 proposed regulations, these final regulations reduce the information collection burden by permitting taxpayers to use alternative methods of providing documentation to withholding agents and to provide less information on certain documentation. These final regulations also reduce information collection burden by permitting taxpayers to provide certain documentation in a less burdensome manner. The provisions reducing collections of information are in §§ 1.1441–1(e)(2)(ii)(B), (e)(3)(iv)(C)(*3*)(*ii*) and (e)(4)(i)(B) and 1.6049–6(e)(4). Section 1.1441–1(e)(2)(ii)(B) allows payees to provide to a withholding agent their foreign TIN on a separate statement rather than on a withholding certificate, for withholding certificates provided after January 1,

2018. This allowance provides flexibility for a payee to use other methods of transmitting information and permits a withholding agent to continue to treat a withholding certificate as valid rather than requesting a new withholding certificate from the payee. Section 1.1441–1(e)(3)(iv)(C)(*3*)(*ii*) permits nonqualified intermediaries to provide withholding statements to withholding agents that omit certain information (a chapter 4 recipient code) that was previously required. This allowance provides more flexibility for a nonqualified intermediary to provide to a withholding agent a Form W–8IMY that is treated as valid. Section 1.1441–1(e)(4)(i)(B) provides an alternative method for a withholding agent to determine whether a withholding certificate is electronically signed, which provides flexibility for withholding agents that are verifying the validity of such certificates. Section 1.6049–6(e)(4) permits withholding agents to provide Form 1042–S to a payee electronically rather than in hard copy.

The reductions in reporting burden provided in these final regulations will be reflected in the PRA submission associated with Forms W–8BEN, W–8BEN–E, W–8ECI, W–8EXP, and W–8IMY (OMB control number 1545–1621) and the PRA submission associated with Form 1042–S (OMB control number 1545–0096).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

III. Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6).

This rule primarily affects withholding agents, such as financial institutions, that make U.S.-connected payments to foreign payees. For purposes of the RFA, small financial institutions are those with less than $600 million in assets. The Treasury Department and the IRS do not have data readily available to assess the number of small entities potentially affected by these regulations. Even if a substantial number of domestic small entities were affected by the final regulations, the Treasury Department and the IRS have determined that the economic impact to these entities will not be significant. These final regulations reduce the collection of information requirements that are currently applicable under existing rules under chapters 3 and 4 in TDs 9808 and 9809. Those rules include detailed requirements for how a withholding agent identifies a payee, documents the payee's status, and reports to the IRS and the payee. Those information collections were certified previously by the Treasury Department and the IRS as not resulting in a significant economic impact on a substantial number of small business entities. The final regulations include a limited number of changes to the temporary regulations that reduce the burden of withholding agents. The burden-reducing revisions of these final regulations provide benefits for both small and large entities because these final regulations allow a withholding agent to collect a foreign TIN from a payee on a separate statement; allow certain intermediaries to provide withholding statements that omit certain information (specifically, a chapter 4 recipient code) that was previously required; provide an alternative method for a withholding agent to determine whether a withholding certificate is electronically signed; and allow withholding agents to provide payee statements electronically rather than in paper form.

Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Association for comment on its impact on small business, and no comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (titled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final 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.

Drafting Information

The principal authors of these regulations are Charles Rioux, Nancy Erwin, and John Sweeney, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

Effect on Other Documents

Section 4 of Notice 2016–08 (2016–6 I.R.B. 304) is obsolete as of January 2, 2020.

Sections 4 and 5 of Notice 2017–46 (2017–41 I.R.B. 275) are obsolete as of January 2, 2020.

Statement of Availability of IRS Documents

The IRS notices cited in this preamble are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1441–0 is amended by:

■ 1. Revising the entry for § 1.1441–1(e)(2)(ii)(B).

■ 2. Adding entries for § 1.1441–1(e)(2)(ii)(B)(*1*) through (*6*) and (e)(4)(iv)(F).
■ 3. Revising the entry for § 1.1441–1(f)(3).

The revision and additions read as follows:

§ 1.1441–0 Outline of regulation provisions for section 1441.

* * * * *

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) Requirement to collect foreign TIN and date of birth.

(*1*) In general.

(*2*) Definitions.

(*3*) Requirements for reasonable explanation of the absence of a foreign TIN.

(*4*) Exceptions to the requirement to obtain a foreign TIN (or reasonable explanation for its absence).

(*i*) Jurisdictions with which the United States does not have an agreement relating to the exchange of tax information.

(*ii*) Jurisdictions that do not issue foreign TINs.

(*iii*) Account holder that is a government, international organization, foreign central bank of issue, or resident of a U.S. territory.

(*5*) Transition rules for the foreign TIN requirement for a beneficial owner withholding certificate signed before January 1, 2018.

(*i*) Payments made before January 1, 2020.

(*ii*) Payments made after December 31, 2019.

(*iii*) Limitation on standard of knowledge.

(*6*) Transition rule for the date of birth requirement for a beneficial owner withholding certificate signed before January 1, 2018.

* * * * *

(4) * * *

(iv) * * *

(F) Examples.

(1) Example 1.

(2) Example 2.

(3) Example 3.

* * * * *

(f) * * *

(1) In general.

* * * * *

(3) Special rules related to section 871(m).

* * * * *

■ **Par. 3.** Section 1.1441–1 is amended by:

■ 1. Revising paragraphs (b)(7)(ii)(B), (c)(2)(ii), (c)(3)(ii), (c)(38), and (e)(2)(ii)(B).
■ 2. Removing ''§ 1.1471–3(c)(3)(ii)(B)(*2*)(*iii*)'' and adding in its place ''§ 1.1471–3(c)(3)(iii)(B)(*2*)(*iii*)'' at the end of the last sentence of paragraph (e)(3)(iv)(B).
■ 3. Revising paragraphs (e)(3)(iv)(C)(*3*), (e)(4)(i)(B), and (e)(4)(ii)(A)(*2*).
■ 4. Adding a sentence to the end of paragraph (e)(4)(ii)(D)(*1*).
■ 5. Revising paragraphs (e)(4)(iv)(C) and (E).
■ 6. Adding paragraph (e)(4)(iv)(F).
■ 7. Revising paragraphs (f)(1) and (3).
■ 8. Removing paragraphs (f)(4) and (5).

