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

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–1671; RIN 7100–AF 54]

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its Regulation A to reflect the Board's approval of a decrease in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board's primary credit rate action.

DATES:

Effective date: The amendments to part 201 (Regulation A) are effective August 12, 2019.

Applicability date: The rate changes for primary and secondary credit were applicable on August 1, 2019.

FOR FURTHER INFORMATION CONTACT: Clinton Chen, Senior Attorney (202–452–3952), or Sophia Allison, Senior Special Counsel (202–452–3565), Legal Division, or Kristen Payne, Senior Financial Institution & Policy Analyst (202–452–2872), or Laura Lipscomb, Assistant Director (202–912–7964), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

On July 31, 2019, the Board voted to approve a ¼ percentage point decrease in the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby decreasing from 3.00 percent to 2.75 percent the rate that each Reserve Bank charges for extensions of primary credit. In addition, the Board had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate in effect at each of the twelve Federal Reserve Banks decreased by ¼ percentage point as a result of the Board's primary credit rate action, thereby decreasing from 3.50 percent to 3.25 percent the rate that each Reserve Bank charges for extensions of secondary credit. The amendments to Regulation A reflect these rate changes.

The ¼ percentage point decrease in the primary credit rate was associated with a decrease in the target range for the federal funds rate (from a target range of 2¼ to 2½ percent to a target range of 2 to 2¼ percent) announced by the Federal Open Market Committee on July 31, 2019, as described in the Board's amendment of its Regulation D published elsewhere in today's **Federal Register**.

Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'')[1] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to congressionally delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.''[2] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[3] The APA further provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, *loans,* grants, benefits, or contracts.''[4]

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to these final amendments to Regulation A. The amendments involve a matter relating to loans and are therefore exempt under the terms of the APA. Furthermore, because delay would undermine the Board's action in responding to economic data and conditions, the Board has determined that ''good cause'' exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[5] As noted previously, a general notice of proposed rulemaking is not required if the final rule involves a matter relating to loans. Furthermore, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

[1] 5 U.S.C. 551 *et seq.*

[2] 5 U.S.C. 553(b)(3)(A).

[3] 5 U.S.C. 553(d).

[4] 5 U.S.C. 553(a)(2) (emphasis added).

[5] 5 U.S.C. 603, 604.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[6] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.,* 347a, 347b, 347c, 348 *et seq.,* 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[3]

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 2.75 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under 201.4(b) is 3.25 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 6, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–17173 Filed 8–9–19; 8:45 am]

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[6] 44 U.S.C. 3506; see 5 CFR part 1320 Appendix A.1.

[3] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1672; RIN 7100–AF 55]

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') is amending Regulation D (Reserve Requirements of Depository Institutions) to revise the rate of interest paid on balances maintained to satisfy reserve balance requirements (''IORR'') and the rate of interest paid on excess balances (''IOER'') maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORR is 2.10 percent and IOER is 2.10 percent, a 0.25 percentage point decrease from their prior levels. The amendments are intended to enhance the role of such rates of interest in moving the Federal funds rate into the target range established by the Federal Open Market Committee (''FOMC'' or ''Committee'').

DATES:

Effective date: The amendments to part 204 (Regulation D) are effective August 12, 2019.

Applicability date: The IORR and IOER rate changes were applicable on August 1, 2019.

FOR FURTHER INFORMATION CONTACT: Clinton Chen, Senior Attorney (202–452–3952), or Sophia Allison, Senior Special Counsel (202–452–3565), Legal Division, or Kristen Payne, Senior Financial Institution & Policy Analyst (202–452–2872), or Laura Lipscomb, Assistant Director (202–912–7964), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''the Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.[1] Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[2] Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.[3] Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include depository institutions and certain other institutions.[4] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.[5] Prior to these amendments, Regulation D specified a rate of 2.35 percent for both IORR and IOER.[6]

II. Amendments to IORR and IOER

The Board is amending § 204.10(b)(5) of Regulation D to specify that IORR is 2.10 percent and IOER is 2.10 percent. This 0.25 percentage point decrease in each rate was associated with a decrease in the target range for the federal funds rate, from a target range of 2¼ to 2½ percent to a target range of 2 to 2¼ percent, announced by the FOMC on July 31, 2019, with an effective date of August 1, 2019. The FOMC's press release on the same day as the announcement noted that:

> Information received since the Federal Open Market Committee met in June indicates that the labor market remains strong and that economic activity has been rising at a moderate rate. Job gains have been solid, on average, in recent months, and the unemployment rate has remained low. Although growth of household spending has picked up from earlier in the year, growth of business fixed investment has been soft. On a 12-month basis, overall inflation and inflation for items other than food and energy are running below 2 percent. Market-based measures of inflation compensation remain low; survey-based measures of longer-term inflation expectations are little changed.
>
> Consistent with its statutory mandate, the Committee seeks to foster maximum employment and price stability. In light of the implications of global developments for the economic outlook as well as muted inflation pressures, the Committee decided to lower the target range for the federal funds rate to 2 to 2¼ percent.

A Federal Reserve Implementation note released simultaneously with the announcement stated:

> The Board of Governors of the Federal Reserve System voted unanimously to lower the interest rate paid on required and excess reserve balances to 2.10 percent, effective August 1, 2019.

As a result, the Board is amending § 204.10(b)(5) of Regulation D to change IORR to 2.10 percent and IOER to 2.10 percent.

[1] 12 U.S.C. 461(b).

[2] 12 CFR 204.5(a)(1).

[3] 12 U.S.C. 461(b)(1)(A) & (b)(12)(A).

[4] See 12 U.S.C. 461(b)(1)(A) & (b)(12)(C); see also 12 CFR 204.2(y).

[5] See 12 U.S.C. 461(b)(12)(B).

[6] See 12 CFR 204.10(b)(5).

III. Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'')[7] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to congressionally delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.''[8] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[9]

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The rate changes for IORR and IOER that are reflected in the final amendments to Regulation D were made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board's action from being effective as promptly as necessary in the public interest and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to these final amendments to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[10] As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[11] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.10 is amended by revising paragraph (b)(5) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(5) The rates for IORR and IOER are:

	Rate (percent)
IORR	2.10
IOER	2.10

By order of the Board of Governors of the Federal Reserve System, August 6, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–17175 Filed 8–9–19; 8:45 am]

BILLING CODE 6210–01–P

[7] 5 U.S.C. 551 *et seq.*

[8] 5 U.S.C. 553(b)(3)(A).

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 603, 604.

[11] 44 U.S.C. 3506; see 5 CFR part 1320 Appendix A.1.

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 633

[Docket ID: USA–2019–HQ–0016]

RIN 0702–AB00

Individual Requests for Access or Amendment of CID Reports of Investigation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the Department of the Army regulation concerning the Criminal Investigation Division (CID) reports of investigation on specific military installations. The content of this part is addressed in DoD regulations related to the Privacy Act and Freedom of Information Act, and it is unnecessary.

DATES: This rule is effective on August 12, 2019.

FOR FURTHER INFORMATION CONTACT: T.L. Williams at 571–305–4355.

SUPPLEMENTARY INFORMATION: This final rule removes 32 CFR part 633, ''Individual Requests for Access or Amendment of CID Reports of Investigation,'' which was originally codified on July 27, 1979 (44 FR 44156), and most recently updated on May 17, 2013 (78 FR 29019). It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing content which is covered in DoD regulations at 32 CFR part 286, ''DoD Freedom of Information Act (FOIA) Program'' (last updated January 5, 2017, at 82 FR 1197), and 32 CFR part 310, ''DoD Privacy Program'' (last updated April 11, 2019 at 84 FR 14730).

Additional internal Army guidance is published in Army Regulation 190–45, ''Law Enforcement Reporting,'' (available at *https://armypubs.army.mil/ProductMaps/PubForm/AR.aspx*) which was most recently updated on September 27, 2016.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 633

Freedom of information, Investigations, Privacy.

PART 633—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 633, is removed.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–17192 Filed 8–9–19; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0591]

RIN 1625–AA00

Safety Zone; Ohio River, Newburgh, IN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 777.3 to MM 778.3. This action is necessary to provide for the safety of life on these navigable waters near Newburgh, Indiana, during the City of Newburgh fireworks display on August 31, 2019. This rule prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 9:30 p.m. through 10 p.m. on August 31, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0591 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST3 Jackson U.S. Coast Guard, telephone 502–779–5347, email *secohv-wwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. It is impracticable to publish an NPRM because we must establish this safety zone by August 31, 2019 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the Newburgh Fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the fireworks display on August 31, 2019 will be a safety concern for anyone on a one-mile stretch of the Ohio River. The purpose of this rule is to ensure safety of persons, vessels, and the marine environment on the navigable waters in the regulated area before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 p.m. through 10 p.m. on August 31, 2019. The safety zone will cover all navigable waters, extending the entire width of the river, from mile marker (MM) 777.3 to MM 778.3. No vessels or persons will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the temporary safety zone. This safety zone restricts transit on a one-mile stretch of the Ohio River for thirty minutes on one day. Moreover, the Coast Guard would issue Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and Marine Safety Information Bulletins (MSIBs) about this safety zone so that waterway users may plan accordingly for this short restriction on transit, and the rule would allow vessels to request permission to enter the zone.

B. Impact on Small Entities

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

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

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

compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only thirty minutes that will prohibit entry within a one-mile stretch of the Ohio River for one day. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0591 to read as follows:

§ 165.T08–0591 Safety zone; Ohio River, Newburgh, IN.

(a) *Location.* All navigable waters of the Ohio River between Mile Markers (MM) 777.3 to MM 778.3 in Newburgh, IN.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM radio channel 16 or phone at 1–800–253–7465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced from 9:30 p.m. through 10 p.m. August 31, 2019.

(d) *Information broadcasts.* The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and Marine Safety Information Bulletins about this safety zone.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2019–17183 Filed 8–9–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2019–OSERS–0075]

Final Priority and Requirements—Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data

[Catalog of Federal Domestic Assistance (CFDA) Number 84.373Z]

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority and requirements.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a funding priority and requirements under the Technical Assistance on State Data Collection program. The Assistant Secretary may use this priority and these requirements for competitions in fiscal year (FY) 2019 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements under Parts C and B of the Individuals with Disabilities Education Act (IDEA).

This center, CFDA Number 84.373Z, will support States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for all people with disabilities and would customize its TA to meet each State's specific needs.

DATES: This priority and these requirements are effective September 11, 2019.

FOR FURTHER INFORMATION CONTACT: Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5141, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6028. Email: *Meredith.Miceli@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: Section 616 of the IDEA requires States to submit to the Department, and make available to the public, a State performance plan (SPP) and an annual performance report (APR) with data on how each State implements both Parts B and C of the IDEA to improve outcomes for infants, toddlers, children, and youth with disabilities. Section 618 of the IDEA requires States to submit to the Department, and make available to the public, quantitative data on infants, toddlers, children, and youth with disabilities who are receiving early intervention and special education services under IDEA. The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements under Sections 616 and 618 of the IDEA. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve up to ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for the implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, Division H of the Consolidated Appropriations Act of 2018 gives the Secretary the authority to use funds reserved under section 611(c) to ''carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.'' Consolidated Appropriations Act, 2018; Div. H, Title III of Public Law 115–141; 132 Stat. 745 (2018).

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), and 1442; and Department of Education Appropriations Act, 2018; Div. H, Title III of Public Law 115–141, Consolidated Appropriations Act, 2018; 132 Stat. 745 (2018).

Applicable Program Regulations: 34 CFR 300.702.

We published a notice of proposed priority and requirements for this program in the **Federal Register** on March 6, 2019 (84 FR 8059) (the NPP). The NPP contained background information and our reasons for proposing the particular priority and requirements.

There are differences between the NPP and this notice of final priority and requirements (NFP) as discussed in the *Analysis of Comments and Changes* section of this document. The most significant of these changes, as discussed below, is the addition of an indirect cost rate cap to the final requirements.

Public Comment: In response to our invitation in the NPP, 14 parties submitted comments on the proposed priority and requirements.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address comments that raised concerns not directly related to the proposed priority and requirements.

Analysis of Comments and Changes: An analysis of the comments and changes in the priority and requirements since publication of the NPP follows. OSERS received comments on a number of specific topics from the proposed cap on the maximum allowable indirect cost rate to the topics for technical assistance. Each topic is addressed below.

General Comments

Comments: Several commenters were supportive of the notice of proposed priority and requirements for this program as it was published in the **Federal Register** on March 6, 2019.

Discussion: The Department appreciates the commenters' support.

Changes: None.

Comments: None.

Discussion: As discussed in the NPP, the Department is particularly concerned about maximizing the efficiency and effectiveness of this investment. Given the purpose of the program, we believe a critical lever to meeting this goal is to ensure that TA is appropriately targeted to recipients with a known and ongoing need for support in reporting, analyzing, and using high quality IDEA data. As such, the Department is adding a requirement that applicants describe their proposed approach to prioritizing TA recipients with a particular focus on meeting the needs of States with ongoing data quality issues.

Changes: The final priority includes a requirement for applicants to describe their proposed approach to prioritizing TA recipients.

Indirect Cost Rate

Comments: A number of commenters agreed with the purpose of the indirect cost cap, which is to maximize funds that go directly to provide TA to States to improve their capacity to meet the IDEA data collection and reporting requirements. These same commenters, however, believed that setting a cap on indirect costs would not achieve this goal and that it may negatively impact the program. They noted that indirect costs support a wide variety of purchases and activities, including, but not limited to, facilities, information technology (IT) services, and support personnel. Further, a subset of these commenters stated that a cap on indirect cost rates would limit competition, reduce the number of qualified applicants, and likely degrade the quality of TA services provided to States. Specifically, some of these commenters stated that a cap could make it cost prohibitive for small businesses to compete for the grant, as they could not absorb any unrecovered indirect costs. Additionally, it would make it harder for applicants to attract and retain qualified personnel, thus depressing the quality of services provided to States.

Discussion: The Department appreciates the stakeholder input it received in response to the specific directed question on the indirect cost cap proposal but disagrees that it would have a negative impact on the program. Regarding potential impact, the Department has done an analysis of the

indirect cost rates for all current technical assistance centers funded under the Technical Assistance on State Data Collection programs as well as other grantees that are large, midsize, and small businesses and small nonprofit organizations and has found that, in general, total indirect costs charged on these grants by these entities were at or below 35 percent of total direct costs. We recognize that, dependent on the structure of the investment and activities, the modified total direct cost (MTDC) base could be much smaller than the total direct cost, which would imply a higher indirect cost rate than those calculated here. The Department arrived at a 40 percent rate to address some of that variation. Such a change accounts for a 12 percent variance between TDC and MTDC. However, we note that, in the absence of a cap, certain entities would likely charge indirect cost rates in excess of 40 percent of MTDC. Based on our review, it appears that those entities would likely be larger for-profit and nonprofit organizations, but these organizations appear to be outliers when compared to the majority of other large businesses as well as the entirety of OSEP's grantees. Setting an indirect cost rate cap at 40 percent is in line with the majority of applicant's existing negotiated rates with their cognizant Federal agency. Therefore, we do not believe that the cap we are setting in these final requirements would negatively impact the majority of entities' ability to recover indirect costs.

Regarding commenters' concerns that a cap on indirect costs would limit competition and reduce the number of qualified applicants, it is not clear how a cap would do so. The cap included in the final requirements does not limit the pool of eligible applicants because most entities' indirect cost rates are below the cap we are setting. Further, regarding the impact on the quality of TA services provided to States, we have no information indicating a direct correlation between an entity's negotiated indirect cost rate and its ability to attract and retain qualified personnel and thus their ability to provide high-quality TA services to States. Based on our analysis, there are many OSEP grantees that are able to effectively carry out project activities required by their individual grants with negotiated indirect cost rates under the cap included in the final requirements. Further, the Department's peer review process is intended to assess the ability of various applicants to provide high-quality TA to States. Finally, we do not believe the cap we are setting in these final requirements would result in an amount of unrecovered costs that would deter most prospective applicants. The prospective applicants could look at the cost cap prior to applying and either choose to absorb unrecovered costs or opt not to apply.

In light of these considerations, we have determined that placing an indirect cost cap that is the lesser of the percentage approved by the grantee's cognizant Federal agency and 40 percent for this priority is appropriate as it maximizes the availability of funds for the primary technical assistance purposes of this priority, which is to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA and to ultimately benefit programs serving children with disabilities.

Changes: Paragraph (d)(5) of the final requirements now includes an indirect cost cap that is the lessor of the percentage approved by the grantee's cognizant Federal agency and a cap of 40 percent on the reimbursement of indirect costs.

Comments: A number of commenters expressed concerns that many of the most qualified organizations could not compete because once indirect cost rates are set by, and audited by, a cognizant agency, they cannot be lowered for a single project.

Discussion: We considered this requirement based on 2 CFR 200.414(c)(1), which allows a Federal awarding agency to use an indirect cost rate different from the negotiated rate when required by Federal statute or regulation or when approved by a Federal awarding agency head based on documented justification when the Federal awarding agency implements, and makes publicly available, the policies, procedures, and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates. Federal discretionary grantees have historically been reimbursed for indirect costs at the rate that each grantee negotiates with its cognizant Federal agency, and we believe that use of the negotiated rate is appropriate for most grants in most circumstances. However, because funding for this program comes from funds reserved by the Department that would otherwise be allocated to States under Part B (which applies a restricted indirect cost rate to State grantees), we determined that using an indirect cost rate different from the negotiated rate was appropriate since it would maximize funds available to provide TA to States to improve their capacity to meet the IDEA data collection and reporting requirements.

Changes: None.

Comments: Numerous commenters expressed concerns that the implementation of an indirect cost rate limit would not impact each vendor equally or result in equal savings to the government, as categories of indirect costs vary across vendors.

Discussion: We appreciate the commenters' concerns and recognize that a cap on the indirect cost rate, although it would apply equally to all applicants, may be more difficult for particular entities to meet, particularly those with high negotiated indirect cost rates. However, as noted above, our analysis indicates that the rate established in the final requirements would not appear to create unreasonable burdens for many applicants. Further, it was not the Department's intention to institute a limit on the reimbursement of indirect costs by specific cost category, but rather to apply it as a percentage of MTDC. We have clarified in the final requirements that the limit applies to MTDC as defined in 2 CFR 200.68. As the MTDC is applied to the total direct costs of the grant, each grantee's MTDC will include direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward, thus ensuring equity across vendors.

Changes: The final requirement clarifies that the 40 percent maximum indirect cost rate is applied to MTDC as defined in 2 CFR 200.68.

Comments: Two commenters provided alternatives to setting a cap. One commenter proposed gauging competitiveness based on a vendor's total price in combination with the proposed quality and level of effort. A second commenter suggested that the program add a cost share requirement in lieu of an indirect cost cap. The commenter suggested that a modest cost share may not impact vendor economics to the same degree as a cap on indirect costs.

Discussion: The Department appreciates the commenters' suggestions. Regarding gauging competitiveness based on a vendor's total price in combination with the proposed quality and level of effort, this may represent a viable approach for contract procurement, but does not lend itself to making discretionary grant awards. Regarding the second commenter's recommendation to add a cost share requirement, the nature of the funding source for this program does not allow for a cost sharing requirement and, in addition, could have the unintended consequence of eliminating small businesses.

Changes: None.

Comments: One commenter advocated for the Department to provide clarification and guidance to States on what should be covered by indirect cost rates and how to determine appropriate indirect cost rates. Additionally, a second commenter suggested the Department allow States the flexibility to determine and justify funds allocated to indirect costs.

Discussion: The Department appreciates the commenters' suggestions. We were not proposing a cap on the indirect cost rates for State formula grants. Clarification or guidance on what is or is not an indirect cost can be obtained from the indirect cost office of the applicant's cognizant Federal agency.

Changes: None.

Topics for Technical Assistance

Comment: One commenter highlighted the need for the proposed center to support States in their data collection initiatives and to give States the leeway to identify issues that are particular to the State and its population.

Discussion: The Department agrees with the commenter, and believes that the center is already designed to support this objective. This center will design and provide TA on collecting, reporting, analyzing, and using high-quality IDEA Part C early intervention data and IDEA Part B preschool special education data based on needs identified by the States. States will have the opportunity to engage in TA with the center in various ways (*i.e.,* universal TA, targeted TA, and intensive TA). Through these different levels of TA, this center will be able to meet specific State requests for assistance related to collecting, reporting, analyzing, and using high-quality IDEA Part C early intervention data and IDEA Part B preschool special education data.

Changes: None.

Potential Duplication of Efforts

Comment: One commenter voiced a concern that the resources generated by the proposed center may overlap with the resources provided by other Office of Special Education Programs (OSEP) funded TA centers. They highlighted the importance of clarifying each entity's role and reducing duplication of services to help States to make more efficient use of resources and cut costs.

Discussion: The Department agrees any overlap in the scopes of TA centers should be minimized and duplication should be avoided. The Department has redefined the scope of this center, as well as the scope of the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, CFDA number 84.373Y, in order to minimize unnecessary overlap. Where similar topics are within scope for multiple TA centers, we believe that effective communication and collaboration among these centers will prevent duplication and assist States in efficiently identifying, accessing, and using resources provided by these centers.

Changes: We have revised the purpose of priority to remove TA on the section 618, Part B Child Count and Educational Environments data for children with disabilities ages 3 through 5 from the scope of this center. This TA will be provided by the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, CFDA number 84.373Y. In addition, we revised paragraph (b)(5)(iv)(F) of the requirements to require applicants to propose a plan for collaborating and coordinating with the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, and other Department-funded TA investments. Applicants must propose how they will align complementary work and jointly develop and implement products and services with other TA centers to meet the purposes of this priority and to develop and implement a coordinated TA plan when they are involved in a State. This structure that specifies more distinct portfolios of the centers (*i.e.,* less overlap) will make it easier for States to work with the two centers.

Significant Disproportionality

Comment: One commenter noted the States' continued need for data-related TA on significant disproportionality.

Discussion: States typically use Part B Child Count, Part B Educational Environment, and Part B Discipline data to analyze significant disproportionality. Since these data are outside of the scope of this priority, this center will not provide TA on this topic.

Changes: None.

Division of Activities Between 84.373Y and 84.373Z

Comment: One commenter voiced a concern with splitting the responsibilities of providing TA on the IDEA Part B preschool special education data between the proposed center and the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, CFDA number 84.373Y. The commenter stated that splitting the responsibilities regarding the IDEA Part B preschool special education data across the two centers may require Part B data managers to work with both centers in order to improve the quality of their IDEA Part B preschool special education data.

Discussion: The Department appreciates the commenter's concerns. The Department believes that including IDEA Part B preschool special education data in the scope of this center makes senses for some of the IDEA data and including IDEA Part B preschool special education data in the scope of the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, CFDA number 84.373Y, is appropriate for other IDEA data.

The Department believes that including the IDEA Part B preschool special education data required under IDEA section 616 for Indicators B–7 (Preschool Outcomes) and B–12 (Early Childhood Transition) within the scope for this center is appropriate because it will facilitate better linkages between the Part C data and the IDEA Part B preschool special education data on children with disabilities and the inclusion of the Part C and IDEA Part B preschool special education data in the Early Childhood Integrated Data Systems (ECIDS). This will allow for enhanced opportunities to improve the quality of data States are collecting, reporting, analyzing, and using related to children's transition from the Part C early intervention program to the Part B preschool special education program. In addition, due to the similarities in the type of data required under IDEA section 616 for Indicator C–3 (Infant and Toddler Outcomes) in the Part C SPP/APR and Indicator B–7 (Preschool Outcomes) in the Part B SPP/APR, it is more efficient to have this center provide TA on these data.

The Department believes that including the IDEA Part B preschool special education data required under IDEA section 618 (including the section 618, Part B Child Count and Educational Environments data) and those preschool data required under IDEA section 616 for indicators in the IDEA Part B State Performance Plan/Annual Performance Report (SPP/APR) that solely use the ED*Facts* data as the source for reporting, such as Indicator B–5 (Preschool Least Restrictive Environment), within the scope of the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, CFDA number 84.373Y will allow States

to obtain TA on IDEA data submitted via ED*Facts* from a single center. Since a State Part B data manager plays a significant role in submitting the IDEA data on children with disabilities ages 3 through 5 and children with disabilities ages 6 through 21 via ED*Facts,* the data manager will be able to access TA on these data through a single center. Finally, this will allow States to receive TA on IDEA data-related topics and analyses that are supported by and use IDEA section 618 data submitted via ED*Facts.*

Changes: None.

Support for Low-Income Communities

Comment: One commenter asked how this funding opportunity will benefit students from low income families.

Discussion: As specified by IDEA, the purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. This center's primary audiences and recipients of TA will be State level staff who work with the IDEA Part B preschool special education programs and IDEA Part C early intervention programs. This center will not provide direct services to children with disabilities. This center will facilitate, support, and encourage the States use of data to improve IDEA program for all infants, toddlers, and children with disabilities served under IDEA.

Changes: None.

Data Collection Under IDEA

Comment: A commenter recommended that the Department collect data on students who identify in a gender-neutral category, use a different language/communication system, or are born in the United States but do not speak English as their first language, and on their socioeconomic status, parental English fluency, and parents' highest educational level.

Discussion: The Department appreciates the comment; however, this priority does not address the data collection and reporting requirements for States under IDEA. The ED*Facts* information collection package (OMB control number 1850–0925), which would more squarely address these issues, was published in the **Federal Register** on April 8, 2019 (84 FR 13913). It addressed the IDEA Section 618 Part B data collection requirements and was open for public comment from April 8, 2019, to May 8, 2019.

Changes: None.

Definition of Evidence-Based Practices

Comment: One commenter stated that the definition of evidence-based practices (EBPs) used in the proposed requirements does not align with the highest level of available evidence, and that EBP is a dynamic process that requires ongoing evaluation.

Discussion: We understood the commenter to be recommending a higher level of evidence than required in the proposed requirements. We agree with the commenter regarding the importance of ensuring the provision of effective TA to States; however, we do not agree that the definition of EBPs used in the proposed requirements is insufficient. We are continually reviewing the effectiveness of services provided by our federally funded TA centers. We believe that the definition of EBPs used in the proposed requirements—the definition in 34 CFR 77.1—is well established and provides the necessary standards against which high-quality services may be judged for the purposes of making an award and monitoring the implementation of TA to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA.

Changes: None.

Funds for Targeted and Intensive Technical Assistance

Comment: None.

Discussion: As a result of our further review of the proposed priority and requirements and public comments received for the two notices of proposed priority under the TA on State Data Collection program published in the **Federal Register** on March 6, 2019, we realized that the requirement to use 50 percent of the funds for intensive, sustained TA needed to be updated to align with the requirement in the priority establishing the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, CFDA number 84.373Y. The Department believes that aligning the two priorities, whenever possible, will allow for more efficient collaborations and will allow the centers funded under these two priorities to provide a clear and seamless set of TA services related to collecting, reporting, analyzing, and using high-quality IDEA data on infants, toddlers, and children with disabilities, birth through age 21, to States.

Changes: We have changed the requirement to use 50 percent of the funds for intensive, sustained TA to a requirement to use 50 percent of funds for targeted and intensive TA to States.

Final Priority:

National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data.

The purpose of this priority is to fund a cooperative agreement to establish and operate a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data (Center).

The Center will focus on providing TA on collecting, reporting, analyzing, and using Part C data required under sections 616 and 618 of IDEA and Part B data on children with disabilities, ages 3 through 5, required under section 616 of IDEA for those indicators that are not solely based on IDEA section 618 data (*e.g.,* Annual Performance Report (APR) Indicators B7 (Preschool Children with Improved Outcomes) and B12 (Transition Between Part C and Part B). The Center will provide TA to (1) improve States' capacity to collect, report, analyze, and use high-quality IDEA Part C data (including IDEA section 618 Part C data and IDEA section 616 Part C data) and IDEA Part B preschool special education data; and (2) enhance, streamline, and integrate statewide, child-level early childhood data systems (including Part C and Part B preschool special education data systems) to address critical policy questions that will facilitate program improvement, improve compliance accountability, and improve outcomes or results for children served under Part C and Part B preschool special education programs. These Part C early intervention and Part B preschool special education data systems must allow the States to: (1) Effectively and efficiently respond to all IDEA-related data submission requirements (*e.g.,* Part C section 616 and 618 data and Part B preschool special education data); (2) respond to critical policy questions that will facilitate program improvement and compliance accountability; and (3) comply with applicable privacy requirements, including the confidentiality requirements under Parts B and C of IDEA, the Privacy Rule under the Health Insurance Portability and Accountability Act (HIPAA) (45 CFR part 160 and subparts A and E of part 164), and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and its regulations at 34 CFR part 99.

The Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part C data (including

IDEA section 616 Part C data and section 618 Part C data);

(b) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B preschool special education data;

(c) Increased number of States that use their Part C early intervention and Part B preschool special education data system to answer critical State-determined policy questions to drive program improvement, improve results for children with disabilities, and improve compliance accountability;

(d) Increased number of States with integrated or linked Part C early intervention and Part B preschool special education data;

(e) Increased number of States that use linked or integrated early childhood data to improve program compliance and accountability;

(f) Increased number of States with data system integration plans that allow for the linking of Part C and Part B preschool special education data as well as linking to other statewide longitudinal and early learning data systems and that comply with all applicable privacy laws;

(g) Increased capacity of States to implement and document Part C and Part B preschool special education data management policies and procedures and data system integration activities and to develop a sustainability plan to continue this data management and data system integration work in the future; and

(h) Increased capacity of States to address personnel training needs to meet the Part C and Part B preschool special education data collection and reporting requirements under sections 616 and 618 of IDEA through development of effective tools (*e.g.,* training modules) and resources (*e.g.,* new Part C Data Managers resources), as well as providing opportunities for in-person and virtual cross-State collaboration about Part C data (required under sections 616 and 618 of IDEA) and Part B preschool special education data collection and reporting requirements that States can use to train personnel in local programs and agencies.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Secretary establishes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Requirements:

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address State challenges associated with early childhood data management and data system integration, including implementing early childhood data system integration and improvements; enhancing and streamlining Part C early intervention and Part B preschool special education data systems to respond to critical policy questions; using ECIDS for program improvement and compliance accountability for Part C early intervention and Part B preschool special education programs; and reporting high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data to the Department and the public. To meet this requirement the applicant must—

(i) Present applicable national, State, or local data demonstrating the challenges of States to implement effective early childhood data management policies and procedures and data system integration activities, including integrating early childhood data systems across IDEA programs, other early learning programs, and other educational programs for school-aged students; linking Part C and Part B preschool special education program data; and using their Part C and Part B preschool special education data systems to respond to critical State-determined policy questions for program improvement and compliance accountability;

(ii) Demonstrate knowledge of current educational and technical issues and policy initiatives relating to early childhood data management and data system integration, data use, data privacy, Part C IDEA sections 616 and 618 data, Part B preschool special education data, and Part C and Part B preschool special education data systems; and

(iii) Present information about the current level of implementation of integrating or linking Part C and Part B preschool special education data systems; integrating or linking Part C and/or Part B preschool special education data systems with other early learning data systems; using Part C and Part B preschool special education data systems to respond to critical State-determined policy questions; and collecting, reporting, analyzing, and using high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data; and

(2) Improve early childhood data management policies and procedures and data system integration activities used to collect, report, and analyze high-quality Part C and Part B preschool special education data; to integrate or link Part C and Part B preschool special education data systems as well as integrate or link these data with data on children participating in other early learning programs and data on school-aged children; and to develop and use robust early childhood data systems to answer critical State-determined policy questions and indicate the likely magnitude or importance of the improvements.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based [1] practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research on early childhood data management and data system integration, and related EBPs; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on early childhood data management and data system integration;

(ii) Its proposed approach to universal, general TA,[2] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[3] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the State and local levels; and

(C) The process by which the proposed project will collaborate with OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State;

(iv) Its proposed approach to intensive, sustained TA [4] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to addressing States' challenges associated with limited resources to engage in early childhood data system integration and enhancement activities that streamline the established Part C and Part B preschool special education data systems to respond to critical policy questions and to report high-quality IDEA data to the Department and the public, which should, at a minimum, include providing on-site consultants to the State lead agency (LA) or State educational agency (SEA) to—

(1) Model and document data management and data system integration policies, procedures, processes, and activities within the State;

(2) Develop and adapt tools and provide technical solutions to meet State-specific data needs; and

(3) Develop a sustainability plan for the State to continue the data management and data system integration work in the future;

(C) Its proposed approach to measure the readiness of the State LA and SEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local program and district levels;

(D) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of States with known ongoing data quality issues, as measured by OSEP's review of the quality of the IDEA sections 616 and 618 data;

(E) Its proposed plan for assisting State LAs and SEAs to build or enhance training systems that include professional development based on adult learning principles and coaching;

(F) Its proposed plan for working with appropriate levels of the education system (*e.g.,* State LAs, SEAs, regional TA providers, districts, local programs, families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data as well as early childhood data management and data system integration; and

(G) Its proposed plan for collaborating and coordinating with the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, Department-funded TA investments, other federally funded TA investments, and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority and to develop and implement a coordinated TA plan when they are involved in a State;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

[1] For the purposes of this priority, ''evidence-based'' means the proposed project component is supported, at a minimum, by evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

[2] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[3] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[4] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[5] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the Annual Performance Report (APR); and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes; and

(5) The applicant will ensure that it will recover the lesser of: (A) Its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency; and (B) 40 percent of its modified total direct cost (MTDC) base as defined in 2 CFR 200.68.