The revisions and additions read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *

(7) * * *

(ii) * * *

(B) *Special rules for establishing that income is effectively connected with the conduct of a U.S. trade or business.* A withholding certificate received after the date of payment to claim under § 1.1441–4(a)(1) that income is effectively connected with the conduct of a U.S. trade or business will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. The signed affidavit must also state that the beneficial owner has included the income on its U.S. income tax return for the taxable year in which it is required to report the income or, alternatively, that the beneficial owner intends to include the income on a U.S. income tax return for the taxable year in which it is required to report the income and the due date for filing such return (including any applicable extensions) is after the date on which the affidavit is signed. A certificate received within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain the affidavit described in the preceding sentences.

* * * * *

(c) * * *

(2) * * *

(ii) *Dual residents.* Individuals will not be treated as U.S. persons for purposes of this section for a taxable year or any portion of a taxable year for which they are a dual resident taxpayer (within the meaning of § 301.7701(b)–7(a)(1) of this chapter) who is treated as a nonresident alien pursuant to § 301.7701(b)–7(a)(1) of this chapter for purposes of computing their U.S. tax liability.

(3) * * *

(ii) *Nonresident alien individual.* The term *nonresident alien individual* means persons described in section 7701(b)(1)(B), alien individuals who are treated as nonresident aliens pursuant to § 301.7701(b)–7 of this chapter for purposes of computing their U.S. tax liability, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under § 301.7701(b)–1(d) of this chapter. An alien individual who has made an election under section 6013(g) or (h) to be treated as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

* * * * *

(38) *Permanent residence address*—(i) *In general.* The term *permanent residence address* is the address in the country of which the person claims to be a resident for purposes of that country's income tax. In the case of a withholding certificate furnished in order to claim a reduced rate of withholding under an income tax treaty, whether a person is a resident of a treaty country must be determined in the manner prescribed under the applicable treaty. See § 1.1441–6(b). The address of a financial institution with which the person maintains an account, a post office box, or an address used solely for mailing purposes is not a permanent residence address unless such address is the only address used by the person and appears as the person's registered address in the person's organizational documents. Further, an address that is provided subject to a hold mail instruction (as defined in paragraph (c)(38)(ii) of this section) is not a permanent residence address unless the person provides the documentary evidence described in paragraph (c)(38)(ii) of this section. If the person is an individual who does not have a tax residence in any country, the permanent residence address is the place at which the person normally resides. If the person is an entity and does not have a tax residence in any country, then the permanent residence address of the entity is the place at which the person maintains its principal office.

(ii) *Hold mail instruction.* The term *hold mail instruction* means a current

instruction by a person to keep the person's mail until such instruction is amended. An instruction to send all correspondence electronically is not a hold mail instruction. An address that is subject to a hold mail instruction may be used as a permanent residence address if the person has also provided the withholding agent with documentary evidence described in § 1.1471–3(c)(5)(i) (without regard to the requirement in § 1.1471–3(c)(5)(i) that the documentary evidence contain a permanent residence address). The documentary evidence described in § 1.1471–3(c)(5)(i) must support the person's claim of foreign status or, in the case of a person that is claiming treaty benefits, must support residence in the country where the person is claiming a reduced rate of withholding under an income tax treaty. If, after a withholding certificate is provided, a person's permanent residence address is subsequently subject to a hold mail instruction, the addition of the hold mail instruction is a change in circumstances requiring the person to provide the documentary evidence described in this paragraph (c)(38)(ii) in order for a withholding agent to use the address as a permanent residence address.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) *Requirement to collect foreign TIN and date of birth*—(*1*) *In general.* In addition to the general requirements of paragraph (e)(2)(ii)(A) of this section, except as provided in paragraphs (e)(2)(ii)(B)(*4*), through (*6*) of this section, a beneficial owner withholding certificate provided by an account holder to document an account that is maintained at a U.S. branch or office of a withholding agent that is a financial institution is valid for purposes of a payment of U.S. source income reportable on Form 1042–S (before the application of this paragraph (e)(2)(ii)(B)) made on or after January 1, 2018, only if it contains the account holder's taxpayer identification number issued by the account holder's jurisdiction of tax residence (foreign TIN) or a reasonable explanation for the absence of a foreign TIN (as described in paragraph (e)(2)(ii)(B)(*3*) of this section) and, in the case of an individual account holder, the account holder's date of birth, unless the withholding agent has the account holder's date of birth in its files. A withholding agent is permitted to obtain a foreign TIN on a written statement signed by an account holder that includes an acknowledgment that such statement is part of the withholding certificate if the withholding agent associates such statement with the account holder's withholding certificate. A withholding agent will be treated as having the account holder's date of birth in its files if it obtains the date of birth on a written statement (including a written statement transmitted by email) from the account holder. A withholding agent may rely on the foreign TIN and date of birth contained in the withholding certificate unless it knows or has reason to know that the foreign TIN or date of birth is incorrect. Therefore, a withholding agent will not be required to validate the format or other specifications of the foreign TIN against the applicable jurisdiction's TIN system. For purposes of this paragraph (e)(2)(ii)(B), a change of address to another jurisdiction other than the United States is a change in circumstances for purposes of a withholding agent's reliance on a foreign TIN of the account holder (or reasonable explanation for its absence).

(*2*) *Definitions.* For purposes of this paragraph (e)(2)(ii)(B), the term ''account'' means a financial account as defined in § 1.1471–5(b) (substituting ''U.S. office or branch of a financial institution'' for ''FFI''); the term ''account holder'' has the meaning described in § 1.1471–5(a)(3); and the term ''financial institution'' means an entity that is a depository institution, custodial institution, investment entity, or a specified insurance company, each as defined in § 1.1471–5(e).

(*3*) *Requirements for reasonable explanation of the absence of a foreign TIN.* A withholding agent may rely on a reasonable explanation for the absence of a foreign TIN on a beneficial owner withholding certificate only if the explanation addresses why the account holder was not issued a foreign TIN. An explanation provided in the instructions for, as applicable, Forms W–8BEN, W–8BEN–E, W–8ECI, W–8EXP, or Form W–8IMY is a reasonable explanation. If an account holder provides an explanation other than as described in the preceding sentence, the withholding agent must determine whether the explanation is reasonable. A reasonable explanation may be provided on the withholding certificate or on a separate attached statement associated with the form. A withholding agent may rely on a reasonable explanation described in this paragraph (e)(2)(ii)(B)(*3*) unless it has actual knowledge that the account holder has a foreign TIN.

(*4*) *Exceptions to the requirement to obtain a foreign TIN (or reasonable explanation for its absence)*—(*i*) *Jurisdictions with which the United States does not have an agreement relating to the exchange of tax information.* A beneficial owner withholding certificate is not required to include a foreign TIN (or reasonable explanation for its absence) for an account holder resident of a jurisdiction that is not identified, in an applicable revenue procedure (see § 601.601(d)(2) of this chapter), as a jurisdiction that has in effect with the United States an income tax or other convention or bilateral agreement relating to the exchange of tax information within the meaning of section 6103(k)(4), under which the United States agrees to provide, as well as receive, tax information. A withholding agent that applies the exception described in the preceding sentence is, however, required to obtain the foreign TIN (or reasonable explanation for its absence) of each account holder resident in a jurisdiction that is added to the list on the applicable revenue procedure, before the time for filing Form 1042–S (with any applicable extension) for payments made during the calendar year following the calendar year in which the revenue procedure was published that added the jurisdiction to the list.

(*ii*) *Jurisdictions that do not issue foreign TINs.* A beneficial owner withholding certificate is not required to include a foreign TIN (or reasonable explanation for its absence) for an account holder resident of a jurisdiction that has been identified by the IRS on a list of jurisdictions that either do not issue foreign TINs to their residents or have requested that their residents not be required to provide foreign TINs to withholding agents for purposes of this paragraph (e)(2)(ii)(B). A withholding agent that applies the exception described in the preceding sentence is, however, required to obtain the foreign TIN (or reasonable explanation for its absence) of each account holder resident in a jurisdiction that is removed from the list of jurisdictions referenced in the preceding sentence before the time for filing Form 1042–S (with any applicable extension) for payments made during the calendar year following the calendar year in which the jurisdiction is removed from the list. A list of jurisdictions that either do not issue taxpayer identification numbers to their residents or that have requested to be included on the list is available at *https://www.irs.gov/businesses/corporations/list-of-jurisdictions-that-do-not-issue-foreign-tins* (or any replacement page on the IRS website or as provided in published guidance).

(*iii*) *Account holder that is a government, international organization, foreign central bank of issue, or resident of a U.S. territory.* A beneficial owner withholding certificate is not required to include a foreign TIN (or reasonable explanation for its absence) if the withholding agent has obtained a valid withholding certificate under paragraph (e)(2)(ii)(A) of this section or other documentation on which it may rely for purposes of the section 1441 regulations to treat the account holder as a government, an international organization, a foreign central bank of issue, or a resident of a U.S. territory. Thus, for example, a withholding agent may apply the exception provided in this paragraph (e)(2)(ii)(B)(*4*)(*iii*) with respect to an account holder claiming exemption under section 892 or otherwise identifying itself as a foreign government on a beneficial owner withholding certificate when the withholding agent may rely upon the claim of exemption under § 1.1441–8(b) or the claim of status as a foreign government under § 1.1441–7(b)(1) and (2).

(*5*) *Transition rules for the foreign TIN requirement for a beneficial owner withholding certificate signed before January 1, 2018*—(*i*) *Payments made before January 1, 2020.* For payments made before January 1, 2020, an otherwise valid beneficial owner withholding certificate signed before January 1, 2018, is not treated as invalid if it does not include a foreign TIN (or a reasonable explanation for its absence) as required under paragraph (e)(2)(ii)(B) of this section until the earlier of—

(A) the expiration date of the validity period of the withholding certificate (if applicable); or

(B) the date when a change in circumstances (including for chapter 4 purposes) requires a revised withholding certificate.

(*ii*) *Payments made after December 31, 2019.* For payments made after December 31, 2019, an otherwise valid beneficial owner withholding certificate signed before January 1, 2018, is not treated as invalid if it does not include a foreign TIN (or a reasonable explanation for its absence) as required under paragraph (e)(2)(ii)(B) of this section until the earlier of the date described in paragraph (e)(2)(ii)(B)(*5*)(*i*)(*A*) or (*B*) of this section, provided the withholding agent either—

(A) obtains from the account holder its foreign TIN (or reasonable explanation for its absence) on a written statement (including a written statement transmitted by email) which the withholding agent associates with the account holder's withholding certificate, or

(B) already has the account holder's foreign TIN in the withholding agent's files, which the withholding agent associates with the account holder's withholding certificate.

(*iii*) *Limitation on standard of knowledge.* If a withholding agent maintains an account on December 31, 2017, that is documented with a valid beneficial owner withholding certificate as of that date, the withholding agent's reason to know that the foreign TIN is incorrect, or actual knowledge that an account holder has a foreign TIN despite providing a reasonable explanation as described in paragraph (e)(2)(ii)(B)(*3*) of this section, is limited to electronically searchable information (as defined in § 1.1471–1(b)(38)) that is in the withholding agent's files.

(*6*) *Transition rule for the date of birth requirement for a beneficial owner withholding certificate signed before January 1, 2018.* For an otherwise valid beneficial owner withholding certificate signed before January 1, 2018, a withholding agent is not required to treat the withholding certificate as invalid for payments made before January 1, 2019, to an account holder solely because the withholding certificate does not include the account holder's date of birth and the date of birth is not in the withholding agent's files.

(3) * * *

(iv) * * *

(C) * * *

(*3*) *Alternative withholding statement*—(i) In lieu of a withholding statement containing all of the information described in paragraph (e)(3)(iv)(C)(*1*) and (*2*) of this section, a withholding agent may accept from a nonqualified intermediary a withholding statement that meets all of the requirements of this paragraph (e)(3)(iv)(C)(*3*)(*i*) with respect to a payment. The withholding statement described in this paragraph (e)(3)(iv)(C)(*3*)(*i*) may be provided only by a nonqualified intermediary that provides the withholding agent with the withholding certificates from the beneficial owners (that is, not documentary evidence) before the payment is made.