Note: The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit. If a grantee's allocable indirect costs exceed 40 percent of MTDC as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two- and one-half-day project directors' meeting in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget at least 50 percent of the grant award for providing targeted and intensive TA to States.

This document does not preclude us from proposing additional priorities or requirements, subject to meeting applicable rulemaking requirements.

[5] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority and these requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. 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).

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new rule must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, Executive Order 13771 does not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the final priority and requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that this regulatory action does not impose significant costs on eligible entities, whose participation in this program is voluntary. While this action does impose some requirements on participating grantees that are cost-bearing, the Department expects that applicants for this program will include in their proposed budgets a request for funds to support compliance with such cost-bearing requirements. Therefore, costs associated with meeting these requirements are, in the Department's estimation, minimal.

The Department believes that these benefits to the Federal government outweigh the costs associated with this action.

Regulatory Alternatives Considered

The Department believes that the priority and requirements are needed to administer the program effectively.

Paperwork Reduction Act of 1995

The final priority and requirements contain information collection requirements that are approved by OMB under OMB control number 1894–0006; the final priority and requirements do not affect the currently approved data collection.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this final regulatory action will affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the final priority and requirements will be

limited to paperwork burden related to preparing an application and that the benefits of this proposed priority and these proposed requirements will outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the final priority and requirements will impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the final priority and requirements will not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application will likely be the same.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2019–OSERS–0001]

Final Priority and Requirements—Technical Assistance on State Data Collection Program—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Part B Data

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Final priority and requirements.

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.373Y.]

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority and requirements under the Technical Assistance on State Data Collection Program. The Assistant Secretary may use this priority and these requirements for competitions in fiscal year (FY) 2019 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection and reporting requirements under Part B of the Individuals with Disabilities Education Act (IDEA). This center, CFDA number 84.373Y, will support States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for each child with a disability and would customize its TA to meet each State's specific needs.

DATES: This priority and these requirements are effective September 11, 2019.

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 5025A, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7334. Email: *Richelle.Davis@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: Section 616 of the IDEA requires States to submit to the Department, and make available to the public, a State performance plan (SPP) and an annual performance report (APR) with data on how each State implements both Parts B and C of the IDEA to improve outcomes for infants, toddlers, children, and youth with disabilities. Section 618 of the IDEA requires States to submit to the Department, and make available to the public, quantitative data on infants, toddlers, children, and youth with disabilities who are receiving early intervention and special education services under IDEA. The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements under Sections 616 and 618 of the IDEA to collect, analyze, and report the data used to prepare the SPP/APR. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve up to ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, Division H of the

Consolidated Appropriations Act of 2018 gives the Secretary authority to use funds reserved under section 611(c) to ''carry out services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.'' Consolidated Appropriations Act, 2018; Div. H, Title III of Public Law 115–141; 132 Stat. 745 (2018).

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442, and the Department of Education Appropriations Act, 2018; Div. H, Title III of Public Law 115–141, Consolidated Appropriations Act, 2018; 132 Stat. 745 (2018).

Applicable Program Regulations: 34 CFR 300.702.

We published a notice of proposed priority and requirements for this program in the **Federal Register** on March 6, 2019 (84 FR 8054) (the NPP). The NPP contained background information and our reasons for proposing the particular priority and requirements.

There are differences between the NPP and this notice of final priority and requirements (NFP) as discussed in the *Analysis of Comments and Changes* section of this notice. The most significant of these changes, as discussed below, is the addition of an indirect cost rate cap to the final requirements.

Public Comment: In response to our invitation in the NPP, 12 parties submitted comments on the proposed priority and requirements.

Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priority and requirements.

Analysis of Comments and Changes: An analysis of the comments and changes in the priority and requirements since publication of the NPP follows. OSERS received comments on a number of specific topics from the proposed cap on the maximum allowable indirect cost rate to the topics for technical assistance. Each topic is addressed below.

General Comments

Comments: One commenter specifically expressed support for the proposed center, and a number of other commenters noted the positive impact of the valuable TA they received from centers previously funded under this program.

Discussion: The Department appreciates the comments and agrees with the commenters. Centers, like the proposed center, funded under this program provide necessary and valuable TA to the States.

Changes: None.

Comments: None.

Discussion: As discussed in the NPP, the Department is particularly concerned about maximizing the efficiency and effectiveness of this investment. Given the purpose of the program, we believe a critical lever to meeting this goal is to ensure that TA is appropriately targeted to recipients with a known and ongoing need for support in reporting, analyzing, and using high quality IDEA data. As such, the Department is adding a requirement that applicants describe their proposed approach to prioritizing TA recipients with a particular focus on meeting the needs of States with ongoing data quality issues.

Changes: The final priority includes a requirement for applicants to describe their proposed approach to prioritizing TA recipients.

Indirect Cost Rate

Comments: A number of commenters agreed with the purpose of the indirect cost cap, which is to maximize funds that go directly to provide TA to States to improve their capacity to meet the IDEA data collection and reporting requirements. These same commenters, however, believed that setting a cap on indirect costs would not achieve this goal and that it may negatively impact the program. They noted that indirect costs support a wide variety of purchases and activities, including, but not limited to, facilities, information technology (IT) services, and support personnel. Further, a subset of these commenters stated that a cap on indirect cost rates would limit competition, reduce the number of qualified applicants, and likely degrade the quality of TA services provided to States. Specifically, some of these commenters stated that a cap could make it cost prohibitive for small businesses to compete for the grant, as they could not absorb any unrecovered indirect costs. Additionally, it would make it harder for applicants to attract and retain qualified personnel, thus depressing the quality of services provided to States.

Discussion: The Department appreciates the stakeholder input it received in response to the specific directed question on the indirect cost cap proposal but disagrees that it would have a negative impact on the program. Regarding potential impact, the Department has done an analysis of the indirect cost rates for all current technical assistance centers funded under the Technical Assistance and Dissemination and Technical Assistance on State Data Collection programs as well as other grantees that are large, midsize and small businesses and small nonprofit organizations and has found that, in general, total indirect costs charged on these grants by these entities were at or below 35 percent of total direct costs. We recognize that, dependent on the structure of the investment and activities, the modified total direct cost (MTDC) base could be much smaller than the total direct cost, which would imply a higher indirect cost rate than those calculated here. The Department arrived at a 40 percent rate to address some of that variation. Such a change accounts for a 12 percent variance between TDC and MTDC. However, we note that, in the absence of a cap, certain entities would likely charge indirect cost rates in excess of 40 percent of MTDC. Based on our review, it appears that those entities would likely be larger for-profit and nonprofit organizations, but these organizations appear to be outliers when compared to the majority of other large businesses as well as the entirety of OSEP's grantees. Setting an indirect cost rate cap of 40 percent is in line with the majority of applicants' existing negotiated rates with the cognizant Federal agency. Therefore, we do not believe that the cap we are setting in these final requirements would negatively impact the majority of entities' ability to recover indirect costs.

Regarding commenters' concerns that a cap on indirect costs would limit competition and reduce the number of qualified applicants, it is not clear how a cap would do so. The cap included in the final requirements does not limit the pool of eligible applicants because most entities' indirect cost rates are below the cap we are setting. Further, regarding the impact on the quality of TA services provided to States, we have no information indicating a direct correlation between an entity's negotiated indirect cost rate and its ability to attract and retain qualified personnel and thus their ability to provide high-quality TA services to States. Based on our analysis, there are many OSEP grantees that are able to effectively carry out project activities required by their individual grants with negotiated indirect cost rates under the cap included in the final requirements. Further, the Department's peer review process is intended to assess the ability of various applicants to provide high-quality TA to States. Finally, we do not believe the cap we are setting in these final requirements would result in an amount of unrecovered costs that would deter most prospective applicants. The prospective applicants could look at the

indirect cost cap prior to applying and either choose to absorb unrecovered costs or opt not to apply.

In light of these considerations, we have determined that placing an indirect cost cap that is the lesser of the percentage approved by the grantee's cognizant Federal agency and 40 percent for this priority is appropriate as it maximizes the availability of funds for the primary TA purposes of this priority, which is to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA and to ultimately benefit programs serving children with disabilities.

Changes: Paragraph (d)(5) of the final requirements now includes an indirect cost cap that is the lesser of the percentage approved by the grantee's cognizant Federal agency and a cap of 40 percent on the reimbursement of indirect costs.

Comments: A number of commenters expressed concerns that many of the most qualified organizations could not compete because once indirect cost rates are set by, and audited by, a cognizant agency, they cannot be lowered for a single project.

Discussion: Our analysis of indirect cost rates took into account 2 CFR 200.414(c)(1), which allows a Federal awarding agency to use an indirect cost rate different from the negotiated rate when required by Federal statute or regulation or when approved by a Federal awarding agency head based on documented justification when the Federal awarding agency implements, and makes publicly available, the policies, procedures, and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates. Federal discretionary grantees have historically been reimbursed for indirect costs at the rate that each grantee negotiates with its cognizant Federal agency, and we believe that use of the negotiated rate is appropriate for most grants in most circumstances. However, because funding for this program comes from funds reserved by the Department that would otherwise be allocated to States under Part B (which applies a restricted indirect cost rate to State grantees), we determined that using an indirect cost rate different from the negotiated rate was appropriate since it would maximize the funds available to provide TA to States to improve their capacity to meet the IDEA data collection and reporting requirements.

Changes: None.

Comments: Numerous commenters expressed concerns that the implementation of an indirect cost rate limit would not impact each vendor equally or result in equal savings to the government, as categories of indirect costs vary across vendors.

Discussion: We appreciate the commenters' concerns and recognize that a cap on the indirect cost rate, although it would apply equally to all applicants, may be more difficult for particular entities to meet, particularly those with high negotiated indirect cost rates. However, as noted above, our analysis indicates that the rate established in the final requirements would not appear to create unreasonable burdens for many applicants. Further, it was not the Department's intention to institute a limit on the reimbursement of indirect costs by specific cost category, but rather to apply it as a percentage of MTDC. We have clarified in the final requirements that the limit applies to MTDC as defined in 2 CFR 200.68. As the MTDC is applied to the total direct costs of the grant, each grantee's MTDC will include direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward, thus ensuring equity across vendors.

Changes: The final requirement clarifies that the 40 percent maximum indirect cost rate is applied to MTDC as defined in 2 CFR 200.68.

Comments: Two commenters provided alternatives to setting a cap. One commenter proposed gauging competitiveness based on a vendor's total price in combination with the proposed quality and level of effort. A second commenter suggested that the program add a cost share requirement in lieu of an indirect cost cap. The commenter suggested that a modest cost share may not impact vendor economics to the same degree as a cap on indirect costs.

Discussion: The Department appreciates the commenters' suggestions. Regarding gauging competitiveness based on a vendor's total price in combination with the proposed quality and level of effort, this may represent a viable approach for contract procurement, but does not lend itself to making discretionary grant awards. Regarding the second commenter's recommendation to add a cost share requirement, the nature of the funding source for this program does not allow for a cost sharing requirement and, in addition, could have the unintended consequence of eliminating small businesses.

Changes: None.

Comments: One commenter advocated for the Department to provide clarification and guidance to States on what should be covered by indirect cost rates and how to determine appropriate indirect cost rates. Additionally, a second commenter suggested the Department allow States the flexibility to determine and justify funds allocated to indirect costs.

Discussion: The Department appreciates the commenters' suggestions. We were not proposing a cap on the indirect cost rates for State formula grants. Clarification or guidance on what is or is not an indirect cost can be obtained from the indirect cost office of the applicant's cognizant Federal agency.

Changes: None.

Data Collection Under IDEA

Comments: A commenter recommended that the Department collect data on students who identify in a gender-neutral category, use a different language/communication system, or are born in the United States but do not speak English as their first language, and on their socioeconomic status, parental English fluency, and parents' highest educational level.

Discussion: The Department appreciates the comment; however, this priority does not address the data collection and reporting requirements for States under IDEA. The ED*Facts* information collection package (OMB control number 1850–0925), which would more squarely address these issues, was published in the **Federal Register** on April 8, 2019 (84 FR 13913). It addressed the IDEA Section 618 Part B data collection requirements and was open for public comment from April 8, 2019 to May 8, 2019.

Changes: None.

Significant Disproportionality

Comments: Some commenters noted that the proposed center did not include anything in its scope or focus related to TA on significant disproportionality. Commenters spoke to the continued need for data-related TA on significant disproportionality.

Discussion: The Department appreciates the commenters' concerns. At this time, however, the Department does not wish to emphasize specific IDEA sections 618 and 616 Part B data collection and reporting requirements that the proposed center would be required to address. Applicants will be required to demonstrate knowledge of current educational issues and policy initiatives (*e.g.,* significant disproportionality) about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate. The Center would be expected to provide TA designed to

meet the needs of States. Therefore, to the extent that particular TA recipients require support for any of the sections 618 and 616 Part B data collection or reporting requirements, the Center would provide the needed TA.

Changes: None.

Involvement of the State Educational Agency (SEA) in TA Efforts

Comments: Some commenters requested that we require the proposed center to work with the SEA when providing TA to local educational agencies (LEAs) within the State in order to ensure TA aligns with the State's requirements.

Discussion: The Department agrees with commenters on the need to include SEAs when TA is provided to an LEA within a State. We added language to the priority to clarify that TA to LEAs must occur in collaboration with the SEA.

Changes: We added language to paragraph (d) of the list of expected outcomes in the priority to require the Center to collaborate with the SEA in providing TA to LEAs.

Cross-State Collaboration

Comments: A number of commenters requested further clarification about expectations for cross-State collaboration, and three commenters suggested the Department require the proposed center to support a State data manager advisory board.

Discussion: The Department agrees with the commenters regarding the importance of cross-State collaboration. Expectations for such collaboration were already included in paragraph (c) in the list of expected outcomes in the proposed priority, which the Department believes fully addresses the commenters' concerns.

Consequently, we do not believe an advisory board is necessary, and anticipate that the funded center would engage established data groups to determine the data manager needs as appropriate.

Changes: None.

Targeted Technical Assistance

Comment: One commenter recommended expanding the provision of targeted TA to States.

Discussion: The Department agrees with the commenter regarding the continued need to provide additional targeted TA to States. Targeted TA to groups of States on specific data processes and data collections is not only valuable to the State but also an efficient way to provide TA.

Changes: We revised what is now paragraph (f)(7) of the requirements to clarify that 50 percent of the grant award must go to support both targeted and intensive TA to States.

Division of Activities Between 84.373Y and 84.373Z

Comment: Several commenters voiced a concern with splitting the responsibilities of providing TA on the IDEA Part B preschool special education data between the proposed center and the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data, CFDA number 84.373Z. The commenters stated that splitting the responsibilities regarding the IDEA Part B preschool special education data across the two centers may require Part B data managers to work with both centers in order to improve the quality of their IDEA Part B preschool special education data.

Discussion: The Department appreciates the commenters' concerns. The Department believes that including IDEA Part B preschool special education data in the scope of this center makes sense for some of the IDEA data and including IDEA Part B preschool special education data in the scope of the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data, CFDA number 84.373Z, is appropriate for other IDEA data.

The Department believes that including the IDEA Part B preschool special education data required under IDEA section 618 (including the section 618, Part B Child Count and Educational Environments data) and those preschool data required under IDEA section 616 for indicators in the IDEA Part B State Performance Plan/Annual Performance Report (SPP/APR) that solely use the ED*Facts* data as the source for reporting, such as Indicator B–5 (Preschool Least Restrictive Environment), within the scope of this center will allow a State to obtain TA on IDEA data submitted via ED*Facts* from a single center. This structure that specifies more distinct portfolios of the centers (*i.e.,* less overlap) will make it easier for States to work with the two centers. Since a State Part B data manager plays a significant role in submitting the IDEA data on children with disabilities ages 3 through 5 and children with disabilities ages 6 through 21 via ED*Facts,* the data manager will be able to access TA on these data through a single center. Finally, this will allow States to receive TA on IDEA data-related topics and analyses that are supported by and use IDEA section 618 data submitted via ED*Facts.*

The Department believes that including the IDEA Part B preschool special education data required under IDEA Section 616 for Indicators B–7 (Preschool Outcomes) and B–12 (Early Childhood Transition) within the scope for the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data, CFDA number 84.373Z, is appropriate because it will facilitate better linkages between the Part C data and the IDEA Part B preschool special education data on children with disabilities and the inclusion of the Part C and IDEA Part B preschool special education data in the Early Childhood Integrated Data Systems (ECIDS). This will allow for enhanced opportunities to improve the quality of data States are collecting, reporting, analyzing, and using related to children's transition from the Part C early intervention program to the Part B preschool special education program. In addition, due to the similarities in the type of data required under IDEA section 616 for Indicator C–3 (Infant and Toddler Outcomes) in the Part C SPP/APR and Indicator B–7 (Preschool Outcomes) in the Part B SPP/APR, it is more efficient to have the center funded under CFDA number 373Z provide TA on these data.

Changes: We have revised the purpose of the priority to include TA on the section 618, Part B Child Count and Educational Environments data for children with disabilities ages 3 through 5 and preschool data required under IDEA section 616 for indicators in the IDEA Part B SPP/APR that solely use the EDFacts data as the source for reporting, such as Indicator B–5 (Preschool Least Restrictive Environment), in the scope of this center.

Definition of Evidence-Based Practices

Comments: One commenter stated that the definition of evidence-based practices (EBPs) used in the proposed requirements does not align with the highest level of available evidence, and that EBP is a dynamic process that requires ongoing evaluation.

Discussion: We understood the commenter to be recommending a higher level of evidence than required in the proposed requirements. We agree with the commenter regarding the importance of ensuring the provision of effective TA to States; however, we do not agree that the definition of EBPs used in the proposed requirements is insufficient. We are continually reviewing the effectiveness of services provided by our federally funded TA

centers. We believe that the definition of EBPs used in the proposed requirements—the definition in 34 CFR 77.1—is well established and provides the necessary standards against which high-quality services may be judged for the purposes of making an award and monitoring the implementation of TA to improve the capacity of States to meet the data collection and reporting requirements under Part B of IDEA.

Changes: None.

Final Priority:

Technical Assistance on State Data Collection—National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

Priority:

The purpose of this priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Data Center).

The Data Center will provide TA to help States better meet current and future IDEA Part B data collection and reporting requirements, improve data quality, and analyze and use section 616, section 618, and other IDEA data (*e.g.,* State Supplemental Survey-IDEA) to identify and address programmatic strengths and areas for improvement. This Data Center will focus on providing TA on collecting, reporting, analyzing, and using Part B data on children with disabilities ages 3 through 21 required under sections 616 and 618 of IDEA, including Part B data on children with disabilities ages 3 through 5 required under section 618 of IDEA for the Part B Child Count and Educational Environments data collection and under section 616 for indicators in the IDEA Part B SPP/APR that solely use the EDFacts data as the source for reporting, such as Indicator B–5 (Preschool Least Restrictive Environment). However, the Data Center will not provide TA on Part B data required under section 616 of IDEA for Indicators B7 (Preschool Outcomes) and B12 (Early Childhood Transition); TA on collecting, reporting, analyzing, and using Part B data associated with children with disabilities ages 3 through 5 for these indicators will be provided by the National IDEA Technical Assistance Center on Early Childhood Data Systems, CFDA number 84.373Z.

The Data Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Improved State data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant State offices, including SEAs, LEAs, and schools to improve the quality of IDEA data required under sections 616 and 618 of IDEA;

(b) Increased capacity of States to submit accurate and timely data, to enhance current State validation procedures, and to prevent future errors in State-reported IDEA Part B data;

(c) Improved capacity of States to meet the data collection and reporting requirements under sections 616 and 618 of IDEA by addressing personnel training needs, developing effective tools (*e.g.,* training modules) and resources (*e.g.,* documentation of State data processes), and providing in-person and virtual opportunities for cross-State collaboration about data collection and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(d) Improved capacity of SEAs and LEAs, in collaboration with SEAs, to collect, analyze, and use both SEA and LEA IDEA data to identify programmatic strengths and areas for improvement, address root causes of poor performance towards outcomes, and evaluate progress towards outcomes;

(e) Improved IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools that can be used by States to lead to improvements in the validity and reliability of data required by IDEA and enable States to communicate accurate data to local consumers (*e.g.,* parents, school boards, the general public); and

(f) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B data.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Secretary establishes the following requirements for this program. We may apply these requirements in any year in which this program is in effect.

Requirements:

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and to increase their capacity to analyze and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of current educational issues and policy initiatives about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement; and

(iii) Describe how SEAs and LEAs are currently meeting IDEA Part B data collection and reporting requirements and using section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidenced-based [1] practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs and LEAs to report and use data, specifically section 616 and section 618 data, as a means of both improving data quality and identifying strengths and areas for improvement; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and SEA and LEA analysis and use of sections 616 and 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement;

(ii) Its proposed approach to universal, general TA,[2] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[3] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive of the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive,[4] sustained TA, which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of SEA and LEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of States with known ongoing data quality issues, as measured by OSEP's review of the quality of the IDEA sections 616 and 618 data;

(D) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems related to the IDEA Part B data collection and reporting requirements that include professional development based on adult learning principles and coaching;

(E) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs and LEAs to meet Part B data collection and reporting requirements under sections 616 and 618 of the IDEA; and

(F) Its proposed plan for collaborating and coordinating with Department-funded TA investments and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration;

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[5] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated

[1] For the purposes of this priority, ''evidence-based'' means the proposed project component is supported, at a minimum, by evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

[2] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[3] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[4] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[5] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the APR and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes; and

(5) How the applicant will ensure that it will recover the lesser of (a) its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency; and (b) 40 percent of its modified total direct cost (MTDC) base as defined in 2 CFR 200.68.

Note: The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit. If a grantee's allocable indirect costs exceed 40 percent of its MTDC as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' meeting in Washington, DC, during each year of the project period;

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget at least 50 percent of the grant award for providing targeted and intensive TA to States.

This document does not preclude us from proposing additional priorities or requirements, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use this priority and these requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. 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).

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For Fiscal Year 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the final priority and requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that this regulatory action does not impose significant costs on eligible entities, whose participation in this program is voluntary. While this action does impose some requirements on participating grantees that are cost-bearing, the Department expects that applicants for this program will include in their proposed budgets a request for funds to support compliance with such cost-bearing requirements. Therefore, costs associated with meeting these requirements are, in the Department's estimation, minimal.

The Department believes that these benefits to the Federal government outweigh the costs associated with this action.

Regulatory Alternatives Considered

The Department believes that the priority and requirements are needed to administer the program effectively.

Paperwork Reduction Act of 1995

The final priority and requirements contain information collection requirements that are approved by OMB under OMB control number 1894–0006; the final priority and requirements do not affect the currently approved data collection.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this final regulatory action will affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the final priority and requirements will be limited to paperwork burden related to preparing an application and that the benefits of this final priority and these final requirements will outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the final priority and requirements will impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the final priority and requirements will not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the final action. That is, the length of the applications those entities would submit in the absence of the final regulatory action and the time needed to prepare an application will likely be the same.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2019–17215 Filed 8–7–19; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2017–0096; FXFR13350700640–190–FF07J00000; FBMS #4500133004]

RIN 1018–BC06

Subsistence Management Regulations for Public Lands in Alaska—2019–20 and 2020–21 Subsistence Taking of Fish Regulations

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises regulations for seasons, harvest limits, methods, and means related to taking of fish for subsistence uses in Alaska during the 2019–2020 and 2020–2021 regulatory years. The Federal Subsistence Board (Board) completes the biennial process of revising subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle. This rule also revises fish customary and traditional use determinations.

DATES: This rule is effective August 12, 2019.

ADDRESSES: The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management website (*https://www.doi.gov/subsistence*). The comments received in response to the proposed rule are available on *www.regulations.gov* in Docket No. FWS–R7–SM–2017–0096.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas C.J. Doolittle, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov*. For questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461 or *thomas.whitford@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program managers have subsequently amended these regulations a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, National Park Service;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska Regional Forester, USDA Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10

subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

The Board addresses customary and traditional use determinations during the applicable biennial cycle. Section ____.24 (customary and traditional use determinations) was originally published in the **Federal Register** on May 29, 1992 (57 FR 22940). The regulations at 36 CFR 242.4 and 50 CFR 100.4 define ''customary and traditional use'' as ''a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. . . .'' Since 1992, the Board has made a number of customary and traditional use determinations at the request of affected subsistence users. Those modifications for fish and shellfish, along with some administrative corrections, were published in the **Federal Register** as follows:

MODIFICATIONS TO § ____.24

Federal Register citation	Date of publication	Rule made changes to the following provisions of ____.24
59 FR 27462	May 27, 1994	Wildlife and Fish/Shellfish.
59 FR 51855	October 13, 1994	Wildlife and Fish/Shellfish.
60 FR 10317	February 24, 1995	Wildlife and Fish/Shellfish.
61 FR 39698	July 30, 1996	Wildlife and Fish/Shellfish.
62 FR 29016	May 29, 1997	Wildlife and Fish/Shellfish.
63 FR 35332	June 29, 1998	Wildlife and Fish/Shellfish.
63 FR 46148	August 28, 1998	Wildlife and Fish/Shellfish.
64 FR 1276	January 8, 1999	Fish/Shellfish.
66 FR 10142	February 13, 2001	Fish/Shellfish.
67 FR 5890	February 7, 2002	Fish/Shellfish.
68 FR 7276	February 12, 2003	Fish/Shellfish.
69 FR 5018	February 3, 2004	Fish/Shellfish.
70 FR 13377	March 21, 2005	Fish/Shellfish.
71 FR 15569	March 29, 2006	Fish/Shellfish.
72 FR 12676	March 16, 2007	Fish/Shellfish.
72 FR 73426	December 27, 2007	Wildlife/Fish.
74 FR 14049	March 30, 2009	Fish/Shellfish.
76 FR 12564	March 8, 2011	Fish/Shellfish.
83 FR 3079	January 23, 2018	Fish.

Current Rule

The Departments published a proposed rule, Subsistence Management Regulations for Public Lands in Alaska—2019–20 and 2020–21 Subsistence Taking of Fish Regulations, on March 23, 2018 (83 FR 12689), to amend the fish section of subparts C and D of 36 CFR part 242 and 50 CFR part 100. The proposed rule opened a comment period, which closed on April 23, 2018. The Departments advertised the proposed rule by mail, email, web page, social media, radio, and newspaper, and comments were submitted via *www.regulations.gov* to Docket No. FWS–R7–SM–2017–0096. During that period, the Councils met and, in addition to other Council business, received suggestions for proposals from the public. The Board received a total of 23 proposals for changes to subparts C and D; this included 4 proposals that were deemed invalid because they were beyond the scope of the Board's authority, and one that was deferred from the previous fisheries cycle. After the comment period closed, the Board prepared a booklet describing the proposals and distributed it to the public. The proposals were also available online. The public then had an additional 70 days in which to comment on the proposals for changes to the regulations.

The 10 Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. The Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board's public meeting of April 15–18, 2019. These final regulations reflect Board review and consideration of Council recommendations, Tribal and Alaska Native corporation consultations, and public comments. The public received extensive opportunity to review and comment on all changes.

Of the 19 valid proposals, 8 were on the Board's non-consensus agenda and 11 were on the consensus agenda. The consensus agenda is made up of proposals for which there is agreement among the affected Councils, a majority of the Interagency Staff Committee members, and the Alaska Department of Fish and Game concerning a proposed regulatory action. Anyone may request that the Board remove a proposal from the consensus agenda and place it on the non-consensus agenda. The Board votes en masse on the consensus agenda after deliberation and action on all other proposals.

Of the proposals on the consensus agenda, the Board adopted two; adopted four with modification; and rejected five. Analysis and justification for the action taken on each proposal on the consensus agenda are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management website (*https://www.doi.gov/subsistence*). Of the proposals on the non-consensus agenda, the Board adopted three; adopted four with modification; and rejected one.

Summary of Non-Consensus Proposals Not Adopted by the Board

The Board rejected one non-consensus proposal. The rejected proposal was recommended for rejection by both affected Councils as noted below.

Kuskokwim Area

The Board rejected a deferred proposal to restructure the management plans, fishing schedules, and methods and means and allow for independent action to be taken by the Federal in-season manager on the Kuskokwim River. This action was supported by both affected Councils.

Summary of Non-Consensus Proposals Adopted by the Board

The Board adopted three proposals and adopted with modification four non-consensus proposals. Modifications were either suggested by the affected Council(s), developed during the analysis process, or developed during the Board's public deliberations. All of the adopted proposals were recommended for adoption by at least one of the Councils as noted below.

Yukon-Northern Area

The Board adopted with modification one proposal to revise the drift gillnet fishery in District 4 and remove mesh depth restrictions. This action was supported by three Councils and opposed by one.

Kuskokwim Area

The Board adopted one proposal to allow the use of 6-inch or less mesh size prior to June 1 in the Kuskokwim River drainage. This action was supported by one Council and opposed by another.

The Board adopted one proposal with modification to allow the use of gillnets in tributaries of the Kuskokwim River during closures, in which salmon do not spawn. One Council supported the proposal and another supported with modification. The Board further modified the text to clarify the original intent of the proponent.

Bristol Bay Area

The Board adopted one proposal to revise the regulations for the take of salmon, without a permit, in Lake Clark and its tributaries and include the use of rod and reel. This action was supported by the affected Council.

Prince William Sound Area

The Board adopted one proposal with modification to place the permit conditions for the Prince William Sound Area into regulations. This action was supported by the affected Council.

The Board adopted one proposal that allows the use of one unit of gear per person fishing under the same (household) subsistence permit in the upper Copper River district.

Southeastern Alaska Area

The Board adopted one proposal to close the public waters of Neva Lake, Neva Creek, and South Creek to the harvest of sockeye salmon except by federally qualified users. This action was supported by the affected Council.

In the area-specific regulations for fish, Southeastern Alaska Area, Stikine River, the *total annual guideline harvest level* for this fishery has been deleted based on changes in the coordination requirements for the U.S./Canada Pacific Salmon Treaty, which went into effect on January 1, 2019.

These final regulations reflect Board review and consideration of Council recommendations, Tribal and Alaska Native corporation consultations, and public comments. Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule in the **Federal Register**, participation in multiple Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change (36 CFR 242.20 and 50 CFR 100.20). Therefore, the Board believes that sufficient public notice and opportunity for involvement have been given to affected persons regarding Board decisions.

In the more than 25 years that the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of the subsistence regulations. A lapse in regulatory control could affect the continued viability of fish or wildlife populations and future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective upon the date set forth in **DATES** to ensure continued operation of the subsistence program.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act of 1995 (PRA)

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018–0075 (expires August 31, 2019; in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the renewal submission is pending at OMB).

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and there is no cost imposed on any State or local entities or Tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Board provided federally recognized Tribes and Alaska Native corporations opportunities to consult on this rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian Tribes under Executive Order No. 13175.''

The Secretaries, through the Board, provided a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

On April 15, 2019, the Board provided federally recognized Tribes and Alaska Native Corporations a specific opportunity to consult on this rule prior to the start of its public regulatory meeting. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend in person or via teleconference.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Thomas C.J. Doolittle of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Clarence Summers, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Carol Damberg, Alaska Regional Office, U.S. Fish and Wildlife Service; and

• Thomas Whitford, Alaska Regional Office, USDA Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

■ 2. Amend § ____.24 in the table in paragraph (a)(2) by revising the entries for ''YAKUTAT AREA'' and ''SOUTHEASTERN ALASKA AREA'' to read as follows:

§ ____.24 Customary and traditional use determinations.

(a) * * *

(2) * * *

Area	Species	Determination
* * *	*	* * *
YAKUTAT AREA	All fish	Residents of Yakutat and Southeastern Alaska Fishery Management Areas.
SOUTHEASTERN ALASKA AREA	All fish	Residents of Yakutat and Southeastern Alaska Fishery Management Areas.

* * * * *

Subpart D—Subsistence Taking of Fish and Wildlife

■ 3. Amend § ____.27 by revising paragraphs (e)(3), (4), (5), (11), and (13) to read as follows:

§ ____.27 Subsistence taking of fish.

* * * * *

(e) * * *

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Point Romanof and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° West longitude, including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time. In those locations where subsistence fishing permits are required, only one subsistence fishing permit will be issued to each household per year. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in this paragraph (e)(3).

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal special action.

(iii) In the following locations, you may take salmon during the open weekly fishing periods of the State commercial salmon fishing season and may not take them for 24 hours before the opening of the State commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4B and 4C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(iv) During any State commercial salmon fishing season closure of greater than 5 days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5D, salmon may not be taken from 6 p.m. Sunday until 6 p.m. Tuesday.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(vi) In Districts 1, 2, 3, and Subdistrict 4A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the State commercial salmon fishing season.

(vii) In Districts 1, 2, and 3:

(A) After the opening of the State commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period.

(viii) In Subdistrict 4A after the opening of the State commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period; however, you may take Chinook salmon during the State commercial fishing season, with drift gillnet gear only, from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks.

(x) You may not subsistence fish in the Delta River.

(xi) In Beaver Creek downstream from the confluence of Moose Creek, a gillnet with mesh size not to exceed 3-inches stretch-measure may be used from June 15 through September 15. You may subsistence fish for all non-salmon

species but may not target salmon during this time period (retention of salmon taken incidentally to non-salmon directed fisheries is allowed). From the mouth of Nome Creek downstream to the confluence of Moose Creek, only rod and reel may be used. From the mouth of Nome Creek downstream to the confluence of O'Brien Creek, the daily harvest and possession limit is 5 grayling; from the mouth of O'Brien Creek downstream to the confluence of Moose Creek, the daily harvest and possession limit is 10 grayling. The Nome Creek drainage of Beaver Creek is closed to subsistence fishing for grayling.