(*A*) The withholding statement is not required to contain all of the information specified in paragraphs (e)(3)(iv)(C)(*1*) and (*2*) of this section that is also included on a withholding certificate (for example, name, address, TIN (if any), chapter 4 status, GIIN (if any)). The withholding statement is also not required to specify the rate of withholding to which each foreign payee is subject, provided that all of the information necessary to make such determination is provided on the withholding certificate. A withholding agent that uses the withholding statement may not apply a different rate from that which the withholding agent may reasonably conclude from the information on the withholding certificate.

(*B*) The withholding statement must allocate the payment to every payee required to be reported as described in paragraph (e)(3)(iv)(C)(*1*)(*ii*) of this section.

(*C*) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapters 3, 4, and 61, and section 3406.

(*D*) The withholding statement must contain a representation from the nonqualified intermediary that the information on the withholding certificates is not inconsistent with any other account information the nonqualified intermediary has for the beneficial owners for determining the rate of withholding with respect to each payee (applying the standards of knowledge applicable to a withholding agent's reliance on a withholding certificate in the regulations under section 1441 and, for a withholdable payment, the regulations under section 1471).

(*ii*) In lieu of a withholding statement that includes a recipient code for chapter 4 purposes used for filing Form 1042–S, a withholding agent may accept a nonqualified intermediary withholding statement that contains all of the information described in paragraph (e)(3)(iv)(C)(*1*) and (*2*) of this section (or an alternative withholding statement permitted under paragraph (e)(3)(iv)(C)(*3*)(i) of this section) but that does not provide a recipient code for chapter 4 purposes used for filing Form 1042–S for a payee as required in paragraph (e)(3)(iv)(C)(*2*)(*iv*) of this section if the withholding agent is able to determine such payee's recipient code based on other information included on or with the withholding statement or in the withholding agent's records with respect to the payee.

* * * * *

(4) * * *

(i) * * *

(B) *Electronic signatures.* A withholding agent, regardless of whether the withholding agent has established an electronic system pursuant to paragraph (e)(4)(iv)(A) or (e)(4)(iv)(C) of this section, may accept a withholding certificate with an electronic signature, provided the

electronic signature meets the requirements of paragraph (e)(4)(iv)(B)(*3*)(*ii*) of this section. In addition, the withholding certificate must reasonably demonstrate to the withholding agent that the form has been electronically signed by the recipient identified on the form (or a person authorized to sign for the recipient). For example, a withholding agent may treat as signed for purposes of the requirements for a valid withholding certificate, a withholding certificate that has in the signature block the name of the person authorized to sign, a time and date stamp, and a statement that the certificate has been electronically signed. However, a withholding agent may not treat a withholding certificate with a typed name in the signature line and no other information as signed for purposes of the requirements for a valid withholding certificate. A withholding agent may also rely upon, in addition to the contents of a withholding certificate, other documentation or information it has collected to support that a withholding certificate was electronically signed by the recipient identified on the form (or other person authorized to sign for the recipient), provided that the withholding agent does not have actual knowledge that the documentation or information is incorrect.

(ii) * * * (A) * * *

(*2*) *Documentary evidence for treaty claims and treaty statements.* Documentary evidence described in § 1.1441–6(c)(3) or (4) shall remain valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent, except as provided in paragraph (e)(4)(ii)(B) of this section. A statement regarding entitlement to treaty benefits described in § 1.1441–6(c)(5) (treaty statement) shall remain valid until the last day of the third calendar year following the year in which the treaty statement is provided to the withholding agent except as provided in this paragraph (e)(4)(ii)(A)(*2*). A treaty statement provided by an entity that identifies a limitation on benefits provision for a publicly traded corporation shall not expire at the time provided in the preceding sentence if a withholding agent determines, based on publicly available information at each time for which the treaty statement would otherwise be renewed, that the entity is publicly traded. Notwithstanding the second sentence of this paragraph (e)(4)(ii)(A)(*2*), a treaty statement provided by an entity that identifies a limitation on benefits provision for a government or tax-exempt organization (other than a tax-exempt pension trust or pension fund) shall remain valid indefinitely. Notwithstanding the validity periods (or exceptions thereto) prescribed in this paragraph (e)(4)(ii)(A)(*2*), a treaty statement will cease to be valid if a change in circumstances makes the information on the statement unreliable or incorrect. For accounts opened and treaty statements obtained prior to January 6, 2017 (including those from publicly traded corporations, governments, and tax-exempt organizations), the treaty statement will expire January 1, 2020.

* * * * *

(D) * * * (*1*) * * * However, see paragraph (e)(2)(ii)(B)(*1*) of this section for a special rule for a change of address for purposes of reliance on a foreign TIN (or a reasonable explanation for the absence of a foreign TIN) included on a beneficial owner withholding certificate.

* * * * *

(iv) * * *

(C) *Form 8233.* A withholding agent may establish a system for a beneficial owner or payee to provide Form 8233 electronically, provided the system meets the requirements of paragraph (e)(4)(iv)(B)(*1*) through (*4*) of this section (replacing ''Form W–8'' with ''Form 8233'' each place it appears).

* * * * *

(E) *Third party repositories.* A withholding certificate will be considered furnished for purposes of this section (including paragraph (e)(1)(ii)(A)(*1*) of this section) by the person providing the certificate, and a withholding agent may rely on an otherwise valid withholding certificate received electronically from a third party repository, if the withholding certificate was uploaded or provided to a third party repository and there are processes in place to ensure that the withholding certificate can be reliably associated with a specific request from the withholding agent and a specific authorization from the person providing the certificate (or an agent of the person providing the certificate) for the withholding agent making the request to receive the withholding certificate. For purposes of the preceding sentence, a withholding agent must be able to reliably associate each payment with a specific request and authorization except when the withholding agent is permitted to rely on the withholding certificate on an obligation-by-obligation basis or as otherwise permitted under paragraph (e)(4)(ix) of this section (treating the withholding certificate as obtained by the withholding agent and furnished by a customer for purposes of this paragraph (e)(4)(iv)(E)). A third party repository may also be used for withholding statements, and a withholding agent may also rely on an otherwise valid withholding statement, if the intermediary providing the withholding certificates and withholding statement through the repository provides an updated withholding statement in the event of any change in the information previously provided (for example, a change in the composition of a partnership or a change in the allocation of payments to the partners) and ensures there are processes in place to update withholding agents when there is a new withholding statement (and withholding certificates, as necessary) in the event of any change that would affect the validity of the prior withholding certificates or withholding statement. A third party repository, for purposes of this paragraph, is an entity that maintains withholding certificates (including certificates accompanied by withholding statements) but is not an agent of the applicable withholding agent or the person providing the certificate.