(xii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(A) In the Yukon River drainage, you may not take salmon for subsistence fishing using gillnets with stretched mesh larger than 7.5 inches.

(B) In Subdistrict 5D you may take salmon once the mid-range of the Canadian interim management escapement goal and the total allowable catch goal are projected to be achieved.

(C) Salmon may be harvested by dip net at any time, except during times of conservation when the Federal in-season manager may announce restrictions on time, areas, and species.

(xiv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the State commercial salmon fishing season using gillnets with stretched-mesh larger than 6 inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xv) In Districts 5 and 6, you may not take salmon for subsistence purposes by drift gillnets.

(xvi) In District 4 salmon may be taken by drift gillnet not more than 150 feet in length unless restricted by special action or as modified by regulations in this section.

(xvii) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes.

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms, and each drift gillnet may not exceed 50 fathoms in length.

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other fishing gear operating for commercial, personal, or subsistence use except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear, and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no minimum distance requirement between fish wheels.

(D) During the State commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods.

(E) In Birch Creek, gillnet mesh size may not exceed 3-inches stretch-measure from June 15 through September 15.

(F) In Racetrack Slough on the Koyukuk River and in the sloughs of the Huslia River drainage, from when each river is free of ice through June 15, the offshore end of the set gillnet may not be closer than 20 feet from the opposite bank except that sloughs 40 feet or less in width may have ¾ width coverage with set gillnet, unless closed by Federal special action.

(xviii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xix) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xx) Only one subsistence fishing permit will be issued to each household per year.

(xxi) In Districts 1, 2, and 3, from June 1 through July 15. If ADF&G has announced that Chinook salmon can be sold in the commercial fisheries, you may not possess Chinook salmon taken for subsistence purposes unless both tips (lobes) of the tail fin have been removed before the person conceals the salmon from plain view or transfers the salmon from the fishing site.

(xxii) In the Yukon River drainage, Chinook salmon must be used primarily for human consumption and may not be targeted for dog food. Dried Chinook salmon may not be used for dog food anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, and deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole Chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5D, upstream of Circle City.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), except the use of gillnets with 6-inch or less mesh size is allowed before June 1 in the Kuskokwim River drainage, unless superseded by a Federal special action.

(iii) In District 1, Kuskokuak Slough, from June 1 through July 31 only, you may not take salmon for 16 hours before and during each State open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before or during and for 6 hours after each State open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8, you may not take salmon by net gear or fish wheel for 16 hours before or during and for 6 hours after each open commercial salmon fishing period in the district. You may subsistence fish for salmon with rod and reel 24 hours per day, 7 days per week, unless rod and reel are specifically restricted by this paragraph (e)(4).

(vi) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before or during and for 6 hours after each State open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before or during and for 6 hours after each State open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before or during and for 6 hours after each State open commercial salmon fishing period.

(ix) You may only take salmon by gillnet, beach seine, fish wheel, dip net, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, handline, or rod and reel.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiv) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller stretched-mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch stretched-mesh may not be more than 35 meshes in depth.

(xv) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xvi) You may take rainbow trout only in accordance with the following restrictions:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15 through June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(xvii) All tributaries not expressly closed by Federal special action, or as modified by regulations in this section, remain open to the use of gillnets more than 100 yards upstream from their confluence with the Kuskokwim River.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay, including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.

(iii) In the Egegik River from 9 a.m. June 23 through 9 a.m. July 17, you may take salmon only during the following times: From 9 a.m. Tuesday to 9 a.m. Wednesday and from 9:00 a.m. Saturday to 9 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin by set gillnets only.

(vii) Outside the boundaries of any district, unless otherwise specified, you may take salmon by set gillnet only.

(A) You may also take salmon by spear in the Togiak River, excluding its tributaries.

(B) You may also use drift gillnets not greater than 10 fathoms in length to take salmon in the Togiak River in the first 2 river miles upstream from the mouth of the Togiak River to the ADF&G regulatory markers.

(C) You may also take salmon without a permit in Sixmile Lake and its tributaries within and adjacent to the exterior boundaries of Lake Clark National Park and Preserve unless otherwise prohibited, and Lake Clark and its tributaries, by snagging (by handline or rod and reel), using a spear, bow and arrow, rod and reel, or capturing by bare hand.

(D) You may also take salmon by beach seines not exceeding 25 fathoms in length in Lake Clark, excluding its tributaries.

(E) You may also take fish (except rainbow trout) with a fyke net and lead in tributaries of Lake Clark and the tributaries of Sixmile Lake within and adjacent to the exterior boundaries of Lake Clark National Park and Preserve unless otherwise prohibited.

(*1*) You may use a fyke net and lead only with a permit issued by the Federal in-season manager.

(*2*) All fyke nets and leads must be attended at all times while in use.

(*3*) All materials used to construct the fyke net and lead must be made of wood and be removed from the water when the fyke net and lead is no longer in use.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, herring, and capelin by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon only under authority of a State subsistence salmon permit (permits are issued by ADF&G)

except when using a Federal permit for fyke net and lead.

(xv) Only one State subsistence fishing permit for salmon and one Federal permit for use of a fyke net and lead for all fish (except rainbow trout) may be issued to each household per year.

(xvi) In the Togiak River section and the Togiak River drainage:

(A) You may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(B) You may not possess salmon taken with a drift gillnet under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(xvii) You may take rainbow trout only by rod and reel or jigging gear. Rainbow trout daily harvest and possession limits are two per day/two in possession with no size limit from April 10 through October 31 and five per day/five in possession with no size limit from November 1 through April 9.

(xviii) If you take rainbow trout incidentally in other subsistence net fisheries, or through the ice, you may retain them for subsistence purposes.

* * * * *

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters and drainages of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) You may take fish, other than rainbow/steelhead trout, in the Prince William Sound Area only under authority of a subsistence fishing permit, except that a permit is not required to take eulachon. You make not take rainbow/steelhead trout, except as otherwise provided for in this paragraph (e)(11).

(A) In the Prince William Sound Area within Chugach National Forest and in the Copper River drainage downstream of Haley Creek, you may accumulate Federal subsistence fishing harvest limits with harvest limits under State of Alaska sport fishing regulations provided that accumulation of fishing harvest limits does not occur during the same day.

(B) You may accumulate harvest limits of salmon authorized for the Copper River drainage upstream from Haley Creek with harvest limits for salmon authorized under State of Alaska sport fishing regulations.

(ii) You may take fish by gear listed in paragraph (b)(1) of this section unless restricted in this section or under the terms of a subsistence fishing permit.

(iii) If you catch rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes, unless restricted in this section.

(iv) In the Copper River drainage, you may take salmon only in the waters of the Upper Copper River District, or in the vicinity of the Native Village of Batzulnetas.

(v) In the Upper Copper River District, you may take salmon only by fish wheels, rod and reel, or dip nets.

(vi) Rainbow/steelhead trout and other freshwater fish caught incidentally to salmon by fish wheel in the Upper Copper River District may be retained.

(vii) Freshwater fish other than rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District may be retained. Rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District must be released unharmed to the water.

(viii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit, or rainbow/steelhead trout caught incidentally to salmon by fish wheel, unless the anal fin has been immediately removed from the fish. You must immediately record all retained fish on the subsistence permit. Immediately means prior to concealing the fish from plain view or transporting the fish more than 50 feet from where the fish was removed from the water.

(ix) You may take salmon in the Upper Copper River District from May 15 through September 30 only.

(x) The total annual harvest limit for subsistence salmon fishing permits in combination for the Glennallen Subdistrict and the Chitina Subdistrict is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel.

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel, plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for Chinook salmon taken by dip net or rod and reel does not increase.

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel, or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel.

(xi) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one subsistence fishing permit per subdistrict will be issued to each household per year. If a household has been issued permits for both subdistricts in the same year, both permits must be in your possession and readily available for inspection while fishing or transporting subsistence-taken fish in either subdistrict. A qualified household may also be issued a Batzulnetas salmon fishery permit in the same year.

(B) Multiple types of gear may be specified on a permit, although only one unit of gear per person may be operated at any one time.

(C) You must return your permit no later than October 31 of the year in which the permit is issued, or you may be denied a permit for the following year.

(D) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by paragraph (e)(11)(xii)(B) or (e)(11)(xiii)(E) of this section and during fishing operations.

(E) Only the permit holder and the authorized member(s) of the household listed on the subsistence permit may take salmon.

(F) You must personally operate your fish wheel or dip net.

(G) You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xii) If you are a fish wheel owner:

(A) You must register your fish wheel with ADF&G or the Federal Subsistence Board.

(B) Your registration number and a wood, metal, or plastic plate at least 12 inches high by 12 inches wide bearing either your name and address, or your Alaska driver's license number, or your Alaska State identification card number in letters and numerals at least 1 inch high, must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water.

(C) Only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel.

(D) You are responsible for the fish wheel; you must remove the fish wheel from the water at the end of the permit period.

(E) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain.

(xiii) If you are operating a fish wheel:

(A) You may operate only one fish wheel at any one time.

(B) You may not set or operate a fish wheel within 75 feet of another fish wheel.

(C) You must check your fish wheel at least once every 10 hours and remove all fish.

(D) No fish wheel may have more than two baskets.

(E) If you are a permittee other than the owner, you must attach an additional wood, metal, or plastic plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least 1 inch high, to the fish wheel so that the name and address are plainly visible.

(xiv) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. The following additional provisions apply to subsistence fishing permits issued under this paragraph (e)(11)(xiv):

(A) The permit will list all households and household members for whom the fish wheel is being operated. The permit will identify a person who will be responsible for the fish wheel and will be the same person as is listed on the fish wheel described in paragraph (e)(11)(xiii)(E) of this section.

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the ADF&G or Federal Subsistence Board when households are added to the list, and the seasonal limit may be adjusted accordingly.

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization are not eligible for a separate household subsistence fishing permit for the Upper Copper River District.

(D) The permit will include provisions for recording daily catches for each fish wheel; location and number of fish wheels; full legal name of the individual responsible for the lawful operation of each fish wheel as described in paragraph (e)(11)(xiii)(E) of this section; and other information determined to be necessary for effective resource management.

(xv) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek.

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, fyke nets, and rod and reel in Tanada Creek. One fyke net and associated lead may be used in Tanada Creek upstream of the National Park Service weir.

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action.

(D) You may retain Chinook salmon taken in a fish wheel in the Copper River. You must return to the water unharmed any Chinook salmon caught in Tanada Creek.

(E) You must return the permit to the National Park Service no later than October 15 of the year the permit was issued.

(F) You may only use a fyke net after consultation with the in-season manager. You must be present when the fyke net is actively fishing. You may take no more than 1,000 sockeye salmon in Tanada Creek with a fyke net.

(xvi) You may take pink salmon for subsistence purposes from fresh water with a dip net from May 15 through September 30, 7 days per week, with no harvest or possession limits in the following areas:

(A) Green Island, Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island, and adjacent islands, and the mainland waters from the outer point of Granite Bay located in Knight Island Passage to Cape Fairfield;

(B) Waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.

(xvii) In the Chugach National Forest portion of the Prince William Sound Area, you must possess a Federal subsistence fishing permit to take salmon, trout, whitefish, grayling, Dolly Varden, or char. Permits are available from the Cordova Ranger District.

(A) Salmon harvest is not allowed in Eyak Lake and its tributaries, Copper River and its tributaries, and Eyak River upstream from the Copper River Highway bridge.

(B) You must record on your subsistence permit the number of subsistence fish taken. You must record all harvested fish prior to leaving the fishing site, and return the permit by the due date marked on the permit.

(C) You must remove both lobes of the caudal (tail) fin from subsistence-caught salmon before leaving the fishing site.

(D) You may take salmon by rod and reel, dip net, spear, and gaff year round.

(E) For a household with 1 person, 15 salmon (other than pink) may be taken, and 5 cutthroat trout, with only 2 over 20 inches, may be taken; for pink salmon, see the conditions of the permit.

(F) For a household with 2 persons, 30 salmon (other than pink) may be taken, plus an additional 10 salmon for each additional person in a household over 2 persons, and 5 cutthroat trout, with only 2 over 20 inches per each household member with a maximum household limit of 30 cutthroat trout may be taken; for pink salmon, see the conditions of the permit.

(G) You may take Dolly Varden, Arctic char, whitefish, and grayling with rod and reel and spear year round and with a gillnet from January 1–April 1. The maximum incidental gillnet harvest of trout is 10.

(H) You may take cutthroat trout with rod and reel and spear from June 15 to April 14th and with a gillnet from January 1 to April 1.

(I) You may not retain rainbow/steelhead trout for subsistence unless taken incidentally in a subsistence gillnet fishery. Rainbow/steelhead trout must be immediately released from a dip net without harm.

* * * * *

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish other than salmon, trout, grayling, and char in the Southeastern Alaska Area at any time.

(ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing District 1.

(iii) In the Southeastern Alaska Area, a rainbow trout is defined as a fish of the species *Oncorhyncus mykiss* less than 22 inches in overall length. A steelhead is defined as a rainbow trout with an overall length of 22 inches or larger.

(iv) In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing with rod and reel, unless restricted by Federal permit. If you use bait, you must retain all federally regulated fish species caught, and they apply to your applicable daily,

seasonal, and annual harvest limits for that species.

(A) For streams with steelhead, once your daily, seasonal, or annual limit of steelhead is harvested, you may no longer fish with bait for any species.

(B) Unless otherwise specified in this paragraph (e)(13), allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.

(v) Unless otherwise specified in this paragraph (e)(13), you may use a handline for snagging salmon or steelhead.

(vi) You may fish with a rod and reel within 300 feet of a fish ladder unless the site is otherwise posted by the USDA Forest Service. You may not fish from, on, or in a fish ladder.

(vii) You may not accumulate Federal subsistence harvest limits authorized for the Southeastern Alaska Area with any harvest limits authorized under any State of Alaska fishery with the following exception: Annual or seasonal Federal subsistence harvest limits may be accumulated with State sport fishing harvest limits provided that accumulation of harvest limits does not occur during the same day.

(viii) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your subsistence fishing permit.

(ix) Nets are prohibited in streams flowing across or adjacent to the roads on Wrangell and Mitkof islands, and in streams flowing across or adjacent to the road systems connected to the community of Sitka.

(x) You may not possess subsistence-taken and sport-taken fish of a given species on the same day.

(xi) If a harvest limit is not otherwise listed for sockeye in this paragraph (e)(13), the harvest limit for sockeye salmon is the same as provided for in adjacent State subsistence or personal use fisheries. If a harvest limit is not established for the State subsistence or personal use fisheries, the possession limit is 10 sockeye and the annual harvest limit is 20 sockeye per household for that stream.

(xii) The Sarkar River system above the bridge is closed to the use of all nets by both federally qualified and non-federally qualified users.

(xiii) You may take Chinook, sockeye, and coho salmon in the mainstem of the Stikine River only under the authority of a Federal subsistence fishing permit. Each Stikine River permit will be issued to a household. Only dip nets, spears, gaffs, rod and reel, beach seine, or gillnets not exceeding 15 fathoms in length may be used. The maximum gillnet stretched mesh size is 8 inches during the Chinook salmon season and 5 ½ inches during the sockeye salmon season. There is no maximum mesh size during the coho salmon season.

(A) You may take Chinook salmon from May 15 through June 20. The annual limit is five Chinook salmon per household.

(B) You may take sockeye salmon from June 21 through July 31. The annual limit is 40 sockeye salmon per household.

(C) You may take coho salmon from August 1 through October 1. The annual limit is 20 coho salmon per household.

(D) You may retain other salmon taken incidentally by gear operated under terms of this permit. The incidentally taken salmon must be reported on your permit calendar.

(E) Fishing nets must be checked at least twice each day.

(xiv) You may take coho salmon with a Federal salmon fishing permit. There is no closed season. The daily harvest limit is 20 coho salmon per household. Only dip nets, spears, gaffs, handlines, and rod and reel may be used. There are specific rules to harvest any salmon on the Stikine River, and you must have a separate Stikine River subsistence salmon fishing permit to take salmon on the Stikine River.

(xv) Unless noted on a Federal subsistence harvest permit, there are no harvest limits for pink or chum salmon.

(xvi) Unless otherwise specified in this paragraph (e)(13), you may take steelhead under the terms of a subsistence fishing permit. The open season is January 1 through May 31. The daily household harvest and possession limit is one with an annual household limit of two. You may only use a dip net, gaff, handline, spear, or rod and reel. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xvii) You may take steelhead trout on Prince of Wales and Kosciusko Islands under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of two fish per household; however, only one steelhead may be harvested by a household from a particular drainage. You may use only a dip net, handline, spear, or rod and reel. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of five fish per household; however, only two steelhead may be harvested by a household from a particular drainage. You may use only a dip net, handline, spear, or rod and reel. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xviii) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat trout, and rainbow trout apply:

(A) The daily household harvest and possession limit is 20 Dolly Varden; there is no closed season or size limit.

(B) The daily household harvest and possession limit is 20 brook trout; there is no closed season or size limit.

(C) The daily household harvest and possession limit is 20 grayling; there is no closed season or size limit.

(D) The daily household harvest limit is 6 and the household possession limit is 12 cutthroat or rainbow trout in combination; there is no closed season or size limit.

(E) You may only use a rod and reel.

(F) The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xix) There is no subsistence fishery for any salmon on the Taku River.

(xx) The Klawock River drainage is closed to the use of seines and gillnets during July and August.

(xxi) The Federal public waters in the Makhnati Island area, as defined in § 100.3(b)(5) are closed to the harvest of herring and herring spawn, except by federally qualified users.

(xxii) Only federally qualified subsistence users may harvest sockeye salmon in Neva Lake, Neva Creek, and South Creek.

Dated: August 6, 2019.

Thomas C.J. Doolittle

Acting Assistant Regional Director, U.S. Fish and Wildlife Service

Dated: August 6, 2019 .

Thomas Whitford

Subsistence Program Leader, USDA–Forest Service.

[FR Doc. 2019–17136 Filed 8–9–19; 8:45 am]

BILLING CODE 4333–15–P; 3411–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0744; FRL–9998–01–Region 9]

Air Plan Approval; Hawaii; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Hawaii's Regional Haze 5-Year Progress Report (''Progress Report'' or ''Report''), submitted on October 20, 2017, as a revision to its state implementation plan (SIP). This SIP revision addresses requirements of the Clean Air Act (CAA or ''Act'') and the EPA's rules that require states to submit periodic reports describing the progress toward reasonable progress goals (RPGs) established for regional haze and a determination of adequacy of the state's existing regional haze plan. The EPA is approving the Report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

DATES: This rule is effective on September 11, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0744. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA, 94105; (415) 947–4192; *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Background and Purpose

On April 11, 2019, the EPA published a notice of proposed rulemaking (NPRM) proposing to approve the Progress Report, submitted by the Hawaii Department of Health (DOH) on October 20, 2017.[1] A detailed discussion of the Report and the EPA's rationale for approving the SIP revision is provided in the NPRM and will not be restated here.

II. Public Comment

The EPA's proposed action provided a 30-day public comment period that ended on May 13, 2019. During this period, we received five anonymous comments, two of which were identical. The two identical comments and one additional comment expressed general support for our proposed approval of the Report but did not address the specifics of our proposal and are therefore not addressed below. All five comments are included in the docket for this rulemaking. We summarize the two more detailed comments below and provide our responses.

Comment 1: The commenter states that Hawaii's Progress Report provides overwhelming evidence that Hawaii has successfully decreased human-generated emissions that contribute to the regional haze problem. The commenter points out that the Progress Report also states that point source emissions have increased 27 percent and that there have been significant increases in emissions from the ''Other Fire/Prescribed Burning'' category. The commenter believes that the EPA should compare these statistics to existing economic data to examine whether these pollution increases are due to higher production rates or increased carelessness of businesses. The commenter goes on to say that if ''economic data claims that there has been a proportional increase, then Hawaii should implement incentives for companies that reduce emissions in future production.'' The commenter then asserts that ''if economic data states otherwise, Hawaii should adopt new business regulations that force companies to reduce emissions.'' The commenter believes these ''changes would further improve the results of the Hawaiian report—despite the already outstanding results.'' The commenter concludes that after this research has been conducted, the EPA should approve the Report due to many of the outlined benefits, but that the EPA should also help Hawaii adopt policies that reduce burning and point source pollution. Finally, the commenter asserts that global warming is a large issue in 2019 and taking small steps to correct the effects of this international issue would not be harmful.

Response 1: We agree that Table 6.0–2, entitled ''Differences in Statewide Anthropogenic Nitrogen Oxide Emissions'' in the Hawaii Progress Report, which we reproduced in our proposed rulemaking as Table 5,[2] indicates that there was a 27 percent increase in nitrogen oxide (NO_X) emissions from point sources between 2005 and 2011. However, we note that the same table indicates that total NO_X emissions from all anthropogenic sources combined decreased by four percent over that time period. Similarly, while there were increases in emissions of NO_X, sulfur dioxide (SO_2) and volatile organic compounds (VOC) from the ''Other Fire/Prescribed Burning'' category between 2005 and 2011, there were overall decreases in anthropogenic NO_X and SO_2 during the same period, and only a small (four percent) increase in anthropogenic VOC emissions.[3]

In addition, as both the Progress Report and our proposed rulemaking noted, the dominant visibility-impairing pollutant in Hawaii's Class I areas during the first planning period was SO_2. Therefore, the EPA's reasonable progress analysis for Hawaii for the first planning period focused primarily on significant sources of SO_2 and concluded that NO_X emissions were a ''secondary concern'' during that period.[4] Thus, even if NO_X emissions were not declining in the first planning period, their effect on visibility was secondary compared to SO_2 emissions during that period.

Finally, the portion of the comment about global warming is not germane to the EPA's proposed action on Hawaii's Progress Report.

Comment 2: The commenter asserts that the EPA should not approve

[1] 84 FR 14634.

[2] 84 FR 14634, 14638.

[3] Id. at 14638, Tables 4–6.

[4] 77 FR 31692, 31707.

Hawaii's Progress Report and the negative declaration stating that further revision of the existing regional haze plan is not needed at this time. The commenter states that the dominant cause of visibility impairment in Hawaii's Class I areas is sulfate compounds, and that over 96 percent of the sulfate emissions are from Hawaii's volcano. The commenter asserts that the eruption of an active volcano is unpredictable, so the sulfate compounds in the air also vary year to year. The commenter states that the current plan may improve visibility in Class I this year, but it does not represent it will account for the following years. The commenter further states that the current method and control procedures are effective and reliable, but because the commenter considers Hawaii to be a ''high-risk'' area given the number of visitors, the commenter asserts that the EPA needs to be extremely careful with people's safety.

Response 2: The commenter makes several distinct points. We agree with the commenter that volcanic eruptions are unpredictable and have year-to-year variability, resulting in variability in SO_2 emissions and sulfate-related visibility effects. However, Hawaii DOH does not have the ability to control or influence these emissions, and the goal of the regional haze program is to remedy visibility impairment resulting from man-made air pollution and does not require control of natural sources such as volcanoes. Therefore, we agree with Hawaii DOH's conclusion that ''the existing implementation plan requires no further substantive revision at this time in order to achieve established goals for visibility improvement and emissions reductions,'' and we find that Hawaii's conclusion is consistent with the Regional Haze Rule at 51.308(h)(1).

Additionally, the commenter states that the current plan may improve visibility in Class I areas this year, but that the plan does not account for subsequent years. The Progress Report only addresses the first regional haze planning period which extends to 2018; a SIP revision covering the second regional haze implementation period ending in 2028 is due to the EPA by July 31, 2021.

Finally, while we agree with the commenter regarding the importance of safety, it is important to note that the purpose of the regional haze program is to protect visibility. The CAA provides separate processes for addressing the health impacts of SO_2, including the establishment of health-based national ambient air quality standards for SO_2, the designation of areas as attainment or nonattainment based on ambient air quality data, and the development of SIPs to ensure attainment and maintenance of the SO_2 standard.

III. Final Action

For the reasons described in our responses to comments, the comments received do not alter our proposed determination that the Hawaii Progress Report addresses the progress report and adequacy determination requirements for the first implementation period for regional haze Therefore, the EPA is approving Hawaii's Regional Haze Progress Report, submitted by Hawaii DOH on October 20, 2017, as meeting the applicable requirements of the CAA and the federal Regional Haze Rule, as set forth in 40 CFR 51.308(g), as a revision to the Hawaii SIP. The EPA is approving Hawaii's determination that the existing regional haze plan is adequate to meet the existing RPGs and requires no substantive revision as this time, as set forth in 40 CFR 51.308(h).

We have also determined that Hawaii fulfilled the requirements in 40 CFR 51.308(i) regarding state coordination with federal land managers.

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, 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:

- 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 regulatory action because this action is not significant 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 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).

In addition, 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).

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

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed,

and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, Volatile organic compounds.

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

Dated: July 30, 2019.

Deborah Jordan,

Acting Regional Administrator, EPA Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 M—Hawaii

■ 2. Section 52.620, the table in paragraph (e) is amended by adding an entry for ''State of Hawaii Air Pollution Control Implementation Plans for Regional Haze,'' after the entry for ''Section XIV—Resources'' to read as follows:

§ 52.620 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NON-REGULATORY AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area or title/subject	State submittal date	EPA approval date	Explanation
*	*	*	*	*
State of Hawaii Air Pollution Control Implementation Plans for Regional Haze				
Hawaii State Department of Health 5-Year Regional Haze Progress Report for Federal Implementation Plan, excluding Appendix H, I and J.	State-wide	10/20/2017	8/12/2019 [Insert **Federal Register** Citation].	
*	*	*	*	*

* * * * *

■ 3. Section 52.633 is amended by adding paragraph (e) to read as follows:

§ 52.633 Visibility protection.

* * * * *

(e) *Approval.* On October 20, 2017, the Hawaii Department of Health submitted the ''Hawaii State Department of Health 5-Year Regional Haze Progress Report for Federal Implementation Plan'' (''Progress Report''). The Progress Report meets the requirements of the Regional Haze Rule in 40 CFR 51.308.

[FR Doc. 2019–17124 Filed 8–9–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0822; FRL–9997–85–Region 4]

Air Plan Approval; KY; Jefferson County Existing and New Miscellaneous Metal Parts and Products Surface Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve two revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), provided by the Commonwealth of Kentucky, through the Kentucky Division of Air Quality (KDAQ), through a letter dated March 15, 2018. The revisions were submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (also referred to herein as Jefferson County) and add a recordkeeping provision for certain sources of volatile organic compounds along with other administrative changes. EPA is approving the changes because they are consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective September 11, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2018–0822. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not 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 (formerly the Air, Pesticides and Toxics Management 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 of 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. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through a letter dated March 15,

2018.[1] Specifically, EPA is finalizing approval of the portions of these SIP revisions that make changes to the District's Regulation 6.31, *Standards of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations,* and Regulation 7.59, *Standards of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations.*[2] The March 15, 2018, SIP revisions add a new recordkeeping provision to both Regulation 6.31 and 7.59 and make a minor, administrative change that clarifies the applicability of Regulation 6.31. The SIP revisions update the current SIP-approved versions of Regulation 6.31 (Version 5) and Regulation 7.59 (Version 5) to Version 6 of each. In a notice of proposed rulemaking (NPRM) published on April 24, 2019 (84 FR 17127), EPA proposed to approve the aforementioned changes to Regulations 6.31 and 7.59 in the Jefferson County portion of the Kentucky SIP, which address the control of emissions from existing and new miscellaneous metal parts and products surface coating operations, respectively. The NPRM provides additional details regarding EPA's action. Comments on the NPRM were due on or before May 24, 2019. EPA received no comments on the proposed action, so EPA is now taking final action to approve the above-referenced revisions.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Jefferson County portion of the Kentucky SIP. Regulation 6.31, *Standards of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations,* Version 6, and Regulation 7.59, *Standards of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations,* Version 6, both State effective January 17, 2018. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

III. Final Action

EPA is taking final action to approve the aforementioned changes to the Jefferson County portion of the Kentucky SIP. These rule revisions do not contravene federal permitting requirements or existing EPA policy, nor will they impact the National Ambient Air Quality Standards or interfere with any other applicable requirement of the Act.

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).

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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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 October 11, 2019. 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).

[1] EPA notes that the Agency received these SIP revisions on March 23, 2018, along with other revisions to the Jefferson County portion of the Kentucky SIP. EPA will be considering action for those SIP revisions in separate rulemakings.

[2] EPA also notes that the Agency received several other revisions to the Jefferson County portion of the Kentucky SIP submitted with the same March 15, 2018, cover letter. EPA will be considering action on the remaining revisions in separate actions.

[3] *See* 62 FR 27968 (May 22, 1997).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: July 29, 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 (S)—Kentucky

■ 2. In § 52.920, in paragraph (c), table 2, is amended:

■ a. Under ''Reg 6—Standards of Performance for Existing Affected Facilities'' by revising the entry for ''6.31''; and

■ b. Under ''Reg 7—Standards of Performance for New Affected Facilities'' by revising the entry for ''7.59''.

The revisions read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	**Federal Register** notice	District effective date	Explanation
*	*	*	*	*	*
Reg 6–Standards of Performance for Existing Affected Facilities					
*	*	*	*	*	*
6.31	Standards of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations.	8/12/19	[Insert citation of publication].	1/17/18	
*	*	*	*	*	*
Reg 7—Standards of Performance for New Affected Facilities					
*	*	*	*	*	*
7.59	Standards of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations.	8/12/19	[Insert citation of publication].	1/17/18	
*	*	*	*	*	*

* * * * *

[FR Doc. 2019–17127 Filed 8–9–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0010; FRL–9997–97–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Nonattainment New Source Review Requirements for 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by Delaware. The revision is in response to EPA's February 3, 2017 Findings of Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision is specific to nonattainment new source review (NNSR) requirements. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on September 11, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0010. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Johansen, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2156. Ms. Johansen can also be reached via electronic mail at *johansen.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 19, 2019 (84 FR 16426), EPA published a notice of proposed rulemaking (NPRM) for Delaware. In the NPRM, EPA proposed approval of Delaware's NNSR Certification for the 2008 8-hour ozone NAAQS. The formal SIP revision was submitted by the Department of Natural Resources and Environmental Control (DNREC) on

behalf of the state of Delaware on June 29, 2018. Specifically, Delaware certified that its existing NNSR program, covering the Delaware portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (Philadelphia Area) nonattainment area (which includes New Castle County) and the entire Seaford, DE (Seaford Area) nonattainment area (which includes Sussex County) for the 2008 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' (SIP Requirements Rule), for ozone and its precursors.[1] [2] See 80 FR 12264 (March 6, 2015). This SIP revision was in response to EPA's final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. See 82 FR 9158 (February 3, 2017).

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Seaford and Philadelphia Areas were classified as marginal nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008–2010 ambient air quality data. See 77 FR 30088. On March 6, 2015, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. See 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012–2014 monitoring data. See 40 CFR 51.1103. The Seaford Area attained the 2008 8-hour ozone NAAQS by July 20, 2015 and the EPA Administrator signed a final Determination of Attainment (DOA) on April 11, 2016. See 81 FR 26697 (May 4, 2016). The Philadelphia Area did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, the area did meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a one-year attainment date extension. Id. Therefore, in same rulemaking action, the EPA Administrator signed a final rule extending the Philadelphia Area 8-hour ozone NAAQS attainment date from July 20, 2015 to July 20, 2016. Id.[3]

Based on initial nonattainment designations for the 2008 8-hour ozone NAAQS, as well as the March 6, 2015 final SIP Requirements Rule, Delaware was required to develop a SIP revision addressing certain CAA requirements for the Seaford and Philadelphia Areas, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of the areas designations for the 2008 8-hour ozone NAAQS (*i.e.,* July 20, 2015).[4] See 80 FR 12264 (March 6, 2015). EPA is approving Delaware's June 29, 2018 NNSR Certification SIP revision for the 2008 8-hour ozone NAAQS.

II. Summary of SIP Revision and EPA Analysis

This rulemaking action is specific to Delaware's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. The specific NNSR requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160 through 165.

Delaware's SIP approved NNSR program, established in Title 7 Delaware Administrative Code (DE Admin Code) 1125 (*Requirements for Preconstruction Review*), apply to the construction and modification of major stationary sources in nonattainment areas. In its June 29, 2018 SIP revision, Delaware certified that the version of Title 7 DE Admin Code Section 1125 approved in the SIP is at least as stringent as the Federal NNSR requirements for the Seaford and Philadelphia Areas.

In addition, on February 3, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the Ozone Transport Region (OTR). See 82 FR 9158. As explained in that rulemaking action, consistent with the CAA and EPA regulations, these Findings of Failure to Submit established certain deadlines for the imposition of sanctions, if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a Federal implementation plan (FIP) to address any outstanding SIP requirements.

EPA found, inter alia, that Delaware failed to submit SIP revisions in a timely manner to satisfy NNSR requirements for the Seaford and Philadelphia Areas. Delaware submitted its June 29, 2018 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160 through 165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS and the Findings of Failure to Submit was discussed in the NPRM and will not be restated here.

III. Public Comments and EPA Response

EPA received two sets of comments on the April 19, 2019 NPRM. See 84 FR 16426. One set of comments was in support of EPA's proposed rulemaking action. With respect to the second set of comments, only one comment is relevant to this action and requires a response. A summary of the comment and EPA's response is discussed in this Section. A copy of the comments can be found in the docket for this rulemaking action.

[1] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

[2] On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (DC Cir. Court or Court) issued an opinion on the EPA's SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 882 F.3d 1138, 2018 U.S. App. LEXIS 3636 (DC Cir. Feb. 16, 2018). The DC Cir. Court found certain provisions from the SIP Requirements Rule to be inconsistent with the statute or unreasonable and vacated those provisions. Id. The Court found other parts of the SIP Requirements Rule reasonable and denied the petition for appeal on those provisions. Id.

[3] On November 2, 2017, EPA approved a DOA for the 2008 8-hour ozone NAAQS for Philadelphia Area. This action was based on complete, certified, and quality assured ambient air quality monitoring data for the 2013–2015 monitoring period. See 82 FR 50814. It should be noted that a DOA does not alleviate the need for Delaware to certify that their existing SIP approved NNSR program is as stringent as the requirements at 40 CFR 51.165, as NNSR applies in nonattainment areas until an area has been redesignated to attainment.

[4] Neither Delaware's obligation to submit the NNSR Certification SIP nor the requirements governing that submission were affected by the D.C. Circuit's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist.* v. *EPA.*

Comment: The commenter makes note that volatile organic compounds (VOC) are defined as those in 40 CFR 51.100(s), but that Delaware's regulations don't include the correct version of what is being defined as a VOC. The commenter references EPA's February 12, 2019 NPRM, where EPA is approving Delaware's definition change of VOC. The commenter also notes suggests that EPA should wait until Delaware's regulations match the requirements in 40 CFR 51.165 exactly before approving this NNSR submission and suggests EPA to look at Delaware's regulation 1125. Lastly, the commenter notes that changes have also been made to the rules governing the Prevention of Significant Deterioration (PSD) program and related modeling requirements.

EPA Response: Delaware's certification applies to its NNSR program, not to its PSD program. The commenter's concerns related to PSD and related modeling are not relevant to EPA's action to approve Delaware's NNSR certification, and as such do not warrant consideration in the final rule.

EPA finalized its approval of the NPRM that the commenter referred to in their comments. In that February 12, 2019 rulemaking action, EPA proposed approval of Delaware's revision to Section 2 of 7 DE Admin Code 1101, where the state updated its definition of VOC to conform to EPA's current definition of VOC in 40 CFR 51.100(s). EPA finalized approval of that action on May 31, 2019. See 84 FR 25183.

EPA disagrees with the commenter's assertion that EPA should wait until Delaware's regulations match 40 CFR 51.165 exactly until it approves this rulemaking action. Delaware evaluated the necessary regulations for this rulemaking action and certified in its June 29, 2018 SIP revision that its existing Federally-approved NNSR program is at least as stringent as the Federal NNSR requirements found at 40 CFR 51.165, and based on EPA's analysis of that SIP revision, EPA agrees with Delaware and is moving forward to approve this rulemaking action.

IV. Final Action

EPA is approving Delaware's June 29, 2018 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Seaford and Philadelphia Areas. EPA has concluded that Delaware's submission fulfills the 40 CFR 51.1114 revisions requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. See 82 FR 9158.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action pertaining to Delaware's NNSR program and the 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: July 29, 2019.

Diana Esher,

Acting Regional Administrator, Region III.

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 I—Delaware

■ 2. In § 52.420, the table in paragraph (e) is amended by adding the entry ''2008 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR)'' at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
2008 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR).	Delaware portion of the Philadelphia-Wilmington-Atlantic City, nonattainment area and the Seaford, Delaware nonattainment area.	06/29/2018	8/12/2019, [insert **Federal Register** citation].	

[FR Doc. 2019–17128 Filed 8–9–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0688; FRL–9997–09]

Pydiflumetofen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pydiflumetofen in or on multiple commodities which are identified and discussed later in this document. Syngenta Crop Protection requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 12, 2019. Objections and requests for hearings must be received on or before October 11, 2019 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0688, 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.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, 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).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0688 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 11, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0688, 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 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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 19, 2019 (84 FR 16430) (FRL–9991–14), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C.

346a(d)(3), announcing the filing of a pesticide petition (PP 8F8696) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide, pydiflumetofen, in or on root vegetable crop subgroup 1A at 0.30 parts per million (ppm); bulb vegetable crop subgroup 3–07A at 0.20 ppm; bulb vegetable crop subgroup 3–07B at 2 ppm; *brassica* leafy greens subgroup 4–16B at 50 ppm; *brassica* head and stem crop group 5–16 at 3 ppm; leaves of root and tuber vegetables, crop group 2 at 15.0 ppm; edible-podded legume vegetables subgroup 6A at 1.0 ppm; succulent shelled pea and bean subgroup 6B at 0.09 ppm; citrus fruit crop group 10–10 at 0.90 ppm; citrus oil at 15 ppm; pome fruit crop group 11–10 at 0.20 ppm; apple, wet pomace at 1.0 ppm; stone fruit, cherry subgroup 12–12A at 2.0 ppm; stone fruit, peach subgroup 12–12B at 1.0 ppm; stone fruit, plum subgroup 12–12C at 0.6 ppm; plum, prune at 1.5 ppm; bushberry crop subgroup 13–07B at 5 ppm; berries, low growing crop subgroup 13–07G, except cranberry and blueberry, at 1 ppm; tree nuts crop group 14–12, nutmeat at 0.05 ppm; almond hull at 9.0 ppm; cottonseed subgroup 20C, cotton undelinted seed at 0.4 ppm; cotton gin by-products at 7.0 ppm; sunflower subgroup 20B at 0.60 ppm; sorghum grain at 3.0 ppm; sorghum forage at 1.5 ppm; and sorghum stover at 10 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the levels at which some of the commodities are being set as well as some of the commodity definitions. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for pydiflumetofen including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with pydiflumetofen follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The liver was a common target across species tested, likely in part due to the extensive first pass metabolism of absorbed pydiflumetofen. Liver effects were either concurrent with body weight depression and other target organ toxicity as in rats, or the first symptoms of treatment-related toxicity as in mice and dogs. Liver toxicity commonly manifested as increased liver weight concordant with hepatocyte hypertrophy in all species and was accompanied by increased cholesterol and triglyceride serum levels and a higher incidence of liver masses and eosinophilic foci of cellular alteration in mice and increased serum levels of liver enzymes and triglycerides in dogs. Male mice further exhibited a dose-dependent increase in the incidence of hepatocellular adenomas and carcinomas (accounted for separately and combined) and in the frequency of individual mice exhibiting multiple liver adenomas following chronic exposure. Treatment-related liver tumors were not observed in female mice nor in rats of either sex.

Body weight effects were also observed in rodents in response to treatment. Adult rats experienced depressed body weight following both subchronic (concurrent with liver toxicity) and chronic oral exposure (in isolation) and mice exhibited body weight depression following chronic exposure concurrent with symptoms of liver toxicity. A dose-dependent increase in the incidence and severity of thyroid gland follicular cell hypertrophy was also noted in rats following subchronic dietary exposure at doses greater than or equal to 587 milligrams/kilogram/day (mg/kg/day). The isolated thyroid findings occurred at a dose level over an order of magnitude above the subchronic and chronic point of departures (PODs) selected for risk assessment. In general, short and intermediate duration repeat dose oral exposures were well tolerated by adult rodents and dogs. Rodents were, however, considerably less tolerant of long-term exposure. Liver and body weight effects manifested at doses 25 and 12 times lower in chronic studies as compared to subchronic studies in mice and rats, respectively. A similar progression of toxicity was not evident in dogs.

The database does not support a conclusion that the pesticide is a neurotoxicant. Although a dose-dependent decrease in two locomotor activity parameters, number of rears and total distance traveled, was observed in female adult rats only within 6 hours of exposure following acute gavage oral exposure to doses greater than or equal to 300 milligrams/kilogram (mg/kg) in the acute neurotoxicity study, there were no neuropathology lesions or consistent evidence of other behavioral changes accompanying the depressed locomotor activity up to acute doses of 2,000 mg/kg. Detailed functional observations of rats and dogs following repeat dose dietary exposure did not identify similar changes in locomotor activity or any other behavioral changes indicative of neurotoxicity.

Body weight toxicity was not a unique observation in adults; it was also observed in rat offspring. In the two-generation reproduction study, rat pups exhibited significantly reduced weight during lactation that persisted through weaning and into adulthood. The pup body weight decrements were observed in the absence of parental toxicity indicating post-natal susceptibility to pydiflumetofen exposure. There was no evidence of enhanced fetal susceptibility following gestational exposure to pregnant rats or rabbits in the developmental studies.

Although there is some evidence of carcinogenicity in the database (*i.e.,* hepatocellular adenomas and carcinomas in male mice), the Agency

has concluded that pydiflumetofen is not likely to be carcinogenic to humans at doses that do not induce a proliferative response in the liver. This conclusion is based on the limited nature of tumors seen in the available data (liver tumors found only in male mice), the fact that pydiflumetofen is not a mutagenic concern *in vivo,* and available mode of action data. The available mode of action data supports the Agency's conclusion that liver tumors are likely induced via activation of the constitutive androstane receptor (CAR) and subsequent stimulation of hepatocellular proliferation, and that hepatocellular proliferation is not likely to occur at the doses at which EPA is regulating exposure to pydiflumetofen. As a result, a non-linear approach using the chronic reference dose would adequately account for chronic toxicity, including carcinogenicity.

Pydiflumetofen exhibited low acute toxicity via the dermal and inhalation route. Acute dermal exposure to dermal doses of 5000 mg/kg elicited reduced activity in rats similar to observations following acute oral exposure, but it did not incur mortality. Acute exposure did not irritate the skin nor did it elicit dermal sensitization. No dermal or systemic toxicity was observed following repeat-dose dermal exposures up to 1000 mg/kg/day. Acute lethality from inhalation exposure was limited to high inhalation concentrations and it was a mild acute eye irritant. The requirement for the subchronic inhalation toxicity study was waived for the pydiflumetofen risk assessment based on a weight of evidence (WoE) approach that considered all of the available hazard and exposure information for pydiflumetofen, including: (1) the physical-chemical properties of pydiflumetofen indicated low volatility (vapor pressure is 3.98×10^{-9} mm Hg at 25 °C); (2) the use pattern and exposure scenarios; (3) the margins of exposure for the worst case scenarios are ≥13,000 using an oral point of departure and assuming inhalation and oral absorption are equivalent; (4) pydiflumetofen exhibits low acute inhalation toxicity (Category IV); and (5) the current endpoints selected for risk assessment, liver toxicity and pup body weight decrements, were the most sensitive effects identified in the database and an inhalation study is not likely to identify a lower POD or more sensitive endpoint for risk assessment.

The toxicity of 2,4,6-trichlorophenol—a pydiflumetofen metabolite and residue of concern in livestock commodities—was evaluated based on studies from the open literature that were provided by the registrant, identified in a previous EPA review of 2,4,6-trichlorophenol (*https://www.epa.gov/sites/production/files/2016-09/documents/2-4-6-trichlorophenol.pdf*) and the Agency for Toxic Substance and Disease Registry (ATSDR) review of chlorophenols (*https://www.atsdr.cdc.gov/toxprofiles/tp107.pdf*), or retrieved in a search of the literature conducted for this risk assessment. Based on available information, the absorption, distribution, metabolism and elimination (ADME) for 2,4,6-trichlorophenol is similar to the ADME profile for pydiflumetofen: Near complete absorption and extensive metabolism followed by rapid excretion without appreciable tissue accumulation. Oral exposure to 2,4,6-trichlorophenol elicited effects in the liver, kidneys, and hematopoietic system as well as body weight depression. Subchronic oral exposure in rats elicited an increase in liver, kidney (males only), and spleen weight, an increase in total protein and albumin serum levels, a moderate to marked increase in splenic hematopoiesis, and an increased incidence of hepatocyte vacuolation.

Following chronic dietary exposure, male rats exhibited an increased incidence of leukemias, lymphomas, and nephropathy, and both sexes exhibited an increased incidence of bone marrow hyperplasia, leukocytosis, fatty metamorphosis in the liver, and chronic inflammation of the kidney. Tissue specific toxicity in mice was limited to the liver and manifest as an increased incidence of liver adenomas and carcinomas following chronic exposure. Adult body weight depression was observed in both rodent species. Mortality also occurred with greater frequency in both species at or above the limit dose. The few studies that examined developmental and offspring effects presented equivocal evidence of offspring toxicity following exposure to 2,4,6-trichlorophenol. Prenatal subchronic drinking water exposure in female rats led to a reduction in litter size and perinatal drinking water exposure in rats elicited changes in offspring spleen and liver weight; however, the health of the dams and its potential contribution to the manifestation of the offspring effects was not discussed in this study so it is unclear whether the offspring toxicity is a direct result of exposure or secondary to maternal toxicity. In a separate study, pup body weight decrements were observed in the presence and absence of parental toxicity following subchronic exposure, but the body weight effect was considered a consequence of the larger litter size rather than treatment. In any event, the effects seen in these studies occurred at doses above the endpoints selected for regulation of pydiflumetofen exposure.

These studies illustrate a spectrum of responses to increasing oral 2,4,6-trichlorophenol exposure: Isolated organ weight changes and a reduction in litter size were observed at doses as low as 30 mg/kg/day with adverse effects in the target tissues and significant body weight depression in adult animals manifesting when the oral dose exceeded 200 mg/kg/day. However, the 2,4,6-trichlorophenol doses that elicited the subchronic and chronic toxicity described above were not below the empirical no-observed-adverse-effect-levels (NOAELs) established in comparable pydiflumetofen guideline studies (after converting both to millimoles/kg/day) suggesting that direct exposure to 2,4,6-trichlorophenol is not more toxic than direct exposure to pydiflumetofen. Direct exposure to 2,4,6-trichlorophenol is anticipated from dietary exposures only. The PODs selected for pydiflumetofen are protective of the adverse effects reported in the 2,4,6-trichlorophenol literature and, therefore, are adequate for assessing direct dietary exposure to 2,4,6-trichlorophenol.

The carcinogenic potential of 2,4,6-tricholorophenol was assessed in 1990 by EPA and classified as a B2-probable human carcinogen in accordance with the 1986 cancer classification guidance based on an increased incidence of combined lymphomas and leukemias in male F344 rats and hepatocellular adenomas or carcinomas in male and female mice. Since that evaluation of 2,4,6-trichlorophenol, new literature has been published on the human relevance of leukemias in the F344 rat. The EPA re-evaluated the 2,4,6-trichlorophenol carcinogenicity literature and the broader scientific literature on rodent leukemia to determine if the data supported conducting a separate cancer assessment for 2,4,6-trichlorophenol. The rodent leukemia literature indicated that the leukemia finding in male F344 rats is common for this strain of rat, is highly variable, and lacks a direct human correlate. Although treatment-related, the EPA concluded the leukemia incidence in rats did not support a linear approach to cancer quantification given its questionable relevance to human health risk assessment. Furthermore, the incidence of lymphomas was not remarkable when examined independently from the leukemias and thus not evidence of carcinogenicity in isolation. The liver

tumors observed in male and female mice were considered treatment-related; however, the tumors could not be solely attributed to 2,4,6-trichlorophenol exposure because the investigators did not account for known carcinogenic contaminants of commercial 2,4,6-trichlorophenol solutions that may have contributed to the induction of the liver tumors. These carcinogenic contaminants would not be present when 2,4,6-trichlorophenol is formed through metabolism; therefore, these data were not considered strong evidence of carcinogenicity and did not support a linear approach to 2,4,6-trichlorophenol cancer quantification for exposure resulting from pydiflumetofen use. The literature also did not suggest 2,4,6-trichlorophenol was a mutagenic concern *in vivo.*

Based on the limited evidence of carcinogenicity and mutagenicity for the metabolite, the EPA concluded that using the reference dose (RfD) approach with the chronic dietary POD selected for the pydiflumetofen dietary assessment would be adequate for assessing direct dietary exposure to 2,4,6-trichlorophenol from the proposed pydiflumetofen uses. Because the chronic POD selected for pydiflumetofen is 66 and 165x lower than the 2,4,6-trichlorophenol dose (on a molar basis) that elicited tumors in rats and mice, respectively, this approach will be protective of potential carcinogenicity from exposure to the metabolite. Consequently, a separate cancer dietary assessment for 2,4,6-trichlorophenol is not warranted at this time.

Specific information on the studies received and the nature of the adverse effects caused by pydiflumetofen as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled, ''*Pydiflumetofen. Human Health Risk Assessment for New Foliar Uses on Berries, Low Growing, Crop Subgroup 13–07G; Brassica Head and Stem Crop Group 5–16; Brassica Leafy Greens Subgroup 4–16B; Bulb Vegetable Crop Subgroup 3–07A; Green Onion Crop Subgroup 3–07B; Bushberry Crop Subgroup 13–07B; Citrus Fruit Crop Group 10–10; Cottonseed Subgroup 20C; Edible-podded Legume Vegetables Subgroup 6A; Succulent Shelled Pea and Bean Subgroup 6B; Pome Fruit Crop Group 11–10; Root Vegetable Crop Subgroup 1A; Sorghum; Stone Fruit Crop Subgroups 12–12A, 12–12B, and 12–12C; Sunflower Subgroup 20B; Tree Nut Crop Group 14–12; Leaves of Root and Tuber Vegetable Crop Group 2; and New Seed Treatment Uses on Rapeseed Crop Subgroup 20A and Soybean; and Registration of a New Seed Treatment End-Use Product*'' on pages 56–69 in docket ID number EPA–HQ–OPP–2018–0688.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological POD and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a RfD—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticide.*

A summary of the toxicological endpoints for pydiflumetofen used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of May 24, 2018 (83 FR 24036) (FRL–9976–66). Because the available data indicate that exposure to 2,4,6-trichlorophenol is not more toxic than direct exposure to pydiflumetofen and that there is insufficient information to warrant a separate cancer assessment of the metabolite at this time, EPA concludes that the endpoints for pydiflumetofen will be protective of effects from exposure to the metabolite 2,4,6-triclorophenol.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to pydiflumetofen, EPA considered exposure under the petitioned-for tolerances as well as all existing pydiflumetofen tolerances in 40 CFR 180.699. EPA assessed dietary exposures from pydiflumetofen in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for pydiflumetofen. In estimating acute dietary exposure, EPA used 2003–2008 food consumption data from the US Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption data from USDA's NHANES/WWEIA. As to residue levels in food, EPA assumed tolerance-level residues and 100 PCT.

iii. *Cancer.* As discussed in Unit III.A., the Agency has determined that a separate cancer assessment is not necessary for assessing exposure to pydiflumetofen. Because the chronic reference dose (cRfD) is below 10 mg/kg/day, *i.e.,* the lowest dose known to induce hepatocellular proliferation based on available MOA data, the chronic assessment will be protective for assessing direct dietary exposure to pydiflumetofen. Also discussed in Unit II.A. is the Agency's conclusion that a separate cancer assessment is not required for assessing exposure to 2,4,6-trichlorophenol (free and conjugated) and the cRfD will be protective of potential carcinogenic effects.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for pydiflumetofen. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for pydiflumetofen and its degradate SYN545547 in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pydiflumetofen. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticides in Water Calculator (PWC) the estimated drinking water concentrations (EDWCs) of

pydiflumetofen for acute exposures are estimated to be 10.4 parts per billion (ppb) for surface water and 113.3 ppb for ground water and for chronic exposures are estimated to be 3.37 ppb for surface water and 101 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 113.3 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 101 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pydiflumetofen is registered for the following uses that could result in residential exposures: Golf course turf; and ornamentals grown in greenhouses, nurseries, and fields for residential planting. EPA assessed residential exposure using the following assumptions: Residential handler exposures are not expected since the turf and ornamental use labels indicate that the product is intended for use by professional applicators, while the crop use labels include the statement ''Not for residential use.'' As a result, residential handler exposures are not expected. There is the potential for residential short-term post-application exposure for individuals exposed as a result of being in an environment that has been previously treated with pydiflumetofen.

The quantitative exposure/risk assessment for residential post-application exposures is based on the short-term dermal exposure from contact with residues on treated golf course turf while golfing for adults, children 6 to less than 11 years old, and children 11 to less than 16 years old, and short-term dermal exposure from post-application activities with treated ornamental plants for adults and for children ages 6 to less than 11. Intermediate-term exposures are not expected.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found pydiflumetofen to share a common mechanism of toxicity with any other substances, and pydiflumetofen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pydiflumetofen does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10x) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10x, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence of fetal sensitivity or toxicity in rat and rabbit developmental studies; however, quantitative offspring sensitivity was noted in the 2-generation reproduction study. Pup body-weight depression starting on day 4 of lactation and persisting into adulthood was observed at doses that did not elicit an adverse response in the parental rats. Although body weight was depressed in these animals after maturity and during the mating and post-mating period (specifically in males), it was considered evidence of offspring susceptibility because the lower body weight was a result of impaired growth in the pups. Reduced pup weight, reduced litter size, and increased liver and spleen weight in offspring was also noted following prenatal and perinatal exposure to the pydiflumetofen metabolite, 2,4,6-trichlorophenol. PODs were selected for each exposure scenario to be protective of the parent and metabolite offspring toxicity and offspring susceptibility in the risk evaluation.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for pydiflumetofen is complete.

ii. Regarding neurotoxicity, evidence of behavioral changes in the pydiflumetofen toxicity database was limited to adult rats in the acute neurotoxicity study (ACN). Female rats exhibited depressed locomotor activity in the form of fewer number of rears and less distance traveled following acute exposure to doses of pydiflumetofen ≥ 300 mg/kg (3x to 30x higher than the PODs selected for risk assessment). Male rats did not exhibit any symptoms of neurotoxicity following acute exposure up to 2,000 mg/kg/day. No evidence of neurotoxicity was observed in the subchronic rat and dog dietary studies that included additional detailed functional observations to identify neurological impairment nor in the routine clinical observations of the chronic studies and the guideline requirement for a subchronic neurotoxicity (SCN) study was waived. The concern for neurotoxicity in sensitive populations is low because the behavioral effects observed in the acute neurotoxicity studies have well-defined NOAEL/LOAELs, the PODs selected for risk assessment are protective of the acute behavioral change observed in females, there were no corresponding neuropathology changes in females exhibiting decreased locomotor activity, and there was no evidence of neurotoxicity following repeat-dose exposure.

iii. There was evidence of quantitative offspring sensitivity in the 2-generation reproduction study; however, as noted in Section D.2., PODs were selected for each exposure scenario to be protective of the offspring susceptibility in the risk evaluation.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to pydiflumetofen in drinking water. EPA used similarly conservative assumptions

to assess residential post-application exposure. These assessments will not underestimate the exposure and risks posed by pydiflumetofen.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to pydiflumetofen will occupy 9.5% of the aPAD for children 3 to 5 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pydiflumetofen from food and water will utilize 29% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of pydiflumetofen is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pydiflumetofen is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to pydiflumetofen.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 400 for adults, 560 for children 6 to less than 11 years old, and 2400 for children 11 to less than 16 years old. Because EPA's level of concern for pydiflumetofen is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, pydiflumetofen is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for pydiflumetofen.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III., the Agency has concluded that regulating on the chronic reference dose will be protective of potential carcinogenicity from exposure to pydiflumetofen. Because the chronic risk assessment did not exceed the Agency's level of concern, the Agency concludes there is not an aggregate cancer risk from exposure to pydiflumetofen.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pydiflumetofen residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Analytical multi-residue method QuEChERS (Quick, Easy, Cheap, Effective, Rugged, and Safe) as described in Eurofins validation study S14–05402 was independently validated in the following crop matrices: Lettuce (high water content), wheat grain (high starch content), oil seed rape (high oil content) and coffee bean (difficult commodity).

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for pydiflumetofen at this time.

C. Revisions to Petitioned-for Tolerances

EPA has modified several of the commodity definitions to be consistent with Agency nomenclature as well as the numerical expression of many of the proposed tolerance values to conform to current EPA policy on trailing zeroes.

For the tolerance in or on berries, low growing crop subgroup 13–07G, the proposed exceptions to the tolerance for lowbush blueberry and for cranberry are not appropriate, since use on both lowbush blueberry and cranberry are included on the proposed label 100–1601 and listed under directions for use on strawberry and low growing berry crop subgroup 13–07G.

EPA has modified several of the petitioned-for tolerances for the following reasons. For the tolerances in/on vegetable, root, subgroup 1A; nut, tree, group 14–12; pea and bean, succulent shelled, subgroup 6B; and fruit, citrus, group 10–10, the petitioner combined the individual commodities together in one calculator analysis when it is Agency practice to separate commodities. For the tolerances in/on vegetable, leaves of root and tuber, group 2 and sunflower subgroup 20B, the petitioner used U.S. residue data only where the Agency used both U.S. and Canadian residue data for harmonization purposes. For the tolerance in prune, the petitioner used the highest residue (HR) value from the field trials while the Agency's practice is to use the highest average field trial (HAFT) value from the field trials. For the tolerance in citrus oil, the Agency's practice is to use the HAFT and median concentration factor, and based on these data, the appropriate tolerance in citrus oil is 30 ppm; hence, the petitioned-for tolerance (15 ppm), the basis for which was not explained in the petition, is too low. As a result, several of the tolerance levels being established are different than those proposed by the petitioner.

V. Conclusion

Therefore, tolerances are established for residues of pydiflumetofen including its metabolites and degradates, in or on the following commodities. Compliance with the tolerance levels specified below is to be determined by measuring only pydiflumetofen (3-(difluoromethyl)-*N*-methoxy-1-methyl-*N*-[1-methyl-2-(2,4,6-trichlorophenyl)ethyl]-1*H*-pyrazole-4-carboxamide) in or on the commodity: Almond, hulls at 9 ppm; apple, wet pomace at 1 ppm; berry, low growing, subgroup 13–07G at 1 ppm; *brassica,* leafy greens, subgroup 4–16B at 50 ppm; bushberry subgroup 13–07B at 5 ppm; cherry subgroup 12–12A at 2 ppm; cotton, gin byproducts at 7 ppm; cottonseed subgroup 20C at 0.4 ppm; fruit, citrus, group 10–10 at 1 ppm; fruit, citrus, group 10–10, oil at 30 ppm; fruit, pome, group 11–10 at 0.2 ppm; nut, tree, group 14–12 at 0.07 ppm; onion, bulb, subgroup 3–07A at 0.2 ppm; onion, green, subgroup 3–07B at 2 ppm; pea and bean, succulent shelled, subgroup 6B at 0.1 ppm; peach subgroup 12–12B at 1 ppm; plum, prune, dried at 1 ppm; plum subgroup 12–12C at 0.6 ppm; sorghum, grain, forage at 1.5 ppm; sorghum, grain, grain at 3 ppm; sorghum, grain, stover at 10 ppm; sunflower subgroup 20B at 0.5 ppm; vegetable, *brassica,* head and stem, group 5–16 at 3 ppm; vegetable, leaves of root and tuber, group 2 at 10 ppm; vegetable, legume, edible podded, subgroup 6A at 1 ppm; and vegetable, root, subgroup 1A at 0.5 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: 7/26/2019.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.699, add alphabetically the commodities almond, hulls; apple, wet pomace; berry, low growing, subgroup 13–07G; *Brassica,* leafy greens, subgroup 4–16B; bushberry subgroup 13–07B; cherry subgroup 12–12A; cotton, gin byproducts; cottonseed subgroup 20C; fruit, citrus, group 10–10; fruit, citrus, group 10–10, oil; fruit, pome, group 11–10; nut, tree, group 14–12; onion, bulb, subgroup 3–07A; onion, green, subgroup 3–07B; pea and bean, succulent shelled, subgroup 6B; peach subgroup 12–12B; plum, prune, dried; plum subgroup 12–12C; sorghum, grain, forage; sorghum, grain, grain; sorghum, grain, stover; sunflower subgroup 20B; vegetable, *Brassica,* head and stem, group 5–16; vegetable, leaves of root and tuber, group 2; vegetable, legume, edible podded, subgroup 6A; and vegetable, root, subgroup 1A to the table in paragraph (a) to read as follows:

§ 180.699 Pydiflumetofen; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	9
Apple, wet pomace	1

Commodity	Parts per million
* * * * * * *	
Berry, low growing, subgroup 13–07G	1
Brassica, leafy greens, subgroup 4–16B	50
Bushberry subgroup 13–07B	5
* * * * * * *	
Cherry subgroup 12–12A	2
* * * * * * *	
Cotton, gin byproducts	7
Cottonseed subgroup 20C	0.4
Fruit, citrus, group 10–10	1
Fruit, citrus, group 10–10, oil	30
Fruit, pome, group 11–10	0.2
* * * * * * *	
Nut, tree, group 14–12	0.07
* * * * * * *	
Onion, bulb, subgroup 3–07A	0.2
Onion, green, subgroup 3–07B	2
Pea and bean, succulent shelled, subgroup 6B	0.1
Peach subgroup 12–12B	1
* * * * * * *	
Plum, prune, dried	1
Plum subgroup 12–12C	0.6
* * * * * * *	
Sorghum, grain, forage	1.5
Sorghum, grain, grain	3
Sorghum, grain, stover	10
* * * * * * *	
Sunflower subgroup 20B	0.5
* * * * * * *	
Vegetable, *Brassica,* head and stem, group 5–16	3
* * * * * * *	
Vegetable, leaves of root and tuber, group 2	10
Vegetable, legume, edible podded, subgroup 6A	1
* * * * * * *	
Vegetable, root, subgroup 1A	0.5
* * * * * * *	

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[FR Doc. 2019–17144 Filed 8–9–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0127; FRL–9997–00]

Propiconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of propiconazole in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 12, 2019. Objections and requests for hearings must be received on or before October 11, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0127, 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.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, 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).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0127 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 11, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0127, 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 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.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of July 24, 2018 (83 FR 34968) (FRL–9980–31), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8658) by Interregional Research Project No. 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.434 be amended by establishing tolerances for residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazol, and its metabolites determined as 2,4,-dichlorobenzoic acid (2,4–DCBA), expressed as the stoichiometric equivalent of propiconazole, in or on the following raw agricultural commodities: Avocado at 0.2 parts per million (ppm); *Brassica,* leafy greens, subgroup 4–16B, except watercress at 20 ppm; Celtuce at 5.0 ppm; Florence fennel at 5.0 ppm; Leaf petiole vegetable subgroup 22B at 5.0 ppm; Swiss chard at 5.0 ppm, Tomato subgroup 8–10A at 3.0 ppm and Vegetable, root, except sugar beet, subgroup 1B at 0.30 ppm. The petition also requested to remove the established tolerances for residues of propiconazole, including its metabolites and degradates, in or on the raw agricultural commodities: Beet, garden, roots at 0.30 ppm; *Brassica* leafy greens, subgroup 5B at 20 ppm; Carrot, roots at 0.25 ppm; Leaf petioles subgroup 4B at 5.0 ppm; Pistachio at 0.1 ppm; Radish, roots at 0.04 ppm; and Tomato at 3.0 ppm. In addition, the petition requested to amend 180.434(b) *Section 18 emergency exemption* by removing the established time-limited tolerance for residues of propiconazole and its metabolites in or on avocado at 10 ppm. That document referenced a summary of the petition prepared by Interregional Research Project No. 4 (IR–4), the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing, in accordance with section 408(d)(4)(a)(i), tolerances that vary in some respects from what the petitioner requested. These variations and the Agency's underlying rationale for those variations are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for propiconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with propiconazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The primary target organ for propiconazole toxicity in animals is the

liver. Increased liver weights were seen in mice after subchronic or chronic oral exposures to propiconazole. Liver lesions, including effects such as vacuolation of hepatocytes, ballooned liver cells, foci of enlarged hepatocytes, hypertrophy and necrosis, are characteristic of propiconazole toxicity in rats and mice. Decreased body weight gain was also seen in subchronic, chronic, developmental and reproductive studies in animal studies. Dogs appeared to be more sensitive to the localized toxicity of propiconazole as manifested by stomach irritations at 6 mg/kg/day and above.

In rabbits, developmental toxicity occurred at a higher dose than the maternally toxic dose, while in rats, developmental toxicity occurred at lower doses than maternal toxic doses. Increased incidences of rudimentary ribs occurred in rat and rabbit fetuses. Increased cleft palate malformations were noted in two studies in rats. In one published study in rats, developmental effects (malformations of the lung and kidneys, incomplete ossification of the skull, caudal vertebrae and digits, extra rib (14th rib) and missing sternebrae) were reported at doses that were not maternally toxic. In the 2-generation reproduction study in rats, offspring toxicity occurred at a higher dose than the parental toxic dose suggesting lower susceptibility of the offspring to the toxic doses of propiconazole.

The acute neurotoxicity study produced severe clinical signs of toxicity (decreased activity, cold, pale, decreased motor activity, etc.) in rats at the high dose of 300 mg/kg. Limited clinical signs (piloerection, diarrhea, tip toe gait) were observed in the mid-dose animals (100 mg/kg), while no treatment related signs were observed at 30 mg/kg. A subchronic neurotoxicity study in rats did not produce neurotoxic signs at the highest dose tested that was associated with decreased body weight.