(F) *Examples.* This paragraph contains examples to illustrate the rules of paragraph (e)(4)(iv)(E) of this section.

(1) *Example 1.* A, a foreign corporation, completes a Form W–8BEN–E and a Form W–8ECI and uploads the forms to X, a third party repository (X is an entity that maintains withholding certificates on an electronic data aggregation site). WA, a withholding agent, enters into a contract with A under which it will make payments to A of U.S. source FDAP that are not effectively connected with A's conduct of a trade or business in the United States. X is not an agent of WA or A. Before receiving a payment, A sends WA an email with a link that authorizes WA to access A's Form W–8BEN–E on X's system. The link does not authorize WA to access A's Form W–8ECI. X's system meets the requirements of a third party repository, and WA can treat the Form W–8BEN–E as furnished by A.

(2) *Example 2.* The facts are the same as Example 1 of this paragraph (e)(4)(iv)(F), and WA and A enter into a second contract under which WA will make payments to A that are effectively connected with A's conduct of a trade or business in the United States. A sends WA an email with a link that gives WA access to A's Form W–8ECI on X's system. The link in this second email does not give WA access to A's Form W–8BEN–E. A's email also clearly indicates that the link is associated with payments received under the second contract. X's system meets the requirements of a third party repository, and WA can treat the Form W–8ECI as furnished by A.

(3) *Example 3.* FP is a foreign partnership that is acting on behalf of its partners, A and B, who are both foreign individuals. FP

completes a Form W–8IMY and uploads it to X, a third party repository. FP also uploads Forms W–8BEN from both A and B and a valid withholding statement allocating 50% of the payment to A and 50% to B. WA is a withholding agent that makes payments to FP as an intermediary for A and B. FP sends WA an email with a link to its Form W–8IMY on X's system. The link also provides WA access to FP's withholding statement and A's and B's Forms W–8BEN. FP also has processes in place that ensure it will provide a new withholding statement or withholding certificate to X's repository in the event of a change in the information previously provided that affects the validity of the withholding statement and that ensure it will update WA if there is a new withholding statement. X's system meets the requirements of a third party repository, and WA can treat the Form W–8IMY (and withholding statement) as furnished by FP. In addition, because FP is acting as an agent of A and B, the beneficial owners, WA can treat the Forms W–8BEN for A and B as furnished by A and B.

* * * * *

(f) * * * (1) *In general.* Except as otherwise provided in paragraphs (e)(2)(ii)(B), (e)(4)(iv)(D), (f)(2), and (f)(3) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014 (except for payments to which paragraph (e)(4)(iv)(D) applies, in which case, substitute March 5, 2014, for June 30, 2014), and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

* * * * *

(3) *Special rules related to section 871(m).* Paragraphs (b)(4)(xxi), (b)(4)(xxiii), (e)(3)(ii)(E), and (e)(6) of this section apply to payments made on or after September 18, 2015. Paragraphs (e)(5)(ii)(C) and (e)(5)(v)(B)(*4*) of this section apply to payments made on or after on January 19, 2017.

§ 1.1441–1T [Removed]

■ **Par. 4.** Section 1.1441–1T is removed.

■ **Par. 5.** Section 1.1441–2 is amended by revising paragraphs (a)(8) and (f) to read as follows:

§ 1.1441–2 Amounts subject to withholding.

(a) * * *

(8) Amounts of United States source gross transportation income, as defined in section 887(b)(1), that is taxable under section 887(a).

* * * * *

(f) *Effective/applicability date.* This section applies to payments made after December 31, 2000. Paragraph (a)(8) of this section applies to payments made on or after January 6, 2017; however, taxpayers may apply paragraph (a)(8) to any open tax year. Paragraphs (b)(5) and (d)(4) of this section apply to payments made after August 1, 2006. Paragraph (b)(6) of this section applies to payments made on or after January 23, 2012. Paragraph (e)(7) of this section applies to payments made on or after January 19, 2017.

§ 1.1441–2T [Removed]

■ **Par. 6.** Section 1.1441–2T is removed.

■ **Par. 7.** Section 1.1441–4 is amended by removing paragraph (h).

■ **Par. 8.** Section 1.1441–6 is amended by:

■ 1. Revising paragraphs (b)(1)(i) and (ii).

■ 2. Redesignating *Example 1* in paragraph (b)(2)(iv) as paragraph (b)(2)(iv)(A), *Example 2* in paragraph (b)(2)(iv) as paragraph (b)(2)(iv)(B), *Example 3* in paragraph (b)(2)(iv) as paragraph (b)(2)(iv)(C), and *Example 4* as paragraph (b)(2)(iv)(D).

■ 3. Revising paragraph (c)(5)(i).

■ 4. Revising the first sentence of paragraph (i)(1).

■ 5. Revising paragraph (i)(3).

The revisions and addition read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(b) * * *

(1) * * *

(i) *Identification of limitation on benefits provisions.* In conjunction with the representation that the beneficial owner meets the limitation on benefits provision of the applicable treaty, if any, required by paragraph (b)(1) of this section, a beneficial owner withholding certificate must also identify the specific limitation on benefits provision of the article (if any, or a similar provision) of the treaty upon which the beneficial owner relies to claim the treaty benefit. A withholding agent may rely on the beneficial owner's claim regarding its reliance on a specific limitation on benefits provision absent actual knowledge that such claim is unreliable or incorrect.

(ii) *Reason to know based on existence of treaty.* For purposes of this paragraph (b)(1), a withholding agent's reason to know that a beneficial owner's claim to a reduced rate of withholding under an income tax treaty is unreliable or incorrect includes a circumstance where the beneficial owner is claiming benefits under an income tax treaty that does not exist or is not in force. A withholding agent may determine whether a tax treaty is in existence and is in force by checking the list maintained on the IRS website at *https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z* (or any replacement page on the IRS website) or in the State Department's annual Treaties in Force publication.

(2) * * *

(iv) * * *

(D) *Example 4*—(i) *Facts.* Entity E is a business organization formed under the laws of Country Y. Country Y has an income tax treaty with the United States that contains a limitation on benefits provision. E receives U.S. source royalties from withholding agent W. E furnishes a beneficial owner withholding certificate to W claiming a reduced rate of withholding under the U.S.-Country Y tax treaty. However, E's beneficial owner withholding certificate does not specifically identify the limitation on benefits provision that E satisfies.

(ii) *Analysis.* Because E's withholding certificate does not specifically identify the limitation on benefits provision under the U.S.-Country Y tax treaty that E satisfies as required by paragraph (b)(1)(i) of this section, W cannot rely on E's withholding certificate to apply the reduced rate of withholding claimed by E.

* * * * *

(c) * * *

(5) * * *

(i) *Statement regarding conditions under a limitation on benefits provision.* In addition to the documentary evidence described in paragraph (c)(4)(ii) of this section, a taxpayer that is not an individual must provide a statement that it meets one or more of the conditions set forth in the limitation on benefits article (if any, or in a similar provision) contained in the applicable tax treaty and must identify the specific limitation on benefits provision of the article (if any, or a similar provision) of the treaty upon which the taxpayer relies to claim the treaty benefit. A withholding agent may rely on the taxpayer's claim on a treaty statement regarding its reliance on a specific limitation on benefits provision absent actual knowledge that such claim is unreliable or incorrect.

* * * * *

(i) * * * (1) *General rule.* Except as otherwise provided in paragraphs (i)(2) and (3) of this section, this section applies to payments made on or after January 6, 2017. * * *

* * * * *

(3) *Effective/applicability date.* Paragraphs (b)(1)(i) and (ii), (b)(2)(iv)(D), and (c)(5)(i) of this section apply to withholding certificates and treaty statements provided on or after January 6, 2017.

§ 1.1441–6T [Removed]

■ **Par. 9.** Section 1.1441–6T is removed.

■ **Par. 10.** Section 1.1441–7 is amended by adding a new third sentence in paragraph (b)(4)(i) and by revising paragraphs (b)(10)(iv) and (g) to read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

* * * * *

(b) * * *

(4) *Rules applicable to withholding certificates*—(i) *In general.* * * * See, however, § 1.1441–1(e)(2)(ii)(B) for additional reliance standards that apply to a withholding certificate that is required to include an account holder's foreign TIN. * * *

* * * * *

(10) * * *

* * * * *

(iv) If the beneficial owner is claiming a reduced rate of withholding under an income tax treaty, the rules of § 1.1441–6(b)(1)(ii) also apply to determine whether the withholding agent has reason to know that a claim for treaty benefits is unreliable or incorrect.

* * * * *

(g) *Effective/applicability date.* Except as otherwise provided in paragraph (a)(4) of this section, this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

§ 1.1441–7T [Removed]

■ **Par. 11.** Section 1.1441–7T is removed.

■ **Par. 12.** Section 1.1471–0 is amended by adding entries for § 1.1471–3(c)(3)(iii)(B)(*5*), § 1.1471–4(d)(2)(ii)(G), and § 1.1474–1(d)(4)(vii) to read as follows:

§ 1.1471–0 Outline of regulation provisions for sections 1471 through 1474.

* * * * *

§ 1.1471–3 Identification of payee.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(B) * * *

(*5*) Nonqualified intermediary withholding statement.

* * * * *

§ 1.1471–4 FFI agreement.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(G) Combined reporting on Form 8966 following merger or bulk acquisition.

* * * * *

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

* * * * *

(d) * * *

(4) * * *

(vii) Combined Form 1042–S reporting.

* * * * *

■ **Par. 13.** Section 1.1471–1 is amended by revising paragraph (b)(99) to read as follows:

§ 1.1471–1 Scope of chapter 4 and definitions.

* * * * *

(b) * * *

(99) *Permanent residence address.* The term *permanent residence address* has the meaning set forth in § 1.1441–1(c)(38).

* * * * *

§ 1.1471–1T [Removed]

■ **Par. 14.** Section 1.1471–1T is removed.

■ **Par. 15.** Section 1.1471–3 is amended by:

■ 1. Revising paragraphs (c)(1) and (c)(3)(iii)(B)(*5*).

■ 2. Revising the third sentence of paragraph (c)(6)(ii)(E)(*3*).

■ 3. Revising paragraphs (c)(7)(ii) and (d)(6)(i)(F).

The revisions and addition read as follows:

§ 1.1471–3 Identification of payee.

* * * * *

(c) * * *

(1) *In general.* A withholding agent can reliably associate a withholdable payment with valid documentation if, before the payment, it has obtained (either directly from the payee or through its agent) valid documentation appropriate to the payee's chapter 4 status as described in paragraph (d) of this section, it can reliably determine how much of the payment relates to the valid documentation, and it does not know or have reason to know that any of the information, certifications, or statements in, or associated with, the documentation are unreliable or incorrect. Thus, a withholding agent cannot reliably associate a withholdable payment with valid documentation provided by a payee to the extent such documentation appears unreliable or incorrect with respect to the claims made, or to the extent that information required to allocate all or a portion of the payment to each payee is unreliable or incorrect. A withholding agent may rely on information and certifications contained in withholding certificates or other documentation without having to inquire into the truthfulness of the information or certifications, unless it knows or has reason to know that the information or certifications are untrue. A withholding agent may rely upon the same documentation for purposes of both chapters 3 and 4 provided the documentation is sufficient to meet the requirements of each chapter. Alternatively, a withholding agent may elect to rely upon the presumption rules of paragraph (f) of this section in lieu of obtaining documentation from the payee. A withholding certificate will be considered provided by a payee if a withholding agent obtains the certificate from a third party repository (rather than directly from the payee or through its agent) and the requirements in § 1.1441–1(e)(4)(iv)(E) are satisfied. A withholding certificate obtained from a third party repository must still be reviewed by the withholding agent in the same manner as any other documentation to determine whether it may be relied upon for chapter 4 purposes. A withholding agent may rely on an electronic signature on a withholding certificate if the requirements in § 1.1441–1(e)(4)(i)(B) are satisfied.