Propiconazole was negative for mutagenicity in the *in vitro* BALB/3T3 cell transformation assay, bacterial reverse mutation assay, Chinese hamster bone marrow chromosomal aberration assay, unscheduled DNA synthesis studies in human fibroblasts and primary rat hepatocytes, mitotic gene conversion assay and the dominant lethal assay in mice. It caused proliferative changes in the rat liver with or without pretreatment with an initiator, like phenobarbital, a known liver tumor promoter. Liver enzyme induction studies with propiconazole in mice demonstrated that propiconazole is a strong phenobarbital type inducer of xenobiotic metabolizing enzymes. Hepatocellular proliferation studies in mice suggest that propiconazole induces cell proliferation followed by treatment-related hypertrophy in a manner similar to the known hypertrophic agent phenobarbital.

Propiconazole was carcinogenic to CD–1 male mice, producing hepatocarcinomas in male mice at doses in excess of levels that induced liver toxicity, including the chronic RfD. At doses at or below the RfD, liver toxicity and carcinogenicity are not expected to occur; therefore, the Agency used the Reference Dose (RfD) approach for assessing cancer risk. Propiconazole was not carcinogenic to rats or to female mice.

Propiconazole showed no significant toxicity in a battery of acute toxicity tests (Toxicity Category III or IV in all tests except eye irritation (II)). It is slightly irritating to the skin and is a dermal sensitizer.

Specific information on the studies received and the nature of the adverse effects caused by propiconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Propiconazole Human Health Risk Assessment for the New Use of Propiconazole on Avocado, along with Conversion to Brassica, leafy greens, subgroup 4–16B, except watercress, Leaf petiole vegetable subgroup 22B, Celtuce, Florence fennel, Swiss chard, and the expansion to Vegetable, root, except sugar beet, subgroup 1B'' at pages 15–20 in docket ID number EPA–HQ–OPP–2018–0127.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for propiconazole used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PROPICONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 30 mg/kg/day UFA = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.3 mg/kg/day. aPAD = 0.3 mg/kg/day	Acute Neurotoxicity Study—Rat. LOAEL = 100 mg/kg/day based on clinical signs of toxicity (piloerection in one male, diarrhea in one female, tip toe gait in 3 females).
Acute dietary (Females 13 to 49 years of age).	NOAEL = 30 mg/kg/day UFA = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.3 mg/kg/day. aPAD = 0.3 mg/kg/day	Developmental Study—Rat. LOAEL = 90 mg/kg/day based on increased incidence of rudimentary ribs, un-ossified sternebrae, as well as increased incidence of shortened and absent renal papillae and increased cleft palate.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PROPICONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Chronic dietary (All populations)	NOAEL = 10 mg/kg/day UFA = 10x UF_H = 10x FQPA SF = 1xa	Chronic RfD = 0.1 mg/kg/day. cPAD = 0.1 mg/kg/day	24-month carcinogenicity study on CD–1 mice. LOAEL = 50 mg/kg/day based on non-neoplastic liver effects (increased liver weight in males and increase in liver lesions: Masses/raised areas/swellings/nodular areas mainly).
Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months) Children.	NOAEL= 42 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100.	2-Generation Reproduction Study—Rats. Offspring LOAEL =192 mg/kg/day based on decreased offspring survival and body weights and an increased incidence of hepatic lesions (cellular swelling).
Incidental oral short-term (1 to 30 days) Adults including females 13+.	NOAEL= 30 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100.	Developmental Study—Rat. Developmental LOAEL = 90 mg/kg/day based on increased incidence of rudimentary ribs, un-ossified sternebrae, as well as increased incidence of shortened and absent renal papillae and increased cleft palate presumed to occur after single or multiple doses.
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months) DAF = 40% Children.	NOAEL= 42 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100.	2-Generation Reproduction Study—Rats. Offspring LOAEL =192 mg/kg/day based on decreased offspring survival and body weights and an increased incidence of hepatic lesions (cellular swelling).
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months) DAF = 40% Adults.	NOAEL= 30 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100.	Developmental Study—Rat. Developmental LOAEL = 90 mg/kg/day based on increased incidence of rudimentary ribs, un-ossified sternebrae, as well as increased incidence of shortened and absent renal papillae and increased cleft palate presumed to occur after single or multiple doses.
Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months) Adults including females 13+.	NOAEL= 30 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100.	Developmental Study—Rat. Developmental LOAEL = 90 mg/kg/day based on increased incidence of rudimentary ribs, un-ossified sternebrae, as well as increased incidence of shortened and absent renal papillae and increased cleft palate presumed to occur after single or multiple doses.
Cancer (Oral, dermal, inhalation)	Classification: Group C, possible human carcinogen, RfD approach for risk characterization.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). DAF = Dermal Absorption Factor.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to propiconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing propiconazole tolerances in 40 CFR 180.434. EPA assessed dietary exposures from propiconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for propiconazole. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) Nationwide Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA) conducted from 2003–2008. As to residue levels in food, the acute dietary analysis assumed 100 percent crops treated (PCT) and tolerance-level residues for all existing and proposed commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA conducted from 2003–2008. As to residue levels in food, the chronic dietary analysis assumed 100 PCT, average field trial residues or tolerance-level residues for all existing and proposed commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to propiconazole. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for propiconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of propiconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Surface Water Concentration Calculator (SWCC) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of propiconazole for acute exposures are

estimated to be 35.2 parts per billion (ppb) for surface water and 37.9 ppb for ground water and for chronic exposures for cancer assessments are estimated to be 18.6 ppb for surface water and 35.1 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 37.9 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 35.1 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Although there are no residential use patterns associated with the proposed uses, propiconazole is currently registered for the following uses that could result in residential handler and post-application exposures: Turf, landscapes, ornamentals, and paint. EPA assessed several residential exposure scenarios and incorporated the following scenarios into the short-term aggregate assessment because they reflected the highest exposure patterns for those age groups:

- Post-application dermal exposure for adults from high-contact activities on treated turf;
- Post-application dermal exposure for children 11 to <16 years old from contact with treated turf during golfing;
- Post-application dermal exposure for children 6 to <11 years old from contact with treated gardens.
- Post-application combined dermal plus incidental oral (hand-to-mouth) exposure for children 1 to <2 years old from high-contact activities on treated turf.

The following residential scenario was included in the intermediate-term aggregate assessment:

- Post-application combined dermal plus incidental oral (hand-to-mouth) exposure for children 1 to <2 years old from the registered wood treatment (antimicrobial use).

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to propiconazole and any other substances; the Agency's previous statements regarding the potential for a common mechanism among the conazoles noted that the underlying data available at the time were inconclusive. Although the conazole fungicides (triazoles) produce 1,2,4 triazole and its acid-conjugated metabolites (triazolylalanine and triazolylacetic acid), 1,2,4 triazole and its acid-conjugated metabolites do not contribute to the toxicity of the parent conazole fungicides (triazoles). The Agency has assessed the aggregate risks from the 1,2,4 triazole and its acid-conjugated metabolites (triazolylalanine and triazolylacetic acid) separately. The supporting risk assessment concludes that aggregate risks are below the Agency's level of concern and can be found at *http://www.regulations.gov* in the document titled ''Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address New Section 3 Registrations For Use of Difenoconazole and Mefentrifluconazole.'' in docket ID number EPA–HQ–OPP–2018–0002. Propiconazole does not appear to produce any other toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that propiconazole has a common mechanism of toxicity with other substances.

For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In the developmental toxicity study in rats, fetal effects observed in this study at a dose lower than the maternal toxicity are quantitative evidence of increased susceptibility of fetuses to *in utero* exposure to propiconazole. Neither quantitative nor qualitative evidence of increased susceptibility was observed *in utero* or post-natal in either the rabbit developmental or 2-generation reproduction rat study. There is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with propiconazole. In the rat acute neurotoxicity study, there was evidence of clinical toxicity at the high dose of 300 mg/kg, but no evidence of neuropathology from propiconazole administration.

Although there was quantitative evidence of increased susceptibility of the young following exposure to propiconazole in the developmental rat study, the Agency determined there is a low degree of concern for this finding and no residual uncertainties because the increased susceptibility was based on minimal toxicity at high doses of administration, clear NOAELs and LOAELs have been identified for all effects of concern, and a clear dose-response has been well defined.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for propiconazole is complete.

ii. There is no indication that propiconazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Other than the mild effects seen at 300 mg/kg in the acute neurotoxicity study, neurotoxicity and neurobehavioral effects were not seen in the propiconazole toxicity database. The liver, not the nervous system, is the primary target organ of propiconazole toxicity.

iii. Although quantitative susceptibility was observed in the rat developmental study, a clear NOAEL is established for the developmental effects. There are no remaining

uncertainties for prenatal and/or postnatal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues, while the chronic used a combination of tolerance-level residues and reliable data on average field trial residues and 100 PCT. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to propiconazole in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by propiconazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to propiconazole will occupy 85% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to propiconazole from food and water will utilize 25% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of propiconazole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Propiconazole is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to propiconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 120 for children 1 to 2 years and an MOE of 130 for adults from post-application activity on treated turf. Because EPA's level of concern for propiconazole is an MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Propiconazole is currently registered for wood treatment use that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to propiconazole.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 470 for children 1 to 2 years old from post-application exposure from wood treatment (antimicrobial use). Because EPA's level of concern for propiconazole is an MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the discussion in Unit III.A., EPA considers the chronic aggregate risk assessment to be protective of any aggregate cancer risk. As there is no chronic risk of concern, EPA does not expect any cancer risk to the U.S. population from aggregate exposure to propiconazole.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to propiconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, high-performance liquid chromatography/ultraviolet (HPLC/UV) detector, Method AG–671A, is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established MRLs for propiconazole for any of the commodities in this action.

C. Revisions to Petitioned-For Tolerances

Based on current policy to use consistent commodity terminology across tolerances, the tolerance ''Florence fennel'' is being established as ''Fennel, Florence, fresh leaves and stalk''. Moreover, tolerances are being established without the requested trailing zeros in accordance with the Agency's current rounding class practice. Finally, EPA is not removing the tolerance for tomato or establishing a new tomato subgroup 8–10A tolerance because the request for that expansion was withdrawn by the petitioner and therefore, was not assessed.

V. Conclusion

Therefore, tolerances are established for residues of propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole, in or on Avocado at 0.2 ppm; *Brassica,* leafy greens, subgroup 4–16B, except watercress at 20 ppm; Celtuce at 5 ppm; Fennel, Florence, fresh leaves and stalk at 5 ppm; Leaf petiole vegetable subgroup 22B at 5 ppm; Swiss chard at 5 ppm, and Vegetable, root, except sugar beet, subgroup 1B at 0.3 ppm.

Additionally, the existing tolerances on the following commodities are removed as unnecessary due to the establishment of the above tolerances: Avocado (time-limited tolerance); Beet, garden, roots; *Brassica* leafy greens, subgroup 5B; Carrot, roots; Leaf petioles

subgroup 4B; and Radish, roots. In addition, EPA is removing the tolerance for pistachio; that individual tolerance is unnecessary since pistachio is included in group 14–12, and the tolerance levels are the same.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 2, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.434,

■ a. Add alphabetically the entries ''Avocado''; ''*Brassica,* leafy greens, subgroup 4–16B, except watercress''; ''Celtuce''; ''Fennel, Florence, fresh leaves and stalk''; ''Leaf petiole vegetable subgroup 22B''; ''Swiss chard''; and ''Vegetable, root, except sugar beet, subgroup 1B'' to the table in paragraph (a)(1).

■ b. Remove the entries ''Beet, garden, roots''; ''*Brassica* leafy greens, subgroup 5B''; ''Carrot, roots''; ''Leaf petioles subgroup 4B''; ''Pistachio''; and ''Radish, roots'' from the table in paragraph (a)(1).

■ c. Remove the entry ''Avocado'' from the table in paragraph (b).

The additions read as follows:

§ 180.434 Propiconazole; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Avocado	0.2
* * * * *	
Brassica, leafy greens, subgroup 4–16B, except watercress	20
* * * * *	
Celtuce	5
* * * * *	
Fennel, Florence, fresh leaves and stalk	5
* * * * *	
Leaf petiole vegetable subgroup 22B	5
* * * * *	
Swiss chard	5
* * * * *	
Vegetable, root, except sugar beet, subgroup 1B	0.3
* * * * *	

* * * * *

[FR Doc. 2019–17143 Filed 8–9–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 170605543–7999–02]

RIN 0648–XT005

Atlantic Highly Migratory Species; Commercial Blacktip Sharks, Aggregated Large Coastal Sharks, and Hammerhead Sharks in the Gulf of Mexico Region; Retention Limit Adjustment

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial retention limit for blacktip shark, aggregated large coastal sharks (LCS), and hammerhead shark management groups in the Gulf of Mexico region from 45 LCS other than sandbar sharks per vessel per trip to 55

LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 55 LCS other than sandbar sharks per vessel per trip in the Gulf of Mexico region through the rest of the 2019 fishing season, or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure. This retention limit adjustment affects anyone with a directed shark limited access permit fishing for LCS in the Gulf of Mexico region.

DATES: The commercial retention limit adjustment is effective on August 12, 2019 through December 31, 2019, or until and if NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford, Guy DuBeck, or Karyl Brewster-Geisz 301–427–8503; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under 50 CFR 635.24(a)(8), NMFS may adjust the commercial retention limits in the Atlantic shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria (see § 635.24(a)(8)(i) through (vi)).

NMFS considered the inseason retention limit adjustment criteria listed at § 635.24(a)(8)(i) through (vi), which include:

- The amount of remaining shark quota in the relevant area, region, or sub-region to date, based on dealer reports.

Based on dealer reports through July 12, 2019, 24 percent of the 27.7 metric tons (mt) dressed weight (dw) shark quota for blacktip, 51 percent of the 85.5 mt dw shark quota for aggregated LCS, and 50 percent of the 13.4 mt dw for the hammerhead shark landings have been harvested in the eastern Gulf of Mexico sub-region. In the western Gulf of Mexico sub-region, 20 percent of the 255.8 mt dw shark quota for blacktip, 13 percent of the 72.0 mt dw shark quota for aggregated LCS, and less than 5 percent of the 11.9 mt dw for the hammerhead shark landings have been harvested. In total across the Gulf of Mexico region (eastern plus western sub-regions), approximately 80 percent of the blacktip, 66 percent of the aggregated LCS quota, and more than 70 percent of the hammerhead shark regional quotas remain available.

- The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports.

Based on the current commercial retention limit and average catch rate of landings data from dealer reports, the amount of overall commercial blacktip shark, aggregated LCS, and hammerhead shark quota that remains available is high. Using current catch rates, projections indicate that the overall Gulf of Mexico landings would not reach 80 percent of any of the quotas before the end of the 2019 fishing year (December 31, 2019). Implementing a higher retention limit will better promote fishing opportunities and utilize available quotas throughout the Gulf of Mexico region.

- Estimated date of fishery closure based on when the landings reach or are projected to reach 80 percent of the quota given the realized catch rates.

Once the landings reach, or are projected to reach a threshold of 80 percent of the available aggregated LCS or hammerhead shark quotas and are projected to reach 100 percent before the end of the fishing season, NMFS would, as required by the regulations at § 635.28(b)(3), close the aggregated LCS and hammerhead shark management groups since they are ''linked'' quotas. The blacktip shark quotas in the Gulf of Mexico region are not linked to the aggregated LCS or hammerhead shark sub-regional quotas. If blacktip shark landings reach, or are projected to reach a threshold of 80 percent of the available quota and are projected to reach 100 percent before the end of the fishing season, NMFS would close the blacktip management group, consistent with existing regulations. Current overall regional catch rates for blacktip, aggregated LCS, and hammerhead sharks indicate all management groups would likely remain open for the remainder of the year. A higher retention limit should help make it possible to fully utilize the quotas in the Gulf of Mexico region.

- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments.

Increasing the retention limit on the blacktip, aggregated LCS, and hammerhead shark management groups in the Gulf of Mexico region from 45 to 55 LCS other than sandbar sharks per vessel per trip would increase the fishery catch rates for the rest of the year and allow fishermen to capitalize on underutilized quota, consistent with the FMP's objective to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, with respect to providing food production for commercial fisheries. The science-based quotas for the stocks would remain the same, consistent with previous actions, and ensure that the fisheries are managed consistent with conservation and management objectives in the 2006 Consolidated HMS FMP, as amended.

- Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge.

The directed shark fisheries in the Gulf of Mexico region exhibit a mixed species composition, with a high abundance and distribution of aggregated LCS caught in conjunction with blacktip sharks. As a result, by increasing the harvest and landings on a per-trip basis, fishermen throughout the Gulf of Mexico region will likely experience equitable fishing opportunities and have a chance to fully utilize the available quotas.

- Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

NMFS has previously provided notice to the regulated community (83 FR 60777; November 27, 2018) that the goal of this year's fishery is to ensure fishing opportunities throughout the fishing year, consistent with conservation and management objectives for the stocks. While dealer reports indicate that, under current catch rates, the blacktip, aggregated LCS, and hammerhead shark management groups in the Gulf of Mexico region would remain open for the remainder of the year, the catch rates also indicate that the quotas would likely not be fully harvested under the current retention limit. If the harvest of these species is increased through an increased retention limit, NMFS estimates that the fishery would continue to remain open for the remainder of the year, and fishermen throughout the Gulf of Mexico region would have a reasonable opportunity to harvest a portion of the quota.

After considering the criteria discussed above, NMFS concluded that increasing the retention limit of the blacktip shark, aggregated LCS, and hammerhead shark management groups in the Gulf of Mexico region will allow for more utilization of the available quotas a for the rest of the year. Based

on landings projections, under the current retention limits the overall Gulf of Mexico blacktip shark, aggregated LCS, and hammerhead shark quotas would not be reached by the end of the year. Therefore, NMFS is increasing the overall commercial blacktip shark, aggregated LCS, and hammerhead shark retention limit in the Gulf of Mexico region from 45 to 55 LCS other than sandbar sharks per vessel per trip.

On November 27, 2018 (83 FR 60777), NMFS announced that the 2019 commercial eastern Gulf of Mexico blacktip shark sub-regional quota was 27.7 mt dw (61,256 lb dw), the eastern Gulf of Mexico aggregated LCS sub-regional quota was 85.5 mt dw (188,593 lb dw), and the eastern Gulf of Mexico hammerhead shark sub-regional quota was 13.4 mt dw (29,421 lb dw), while the commercial western Gulf of Mexico blacktip shark sub-regional quota was 255.8 mt dw (563,799 lb dw), the western Gulf of Mexico aggregated LCS sub-regional quota was 72.0 mt dw (158,724 lb dw), and the western Gulf of Mexico hammerhead shark sub-regional quota was 11.9 mt dw (26,301 lb dw). Thus, the total Gulf of Mexico regional quotas are 283.5 mt dw (625,055 lb dw) for blacktip sharks; 157.5 mt dw (347,317 lb dw) for aggregated LCS; and 25.3 mt dw (55,722 lb dw) for hammerhead sharks. In the final rule, after considering public comment on the proposed rule (83 FR 45866, September 11, 2018), NMFS explained that if it appeared that the quota was being harvested too slowly, NMFS would consider increasing the retention limit, consistent with the applicable regulatory requirements. Dealer reports received through June14, 2019, indicate that 18 percent (50.2 mt dw), 29 percent (45.8 mt dw), and 23 percent (5.9 mt dw) of the available Gulf of Mexico regional blacktip, aggregated LCS, and hammerhead shark quotas, respectively, has been harvested. Increasing the retention limit provides the best opportunity to fully utilize these available quotas.

The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4′ N lat, proceeding due east. Any water and land to the south and west of that boundary is considered for the purposes of monitoring and setting quotas, to be within the Gulf of Mexico region. The boundary between the western and eastern Gulf of Mexico sub-regions is drawn along 88°00′ W long (§ 635.27(b)(1)(ii)). Persons fishing aboard vessels issued a commercial shark limited access permit under § 635.4 may still retain blacktip sharks, aggregated LCS, and/or hammerhead sharks management groups in the eastern Gulf of Mexico sub-region (east of 88°00′ W long).

Accordingly, as of August 12, 2019, NMFS is increasing the retention limit for the commercial blacktip shark, aggregated LCS, and hammerhead shark management groups in the Gulf of Mexico region for directed shark limited access permit holders from 45 LCS other than sandbar sharks per vessel per trip to 55 LCS other than sandbar sharks per vessel per trip. This retention limit adjustment does not apply to directed shark limited access permit holders if the vessel is properly permitted in the charter/headboat category and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and ''no sale'' provisions apply (§ 635.22(a) and (c)); or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, in which case the restrictions noted on the shark research permit apply.

The adjusted retention limit will remain at 55 LCS other than sandbar sharks per vessel per trip for the remainder of the 2019 fishing season, or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted. All other retention limits and shark fishery regulations in the Gulf of Mexico region remain unchanged by this adjustment.

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:

Prior notice is impracticable because the regulatory criteria for inseason retention limit adjustments are intended to allow the agency to respond quickly to existing management considerations, including remaining available shark quotas, estimated dates for the fishery closures, the regional variations in the shark fisheries, and allowing fishermen to capitalize on underutilized quota. Additionally, regulations implementing Amendment 6 of the 2006 Atlantic Consolidated HMS FMP (80 FR 50074, August 18, 2015) intended that the LCS retention limit could be adjusted quickly throughout the fishing season to provide management flexibility for the shark fisheries and to allow fishermen to capitalize on underutilized quota, consistent with the FMP's objective to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation. Based on available shark quotas and informed by shark landings in previous seasons, responsive adjustment to the LCS commercial retention limit from the incidental level is warranted as quickly as possible to allow fishermen to take advantage of available quotas. For such adjustment to be practicable, it must occur in a timeframe that allows fishermen to take advantage of it.

Adjustment of the LCS fisheries retention limit in the Gulf of Mexico region will begin on August 12, 2019. Analysis of available data shows that adjustment of the LCS commercial retention limit upward to 55 would result in minimal risks of exceeding the blacktip shark, aggregated LCS and hammerhead shark quotas in the Gulf of Mexico region based on our consideration of previous years' data. With quota available and with no measurable impacts to the stocks expected, it would be contrary to the public interest to require vessels to wait to harvest the sharks otherwise allowable through 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. Adjustment of the LCS commercial retention limit in the Gulf of Mexico region is effective August 12, 2019, to minimize any unnecessary disruption in fishing patterns and to allow the impacted fishermen to benefit from the adjustment. Foregoing opportunities to harvest the respective quotas could have negative social and economic impacts for U.S. fishermen that depend upon catching the available quotas. Therefore, the AA finds there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.24(a)(2) and is exempt from review under Executive Order 12866.

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

Dated: August 6, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–17139 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 155
Monday, August 12, 2019

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 ENERGY

10 CFR Parts 429 and 430

[EERE–2014–BT–TP–0034]

RIN 1904–AD46

Energy Conservation Program: Test Procedures for Clothes Dryers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; public meeting.

SUMMARY: On July 23, 2019, the U.S. Department of Energy (''DOE'') published in the **Federal Register** a notice of proposed rulemaking regarding proposals to amend the test procedures for clothes dryers and to request comment on the proposals and other aspects of clothes dryer testing. This notice also announced a webinar to be held on August 14, 2019, and stated that DOE would hold a public meeting on the proposal if one was requested by August 6, 2019. On July 29, 2019, DOE received a comment requesting a public meeting; therefore, DOE is announcing a public meeting to be held on August 28, 2019, which will also be available as a webinar, and is cancelling the previously announced webinar scheduled for August 14, 2019.

DATES: *Meeting:* DOE will hold a public meeting on Wednesday, August 28, 2019, from 10:00 a.m. to 3:00 p.m. The meeting will also be broadcast as a webinar.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW, Washington, DC 20585.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2014-BT-TP-0034.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or regarding a public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On July 23, 2019, the U.S. Department of Energy (''DOE'') published in the **Federal Register** a notice of proposed rulemaking and request for comment regarding proposals to amend the test procedures for clothes dryers. 84 FR 35484. This notice also announced a webinar to be held on August 14, 2019, and stated that DOE would hold a public meeting to discuss the proposals if one was requested by August 6, 2019.

On July 29, 2019, DOE received a comment from the Natural Resources Defense Council, the Northwest Energy Efficiency Alliance, and Pacific Gas and Electric Company requesting that DOE hold an in-person public meeting regarding the proposed amendments to the clothes dryers test procedures.[1]

This notice announces that DOE will hold a public meeting to discuss the proposed amendments to the clothes dryers test procedures on August 28, 2019. The public meeting will also available as a webinar. This notice also cancels the previously announced webinar scheduled for August 14, 2019.

See section V, ''Public Participation,'' of the notice published on July 23, 2019, for additional information on participating in the webinar and submitting comments. *Id.*

A. Attendance at Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov.*

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting or webinar, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (''DHS''), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. DHS maintains an updated website identifying the State and territory driver's licenses that currently are acceptable for entry into DOE facilities at *https://www.dhs.gov/real-id-enforcement-brief.* Acceptable alternate forms of Photo-ID include a U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories identified on the DHS website (Enhanced licenses issued by these states are clearly marked Enhanced or

[1] See document number 17 within docket EERE–2014–BT–TP–0034, available on *regulations.gov.*

Enhanced Driver's License); a military ID; or other Federal government issued Photo-ID card.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the Docket section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

Signed in Washington, DC, on August 1, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–17081 Filed 8–9–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0582; Product Identifier 2019–NM–034–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A and 601–3R Variants) airplanes. This proposed AD was prompted by reports of the loss of all air data system information provided to the flightcrew, which was caused by icing at high altitudes. This proposed AD would require revising the exisitng airplane flight manual (AFM) to provide the flightcrew with procedures for ''Unreliable Airspeed'' that stabilize the airplane's airspeed and attitude. 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 September 26, 2019.

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 *http://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 Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.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.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0582; 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: John DeLuca, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7369; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0582; Product Identifier 2019–NM–034–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 *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–36, dated December 27, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A and 601–3R Variants) airplanes. The MCAI states:

A number of in-service incidents have been reported on CL–600–2C10 aeroplanes regarding the loss of all air data system information provided to the crew. The air data system information was recovered as the aeroplanes descended to lower altitudes. An investigation determined that the root cause in both events was high altitude icing (ice crystal contamination). If not recognized and addressed, this condition may affect continued safe flight and landing.

Due to similarities in the air data systems, similar events could also occur on Bombardier Inc. CL–600–1A11, CL–600–2A12 and CL–600–2B16 aeroplanes.

This [Canadian] AD mandates the incorporation of Airplane Flight Manual (AFM) procedures that will allow the crew to stabilize the aeroplane's airspeed and attitude for continued safe flight and landing.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0582.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which provides a procedure for ''Unreliable Airspeed'' in the Emergency Procedures section of the applicable AFM.

- Canadair Challenger CL–600–1A11 AFM, Product Publication (PP) 600, Revision A111, dated August 31, 2018.
- Canadair Challenger CL–600–1A11 (Winglets) AFM, Product Support Publication (PSP) 600–1, Revision 103, dated August 31, 2018.
- Canadair Challenger CL–600–2A12 AFM, PSP 601–1A, Revision 120, dated August 31, 2018.
- Canadair Challenger CL–600–2A12 AFM, PSP 601–1A–1, Revision 79, dated August 31, 2018.
- Canadair Challenger CL–600–2A12 AFM, PSP 601–1B, Revision 83, dated August 31, 2018.
- Canadair Challenger CL–600–2A12 AFM, PSP 601–1B–1, Revision 81, dated August 31, 2018.
- Canadair Challenger CL–600–2B16 AFM, PSP 601A–1, Revision 103, dated August 31, 2018.
- Canadair Challenger CL–600–2B16 AFM, PSP 601A–1–1, Revision 92, dated August 31, 2018.

These documents are distinct since they apply to different airplane models in different configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing AFM with procedures for ''Unreliable Airspeed'' in the Emergency Procedures section of the applicable AFM as described previously.

Costs of Compliance

The FAA estimates that this proposed AD affects 206 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$17,510

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) 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 adding the following new airworthiness directive (AD):

Bombardier, Inc.: Docket No. FAA–2019–0582; Product Identifier 2019–NM–034–AD.

(a) Comments Due Date

The FAA must receive comments by September 26, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(3) of this AD.

(1) Model CL–600–1A11 (600), serial numbers 1001 through 1085 inclusive.

(2) Model CL–600–2A12 (601), serial numbers 3001 through 3066 inclusive.

(3) Model CL–600–2B16 (601–3A and 601–3R Variants), serial numbers 5001 through 5194 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by reports of the loss of all air data system information provided to the flightcrew, which was caused by icing at high altitudes. The FAA is issuing this AD to address the loss of all air data system information provided to the flightcrew. If not addressed, this condition may adversely affect continued safe flight and landing.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD: Revise the Emergency Procedures section of the existing AFM to include the information in the ''Unreliable Airspeed'' procedure of the applicable AFM specified in figure 1 to paragraph (g) of this AD.

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Figure 1 to paragraph (g) – *AFM Revisions*

Airplane Serial Numbers	AFM	AFM Revision	Issue Date
CL-600-1A11 (600) serial numbers 1001 through 1085 inclusive for non-winglets	Canadair Challenger CL-600-1A11 AFM, Product Publication (PP) 600	Revision A111	August 31, 2018
CL-600-1A11 (600) serial numbers 1001 through 1085 inclusive for winglets	Canadair Challenger CL-600-1A11 (Winglets) AFM, Product Support Publication (PSP) 600-1	Revision 103	August 31, 2018
CL-600-2A12 (601) serial numbers 3001 through 3066 inclusive	Canadair Challenger CL-600-2A12 AFM, PSP 601-1A	Revision 120	August 31, 2018
CL-600-2A12 (601) serial numbers 3001 through 3066 inclusive with Bombardier Service Bulletin 601-0360 incorporated	Canadair Challenger CL-600-2A12 AFM, PSP 601-1A-1	Revision 79	August 31, 2018
CL-600-2A12 (601) serial numbers 3001 through 3066 inclusive with -3A engine	Canadair Challenger CL-600-2A12 AFM, PSP 601-1B	Revision 83	August 31, 2018
CL-600-2A12 (601) serial numbers 3001 through 3066 inclusive with -3A engine and Bombardier Service Bulletin 601-0360 incorporated	Canadair Challenger CL-600-2A12 AFM, PSP 601-1B-1	Revision 81	August 31, 2018
CL-600-2B16 (601-3A and 601-3R Variants) serial numbers 5001 through 5194 inclusive	Canadair Challenger CL-600-2B16 AFM, PSP 601A-1	Revision 103	August 31, 2018

Airplane Serial Numbers	AFM	AFM Revision	Issue Date
CL-600-2B16 (601-3A and 601-3R Variants) serial numbers 5001 through 5194 inclusive with Bombardier Service Bulletin 601-0360 incorporated	Canadair Challenger CL-600-2B16 AFM, PSP 601A-1-1	Revision 92	August 31, 2018

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(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–36, dated December 27, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0582.

(2) For more information about this AD, contact John DeLuca, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7369; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.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.

Issued in Des Moines, Washington, on July 26, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–16808 Filed 8–9–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0615; Product Identifier 2018–CE–053–AD]

RIN 2120–AA64

Airworthiness Directives; GA 8 Airvan (Pty) Ltd Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for GA 8 Airvan (Pty) Ltd Model GA8 and Model GA8–TC320 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a design change to the fuselage strut pick up ribs No. 5 and 6 that requires a reduced life limit. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 26, 2019.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact GA 8 Airvan (Pty) Ltd, c/o GippsAero Pty Ltd, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; email: *aircraft.techpubs@mahindraaerospace.com.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0615; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0615; Product Identifier 2018–CE–053–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy

aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Civil Aviation Safety Authority (CASA), which is the aviation authority for Australia, has issued AD No. AD/GA8/10, dated October 17, 2018 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Airworthiness Limitations are promulgated in the GippsAero Service Manual [Airworthiness Limitations Section] ALS Chapter 4 Airworthiness Limitations. The change to the Airworthiness Limitations by GippsAero on 15 May 2018 was the result of the manufacturer changing the design of the fuselage strut pick up ribs no. 5 and 6. The revised rib designs have a different life limitation to the earlier rib designs. These Airworthiness Limitations are approved by CASA and non-compliance with these limitations could result in an unsafe condition developing. The Service Manual Chapter 4 Airworthiness Limitations dated 15 May 2018 are mandatory in Australia however foreign National Aviation Authorities may not automatically require revision of service manuals without the issue of this AD.

While the U.S. type certificate holder is GA8 Airvan C/O GippsAero, service manuals for the GA8 and GA8–TC320 model airplanes are issued by GippsAero.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0615.

Related Service Information Under 1 CFR Part 51

The FAA has reviewed the following updated service information from the aircraft service manuals for Model GA8 and Model GA8–TC320 airplanes:

- C01–00–04, Chapter 4, Airworthiness Limitations, dated May 14, 2018, for the Model GA8; and
- C01–00–06, Chapter 4, Airworthiness Limitations, dated May 14, 2018, for the Model GA8–TC 320.

This service information establishes life limits for certain fuselage strut pick up ribs No. 5 and 6. 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 and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 30 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $2,550, or $85 per product.

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.

We are 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 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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

(4) 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 adding the following new airworthiness directive (AD):

GA 8 Airvan (Pty) Ltd: Docket No. FAA–2019–0615; Product Identifier 2018–CE–053–AD.

(a) Comments Due Date

We must receive comments by September 26, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GA 8 Airvan (Pty) Ltd Model GA8 and Model GA8–TC320 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 5: Time Limits.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a change to the airworthiness limitations because of a design change by the manufacturer to the fuselage strut pick up ribs No. 5 and 6. We are issuing this AD to require a revision of the service manuals and incorporate new airworthiness limitations.