* * * * *

(3) * * *

(iii) * * *

(B) * * *

(*5*) *Nonqualified intermediary withholding statement.* A withholding agent that is making a withholdable payment to a nonqualified intermediary for which a withholding statement is required under chapters 3 or 4 may accept a withholding statement that meets the requirements described in § 1.1441–1(e)(3)(iv)(C)(*3*)(*i*) or (*ii*).

* * * * *

(6) * * *

(ii) * * *

(E) * * *

(*3*) *Withholding agent's obligation with respect to a change in circumstances.* * * * A withholding agent will have reason to know of a change in circumstances with respect to an FFI's chapter 4 status that results solely because the jurisdiction in which the FFI is resident, organized, or located ceases to be treated as having an IGA in effect on the date that the jurisdiction ceases to be treated as having an IGA in effect. * * *

(7) * * *

(ii) *Documentation received after the time of payment.* Proof that withholding was not required under the provisions of chapter 4 and the regulations thereunder also may be established after

the date of payment by the withholding agent on the basis of a valid withholding certificate and/or other appropriate documentation that was furnished after the date of payment but that was effective as of the date of payment. A withholding certificate furnished after the date of payment will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A certificate obtained within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain an affidavit. However, in the case of a withholding certificate of an individual received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence described in paragraph (c)(5)(i) of this section that supports the individual's claim of foreign status. In the case of a withholding certificate of an entity received more than a year after the date of payment, the withholding agent will be required to obtain, in addition to the withholding certificate and affidavit, documentary evidence specified in paragraph (c)(5)(ii) of this section that supports the chapter 4 status claimed. If documentation other than a withholding certificate is submitted from a payee more than a year after the date of payment, the withholding agent will be required to also obtain from the payee a withholding certificate and affidavit supporting the chapter 4 status claimed as of the date of the payment. See, however, § 1.1441–1(b)(7)(ii) for special rules that apply when a withholding certificate is received after the date of the payment to claim that income is effectively connected with the conduct of a U.S. trade or business (as applied for purposes of this paragraph (c)(7)(ii) to a claim to establish that the payment is not a withholdable payment under § 1.1473–1(a)(4)(ii) rather than to claim an exemption described in § 1.1441–4(a)(1)).

* * * * *

(d) * * *

(6) * * *

(i) * * *

(F) The withholding agent does not know or have reason to know that the payee is a member of an expanded affiliated group with any FFI that is a depository institution, custodial institution, or specified insurance company, or that the FFI has any specified U.S. persons that own an equity interest in the FFI or a debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding $50,000) in the FFI other than those identified on the FFI owner reporting statement described in paragraph (d)(6)(iv) of this section.

* * * * *

§ 1.1471–3T [Removed]

■ **Par. 16.** Section 1.1471–3T is removed.

■ **Par. 17.** Section 1.1471–4 is amended by revising paragraphs (c)(2)(ii)(B)(*2*)(*iii*), (d)(2)(ii)(G), (d)(4)(iv)(C), (d)(4)(iv)(D) introductory text, (d)(7) introductory text, and (j)(2) to read as follows:

§ 1.1471–4 FFI agreement.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) * * *

(*2*) * * *

(*iii*) In the case of a transferor FI that is a participating FFI or a registered deemed-compliant FFI (or a U.S. branch of either such entity that is not treated as a U.S. person) or that is a deemed-compliant FFI that applies the requisite due diligence rules of this paragraph (c) as a condition of its status, the transferor FI provides a written representation to the transferee FFI acquiring the accounts that the transferor FI has applied the due diligence procedures of this paragraph (c) with respect to the transferred accounts and, in the case of a transferor FI that is a participating FFI, has complied with the requirements of paragraph (f)(2) of this section; and

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(G) *Combined reporting on Form 8966 following merger or bulk acquisition.* If a participating FFI (successor) acquires accounts of another participating FFI (predecessor) in a merger or bulk acquisition of accounts, the successor may assume the predecessor's obligations to report the acquired accounts under paragraph (d) of this section with respect to the calendar year in which the merger or acquisition occurs (acquisition year), provided that the requirements in paragraphs (d)(2)(ii)(G)(*1*) through (*4*) of this section are satisfied. If the requirements of paragraphs (d)(2)(ii)(G)(*1*) through (*4*) of this section are not satisfied, both the predecessor and the successor are required to report the acquired accounts for the portion of the acquisition year that it maintains the account.

(*1*) The successor must acquire substantially all of the accounts maintained by the predecessor, or substantially all of the accounts maintained at a branch of the predecessor, in a merger or bulk acquisition of accounts for value.

(*2*) The successor must agree to report the acquired accounts for the acquisition year on Form 8966 to the extent required in § 1.1471–4(d)(3) or (d)(5).

(*3*) The successor may not elect to report under section 1471(c)(2) and § 1.1471–4(d)(5) with respect to any acquired account that is a U.S. account for the acquisition year.

(*4*) The successor must notify the IRS on the form and in the manner prescribed by the IRS that Form 8966 is being filed on a combined basis.

* * * * *

(4) * * *

(iv) * * *

(C) *Other accounts.* In the case of an account described in § 1.1471–5(b)(1)(iii) (relating to a debt or equity interest other than an interest as a partner in a partnership) or § 1.1471–5(b)(1)(iv) (relating to cash value insurance contracts and annuity contracts), the payments made during the calendar year with respect to such account are the gross amounts paid or credited to the account holder during the calendar year including payments in redemption (in whole or part) of the account. In the case of an account that is a partner's interest in a partnership, the payments made during the calendar year with respect to such account are the amount of the partner's distributive share of the partnership's income or loss for the calendar year, without regard to whether any such amount is distributed to the partner during the year, and any guaranteed payments for the use of capital. The payments required to be reported under this paragraph (d)(4)(iv)(C) with respect to a partner may be determined based on the partnership's tax returns or, if the tax returns are unavailable by the due date for filing Form 8966, the partnership's financial statements or any other reasonable method used by the partnership for calculating the partner's share of partnership income by such date.