(f) Actions and Compliance

Unless already done, before further flight, comply with the actions in paragraphs (f)(1) through (3) of this AD.

(1) Remove and replace Chapter 4, Airworthiness Limitations, in your airplane service manual with GippsAero GA8 Service Manual, C01–00–04, Chapter 4, dated May 14, 2018, or GippsAero GA8–TC 320 Service Manual, C01–00–06, Chapter 4, dated May 14, 2018, as applicable to your model airplane.

(2) Remove from service each part listed in Chapter 4, Airworthiness Limitations, in your airplane service manual that has reached or exceeded its new life limit.

(3) Except as provided in paragraph (g)(1) of this AD, no alternative life limits may be approved for the parts listed in GippsAero GA8 Service Manual, C01–00–04, Chapter 4, dated May 14, 2018, and GippsAero GA8–TC 320 Service Manual, C01–00–06, Chapter 4, dated May 14, 2018.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must instead be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or the Civil Aviation Safety Authority for the Commonwealth of Australia (CASA).

(h) Related Information

Refer to MCAI issued by CASA, AD No. AD/GA8/10, dated October 17, 2018, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0615. For service information related to this AD, contact GA 8 Airvan (Pty) Ltd, c/o GippsAero Pty Ltd, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; email: *aircraft.techpubs@mahindraaerospace.com.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on July 29, 2019.

Melvin J. Johnson,

Aircraft Certification Service Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2019–16917 Filed 8–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0034; Airspace Docket No. 19–ASW–1]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Alpine, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Alpine-Casparis Municipal Airport, Alpine, TX. This action is necessary due to the decommissioning of the Brewster County non-directional radio beacon (NDB), and cancellation of the NDB approach, and would enhance the safety and management of standard instrument approach procedures for instrument flight rules (IFR) operations at this airport. Additionally, the geographic coordinates are being updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before September 26, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2019–0034; Airspace Docket No. 19–ASW–1, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Witucki, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending upward from 700 feet above the surface at Alpine-Casparis Municipal Airport, Alpine, TX, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0034; Airspace Docket No. 19–ASW–1.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov//air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Class E airspace extending upward from 700 feet above the surface within 6.6 mile radius of the Alpine-Casparis Municipal Airport and within 2 miles each side of the 023° bearing from the Alpine-Casparis Municipal Airport extending from the 6.6-mile radius to 10.5 miles northeast of the airport. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

Airspace reconfiguration is necessary due to the decommissioning of the Brewster County NDB, and cancellation of the NDB approach, which would enhance the safety and management of the standard instrument approach.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Alpine, TX [Amended]

Alpine-Casparis Municipal Airport, TX
(Lat. 30°23′03″ N, long. 103°41′01″ W)

That airspace extending upward from 700 feet above the surface within 6.6 mile radius of the Alpine-Casparis Municipal Airport and within 2.0 miles each side of the 023° bearing from the Alpine-Casparis Municipal Airport extending from the 6.6-mile radius to 10.5 miles northeast of the airport.

Issued in Fort Worth, TX, on February 13, 2019.

John Witucki,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–17117 Filed 8–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2019–F–3519]

Kellogg Company; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Kellogg Company, proposing that the food additive regulations be amended to

provide for the safe use of vitamin D_3 as a nutrient supplement in breakfast cereals and in grain-based nutrition bars (*e.g.,* granola bars).

DATES: The food additive petition was filed on June 25, 2019.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this document into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1204.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), we are giving notice that we have filed a food additive petition (FAP 9A4823), submitted on behalf of Kellogg Company by Hogan Lovells US LLP, Columbia Square, 555 Thirteenth Street NW, Washington, DC 20004. The petition proposes to amend the food additive regulations in § 172.380 (21 CFR 172.380; Vitamin D_3) to provide for the safe use of vitamin D_3 as a nutrient supplement as defined in § 170.3(o)(20) (21 CFR 170.3(o)(20)) in breakfast cereals as defined in § 170.3(n)(4) and in grain-based nutrition bars (*e.g.,* granola bars) and to update the specifications for vitamin D_3 established in § 172.380(b) by incorporating by reference the most recent edition of the Food Chemicals Codex.

We have determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 5, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–17056 Filed 8–9–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, 26, and 27

[Docket Nos. TTB–2019–0004 and TTB–2019–0005; Notice No. 184; Re: Notice Nos. 182 and 183]

RINS 1513–AB56 and 1513–AC45

Elimination of Certain Standards of Fill for Wine; and Elimination of Certain Standards of Fill for Distilled Spirits; Amendment of Malt Beverage Net Contents Labeling Regulation

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notices of proposed rulemaking; extension of comment periods.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is extending for an additional 60 days the comment periods for the two notices of proposed rulemaking it published on July 1, 2019, entitled, ''Elimination of Certain Standards of Fill for Wine'' and ''Elimination of Certain Standards of Fill for Distilled Spirits; Amendment of Malt Beverage Net Contents Labeling Regulation.'' TTB is taking this action in response to requests to extend the comment periods for those proposed rulemakings made by several interested parties.

DATES: For Notice No. 182 and Notice No. 183, proposed rules published on July 1, 2019, at 84 FR 31257 and 84 FR 31264, respectively, comments are now due on or before October 30, 2019.

ADDRESSES: Please send your comments on Notice No. 182 and/or Notice No. 183 to one of the following addresses:

- *internet: https://www.regulations.gov* (via the online comment form for Notice No. 182 as posted within Docket No. TTB–2019–0004, or the online comment form for Notice No. 183 as posted within Docket No. TTB–2019–0005, at ''*Regulations.gov*,'' the Federal e-rulemaking portal);
- *U.S. mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please refer to the specific notice number you are commenting on in your comment. See the Public Participation section of Notice No. 182 or Notice No. 183 for specific instructions and requirements for submitting comments. You may view copies of the two proposed rules, this comment period extension document, and all public comments associated with the proposed rules within Docket Nos. TTB–2019–0004 and TTB–2019–0005 on the *Regulations.gov* website at *https://www.regulations.gov.* You also may view copies of these materials by appointment at the TTB Public Reading Room, 1310 G Street NW, Washington, DC 20005. Please call 202–453–1039, ext. 135 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 275.

SUPPLEMENTARY INFORMATION: On July 1, 2019, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published two proposed rules in the **Federal Register**:

- Notice No. 182, Elimination of Certain Standards of Fill for Wine, at 84 FR 31257; and
- Notice No. 183, Elimination of Certain Standards of Fill for Distilled Spirits; Amendment of Malt Beverage Net Contents Labeling Regulation, at 84 FR 31264.

In the two proposed rules, TTB addresses petitions requesting that TTB amend the regulations that govern wine and distilled spirits containers to provide for additional authorized standards of fill. As discussed in Notice No. 182, TTB is proposing to eliminate all but a minimum standard of fill for wine containers, and, as discussed in Notice No. 183, TTB is proposing to eliminate all but minimum and maximum standards of fill for distilled spirits containers. The term ''standard of fill'' as used in the TTB regulations and in the two proposed rules refers to the authorized amount of liquid in the container (for example, 50 mL, 100 mL, 375 mL, 750 mL, and 1 liter) rather than the size or capacity of the container itself.

In addition, in Notice No. 183, TTB is also proposing to specifically provide that distilled spirits may be labeled with the equivalent standard United States (U.S.) measure in addition to the mandatory metric measure, and that malt beverages may be labeled with the equivalent metric measure in addition to the mandatory U.S. measure. These revisions will align those labeling regulations with current TTB policy, which allows such labeling, and also with the wine labeling regulations, which provide that wine labels may include the equivalent U.S. measure in addition to the mandatory metric measure.

As discussed in each proposed rule, in addition to comments on the proposed deregulatory actions, TTB is also requesting comments on the relative merits of alternatives, such as adding new authorized standards of fill and developing an expedited process for adding additional standards in the future. TTB believes that all of these approaches would eliminate restrictions that inhibit competition and the movement of goods in domestic and international commerce.

To date, TTB has received requests to extend the comment period for either Notice No. 182 or Notice No. 183 from three national associations and the European Commission.

The Wine Institute requested a 90-day extension of the comment period for Notice No. 182, stating that TTB issued the notice at a time when their members are engaged in longer business hours in preparation for harvest, with limited time to devote to the issues raised. In addition, the comment states that the group needs additional time to identify interested parties, including both its members and other wine trade associations, to discuss how best to respond.

The American Distilled Spirits Association (ADSA) requested a 90-day extension of Notice No. 183, stating that it and its member companies require ''substantial time to fully and properly address this significant request for comment.'' The National Alcohol Beverage Control Association (NABCA), which describes itself as representing the States and local jurisdictions that directly control the distribution and sale of alcohol beverages within their borders, is also requesting a 90-day extension of the comment period for Notice No. 183. NABCA states that it requires additional time to coordinate among its member jurisdictions to develop comments to the issues raised in Notice No. 183.

In addition, TTB has received a request from the European Commission to extend the comment period for Notice No. 183 until September 13, 2019, to allow for coordination of European Union comments on the proposed rule.

In response to these requests, TTB is extending the comment period for Notice No. 182 and Notice No. 183 for an additional 60 days. TTB believes that a 60-day extension of the two comment periods, which in addition to the original 60-day comment period will provide 120 days overall for comment, will be of sufficient length to allow interested parties to consider and comment on the issues raised in the two notices, while allowing TTB to conclude the rulemaking process in a more timely manner.

Therefore, TTB will now accept public comments on Notice No. 182 and Notice No 183 through October 30, 2019.

Signed: August 6, 2019.

Mary G. Ryan,

Acting Administrator.

[FR Doc. 2019–17155 Filed 8–9–19; 8:45 am]

BILLING CODE 4810–31–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1610 and 1630

Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity; Cost Standards and Procedures

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking would revise the Legal Services Corporation's (LSC or Corporation) regulations addressing the use of non-LSC funds by LSC recipients and the requirement that recipients maintain program integrity with respect to other entities that engage in LSC-restricted activities, and also providing cost standards for LSC grants and permits LSC to question costs when a recipient uses non-LSC funds in violation of LSC rules. LSC proposes technical and stylistic updates to both rules without any substantive changes.

DATES: Comments must be received by October 11, 2019.

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

- *Federal Rulemaking Portal:* Follow the instructions for submitting comments.
- *Email: lscrulemaking@lsc.gov.* Include ''Part 1610 Rulemaking'' in the subject line of the message.
- *Fax:* (202) 337–6519.
- *Mail:* Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1610 Rulemaking.
- *Hand Delivery/Courier:* Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1610 Rulemaking.

Instructions: LSC prefers electronic submissions via email with attachments in Acrobat PDF format. LSC will not consider written comments sent to any other address or received after the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1623 (phone), (202) 337–6519 (fax), or *mfreedman@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Legal Services Corporation Act (LSC Act or Act), 42 U.S.C. 2996–2996l, and LSC's annual appropriation, Public Law 116–6 (2019), impose restrictions and requirements on the use of LSC and non-LSC funds by recipients of grants from LSC for the delivery of civil legal aid. LSC implemented those restrictions and requirements on non-LSC funds through part 1610 of title 45 of the Code of Federal Regulations. Part 1610 also contains the program integrity rule, which requires objective integrity and independence between a recipient and any entity that engages in LSC-restricted activities.

LSC's last major substantive revisions of part 1610 occurred in 1996 and 1997 when Congress passed major new statutory restrictions on LSC recipients. 61 FR 63749, Dec. 2, 1996; 62 FR 27695, May 21, 1997. Since then, LSC has made two technical updates to part 1610 as part of rescinding or substantively revising other rules—parts 1627 (Subgrants) and 1642 (Attorneys' Fees). 82 FR 10273, Feb. 10, 2017; 75 FR 21506, Apr. 26, 2010. LSC has identified several technical changes to update the rule and improve clarity. LSC does not propose any substantive changes to the rule because LSC has not encountered compliance or oversight problems with the operation of the rule.

LSC's cost standards rule appears at 45 CFR part 1630. Section 1630.16 authorizes LSC to question costs when a recipient uses non-LSC funds in violation of part 1610. LSC proposes to update that provision to better reference part 1610. LSC does not propose any substantive changes to the rule.

II. Regulatory Background

In 1974, the LSC Act established requirements and restrictions on LSC recipients and on their use of LSC funds. Public Law 93–355, 88 Stat. 378. As amended, section 1010(c) of the Act extends many of the restrictions to recipients' use of non-LSC funds, with specific exceptions. *See* 42 U.S.C. 2996i(c). Generally, the restrictions apply to LSC funds and private funds but not to most uses of public or tribal funds or to separately funded public defender programs. In the 1970s, LSC adopted regulations implementing most of the restrictions (*e.g.,* part 1613 regarding criminal proceedings). Other restrictions apply directly from the Act

without implementing regulations (*e.g.,* the restriction on abortion proceedings at 42 U.S.C. 2996f(b)(8)). In 1976, as part of the initial set of regulations, LSC created part 1610 to govern when LSC restrictions apply to the use of non-LSC funds by recipients. 41 FR 25899, June 23, 1976.

Starting in the 1980s, Congress imposed additional restrictions on recipients through riders on LSC's annual appropriation (Appropriations Restrictions). In 1996, Congress enacted a major new set of restrictions and requirements on recipients in LSC's FY 1996 appropriation. Public Law 104–134, 110 Stat. 1321 (1996). Unlike the Act restrictions, most of the Appropriations Restrictions applied to the use of public funds. *Id.* at Section 504(d). Congress incorporated those restrictions in LSC's FY 1997 and FY 1998 appropriations with some modifications. Public Law 104–208, 110 Stat. 3009 (1996); Public Law 105–119, 111 Stat. 2440 (1997). Thereafter, Congress has incorporated those restrictions in each annual appropriation for LSC through reference to LSC's FY 1998 appropriation. *E.g.,* Public Law 116–6 (2019). Congress has also made some modifications to those restrictions in other LSC appropriations acts or in other statutes. *E.g.,* Section 533, Public Law 111–117, 123 Stat. 3034 (2009) (removing the restriction on attorneys' fees). In 1996 and 1997 LSC implemented the new restrictions through rulemaking. LSC also updated part 1610 to specify which restrictions apply to which categories of non-LSC funds and under what circumstances. 61 FR 63749, Dec. 2, 1996. LSC has continued to update the regulations regarding the restrictions as Congress has modified them.

In 1997, LSC revised part 1610 in response to litigation challenging the application of the Appropriations Restrictions to non-LSC funds. The United States District Court for the District of Hawaii had issued a preliminarily injunction against specific applications of part 1610 to the use of non-LSC funds by recipients. Legal Aid Soc'y of Haw. v. Legal Services Corp., 961 F. Supp. 1402, 1422 (D. Haw. 1997). The Court found that part 1610 failed to provide recipients with alternative avenues to use non-LSC funds for protected First Amendment activities. In response, LSC adopted a revised part 1610 in 1997 to address the District Court's concerns. 62 FR 27695, May 21, 1997. The revised rule permitted LSC grantees to provide non-LSC funds to other organizations for restricted activities and required LSC grantees to maintain program integrity with respect to any entities engaged in LSC-restricted activities. The revised rule also included a section on how the restrictions applied to transfers of LSC funds, which were functionally equivalent to subgrants subject to other requirements in 45 CFR part 1627. The District Court lifted the injunction and the regulation was upheld as facially valid by the U.S. Courts of Appeals for the Second Circuit and the Ninth Circuit. Velazquez v. Legal Services Corp., 164 F.3d 757 (2d Cir. 1999), *aff'd on other grounds,* 531 U.S. 533 (2001); Legal Aid Soc'y of Haw. v. Legal Services Corp., 145 F.3d 1017 (9th Cir. 1998); Legal Aid Soc'y of Haw. v. Legal Services Corp., 981 F. Supp. 1288, 1291–92 (D. Haw. 1997).

In 2010, Congress removed the restriction on attorneys' fees that it had imposed in 1996. Section 533, Public Law 111–117, 123 Stat. 3034 (2009). LSC rescinded the regulation on attorneys' fees, 45 CFR 1642, and removed references to that restriction in part 1610. 75 FR 21506, Apr. 26, 2010.

In 2017, LSC adopted significant revisions to the subgrants rule at 45 CFR 1627. 82 FR 10273, Feb. 10, 2017. As part of that rulemaking, LSC updated and moved the transfer provisions from then-§ 1610.7 into the revised subgrants rule and renumbered provisions within part 1610 as needed.

On April 8, 2018, the Committee approved Management's proposed 2018–2019 rulemaking agenda, which included revising part 1610 as a Tier 2 rulemaking item. LSC intends to improve understanding of the rule through the revisions in this Notice of Proposed Rulemaking and through other references, such as the Table of LSC Restrictions and Other Funding Sources that LSC publishes at <*https://www.lsc.gov/lsc-restrictions-and-funding-sources*>.

On January 17, 2019, LSC Management presented the Operations and Regulations Committee with a Justification Memo requesting authority to initiate rulemaking on part 1610. On January 17, 2019, the Committee voted to recommend that the Board authorize rulemaking. On January 18, 2019, the Board authorized LSC to begin rulemaking. On [ ], the Committee voted to recommend that the Board authorize publication of this NPRM in the **Federal Register** for notice and comment. On [ ], the Board accepted the Committee's recommendation and vote to approve publication of this NPRM.

III. Discussion of Proposed Changes

A. Part 1610—Use of Non-LSC Funds and Program Integrity

Overall note. None of the changes in the rule will change the substance, application, or scope of the rule.

Organizational note. LSC proposes to reorganize part 1610 into four subparts to improve the organization and coherence of the rule.

Subpart A will contain provisions generally applicable to all of part 1610 and will state requirements that apply to all activities of recipients regardless of the source of the funding used.

Subpart B will contain the prohibitions on the use of non-LSC funds by recipients and related provisions.

Subpart C will contain the program integrity requirements.

Subpart D will contain accounting and compliance provisions.

1. Subpart A—General Provisions

§ 1610.1 Purpose

LSC proposes to change the phrase ''implement statutory restrictions on the use of non-LSC funds'' to ''implement restrictions and requirements on the use of non-LSC funds'' to state the purpose of the rule more accurately. LSC proposes to delete the phrase ''to ensure that no LSC funded entity shall engage in any restricted activities'' because that overstates the purpose of the rule.

LSC also proposes to replace the reference to ''objective integrity and independence'' with a reference to ''program integrity'' consistent with the title of the rule. A new definition of program integrity in § 1610.2 will explain that program integrity requires objective integrity and independence as provided in the renumbered § 1610.8 (currently § 1610.7).

§ 1610.2 Definitions

LSC proposes to restructure the definitions section to improve clarity, comprehensibility, and readability. LSC proposes to list terms logically rather than alphabetically and to group related terms together.

1610.2(a) Use of Funds

LSC proposes replacing the definition of *purpose prohibited by the LSC Act* with new definitions of restrictions in § 1610.2(d) and with the new § 1610.3.

LSC proposes adding a new definition for *use of funds.* The current rule does not define *use of funds,* which appears in the prohibition in § 1610.3. Additionally, the current § 1610.4 discusses using funds ''in accordance with the purposes [or specific purposes] for which they were provided.'' LSC

proposes adding a definition of *use of funds* and two subdefinitions for *authorized use of funds* and *unauthorized use of funds.* The subdefinition of *use of funds* incorporates the purpose for which the funds were provided and includes examples typical of the kind of purposes grantees encounter. These proposed terms would then be used in the revised prohibition in the new § 1610.4, which replaces the current §§ 1610.3 and 1610.4.

1610.2(b) Derived From

LSC proposes replacing the definition of *activity prohibited by or inconsistent with Section 504* with new definitions of *restrictions* in § 1610.2(d) and the new § 1610.3.

LSC proposes adding a new definition for *derived from.* The current rule uses the term *derived from* in the definitions of types of non-LSC funds, but it does not provide a definition of that term. LSC proposes a definition and an example consistent with how LSC applies the current rule.

1610.2(c) Non-LSC Funds

LSC proposes to group together in one paragraph the categories of non-LSC funds from the current rule: Private, public, IOLTA, and tribal, which currently appear in § 1610.2(c), (e), (f), and (h). IOLTA refers to funds collected through interest on lawyers' trust account programs, commonly referred to as IOLTA or IOLA programs. The new definitions propose technical adjustments to the text and one new example. The new definitions also include IOLTA funds as a type of public funds to replace the current rule's separate listing of them as a different category of funds that are treated as public funds.

1610.2(d) Restrictions

LSC proposes moving the definition of *non-LSC funds* to § 1610.2(c) with technical updates. LSC proposes adopting a new definition of *restrictions* with three new categories to better organize the restrictions: extended restrictions, standard restrictions, and limited restrictions. These categories group the restrictions based on how they apply to non-LSC funds rather than by statutory source as the current rule does. They replace the definitions in § 1610.2(a) and (b). The proposed approach simplifies the language of the prohibition in the new § 1610.3 and the exceptions in the new § 1610.4. In each category, the individual restrictions are stated more clearly and organized by a descriptive name rather than by citation to a regulation or statute. LSC also proposes to cite the implementing regulation for each restriction without additional citation to statutes, except for restrictions that have no implementing regulation. The proposed rule adds as a limited restriction the prohibition in the Appropriations Restrictions on using appropriated LSC funds to file or pursue a lawsuit against LSC.

Lastly, LSC proposes moving to a new § 1610.3 the references to three regulations that currently appear in § 1610.2(b): 45 CFR parts 1620, 1635, and 1636. Those regulations do not prohibit activities as restrictions. Instead they set additional requirements involving priorities, timekeeping, and reporting.

1610.2(e) Restricted Activity

LSC proposes moving the definition of *private funds* to § 1610.2(c)(1) with technical updates. LSC proposes adding a new definition *of restricted activity* as a companion term to the definition of *restrictions.*

1610.2(f) Program Integrity

LSC proposes to move the definition of *public funds* to § 1610.2(c)(2) with technical updates. LSC proposes adding a new definition of *program integrity* to link the reference to program integrity in the title of the regulation with the provisions governing program integrity in subpart C.

1610.2(g) Transfer

LSC proposes to remove the definition of *transfer* in § 1610.2(g) because the rule no longer uses that term. In 2017, LSC moved all the provisions of the rule regarding transfers to the revised subgrants rule at 45 CFR part 1627. 82 FR 10273, Feb. 10, 2017.

1610.2(h) Tribal Funds

LSC proposes to move the definition of *tribal funds* to § 1610.2(c)(3) with technical updates.

§ 1610.3 Requirements That Apply to All Funds

LSC proposes to move most of § 1610.3 to the new § 1610.4. LSC proposes to create a new § 1610.3 to address regulations that implement requirements on non-LSC funds differently from the other restrictions covered in the new § 1610.4. Three of these regulations are moved into this section from the current § 1610.2(b): 45 CFR parts 1620, 1635, and 1636. LSC also proposes to add other regulations that fit into this category but do not appear in the current part 1610: Part 1644, § 1612.7(a) and (b), and the provisions of part 1608 that are currently grouped with other provisions of part 1608 in § 1610.2(a). This new section references existing restrictions in other regulations that apply to some uses of non-LSC funds. It does not create new restrictions on non-LSC funds beyond the provisions of those other regulations.

Subpart B—Use of Non-LSC Funds

LSC proposes replacing the current §§ 1610.3, 1610.4, and 1610.6 with new §§ 1610.4, 1610.5, and 1610.6.

§ 1610.4 Prohibitions on the Use of Non-LSC Funds

The current § 1610.3 prohibits the use of non-LSC funds for any restricted activities unless permitted by §§ 1610.4, 1610.6, or 1610.7. LSC proposes to relocate the substance of § 1610.3 to the introductory paragraph of § 1610.4(a) and consolidate the substance of existing § 1610.4 into paragraph (a). The prohibitions stated in the new § 1610.4 will be subject to exceptions in §§ 1610.5 and 1610.6. Section 1610.6 will remain § 1610.6.

The reference in § 1610.3 to exceptions in § 1610.7 is outdated. It refers to the pre-2017 version of the rule in which § 1610.7 addressed transfers of LSC funds. In 2017, LSC moved those provisions into the subgrants rule at 45 CFR part 1627. 82 FR 10273, Feb. 10, 2017. The new § 1610.4 will reference a new § 1610.5, which cross-references the subgrant provisions in part 1627.

Section 1610.4 will map each type of restriction with each category of non-LSC funds and, when applicable, use the newly defined terms for *authorized* and *unauthorized use of non-LSC funds.*

Additionally, § 1610.4(c) will state that the limited restrictions do not apply to the use of non-LSC funds. Although not a prohibition, this paragraph enables the rule to provide a more complete picture of the relationship of the restrictions to the uses of different types of non-LSC funds.

LSC proposes to delete the current § 1610.4(d) as unnecessary and potentially confusing. LSC adopted this section to make clear that part 1610 did not apply the financial eligibility requirements at 45 CFR part 1611 to non-LSC funds. However, part 1611 does not appear in the current rule or the proposed rule as one of the restrictions addressed by part 1610. Part 1611 states only that it applies to the use of LSC funds, and nothing in part 1610 or any other LSC regulation applies it to any other funds of a recipient.

§ 1610.5 Grants, Subgrants, Donations, and Gifts Made by Recipients

LSC proposes moving the current § 1610.4 to the new § 1610.7. LSC proposes to add a new § 1610.5 to address three different issues. First, in 2017, LSC moved the transfer of LSC funds provisions of part 1610 to the revised subgrants rule at 45 CFR part 1627. 82 FR 10273, Feb. 10, 2017. The proposed § 1610.5(a) directs the reader to part 1627 for application of the restrictions to the LSC funds and non-LSC funds of a subrecipient with a subgrant described in part 1627.

Second, § 1610.5(b) will note that 45 CFR part 1630 prohibits using LSC funds for donations or gifts. LSC proposes adding this paragraph as an aid to the reader.

By contrast, § 1610.5(c) will explain that grants, subgrants, donations, or gifts provided by a recipient entirely with non-LSC funds normally are not subject to part 1610. The preamble to the rule in 1997 explains that transfers of non-LSC funds are not subject to the restrictions. It does not state so in the rule because in 1997 LSC determined doing so would be superfluous. 62 FR 27695, 27697, May 21, 1997. LSC now proposes adding it to the rule because the topic comes up frequently and LSC prefers to address it in the rule text instead of the preamble.

§ 1610.6 Exceptions for Public Defender Programs and Criminal or Related Cases

LSC proposes to reorganize and rename § 1610.6 for clarity.

First, LSC proposes to remove an obsolete reference to § 1610.7(a). That reference was added in 1996 along with the transfer section in § 1610.7. 61 FR 63749, 63751, Dec. 2, 1996. In 2017 LSC moved the transfer provisions to the subgrants rule at 45 CFR part 1627. 82 FR 10273, Feb. 10, 2017. LSC proposes to delete the reference instead of updating it because the reference is no longer necessary. The changes to both this paragraph and part 1627 make clear that these exceptions apply to both recipients and part 1627 subrecipients.

LSC also proposes to reorganize this section to state first the two types of programs to which these exceptions apply. The rule then lists the four restrictions subject to these exceptions with improved citations consistent with the proposed revisions to § 1610.2.

LSC has issued two advisory opinions determining that § 1610.6 applies to three specific situations involving a statutory right to counsel paid for by the government in non-criminal proceedings. LSC found that each situation was sufficiently fact specific, so LSC does not currently propose revising this section. Rather, LSC will continue to review questions about the application of this section on a case-by-case basis. We summarize the opinions here for reference.

EX–2009–1001 found that § 1610.6 applies to appointments when a state provides a statutory right to counsel paid by the government for low-income parents in family court child protective proceedings involving allegations of abuse or neglect.

AO–2016–005 addressed two situations. First, it found that § 1610.6 applies to paid statutory appointments for individuals charged with criminal acts who are mental health patients for whom the state seeks to impose involuntary medical treatment. The statute provides a right to counsel paid by the government to represent these individuals in hearings regarding involuntary medication plans intended to restore them to competency to stand trial in their criminal cases.

In the second situation, AO–2016–005 found that § 1610.6 applies to paid statutory appointments to represent individuals in hearings regarding involuntary commitment to a medical facility for mental health treatment or involving release from such a facility after either involuntary or voluntary commitment.

§ 1610.7 Notification to Non-LSC Funders and Donors

LSC proposes renumbering § 1610.7 as § 1610.8. LSC proposes replacing § 1610.7 with the current § 1610.5, rewriting this section in active rather than passive voice, and updating the description of the exception in § 1610.7(b) for ''contributions of less than $250.'' In 1996, LSC based the $250 exception on the Internal Revenue Service's (IRS) requirement that donors who contribute $250 or more to a charity must obtain documentation of the contribution. 61 FR 63749, 63751, Dec. 2, 1996. The IRS has explained that this requirement applies to ''each single contribution of $250 or more'' and that ''[s]eparate contributions of less than $250 will not be aggregated.'' IRS Publication 1771. Consistent with our 1996 intent to adopt the same approach as the IRS regarding small individual contributions, LSC proposes updating the exception in § 1610.7(b) to apply to ''receipt of any single contribution of less than $250.''

Subpart C—Program Integrity

§ 1610.8 Program Integrity of Recipient

LSC proposes moving § 1610.8 to a new § 1610.9. LSC proposes renumbering existing § 1610.7 as § 1610.8 within the new subpart C of the rule.

LSC proposes to add a reference to subgrants of LSC funds to § 1610.8(a)(2). Originally in 1996, this paragraph referenced a ''transfer of LSC funds,'' which was addressed in § 1610.7 and functionally identical to a subgrant in 45 CFR part 1627. 61 FR 63749, 63752, Dec. 2, 1996. In 2017, LSC removed the words ''transfer of'' as part of the rulemaking moving all transfer provisions to part 1627 and eliminating the use of the term ''transfer'' to refer to subgrants. 82 FR 10273, 10275, Feb. 10, 2017. LSC did not intend to change the meaning of this section. To make that clear, LSC proposes adding the term ''subgrant of LSC funds'' and reference to part 1627 where the words ''transfer of LSC funds'' appeared in the 1997 to 2017 version of the rule.

In § 1610.8(a)(3), LSC proposes rewording the third sentence from passive to active voice to improve clarity.

Additionally, LSC proposes technical changes to the current § 1610.7(b), renumbered § 1610.8(b). LSC proposes to remove language about the program integrity certifications first required in 1997 after adoption of the rule, but not the annual requirement. 62 FR 27695, 27698, May 21, 1997. LSC proposes keeping the language about annual certifications.

IV. Subpart D—Accounting and Compliance

§ 1610.9 Accounting

LSC proposes to renumber § 1610.8 to § 1610.9(a) and reword this paragraph from passive to active voice to improve clarity.

LSC also proposes to add new §§ 1610.9(b) and (c) to state in the rule the longstanding requirements for recipients to create and maintain policies, procedures, and documentation. Pursuant to this rule, the cost standards at 45 CFR part 1630, and the LSC Accounting Guide, recipients separately track and account for LSC funds and non-LSC funds. Whenever a recipient claims to use non-LSC funds to permissibly engage in a restricted activity, the recipient must document that it charged the costs to those non-LSC funds.

Similar language appears in other regulations, including parts 1636, 1637, and 1638. LSC proposes to add the language here to improve consistency among the regulations.

§ 1610.10 Compliance

LSC proposes adding this new section to connect part 1610 with the section of

the costs standards rule that permits LSC to disallow LSC funds when a recipient uses non-LSC funds in violation of the currently stated in § 1610.3. LSC also proposes to update § 1630.16 to better cross-reference part 1610.

Part 1630—Cost Standards and Procedures

§ 1630.16 Applicability to Non-LSC Funds

LSC proposes technical changes to this section to improve clarity. Section 1630.16 provides that if a recipient uses non-LSC funds in violation of the rule stated in § 1610.3, then LSC can disallow an equivalent amount of LSC funds. The current § 1630.16(a) and (b) attempt to restate the prohibition in § 1610.3 rather than reference it. LSC proposes to remove those paragraphs and replace them with a new § 1630.16(a) that will reference the new §§ 1610.3 and 1610.4. LSC proposes to renumber § 1630.16(c) as § 1630.16(b) and change the last sentence from passive voice to active voice.

List of Subjects

45 CFR Part 1610

Grant programs—law, Legal services.

45 CFR Part 1630

Accounting, Government contracts, Grant programs—law, Hearing and appeal procedures, Legal services, Questioned costs.

For the reasons set forth in the preamble, the Legal Services Corporation proposes to amend 45 CFR chapter XVI as follows:

■ 1. Revise part 1610 to read as follows:

PART 1610—USE OF NON-LSC FUNDS; PROGRAM INTEGRITY

Subpart A—General Provisions

Sec.

1610.1 Purpose.
1610.2 Definitions.
1610.3 Requirements that apply to all funds.

Subpart B—Use of Non-LSC Funds

1610.4 Prohibitions on the use of non-LSC funds.
1610.5 Grants, subgrants, donations, and gifts made by recipients.
1610.6 Exceptions for public defender programs and criminal or related cases.
1610.7 Notification to non-LSC funders and donors.

Subpart C—Program Integrity

1610.8 Program integrity of recipient.

Subpart D—Accounting and Compliance

1610.9 Accounting.
1610.10 Compliance.

Authority: 42 U.S.C. 2996g(e).

Subpart A—General Provisions

§ 1610.1 Purpose.

This part is designed to implement restrictions and requirements on the use of non-LSC funds by LSC recipients and to set requirements for each LSC recipient to maintain program integrity with respect to any organization that engages in LSC-restricted activities.

§ 1610.2 Definitions.

(a) *Use of funds* means the expenditure of funds by an LSC recipient.

(1) *Authorized use of funds* means any use of funds within the purpose for which the funds were provided, including:

(i) Limited purposes such as providing legal services for victims of domestic violence regardless of income or financial resources;

(ii) General purposes such as providing any civil legal services to people with household incomes below 200% of the Federal Poverty Guidelines; and

(iii) Any purposes for funds provided without any instructions from the donor or grantor regarding the use of the funds.

(2) *Unauthorized use of funds* means any use of funds that is not an authorized use as defined in paragraph (a)(1) of this section.

(b) *Derived from* means the recipient obtained the funds either directly from the source or as the result of a series of grants and subgrants (or similar arrangements) originating from the source and maintaining the character and purpose designated by the source. For example, a state provides public funds to a private, non-LSC-funded statewide legal aid entity to distribute as grants for civil legal services subject to rules set by the state. The statewide legal aid entity subgrants some of those public funds to an LSC recipient to provide services in six counties subject to the state rules. The subgranted funds remain public funds under this rule because they are derived from public funds.

(c) *Non-LSC funds* means funds derived from any source other than LSC.

(1) *Private funds* means funds that are derived from any source other than LSC or the other categories of non-LSC funds in this section. Examples of private funds are donations from individuals or grants that do not qualify as public funds or tribal funds in this section.

(2) *Public funds* means funds that are:

(i) Derived from a Federal, State, or local government or instrumentality of a government; or

(ii) Derived from Interest on Lawyers' Trust Account (IOLTA or IOLA) programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(3) *Tribal funds* means funds that are derived from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes.

(d) *Restrictions* means the prohibitions or limitations on the use of LSC funds by a recipient and on the use of non-LSC funds as described in this part. LSC has three categories of restrictions: Extended, standard, and limited. The restrictions appear in 45 CFR parts 1600 through 1644, in the LSC Act at 42 U.S.C. 2996–2996l and in the sections of LSC's annual appropriation (Appropriations Restrictions) that incorporate the restrictions enacted in § 504 of Title V in Public Law 104–134, 122 Stat. 1321–50 (1996), as incorporated through Public Law 105–119, tit. V, § 502(a)(2), 111 Stat. 2440, 2510 (1998) and subject to modifications in other statutes.

(1) *Extended restrictions* are the restrictions on:

(i) Abortion litigation (other abortion activities are subject to a standard restriction)—Section 504(a)(14) of the Appropriations Restrictions;

(ii) Aliens (representation of non-U.S. citizens)—45 CFR part 1626;

(iii) Class actions—45 CFR part 1617;

(iv) Evictions from public housing involving illegal drug activities—45 CFR part 1633;

(v) Lobbying in general—45 CFR 1612.3, subject to the limitations and exceptions in § 1612.5 (activities that are not lobbying) and § 1612.6 (exceptions for non-LSC funds that are a limited restriction);

(vi) Prisoner litigation—45 CFR part 1637;

(vii) Redistricting or census—45 CFR part 1632;

(viii) Solicitation of clients—45 CFR part 1638;

(ix) Training on prohibited topics—45 CFR 1612.8; and

(x) Welfare reform—45 CFR part 1639.

(2) *Standard restrictions* are the restrictions on:

(i) Abortion activities (other than abortion litigation subject to an extended restriction)—42 U.S.C. 2996f(b)(8);

(ii) Criminal proceedings—45 CFR part 1613;

(iii) Draft registration violations (violations of Military Selective Service Act) or military desertion—42 U.S.C. 2996f(b)(10);

(iv) Desegregation of schools—42 U.S.C. 2996f(b)(9);

(v) Fee-generating cases—45 CFR part 1609;

(vi) Habeas corpus (collaterally attacking criminal convictions)—45 CFR part 1615;

(vii) Organizing—45 CFR 1612.9;

(viii) Persistent incitement of litigation and other activities prohibited by rules of professional responsibility for attorneys—Section 42 U.S.C. 2996f(a)(10); and

(ix) Political activities—the provisions of 45 CFR part 1608 that are stated as restrictions on the use of LSC funds (other provisions of part 1608 are addressed in § 1610.3).

(3) *Limited restrictions* are the restrictions on:

(i) Lobbying permitted with non-LSC funds (upon government request, in public rulemaking, or regarding state or local funding of the recipient)—45 CFR 1612.6;

(ii) Assisted suicide, euthanasia, and mercy killing—45 CFR part 1643; and

(iii) Use of appropriated LSC funds to file or pursue a lawsuit against LSC—Section 506 of the Appropriations Restrictions.

(e) *Restricted activity* means an activity prohibited or limited by the restrictions.

(f) *Program integrity* means that a recipient is maintaining objective integrity and independence from any organization that engages in restricted activities, as required by subpart C of this part.

§ 1610.3 Requirements that apply to all funds.

The following requirements apply to all activities of a recipient regardless of the funding used for the activity to the extent provided in the referenced regulation.

(a) Client identity and statement of facts—45 CFR part 1636.

(b) Demonstrations, picketing, boycotts, or strikes—45 CFR 1612.7(a).

(c) Disclosure of case information—45 CFR part 1644.

(d) Political activities—the provisions of 45 CFR part 1608 other than those stated as restrictions on the use of LSC funds (which are standard restrictions).

(e) Priorities for the provision of services—45 CFR part 1620.

(f) Rioting, civil disturbances, or violations of injunctions—45 CFR 1612.7(b).

(g) Timekeeping—45 CFR part 1635.

Subpart B—Use of Non-LSC Funds

§ 1610.4 Prohibitions on the use of non-LSC funds.

Non-LSC funds may not be used by recipients for restricted activities as described in this section, subject to the exceptions in §§ 1610.5 and 1610.6 of this part.

(a) *Extended restrictions.* The extended restrictions apply to the following uses of non-LSC funds:

(1) Private funds—any use of private funds;

(2) Public funds—any use of public funds; and

(3) Tribal funds—any unauthorized use of tribal funds.

(b) *Standard restrictions.* The standard restrictions apply to the following uses of non-LSC funds:

(1) Private funds—any use of private funds;

(2) Public funds—any unauthorized use of public funds; and

(3) Tribal funds—any unauthorized use of tribal funds.

(c) *Limited restrictions.* The limited restrictions do not apply to the use of non-LSC funds.

§ 1610.5 Grants, subgrants, donations, and gifts made by recipients.

(a) Subgrants in which a recipient provides LSC funds or LSC-funded resources as some or all of a subgrant to a subrecipient are governed by 45 CFR part 1627. That rule states how the restrictions apply to the subgrant and to the non-LSC funds of the subrecipient, which can vary with different types of subgrants.

(b) Donations and gifts using LSC funds are prohibited by 45 CFR part 1630.

(c) Grants, subgrants, donations, or gifts provided by a recipient and funded entirely with non-LSC funds are not subject to this part, unless the source of the funds does not authorize the use of its funds for those purposes.

§ 1610.6 Exceptions for public defender programs and criminal or related cases.

The following restrictions do not apply to:

(a) A recipient's or subrecipient's separately funded public defender program or project; or

(b) Criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment:

(1) Criminal proceedings—45 CFR part 1613;

(2) Actions challenging criminal convictions—45 CFR part 1615;

(3) Aliens—45 CFR part 1626;

(4) Prisoner litigation—45 CFR part 1637.

§ 1610.7 Notification to non-LSC funders and donors.

(a) No recipient may accept funds from any source other than LSC unless the recipient provides the source of the funds with written notification of LSC prohibitions and conditions that apply to the funds, except as provided in paragraph (b) of this section.

(b) LSC does not require recipients to provide written notification for receipt of any single contribution of less than $250.

Subpart C—Program Integrity

§ 1610.8 Program integrity of recipient.

(a) A recipient must have objective integrity and independence from any organization that engages in restricted activities. A recipient will be found to have objective integrity and independence from such an organization if:

(1) The other organization is a legally separate entity;

(2) The other organization receives no subgrant of LSC funds from the recipient, as defined in 45 CFR part 1627, and LSC funds do not subsidize restricted activities; and

(3) The recipient is physically and financially separate from the other organization. Mere bookkeeping separation of LSC funds from other funds is not sufficient. LSC will determine whether sufficient physical and financial separation exists on a case-by-case basis and will base its determination on the totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to:

(i) The existence of separate personnel;

(ii) The existence of separate accounting and timekeeping records;

(iii) The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and

(iv) The extent to which signs and other forms of identification that distinguish the recipient from the organization are present.

(b) Each recipient's governing body must certify to LSC on an annual basis that the recipient is in compliance with the requirements of this section.

Subpart D—Accounting and Compliance

§ 1610.9 Accounting.

(a) Recipients shall account for funds received from a source other than LSC as separate and distinct receipts and disbursements in a manner directed by LSC.

(b) Recipients shall adopt written policies and procedures to implement the requirements of this part.

(c) Recipients shall maintain records sufficient to document the expenditure

of non-LSC funds for any restricted activities and to otherwise demonstrate compliance with this part.

§ 1610.10 Compliance.

In addition to all other compliance and enforcement options, LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds, as provided in § 1630.16 of this chapter.

PART 1630—COST STANDARDS AND PROCEDURES

■ 2. The authority citation for part 1630 continues to read as follows:

Authority: 42 U.S.C. 2996g(e).

■ 3. Revise § 1630.16 to read as follows:

§ 1630.16 Applicability to non-LSC funds.

(a) No cost may be charged to non-LSC funds in violation of §§ 1610.3 or 1610.4 of this chapter.

(b) LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds. The review and appeal procedures of §§ 1630.11 and 1630.12 govern any decision by LSC to recover funds under this paragraph.

Dated: August 1, 2019.

Mark Freedman,

Senior Associate General Counsel.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 19

[FAR Case 2016–002; Docket No. 2016–0002; Sequence No. 1]

RIN 9000–AN34

Federal Acquisition Regulation: Applicability of Small Business Regulations Outside the United States

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to support the Small Business Administration's (SBA) policy of including overseas contracts in agency small business contracting goals. This amendment is consistent with SBA's regulatory changes, which clarify that small business contracting provisions, *e.g.,* set-asides, may apply to contracts performed overseas.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before October 11, 2019 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2016–002 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''FAR Case 2016–002'' under the heading ''Enter Keyword or ID''. Select the link ''Submit a Comment'' that corresponds with FAR Case 2016–002. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2016–002'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, ATTN: Lois Mandell, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2016–002 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn E. Chambers, Procurement Analyst, at 202–285–7380 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at (202) 501–4755. Please cite FAR Case 2016–002.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to support SBA's changes to the basis for the Governmentwide small business contracting goals. The proposed FAR changes are consistent with SBA's regulatory changes, which clarify that small business contracting rules, *e.g.,* set-asides, may be applied to contracts performed outside the United States. On October 3, 2013, SBA issued a final rule amending its regulations at 13 CFR 125.2 to make this clarification.

The Small Business Act requires the President to establish Governmentwide contracting goals for small business contracts awarded by Federal agencies each fiscal year (15 U.S.C. 644(g)). Historically, SBA has not included certain categories of contracts in the establishment of these goals, for example, contracts with a place of performance outside of the United States. Section 1631(c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239), amended the Governmentwide small business contracting goal provisions established under section 15(g) of the Small Business Act. Section 1631(c) requires SBA to review and revise the guidelines for the establishment of small business goals for Federal procurement to ensure that agency goals are established in a manner that does not exclude contracts based on (a) type of goods or services for which the agency contracts, (b) how funding for the contracts is made available to the agency by an Appropriations Act or is made available by reimbursement from another agency or account, or (c) whether or not the contract is subject to the FAR. As a result of this review, SBA began including overseas contracts in the establishment of small business goals for FY 2016 to broaden the base of contracts that could be awarded to small businesses under FAR part 19.

II. Discussion and Analysis

The proposed changes to the FAR are summarized in the following paragraphs.

A. *Subpart 2.1, Definitions.* This subpart is amended to revise the definition of ''bundling'' by deleting paragraph (3) in its entirety, making the definition applicable outside the United States. The Small Business Act does not exempt an agency from justifying its bundling of contract requirements based on location of award, location of service performance, or location of supply delivery.

B. *Section 19.000, Scope of part.* This section is amended to clarify that, unless otherwise noted in FAR part 19 (such as for subparts 19.6 and 19.7), contracting officers shall apply this part in the United States and its outlying areas and may apply this part outside the United States and its outlying areas. Additionally, the section is amended to specify that offerors participating in any FAR part 19 procurement are required to meet the definition of ''small business concern'' at FAR 2.101 and the definition of ''concern'' at FAR 19.001.

C. *Section 19.309, Solicitation provisions and contract clauses.* This section is amended to remove language that restricts application of the following provisions and clause to contracts to be performed in the United States or its outlying areas: The provisions at FAR 52.219–1, Small

Business Program Representations, and FAR 52.219–2, Equal Low Bids; and the clause at FAR 52.219–28, Post-Award Small Business Program Rerepresentation.

III. Expected Impact of the Rule

Currently, FAR 19.000(b) states that FAR part 19, except for FAR subpart 19.6, applies only in the United States or its outlying areas. Some contracting officers have interpreted the phrase ''applies only in the United States'' to mean that they are not allowed to use the set-aside and sole-source procedures of FAR part 19 for overseas procurements. Other contracting officers have interpreted ''applies only in the United States'' to mean that they are not required to use FAR part 19 procedures for overseas procurements, but may do so if they choose. These conflicting interpretations have resulted in inconsistent use of FAR part 19 procedures for overseas procurements across Federal agencies. Conflicting interpretations may also contribute to low numbers of overseas contract actions that are set aside for small businesses.

This proposed rule will clarify that contracting officers are allowed, but not required, to use the set-aside and sole-source procedures of FAR part 19 for overseas procurements. While SBA's regulations do not explicitly state that use of small business programs is discretionary overseas, SBA clarified and confirmed their position in the preamble of their notice on Small Business Mentor-Protégé Programs published July 25, 2016, at 81 FR 48557. The preamble stated that SBA had issued a final rule previously on October 2, 2013, to amend 13 CFR 125.2 ''recognizing that small business contracting could be used 'regardless of the place of performance.' '' The preamble went on to explain that SBA merely sought to clarify that the authority to use small business programs overseas already existed and to highlight contracting officers' discretionary authority to use these programs where appropriate regardless of the place of performance. This proposed rule is consistent with these rules.

As a result of the clarification provided in the rule, contracting officers may set aside more overseas actions for small businesses in the future. However, this rule does not propose to impose additional costs or reduce existing costs for small businesses who may compete. The rule merely allows additional opportunities to be provided to small businesses through set-asides and other tools in FAR part 19 for overseas requirements.

Data are not available on the number of overseas procurements contracting officers have not set aside for small business as a result of the conflicting interpretations described in the first paragraph of this section. According to data obtained from the Federal Procurement Data System (FPDS) for FY 2017 and 2018, there were an average of 1,601,915 awards for performance overseas, including contracts, task and delivery orders, and calls under FAR part 13 blanket purchase agreements. Of those awards, 1,588,334 were made to approximately 8,512 unique large businesses, while 13,581 awards were made to approximately 1,954 unique small businesses. These numbers indicate that less than 1 percent of actions awarded for performance outside the United States are awarded to small businesses.

Contract awards to small businesses could increase if contracting officers expand their use of set-asides and other tools in FAR part 19 for overseas contracts. FAR 19.502–(2)(b) states that the set-aside authority can only be used where a contracting officer has a reasonable expectation that offers will be received from two small businesses and that award will be made at a fair market price. Similarly, sole-source authority under any of the small business programs also requires certain conditions to be met before being utilized. The conditions for using the FAR part 19 sole-source authorities include, but are not limited to, making award at a fair and reasonable price. It is not possible to identify how many small businesses will have the capability, capacity, or inclination to compete for contracts performed outside the United States. In addition, it is not possible to predict how many overseas procurements contracting officers will set aside for small business as a result of the proposed FAR changes.

DoD, GSA, and NASA invite public comment regarding the driving and restraining forces impacting application of FAR part 19 to overseas procurements, both on the Government's acquisition workforce and small business concerns.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule does not change the applicability of the existing provisions at FAR 52.219–1, Small Business Program Representations, and 52.219–2, Equal Low Bids, and the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, which already apply to acquisitions at or below the simplified acquisition threshold and to acquisitions for commercial items, including commercially available off-the-shelf items.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This proposed rule is not expected to be an E.O. 13771 regulatory action, because this rule imposes de minimis costs on the public as explained in section III of this preamble, Expected Impact of the Rule. The FAR Council invites comments from the regulated community on the analysis provided in this rule.

VII. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to give contracting officers the tools they need, including the ability to use set-asides, to maximize opportunities for small businesses to obtain contracts for performance outside the United States. This change may increase contract awards to small businesses, which will improve agencies' achievement of their small business contracting goals.

The objective of this proposed rule is to provide the Government with additional tools with which to maximize small business participation in contracts performed outside the United States. Currently, the FAR states that the small business programs do not apply outside of the United States (FAR 19.000(b)). However, on October 3, 2013, the Small Business Administration (SBA) issued

a final rule amending its regulations at 13 CFR 125.2 to clarify that its small business contracting regulations apply regardless of the place of performance. With the changes to SBA's guidelines for establishment of small business goals in response to section 1631(c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239), contracts performed outside of the United States are now included in the Government's small business contracting goals.

This rule may have a positive economic impact on small businesses. The proposed rule expands existing procurement mechanisms (*e.g.,* set-asides) to contracts performed outside the United States. Therefore, small businesses available to compete for Federal contracts performed outside the United States are most directly affected by this rule. Analysis of the System for Award Management (SAM) indicates there are over 327,000 small business registrants that can potentially benefit from the implementation of this rule. An analysis of the Federal Procurement Data System (FPDS) for FY 2017 and 2018 revealed that there was an average of 1,601,915 awards for performance overseas, including contracts, task and delivery orders, and calls under part 13 blanket purchase agreements (BPAs). Of those awards, 1,588,334 were made to approximately 8,512 unique large businesses, while 13,581 awards were made to approximately 1,954 unique small businesses. This number could increase if contracting officers expand their use of set-asides and other tools in FAR part 19 for overseas contracts.

Therefore, this rule could affect a smaller number of small businesses than the 327,000 registered in SAM, but potentially more than those revealed by FPDS as having overseas contracts. It is not possible to identify how many of the registered small businesses will have the capability, capacity, or inclination to compete for contracts performed outside the United States. In addition, it is not possible to predict how many overseas procurements contracting officers will set aside for small business as a result of the proposed FAR changes. Contracting officers must continue to comply with FAR 19.502–(2)(b), which states that the set-aside authority can only be used where a contracting officer has a reasonable expectation that offers will be received from two small businesses and that award will be made at a fair market price. Similarly, sole source authority under any of the small business programs also requires certain conditions to be met before being utilized. The conditions for using the FAR part 19 sole-source authorities include, but are not limited to, making award at a fair and reasonable price.

Nonetheless, we believe that this rule may have a significant positive economic impact on small business concerns competing for Federal contracting opportunities since it will provide greater access to Federal contracting opportunities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the SBA. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit comments separately and should cite 5 U.S.C. 610 (FAR case 2016–002) in correspondence.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2 and 19

Government procurement.

Janet Fry,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 2 and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 2 and 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

Part 2—Definitions of Words and Terms

2.101 [Amended]

■ 2. Amend section 2.101, in the definition of ''bundling'', by removing paragraph (3).

Part 19—Small Business Programs

■ 3. Amend section 19.000 by revising paragraph (b) to read as follows:

19.000 Scope of part.

* * * * *

(b)(1) Unless otherwise specified in this part (see subparts 19.6 and 19.7)—

(i) Contracting officers shall apply this part in the United States and its outlying areas; and

(ii) Contracting officers may apply this part outside the United States and its outlying areas.

(2) Offerors that participate in any part 19 procurement are required to meet the definition of ''small business concern'' at 2.101 and the definition of ''concern'' at 19.001.

■ 4. Amend section 19.309 by revising paragraphs (a)(1), (b), and (c) to read as follows:

19.309 Solicitation provisions and contract clauses.

(a)(1) Insert the provision at 52.219–1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii).

* * * * *

(b) When contracting by sealed bidding, insert the provision at 52.219–2, Equal Low Bids, in solicitations when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii).

(c) Insert the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, in solicitations and contracts exceeding the micro-purchase threshold when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii).

[FR Doc. 2019–16957 Filed 8–9–19; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register

Vol. 84, No. 155

Monday, August 12, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2019 Through June 30, 2020

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2020 (July 1, 2019 through June 30, 2020) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP).

DATES: The new average shall be applicable starting on July 1, 2019.

FOR FURTHER INFORMATION CONTACT: Polly Fairfield, Program Analyst, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2680.

SUPPLEMENTARY INFORMATION: These programs are located in the Assistance Listings under Nos. 10.555 and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice was reviewed by the Office of Management and Budget under Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this notice as not a major notice, as defined by 5 U.S.C. 804(2).

National Average Minimum Value of Donated Foods for the Period July 1, 2019 Through June 30, 2020

This notice implements mandatory provisions of sections 6(c) and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (the Act) (42 U.S.C. 1755(c) and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in the NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments on July 1 of each year to reflect changes in a three-month average value of the Producer Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the NSLP (7 CFR part 210) and per lunch and supper under the CACFP (7 CFR part 226) shall be 23.75 cents for the period July 1, 2019 through June 30, 2020.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry, and fish; dairy; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April, and May each year. The three-month average of the Price Index increased by 0.74 percent from 205.07 for March, April, and May of 2018, as previously published in the **Federal Register**, to 206.58 for the same three months in 2019. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2019 through June 30, 2020 will be 23.75 cents per meal. This is an increase of one quarter of a cent from the school year 2019 (July 1, 2018 through June 30, 2019) rate.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)(1)(A) and (B) and (e)(1), and 1766(h)(1)(B)).

Dated: July 29, 2019.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2019–17156 Filed 8–9–19; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the meeting of the Utah Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Mountain Time) Friday, August 23, 2019. The purpose of this meeting is for the Committee to continue planning for their briefing on the gender wage gap.

DATES: The meeting will be held on Friday, August 23, 2019 at 1:00 p.m. MT.

Public Call Information: Dial: 800–367–2403, Conference ID: 9469375.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 9469375. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free

telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzltAAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome

II. Approval of July 25, 2019 Meeting Minutes

III. Continue discussion on planning for briefing on the gender wage gap

IV. Public Comment

V. Next Steps

VI. Adjournment

Dated: August 7, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–17180 Filed 8–9–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–817]

Oil Country Tubular Goods From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain producers and exporters of oil country tubular goods (OCTG) from the Republic of Turkey (Turkey) received countervailable subsidies during the period of review (POR) January 1, 2017, through December 31, 2017. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 12, 2019.

FOR FURTHER INFORMATION CONTACT: Aimee Phelan, 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) 482–0697.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2018, Commerce published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on OCTG from Turkey for the period January 1, 2017, through December 31, 2017.[1] On September 28, 2018, Commerce received a review request from United States Steel Corporation, Maverick Tube Corporation, Tenaris Bay City Inc., TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA (domestic interested parties), for Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A. Ş.[2] On October 1, 2018, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. requested a review of itself.[3] On November 15, 2018, Commerce published a notice of initiation of an administrative review for this CVD order.[4] On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[5] Accordingly, the deadline for the preliminary results of this administrative review was rescheduled to July 12, 2019. On July 3, 2019, Commerce extended the deadline for the preliminary results to August 21, 2019.[6]

Scope of the Order

The merchandise covered by the order is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. A full description of the scope of the order is contained in the Preliminary Decision Memorandum, which is hereby adopted by this notice.[7]

Methodology

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily find that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 45888 (September 11, 2018).

[2] *See* Letter from domestic interested parties, ''Oil Country Tubular Goods from Turkey: Request for Administrative Review,'' dated September 28, 2018.

[3] *See* Letter from Borusan, ''Oil Country Tubular Goods from Turkey, Case No. C–489–817: Request for Countervailing Duty Administrative Review,'' dated October 1, 2018.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411, 57418 (November 15, 2018).

[5] *See* Memo from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operation, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadline Affected by Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial closure of the Federal government have been extended by 40 days.

[6] *See* Memo to James Maeder, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Administrative Review of the Countervailing Duty Order on Oil Country Tubular Goods from the Republic of Turkey: Extension of Deadline for Preliminary Results,'' dated July 3, 2019.

[7] *See* Memorandum re: ''Decision Memorandum for the Preliminary Results of 2016 Countervailing Duty Administrative Review: Oil Country Tubular Goods from the Republic of Turkey,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E)

Continued

full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of topics discussed in the Preliminary Decision Memorandum is provided in the Appendix to this notice.

Preliminary Results of the Review

We preliminarily determine the following net countervailable subsidy rate for the mandatory respondent, Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A. Ş., Borusan Mannesmann Boru Yatirim Holding A.Ş., and Borusan Holding A.Ş., (collectively, Borusan) [9] for the period January 1, 2017, through December 31, 2017:

Company	Net subsidy rate *Ad Valorem*
Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A. Ş., Borusan Mannesmann Boru Yatirim Holding A.Ş., and Borusan Holding A.Ş. (collectively, Borusan).	1.00 percent.

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Borusan, with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties in this review the calculations performed in reaching the preliminary results within five days of publication of these preliminary results.[10] Interested parties may submit written argument (case briefs) on the preliminary results no later than 30 days from the date of publication of this **Federal Register** notice, and rebuttal argument (rebuttal briefs) within five days after the time limit for filing case briefs.[11] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] All briefs must be filed electronically using ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[13] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[14] Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), unless this deadline is extended.

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: August 5, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Subsidies Valuation Information
V. Analysis of Programs
VI. Recommendation

[FR Doc. 2019–17097 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–107]

Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of wooden cabinets and vanities and components thereof (wooden cabinets and vanities) from the People's Republic of China (China). The period of investigation is January 1, 2018 through December 31, 2018. Interested parties

of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

[9] Commerce has determined that Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A. Ş., Borusan Mannesmann Boru Yatirim Holding A.Ş., and Borusan Holding A.Ş. are cross-owned. *See* Preliminary Decision Memorandum.

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(c)(1)(ii); 351.309(d)(1); and 19 CFR 351.303 (for general filing requirements).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310(d).

are invited to comment on this preliminary determination.

DATES: Applicable August 12, 2019.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros (Ancientree), Christian Llinas (Dalian Meisen), or Justin Neuman (Rizhao Foremost), AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7425, (202) 482–4877, and (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 2, 2019.[1] On May 17, 2019, Commerce postponed the preliminary determination of this investigation to August 5, 2019.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are wooden cabinets and vanities from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce intends to issue its preliminary decision regarding comments concerning the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigation.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[7] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of wooden cabinets and vanities from China based on a request made by the petitioner.[8] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than December 16, 2019, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated countervailable subsidy rates individually for The Ancientree Cabinet Company Co., Ltd. (Ancientree), Dalian Meisen Woodworking Co., Ltd. (Dalian Meisen), and Rizhao Foremost Woodwork Manufacturing Company Ltd. (Rizhao Foremost), that are not zero, *de minimis,* or based entirely on facts otherwise available. As calculating the all-others rate using a weighted-average of the estimated subsidy rates individually calculated for the examined respondents would reveal each company's business proprietary sales data, we are using a simple average of the calculated subsidy rates to establish the all-others rate.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
The Ancientree Cabinet Co., Ltd[9]	10.97
Dalian Meisen Woodworking Co., Ltd[10]	16.49
Rizhao Foremost Woodwork Manufacturing Company Ltd[11]	21.78
Henan AiDiJia Furniture Co., Ltd	229.24
Deway International Trade Co., Ltd	229.24
All Others	16.41

[1] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 84 FR 12581 (April 2, 2019) (*Initiation Notice*).

[2] *See Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Postponement of Preliminary Determination,* 84 FR 22437 (May 17, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* sections 776(a) and (b) of the Act.

[8] *See* Letter from the petitioner, ''Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,'' dated July 19, 2019.

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Ancientree: Jiangsu Hongjia Wood Co., Ltd. (Jiangsu Hongjia) and Shanghai Hongjia Wood Co., Ltd. (Shanghai Hongjia).

[10] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Dalian Meisen: Dalian Hechang Technology Development Co., Ltd. (Dalian Hechang).

[11] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Rizhao Foremost: Foremost Worldwide Co., Ltd., and Rizhao Foremost Landbridge Wood Industries Co., Ltd.

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination, whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 5, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise subject to this investigation consists of wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Wooden cabinets and vanities and wooden components are made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo. Wooden cabinets and vanities consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may not include a frame, door, drawers and/or shelves. Subject merchandise includes wooden cabinets and vanities with or without wood veneers, wood, paper or other overlays, or laminates, with or without non-wood components or trim such as metal, marble, glass, plastic, or other resins, whether or not surface finished or unfinished, and whether or not completed.

Wooden cabinets and vanities are covered by the investigation whether or not they are imported attached to, or in conjunction with, faucets, metal plumbing, sinks and/or sink bowls, or countertops. If wooden cabinets or vanities are imported attached to, or in conjunction with, such merchandise, only the wooden cabinet or vanity is covered by the scope.

Subject merchandise includes the following wooden component parts of cabinets and vanities: (1) Wooden cabinet and vanity frames (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3) wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.

Subject merchandise includes all unassembled, assembled and/or ''ready to assemble'' (RTA) wooden cabinets and vanities, also commonly known as ''flat packs,'' except to the extent such merchandise is already covered by the scope of antidumping and countervailing duty orders on *Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018). RTA wooden cabinets and vanities are defined as cabinets or vanities packaged so that at the time of importation they may include: (1) Wooden components required to assemble a cabinet or vanity (including drawer faces and doors); and (2) parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a cabinet or vanity. RTAs may enter the United States in one or in multiple packages.

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: Trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Excluded from the scope of this investigation, if entered separate from a wooden cabinet or vanity are:

(1) Aftermarket accessory items which may be added to or installed into an interior of a cabinet and which are not considered a structural or core component of a wooden cabinet or vanity. Aftermarket accessory items may be made of wood, metal, plastic, composite material, or a combination thereof that can be inserted into a cabinet and which are utilized in the function of organization/accessibility on the interior of a cabinet; and include:

- Inserts or dividers which are placed into drawer boxes with the purpose of organizing or dividing the internal portion of the drawer into multiple areas for the purpose of containing smaller items such as cutlery, utensils, bathroom essentials, etc.
- Round or oblong inserts that rotate internally in a cabinet for the purpose of accessibility to foodstuffs, dishware, general supplies, etc.

(2) Solid wooden accessories including corbels and rosettes, which serve the primary purpose of decoration and personalization.

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

(3) Non-wooden cabinet hardware components including metal hinges, brackets, catches, locks, drawer slides, fasteners (nails, screws, tacks, staples), handles, and knobs.

Also excluded from the scope of this investigation are:

(1) All products covered by the scope of the antidumping duty order on *Wooden Bedroom Furniture from the People's Republic of China. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005).

(2) All products covered by the scope of the antidumping and countervailing duty orders on *Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018).

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Alignment
VI. Injury Test
VII. Diversification of China's Economy
VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Subsidies Valuation
X. Benchmarks and Interest Rates
XI. Analysis of Programs
XII. ITC Notification
XIII. Recommendation

[FR Doc. 2019–17198 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–903, A–201–852, A–523–813]

Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty Petitions: Polyethylene Terephthalate Sheet From the Republic of Korea, Mexico, and the Sultanate of Oman

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable July 29, 2019.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit at (202) 482–4031 (Mexico and the Sultanate of Oman (Oman)); Charles Doss at (202) 482–4474 (the Republic of Korea (Korea)); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Extension of Initiation of Investigations

The Petitions

On July 9, 2019, the Department of Commerce (Commerce) received antidumping duty petitions filed by Advanced Extrusion Inc.; Ex-Tech Plastics, Inc.; and Multi-Plastics Extrusions, Inc. (collectively, the petitioners) on behalf of the domestic industry producing polyethylene terephthalate sheet.[1]

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), requires that a petition be filed by or on behalf of the domestic industry. To determine that the petition has been filed by or on behalf of the industry, section 732(c)(4)(A) of the Act requires that the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) if there is a large number of producers, determine industry support using a statistically valid sampling method to poll the industry.

Extension of Time

Section 732(c)(1)(A) of the Act provides that within 20 days of the filing of an antidumping duty petition, Commerce will determine, *inter alia,* whether the petition has been filed by or on behalf of the U.S. industry producing the domestic like product. Section 732(c)(1)(B) of the Act provides that the deadline for the initiation determination, in exceptional circumstances, may be extended by 20 days in any case in which Commerce must ''poll or otherwise determine support for the petition by the industry.'' Because it is not clear from the Petitions whether the industry support criteria have been met, Commerce has determined it should extend the time for initiating investigations in order to further examine the issue of industry support.

Commerce will need additional time to gather and analyze additional information regarding industry support. Therefore, it is necessary to extend the deadline for determining the adequacy of the Petitions for a period not to exceed 40 days from the filing of the Petitions. Because the extended initiation determination deadline of August 18, 2019, falls on a Sunday, a non-business day, Commerce's initiation determination will now be due no later than August 19, 2019, the next business day.[2]

International Trade Commission Notification

Commerce will contact the International Trade Commission (ITC) and will make this extension notice available to the ITC.

Dated: July 29, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–17098 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Petitioners' Letter, ''Polyethylene Terephthalate Sheet from the Republic of Korea, Mexico, and the Sultanate of Oman—Petitions for the Imposition of Antidumping Duties,'' dated July 9, 2019 (the Petitions).