(D) *Transfers and closings of deposit, custodial, insurance, and annuity financial accounts.* In the case of an account closed or transferred in its entirety during a calendar year that is a depository account, custodial account, or a cash value insurance contract or

annuity contract, the payments made with respect to the account shall be—

* * * * *

(7) *Special reporting rules with respect to the 2014 and 2015 calendar years*—

* * * * *

(j) * * *

(2) *Special applicability date.* Paragraph (d)(4)(iv)(C) of this section applies beginning with reporting with respect to calendar year 2017. (For rules that apply to reporting under paragraph (d)(4)(iv)(C) with respect to calendar years before 2017, see this section as in effect and contained in 26 CFR part 1 revised April 1, 2016.)

§ 1.1471–4T [Removed]

■ **Par. 18.** Section 1.1471–4T is removed.

■ **Par. 19.** Section 1.1474–1 is amended by revising paragraph (d)(4)(vii) to read as follows:

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

* * * * *

(d) * * *

(4) * * *

(vii) *Combined Form 1042–S reporting.* A withholding agent required to report on Form 1042–S under paragraph (d)(4) of this section (other than a nonparticipating FFI reporting under paragraph (d)(4)(v) of this section) may rely on the procedures used for chapter 3 purposes (provided in published guidance) for reporting on Form 1042–S (even if the withholding agent is not required to report under chapter 3) for combined reporting following a merger or acquisition, provided that all of the requirements for such reporting provided in the Instructions for Form 1042–S are satisfied.

* * * * *

§ 1.1474–1T [Removed]

■ **Par. 20.** Section 1.1474–1T is removed.

■ **Par. 21.** Section 1.6049–6 is amended by:

■ 1. Adding a sentence to the end of paragraph (e)(4).

■ 2. Revising the second sentence of paragraph (e)(5) and adding a new third sentence to paragraph (e)(5).

The additions and revision read as follows:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(e) * * *

(4) *Special rule for amounts described in § 1.6049–8(a).* * * * A person required by this paragraph (e)(4) to furnish a recipient copy of Form 1042–S may furnish such copy electronically by complying with the requirements provided in § 1.6050W–2(a)(2) through (5) applicable to statements required under section 6050W (substituting the phrase ''Form 1042–S'' for the phrases ''statement required under section 6050W'' or ''statements required by section 6050W(f)'' each place they appear).

(5) *Effective/applicability date.* * * * Paragraph (e)(4) of this section applies to payee statements reporting payments of deposit interest to nonresident alien individuals paid on or after January 2, 2020, but it may be applied to payments made on or after January 1, 2016. For payee statements reporting payments of deposit interest to nonresident alien individuals paid on or after January 1, 2013 and before January 2, 2020, see paragraph (e)(4) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2019. * * *

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: December 11, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–27979 Filed 12–27–19; 4:15 pm]

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Federal Register

Vol. 85, No. 1

Thursday, January 2, 2020

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General Information, indexes and other finding aids **202–741–6000**

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–206 2

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

14 CFR

Proposed Rules:
39 23
382 27

25 CFR

Proposed Rules:
82 37

26 CFR

1 192

31 CFR

148 1

40 CFR

52 3

Proposed Rules:
52 (2 documents) 54, 59

42 CFR

402 7
403 (2 documents) 7, 8
409 8
410 8
411 (2 documents) 7, 8
412 7
414 8
415 8
416 8
418 8
422 7
423 7
424 8
425 8
460 7
483 7
488 7
489 8
493 7
498 8

47 CFR

Proposed Rules:
54 61

49 CFR

243 10

50 CFR

17 164
635 (2 documents) 14, 17
679 19

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 26, 2019

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 2	Jan 17	Jan 23	Feb 3	Feb 6	Feb 18	Mar 2	Apr 1
January 3	Jan 21	Jan 24	Feb 3	Feb 7	Feb 18	Mar 3	Apr 2
January 6	Jan 21	Jan 27	Feb 5	Feb 10	Feb 20	Mar 6	Apr 6
January 7	Jan 22	Jan 28	Feb 6	Feb 11	Feb 21	Mar 9	Apr 6
January 8	Jan 23	Jan 29	Feb 7	Feb 12	Feb 24	Mar 9	Apr 7
January 9	Jan 24	Jan 30	Feb 10	Feb 13	Feb 24	Mar 9	Apr 8
January 10	Jan 27	Jan 31	Feb 10	Feb 14	Feb 24	Mar 10	Apr 9
January 13	Jan 28	Feb 3	Feb 12	Feb 18	Feb 27	Mar 13	Apr 13
January 14	Jan 29	Feb 4	Feb 13	Feb 18	Feb 28	Mar 16	Apr 13
January 15	Jan 30	Feb 5	Feb 14	Feb 19	Mar 2	Mar 16	Apr 14
January 16	Jan 31	Feb 6	Feb 18	Feb 20	Mar 2	Mar 16	Apr 15
January 17	Feb 3	Feb 7	Feb 18	Feb 21	Mar 2	Mar 17	Apr 16
January 21	Feb 5	Feb 11	Feb 20	Feb 25	Mar 6	Mar 23	Apr 20
January 22	Feb 6	Feb 12	Feb 21	Feb 26	Mar 9	Mar 23	Apr 21
January 23	Feb 7	Feb 13	Feb 24	Feb 27	Mar 9	Mar 23	Apr 22
January 24	Feb 10	Feb 14	Feb 24	Feb 28	Mar 9	Mar 24	Apr 23
January 27	Feb 11	Feb 18	Feb 26	Mar 2	Mar 12	Mar 27	Apr 27
January 28	Feb 12	Feb 18	Feb 27	Mar 3	Mar 13	Mar 30	Apr 27
January 29	Feb 13	Feb 19	Feb 28	Mar 4	Mar 16	Mar 30	Apr 28
January 30	Feb 14	Feb 20	Mar 2	Mar 5	Mar 16	Mar 30	Apr 29
January 31	Feb 18	Feb 21	Mar 2	Mar 6	Mar 16	Mar 31	Apr 30