[2] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–831]

Carbon and Alloy Steel Wire Rod From the Republic of Turkey: Rescission of Antidumping Duty Administrative Review; 2017–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on carbon and alloy steel wire rod from the Republic of Turkey for the period October 31, 2017, through April 30, 2019, based on the timely withdrawal of the request for review.

DATES: Applicable August 12, 2019.

FOR FURTHER INFORMATION CONTACT: Jasun Moy, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8194.

Background

On May 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty (AD) order on carbon and alloy steel wire rod (wire rod) from the Republic of Turkey (Turkey) for the period October 31, 2017, through April 30, 2019.[1] On May 31, 2019, Commerce received a timely request to conduct an administrative review of the AD wire rod order from Turkey from Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas).[2] On July 15, 2019, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the AD order on wire rod from Turkey with respect to Icdas.[3] On August 2, 2019, Icdas timely withdrew its request for an administrative review.[4]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 18479 (May 1, 2019).

[2] *See* Icdas' Letter, ''Wire Rod from Turkey; Icdas's Request for Administrative Review,'' dated May 31, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[4] *See* Icdas' Letter, ''Wire Rod from Turkey; Icdas's Withdrawal of Request for AD Administrative Review,'' dated August 2, 2019.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication date of the notice of initiation of the requested review. Icdas withdrew its request for review within the 90-day deadline. Because Commerce received no other requests for review of Icdas, and no other requests were made for a review of the AD order on wire rod from Turkey with respect to other companies, we are rescinding the administrative review covering the period October 31, 2017, through April 30, 2019, in full, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess AD duties on all appropriate entries of wire rod from Turkey during the period of review. For the company for which this review is rescinded, AD duties shall be assessed at rates equal to the cash deposit rate of estimated AD duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of AD duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of the AD duties occurred and the subsequent assessment of double AD duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751 and 777(i)(l) of the Act and 19 CFR 351.213(d)(4).

Dated: August 6, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–17193 Filed 8–9–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–853]

Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR), February 1, 2017, through January 31, 2018.

DATES: Applicable August 12, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Maisha Cryor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; (202) 482–3936 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the preliminary results of this administrative review on April 15, 2019.[1] This review covers 31 producers/exporters of subject merchandise, including two mandatory respondents, Motech Industries Inc., and Sino-American Silicon Products Inc., Solartech Energy Corp. and Sunshine PV Corporation (SAS–SEC). We invited interested parties to comment on the *Preliminary Results.* On May 15, 2019, Commerce received a

[1] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018,* 84 FR 15179 (April 15, 2019) (*Preliminary Results*).

case brief from SAS–SEC.[2] No party filed a rebuttal brief.

Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by this order is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials.[3] Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6015, 8541.40.6020, 8541.40.6025, 8541.40.6030, 8541.40.6035, and 8501.31.8000.[4] These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in the sole case brief filed in this administrative review are addressed in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is appended to this notice. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and it is available to all parties in the Central Records Unit of the main Commerce Building, Room B–8024. In addition, a complete version of the Issues and Decision Memorandum is also accessible on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce preliminarily determined that thirteen companies had no shipments during the POR.[5] Following publication of the *Preliminary Results,* we received no comments from interested parties regarding these companies. As a result, and because the record contains no evidence to the contrary, we continue to find that these thirteen companies made no shipments during the POR. Consistent with our practice, we will issue appropriate instructions to CBP based on our final results.

Changes Since the *Preliminary Results*

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* Commerce has made no changes to the *Preliminary Results.*

Final Results of Review

As a result of this administrative review, we are assigning the following weighted-average dumping margins to the manufacturers/exporters listed below for the period of February 1, 2017, through January 31, 2018:

Manufacturer/exporter	Weighted-average margin (percent)
Motech Industries, Inc	7.77
Sino-American Silicon Products Inc., and Solartech Energy Corp., and Sunshine PV Corporation[6]	1.00
Boviet Solar Technology Co., Ltd	4.39
Canadian Solar Inc	4.39
Canadian Solar International, Ltd	4.39
Canadian Solar Manufacturing (Changshu), Inc	4.39
Canadian Solar Manufacturing (Luoyang), Inc	4.39
Canadian Solar Solutions Inc	4.39
EEPV CORP	4.39
E–TON Solar Tech. Co., Ltd	4.39
Gintech Energy Corporation	4.39
Inventec Solar Energy Corporation	4.39
Kyocera Mexicana S.A. de C.V	4.39
Lof Solar Corp	4.39
Sunengine Corporation Ltd	4.39
Sunrise Global Solar Energy	4.39
TSEC Corporation	4.39
Win Win Precision Technology Co., Ltd	4.39

Assessment Rates

Pursuant to section 751(a)(2)(A) the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

We intend to calculate importer- (or customer-) specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's (or customer's) examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). Where an importer- (or customer-) specific rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average of the cash deposit rates calculated for Motech Industries, Inc. and SAS–SEC. 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.[7]

For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company or companies involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after

[2] *See* "Certain Crystalline Silicon Photovoltaic Products from Taiwan: Case Brief," dated May 15, 2019.

[3] For a complete description of the scope of the products under review, *See* Memorandum, "Antidumping Duty Administrative Review of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Issues and Decision Memorandum for the Final Results; 2017–2018" (Issues and Decision Memorandum), dated concurrently with and herby adopted by this notice.

[4] On August 7, 2018, Commerce added the following HTSUS numbers to the ACE Case Reference File to reflect 2018 HTSUS updates at the request of U.S. Customs and Border Protection (CBP): 8541.40.6015, 8541.40.6035. On November 7, 2018, Commerce added the following HTSUS numbers to the ACE Case Reference File to reflect 2018 HTSUS updates at the request of CBP: 8541.40.6025.

[5] *See Preliminary Results,* 84 FR at 15180; *see also* certifications of no shipments filed by: (1) AU Optronics Corporation; and (2) Inventec Energy Corporation, dated May 7, 2018, and certifications of no shipments filed by: (3) Vina Solar Technology Co., Ltd; (4) Baoding Jiasheng Photovoltaic Technology Co., Ltd.; (5) Baoding Tianwei Yingli New Energy Resources Co., Ltd.; (6) Beijing Tianneng Yingli New Energy Resources Co., Ltd.; (7) Hainan Yingli New Energy Resources Co., Ltd.; (8) Hengshui Yingli New Energy Resources Co., Ltd.; (9) Lixian Yingli New Energy Resources Co., Ltd.; (10) Shenzhen Yingli New Energy Resources Co., Ltd.; (11) Tianjin Yingli New Energy Resources Co., Ltd.; (12) Yingli Energy (China) Co., Ltd.; and (13) Yingli Green Energy International Trading Company Limited, dated May 16, 2018.

[6] In the 2014–2016 administrative review of the order, Commerce collapsed Sino-American Silicon Products Inc. and Solartech Energy Corp., and treated the companies as a single entity for purposes of the proceeding. *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review;* 2014–2016, 82 FR 31555 (July 7, 2017). Because there were no changes to the facts which supported that decision since that determination was made, we continue to find that these companies are part of a single entity for this administrative review. Additionally, we have determined to collapse Sino-American Silicon Products Inc. and Solartech Energy Corp. with Sunshine PV Corporation. *See Preliminary Results,* 84 FR at 15182.

[7] *See* section 751(a)(2)(C) of the Act.

publication of the final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be equal to the weighted-average dumping margin listed above in the ''Final Results of Review'' section; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previously completed segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the final results for the most recent period in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, then the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the final results for the most recent period in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previously completed segment of this proceeding, then the cash deposit rate will be 19.50 percent *ad valorem,* the all-others rate established in the less than fair value investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: August 5, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of Comment
Comment: Rate Applicable to Sunrise Global Solar Energy
V. Recommendation

[FR Doc. 2019–17196 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Determination of Sales at Less Than Fair Value,* 79 FR 76966 (December 23, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–841, A–570–925, C–570–926]

Sodium Nitrite From Germany and the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on sodium nitrite from Germany and the People's Republic of China (China), and revocation of the countervailing duty (CVD) order on sodium nitrite from China would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders and CVD order.

DATES: Applicable August 12, 2019.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton (Germany and China AD) or Leo Ayala (China CVD), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798 or (202) 482–3945, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 2008, Commerce published the AD orders on sodium nitrite from Germany and China and the CVD order on sodium nitrite from China.[1] On January 2, 2019, the ITC instituted,[2] and on February 5, 2019 Commerce initiated,[3] the five-year (sunset) reviews of the AD and CVD orders on sodium nitrite from Germany and China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *CVD Order* on sodium nitrite from China would be likely to lead to continuation or recurrence of countervailable subsidies and notified the ITC of the magnitude of the subsidy rates likely to prevail were the order revoked.[4] Commerce also determined, as a result of its reviews, that revocation of the *AD Orders* on sodium nitrite from Germany and China would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins of dumping likely to prevail were the orders revoked.[5]

[1] *See Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Antidumping Duty Orders,* 73 FR 50593 (August 27, 2008) (*AD Orders*); *see also Sodium Nitrite from the People's Republic of China: Countervailing Duty Order,* 73 FR 50595 (August 27, 2008) (*CVD Order*) (collectively, *Orders*).

[2] *See Sodium Nitrite from China and Germany; Institution of Five-Year Reviews,* 84 FR 6 (January 2, 2019).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 1705 (February 5, 2019). The initiation of these reviews was originally scheduled for January 2019 (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review,* 83 FR 62292 (December 3, 2018), as corrected, *Advance Notification of Sunset Review; Correction,* 83 FR 66244 (December 26, 2018)). However, Commerce's initiation was affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019. Due to the partial federal government closure, Commerce initiated these reviews in February 2019.

[4] *See Sodium Nitrite from the People's Republic of China: Final Results of the Expedited Second Five Year (Sunset) Review of the Countervailing Duty Order,* 84 FR 27084 (June 11, 2019), and accompanying Issues and Decision Memorandum (IDM).

[5] *See Sodium Nitrite from Germany and the People's Republic of China: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders,* 84 FR 27086 (June 11, 2019), and accompanying IDM.

On August 5, 2019, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6]

Scope of the Orders

The merchandise subject to these orders is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by these orders may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is $NaNO_2$ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name ''sodium nitrite'' to sodium nitrite. The CAS registry number is 7632–00–0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and countervailable subsidies and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection (CBP) will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and (d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: August 5, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–17099 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Sodium Nitrite from China and Germany (Inv. Nos. 701–TA–453 and 731–TA–1136–1137 (Second Review)),* 84 FR 38058 (August 5, 2019); *see also Sodium Nitrite from China and Germany (Inv. Nos. 701–TA–453 and 731–TA–1136–1137 (Second Review)),* USITC Pub. 4936 (July 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967, C–570–968]

Aluminum Extrusions From the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders, and Partial Rescission

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that aluminum extrusions exported from Vietnam, that are produced from aluminum previously extruded in the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from China. Commerce has also rescinded the minor alterations circumvention inquiry.

DATES: Applicable August 12, 2019.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2019, Commerce published the *Preliminary Determination* [1] of circumvention of the *Orders.*[2] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Orders

The products covered by the *Orders* are aluminum extrusions. For a complete description of the scope of the *Orders, see* the Issues and Decision Memorandum.

Partial Rescission of Circumvention Inquiries

In the *Preliminary Determination,* we stated that because of the affirmative determination of circumvention with respect to merchandise that has been completed or assembled in other foreign countries, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), we did not make a determination with respect to the minor alterations inquiries, pursuant to section 781(c) of the Act.[4] For these final results, because we continue to affirm circumvention with respect to merchandise that has been completed or assembled in other foreign countries, we are rescinding the minor alterations circumvention inquiries.

[1] *See Aluminum Extrusions from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders,* 84 FR 22445 (May 17, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (collectively, the *Orders*).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of Circumvention Concerning Aluminum Extrusions from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Preliminary Determination* PDM at 15.

Scope of the Circumvention Inquiries

These inquiries cover aluminum extrusions that are made from aluminum previously extruded in China (including billets created from re-melted Chinese extrusions) that meet the description of the *Orders* and are exported from Vietnam, regardless of producer, exporter or importer (inquiry merchandise). This final ruling applies to all shipments of inquiry merchandise on or after the date of publication of the initiation of these inquiries.

Methodology

Commerce is conducting these inquiries in accordance with section 781(b) of the Act. For a full description of the methodology underlying the Commerce's final determination, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these inquiries are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I. Based on our analysis of the record evidence and comments received, we made certain changes to the *Preliminary Determination.*

Final Affirmative Determination of Circumvention

As detailed in the Issues and Decision Memorandum, we determine that aluminum extrusions exported from Vietnam, that are produced from aluminum previously extruded (including billets created from re-melted Chinese extrusions) in China, are circumventing the *Orders.* As such, we determine that it is appropriate to include this merchandise within the *Orders* and to instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation and require cash deposits for any unliquidated entries of aluminum extrusions from Vietnam, that are produced from aluminum previously extruded in China (including billets created from re-melted Chinese extrusions), as discussed below.

Continuation of Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(3), Commerce will direct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of inquiry merchandise that were entered, or withdrawn from warehouse, for consumption on or after March 5, 2018, the date of publication of the initiation of these inquiries.

The suspension of liquidation and cash deposit instructions will remain in effect until further notice. Commerce will instruct CBP to require AD cash deposits equal to the China-wide rate of 86.01 percent [5] for all extruded aluminum from Vietnam produced from aluminum previously extruded in China (including billets created from re-melted Chinese extrusions), unless the importer/exporter can demonstrate that the aluminum consumed in production was previously extruded by a Chinese manufacturer with a company-specific separate rate. In that instance, the cash deposit rate will be the rate of the Chinese supplier of the aluminum extrusions used in the production process that has its own rate.[6]

Aluminum extrusions not produced from aluminum previously extruded in China are not subject to these inquiries and are not included within the scope of the *Orders* as a result of this final affirmative determination. Therefore, the suspension of liquidation and cash deposit requirements do not apply to such merchandise, subject to the following certification requirements: An importer of aluminum extrusions from Vietnam claiming that its aluminum extrusions were produced from non-Chinese aluminum extrusions (including billets created from re-melted Chinese extrusions) must meet the certification and documentation requirements described in Appendices II, III, and IV.

We determine that the following companies are not eligible for the certification process: China Zhongwang Holdings Ltd.; Global Vietnam Aluminum Co., Ltd.; Aluminicaste Fundicion de Mexico; Dalian Liwan Trade Co., Ltd.; Tianjin Boruxin Trading Co., Ltd.; Dragon Luxe Limited; Perfectus Aluminum Inc.; Perfectus Aluminum Acquisitions LLC; Pencheng Aluminum Enterprise Inc. USA; Transport Aluminum Inc.; Aluminum Source Inc.; Aluminum Industrial Inc.; Global Aluminum (USA) Inc.; Aluminum Shapes, LLC; Century American Aluminum Inc.; American Apex Aluminum Inc.; and Global Tower Worldwide Ltd.[7] Accordingly, aluminum extrusions from Vietnam that are produced, exported, or imported by these companies are ineligible for the certification process.

Administrative Protective Orders

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction or 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

These determinations are issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: July 31, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to the Circumvention Inquiries
V. Period of Inquiry
VI. Rescission of Minor Alterations of Merchandise
VII. Changes Since the Preliminary Determination
VIII. Statutory Framework
IX. Use of Facts Available With Adverse Inference
X. Statutory Analysis
XI. Discussion of the Issues
  Comment 1: Inquiry Merchandise is Circumventing the *Orders*
  Comment 2: Inclusion of East Asia Aluminum in the Country-Wide Determination
  Comment 3: Certification Requirements
XII. Recommendation

Appendix II

Certification Eligibility and Requirements

A. Eligibility for the Certification

(1) Importers and exporters of aluminum extrusions from the Socialist Republic of Vietnam (Vietnam) that were completed in Vietnam using aluminum not previously extruded in the People's Republic of China (China) (including billets created from re-melted Chinese extrusions) are eligible for the certification process detailed below and in the preliminary determination, with the exception of certain companies. The following companies are not eligible to participate in the certification process: China Zhongwang Holdings Ltd.; Global Vietnam Aluminum Co., Ltd.; Aluminicaste Fundicion

[5] *See Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 52265, 52267 (November 13, 2017).

[6] *See, e.g., Glycine from the People's Republic of China: Preliminary Partial Affirmative Determination of Circumvention of the Antidumping Duty Order and Initiation of Scope Inquiry,* 77 FR 21532, 21535 (April 10, 2012), unchanged in *Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order,* 77 FR 73426 (December 10, 2012).

[7] *See* Issues and Decision Memorandum at Comment 3.

de Mexico; Dalian Liwan Trade Co., Ltd.; Tianjin Boruxin Trading Co., Ltd.; Dragon Luxe Limited; Perfectus Aluminum Inc.; Perfectus Aluminum Acquisitions LLC; Pencheng Aluminum Enterprise Inc. USA; Transport Aluminum Inc.; Aluminum Source Inc.; Aluminum Industrial Inc.; Global Aluminum (USA) Inc.; Aluminum Shapes, LLC; Century American Aluminum Inc.; American Apex Aluminum Inc.; and Global Tower Worldwide Ltd.

B. Certification Requirements for Importers and Exporters of Aluminum Extrusions Completed in Vietnam Using Aluminum Not Previously Extruded in China (Including Billets Created From Re-Melted Chinese Extrusions)

(1) For entries of aluminum extrusions completed in Vietnam that were entered, or withdrawn from warehouse, for consumption on or after March 5, 2018 (the date of publication of the initiation of these circumvention inquiries), for which the importer claims that the aluminum extrusions were completed (including extruded) in Vietnam using aluminum not previously extruded in China (including billets created from re-melted Chinese extrusions), the importer and exporter are required to meet the certification and documentation requirements detailed below in order for no AD and/or CVD cash deposit to be required on such entries.

(2) The importer is required to complete and maintain the importer certification, attached as Appendix III. Where the importer uses an agent or broker to facilitate the entry process, it must obtain and provide the entry number as part of the certification. Agents of the importer, such as brokers, however, are not permitted to make this certification on behalf of the importer.

(3) The exporter is required to complete and maintain the exporter certification, attached as Appendix IV. The exporter certification should be completed by the party selling the merchandise completed in Vietnam to the United States, which is not necessarily the producer of the product.

(4) The exporter is further required to provide the importer with a copy of the exporter certification.

(5) The importer is also required to maintain a copy of the exporter certification.

(6) The importer and exporter are also required to maintain sufficient documentation (as indicated in the certifications) supporting their certifications.

(7) The importer and exporter are required to maintain the certifications and supporting documentation for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.

(8) Although the importer will not be required to submit the certifications or supporting documentation to U.S. Customs and Border Protection (CBP) as part of the entry process, the importer and the exporter will be required to present the certifications and supporting documentation, to Commerce and/or CBP, as applicable, upon request by the respective agency.

(9) The claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP.

C. Certification Timing Requirements for Importers and Exporters of Aluminum Extrusions Completed in Vietnam Using Aluminum Not Previously Extruded in China (Including Billets Created From Re-Melted Chinese Extrusions)

(1) For unliquidated entries of merchandise (a) shipped and/or (b) entered, or withdrawn from warehouse, for consumption during the period, March 5, 2018 (the date of publication of the initiation of these circumvention inquiries), through the 29th day after the date of publication of the final determination in the **Federal Register**, for which certifications are required:

(a) The importers and exporters each have the option to complete a blanket certification covering multiple entries, individual certifications for each entry, or a combination thereof. Importer and exporter certifications for these entries should be completed, signed and dated within 45 days of publication of the final determination in the **Federal Register**.

Accordingly, the relevant bullet in the certification should be edited to reflect that the certification was completed within this time frame. For example, the bullet in the importer certification that reads: ''This certification was completed by the time of filing the entry summary,'' could be edited as follows: ''The shipments/products referenced herein entered within the 29th day after the mm/dd/yyyy publication of the *Final Determination* ***Federal Register*** notice. This certification was completed on mm/dd/yyyy, within 45 days of the **Federal Register** notice publication.''

Similarly, the bullet in the exporter certification that reads, ''This certification was completed by the time of shipment,'' could be edited as follows: ''The shipments/products referenced herein shipped within the 29th day after the mm/dd/yyyy publication of the *Final Determination* ***Federal Register*** notice. This certification was completed on mm/dd/yyyy, within 45 days of the **Federal Register** notice publication.''

(b) Additionally, the exporter must provide the importer a copy of the exporter certification within 45 days of the publication of the final determination in the **Federal Register**.

(2) For subject merchandise (1) shipped and/or (2) entered, or withdrawn from warehouse, for consumption on or after the date that is 30 days after publication of the final determination in the **Federal Register**, for which certifications are required:

(a) The importer certification must be completed, signed, and dated by the deadline for filing of the entry summary for the relevant importation; and

(b) The exporter certification must be completed, signed, dated and provided to the importer by the time of shipment of the relevant entries.

D. Importers and Exporters Not Eligible for the Certification Process

(1) Importers and exporters of aluminum extrusions from the Socialist Republic of Vietnam (Vietnam):

- That were specifically identified above as not being eligible
- that were completed (including extruded) in Vietnam using aluminum previously extruded in China (including billets created from re-melted Chinese extrusions) and/or
- that do not meet the certification requirements detailed above are not eligible for the certification process detailed above.

(2) For aluminum extrusions completed in Vietnam from aluminum previously extruded in China (including billets created from re-melted Chinese extrusions) and, thus, subject to the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China, A–570–967 and C–570–968, respectively, Commerce has established the following third-country case numbers in the Automated Commercial Environment (ACE): A–552–998 and C–552–999.

(3) For unliquidated entries (and entries for which liquidation has not become final) of merchandise not eligible for the certifications, that entered as non-AD/CVD type entries (*e.g.,* type 01) that were shipped and/or entered, or withdrawn from warehouse, for consumption during the period, March 5, 2018 (the date of publication of the initiation of these circumvention inquiries) through the 29th day after the date of publication of the final determination in the **Federal Register**, importers should file a Post Summary Correction with CBP, as applicable, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD type entries to AD/CVD type (*e.g.,* types 03, 06,) entries and report those AD/CVD type entries using the third-country case numbers, A–552–998 and C–552–999. Similarly, the importer should pay cash deposits on those entries, consistent with the regulations governing post summary corrections, that require payment of additional duties.

(4) Further, Commerce intends to instruct CBP to suspend (under the third-country case numbers identified above) all unliquidated shipments of aluminum extrusions completed in Vietnam for which the certification and/or documentation requirements have not been met, and to require the importer to post applicable AD and CVD cash deposits equal to the rates as determined by Commerce. Entries suspended under these third-country case numbers will be liquidated pursuant to applicable administrative reviews of the China AD and CVD orders or through the automatic liquidation process.

Appendix III

Importer Certification

I hereby certify that:

- My name is {INSERT COMPANY OFFICIAL'S NAME} and I am an official of {INSERT NAME OF IMPORTING COMPANY};
- I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the aluminum extrusions completed in Vietnam that entered under entry number(s) {INSERT ENTRY NUMBER(S)} and are covered by this certification. ''Direct personal knowledge''

refers to facts the certifying party is expected to have in its own records. For example, the importer should have ''direct personal knowledge'' of the importation of the product (*e.g.,* the name of the exporter) in its records;

• I have personal knowledge of the facts regarding the production of the imported products covered by this certification. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer regarding the source of the substrate used to produce the imported products);

• The aluminum extrusions completed (including extruded) in Vietnam do not contain aluminum previously extruded in China (including billets created from re-melted Chinese extrusions), regardless of whether sourced directly from a Chinese producer or from a downstream supplier;

• I understand that {INSERT NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, mill certificates, productions records, invoices, *etc.*) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

• I understand that {INSERT NAME OF IMPORTING COMPANY}is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);

• I understand that {INSERT NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification, (attesting to the production and/or export of the imported merchandise identified above), for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries;

• I understand that {INSERT NAME OF IMPORTING COMPANY}is required to maintain and provide a copy of the exporter's certification and supporting records, upon request, to CBP and/or Commerce;

• I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

• I understand that failure to maintain the required certification and/or failure to substantiate the claims made herein will result in:

○ Suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met; and

○ the requirement that the importer post applicable antidumping duty (AD) and countervailing duty (CVD) cash deposits (as appropriate) equal to the rates determined by Commerce;

• I understand that agents of the importer, such as brokers, are not permitted to make this certification;

• This certification was completed by the time of filing the entry summary; and

• I am aware that U.S. law (including, but not limited to, *18 U.S.C. 1001*) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

Appendix IV

Exporter Certification

I hereby certify that:

• My name is {INSERT COMPANY OFFICIAL'S NAME HERE} and I am an official of {INSERT NAME OF EXPORTING COMPANY};

• I have direct personal knowledge of the facts regarding the production and exportation of the aluminum extrusions identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own books and records. For example, an exporter should have ''direct personal knowledge'' of the producer's identity and location;

• Thee aluminum extrusions completed (including extruded) in Vietnam do not contain aluminum previously extruded in China (including billets created from re-melted Chinese extrusions), regardless of whether sourced directly from a Chinese producer or from a downstream supplier;

• I understand that {INSERT NAME OF EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, mill certificates, productions records, invoices, *etc.*) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

• I understand that {INSERT NAME OF EXPORTING COMPANY} must provide this Exporter Certification to the U.S. importer by the time of shipment.

• I understand that {INSERT NAME OF EXPORTING COMPANY} is required to provide a copy of this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);

• I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

• I understand that failure to maintain the required certification and/or failure to substantiate the claims made herein will result in:

○ Suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met; and

○ the requirement that the importer post applicable antidumping duty (AD) and countervailing duty (CVD) cash deposits (as appropriate) equal to the rates as determined by Commerce;

• This certification was completed by the time of shipment; and

• I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

[FR Doc. 2019–17194 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–885]

Phosphor Copper From the Republic of Korea: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on phosphor copper from the Republic of Korea (Korea) for the period of review (POR) April 1, 2018, through March 31, 2019.

DATES: Applicable August 12, 2019.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order [1] on phosphor copper from the Republic of Korea.[2] On April 26 and 30, 2019, Commerce received timely requests from Metallurgical Products Company (Metallurgical or the petitioner) and Bongsan Co., Ltd. (Bongsan) in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), to conduct an administrative review of this antidumping duty order with respect to Bongsan.[3]

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[1] *See Phosphor Copper from the Republic of Korea: Antidumping Duty Order,* 82 FR 18893 (April 24, 2017).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 12207 (April 1, 2019).

[3] *See* Petitioner's Letter, ''Phosphor Copper from the Republic of Korea: Request for Administrative

On June 13, 2019, Commerce published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to Bongsan.[4] On July 23 and 24, 2019, Bongsan and the petitioner, respectively, timely withdrew their requests for administrative review of the antidumping duty order with respect to Bongsan.[5]

Rescission of the 2018–2019 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The instant review was initiated on June 13, 2019. Bongsan withdrew its request for review on July 23, 2019, and the petitioner withdrew its request for a review on July 24, 2019, which is within the 90-day deadline. No other party requested an administrative review of this order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review of the antidumping duty order on phosphor copper from the Republic of Korea in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of phosphor copper from Korea. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review in the **Federal Register**.

Notification to Importers

This notice also serves as a final reminder to importers for whom this review is being rescinded of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 6, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–17195 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–DS–P

Review,'' dated April 26, 2019; *see also* Bongsan's Letter, ''Phosphor Copper from the Republic of Korea—Request for Administrative Review,'' dated April 30, 2019.

[4] *See Initiation of Antidumping or Countervailing Administrative Reviews,* 84 FR 27587 (June 13, 2019) (*Initiation Notice*).

[5] *See* Petitioner's Letter, ''Phosphor Copper from the Republic of Korea: Request to Withdraw Administrative Review,'' dated July 24, 2019 (Petitioner's Withdrawal Request); *see also* Bongsan's Letter, ''Phosphor Copper from the Republic of Korea—Withdrawal of Request for Administrative Review,'' dated July 23, 2019 (Bongsan's Withdrawal Request).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Sunrise Seafoods India Private Limited (SSIPL) is the successor-in-interest to Sunrise Aqua Food Exports (SAFE) in the context of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India.

DATES: Applicable August 12, 2019.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, 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) 482–3860.

SUPPLEMENTARY INFORMATION:

Background

On December 26, 2018, in response to a request by SSIPL, Commerce published a notice of initiation of changed circumstances review to consider whether SSIPL is the successor-in-interest to SAFE.[1] On March 5, 2019, we issued a supplemental questionnaire to SSIPL,[2] and we received a response during the same month.[3]

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[4] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Preliminary Results

In this changed circumstances review, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), Commerce conducted a successor-in-interest analysis. In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[5] While no single

[1] *See Certain Frozen Warmwater Shrimp from India: Initiation of Antidumping Duty Changed Circumstances Review,* 83 FR 66244 (December 26, 2018).

[2] *See* Commerce's Letter, ''Certain Frozen Warmwater Shrimp from India: Successor-In-Interest Changed Circumstances Review Supplemental Questionnaire,'' dated March 5, 2019.

[3] *See* SSIPL's March 15, 2019 Supplemental Questionnaire Response (SSIPL March 15, 2019 SQR).

[4] For a complete description of the Scope of the Order, *see* Memorandum, ''Certain Frozen Warmwater Shrimp from India: Preliminary Results of Changed Circumstances Review,'' dated concurrently with this notice.

[5] *See, e.g., Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 83 FR 37784 (August 2, 2018) (*Shrimp from India Preliminary Results*), unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 83 FR 49909 (October 3, 2018) (*Shrimp from India Final Results*).

factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally, Commerce will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.[6] Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, Commerce may assign the new company the cash deposit rate of its predecessor.[7]

In accordance with 19 CFR 351.216, we preliminarily determine that SSIPL is the successor-in-interest to SAFE. Record evidence, as submitted by SSIPL, indicates that SSIPL operates as essentially the same business entity as SAFE with respect to the subject merchandise.[8] For the complete successor-in-interest analysis, including discussion of business proprietary information, refer to the accompanying successor-in-interest memorandum.[9]

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice. In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] All comments are to be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building, and must also be served on interested parties. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day it is due.[11]

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216(b), 351.221(b) and 351.221(c)(3).

Dated: August 5, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–17100 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See, e.g., Shrimp from India Preliminary Results,* 83 FR at 37784, unchanged in *Shrimp from India Final Results,* 83 FR at 49909.

[7] *See Shrimp from India Preliminary Results,* 83 FR at 37784, unchanged in *Shrimp from India Final Results,* 83 FR at 49910; *see also Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan,* 67 FR 58, 59 (January 2, 2002); *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688, 34689 (June 18, 2010); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe from Korea; Final Results of Antidumping Duty Changed Circumstances Review,* 63 FR 20572 (April 27, 1998), in which Commerce found that a company which only changed its name and did not change its operations is a successor-in-interest to the company before it changed its name.

[8] *See* SSIPL's Letter, ''Frozen Warmwater Shrimp from India: Request to Initiate a Successor-in-Interest Changed Circumstances Review,'' dated October 31, 2018, and SSIPL March 15, 2019 SQR.

[9] *See* Memorandum, ''Certain Frozen Warmwater Shrimp from India: Preliminary Results of Changed Circumstances Review,'' dated concurrently with this notice.

[10] *See* 19 CFR 351.309(c)(2).

[11] *See* 19 CFR 351.303(b).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV019

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold a webinar, which is open to the public.

DATES: The webinar meeting will be held on Tuesday, August 27, 2019, from 1:30 p.m. until 4:30 p.m., Pacific Daylight Time. The webinar time is an estimate; the meeting will adjourn when business for the day is completed.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the meeting by visiting this link *https://www.gotomeeting.com/webinar,* (2) enter the Webinar ID: 544–381–883, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number 1–562–247–8321 (not a toll-free number), (2) enter the attendee phone audio access code 835–605–745, and (3) enter the provided audio PIN after joining the webinar. You must enter this PIN for audio access. NOTE: We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps.*) You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 411 for technical assistance. A public listening station will also be available at the Pacific Council office.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The primary purpose of this HMSMT webinar is to prepare for the September 2019 Council meeting. The Highly Migratory Species topics on the Council's September agenda are: (1) National Marine Fisheries Report, (2) Recommend International Management Activities, (3) Exempted Fishing Permits: Final Recommendations, and (4) Deep-Set Buoy Gear Authorization: Final Preferred Alternative. In addition, the HMSMT will discuss potential recommendations for updates to the vision (purpose, goals and objectives) of the Council's Fishery Ecosystem Plan. The HMSMT may also discuss other items related to Highly Migratory Species management and administrative Pacific Council agenda items. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting. No management actions will be decided by the HMSMT.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the

subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2411, at least 10 business days prior to the meeting date.

Dated: August 7, 2019.

Diane M. DeJames-Daly,

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

[FR Doc. 2019–17203 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR033

Marine Mammals; File No. 23095

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Ari Friedlaender, Ph.D., University of California at Santa Cruz, 115 McAllister Way, Santa Cruz, CA 95060, has applied in due form for a permit to conduct research on eight whale species.

DATES: Written, telefaxed, or email comments must be received on or before September 11, 2019.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23095 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Shasta McClenahan; phone: (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to study eight cetacean species, including endangered blue (*Balaenoptera musculus*), fin (*B. physalus*), sei (*B. borealis*), and Southern right (*Eubalaena australis*) whales, in the Southern Ocean for five years. The primary objectives are to understand population demography, health, behavior, and ecology of whales. Animals would be approached during vessel and aerial surveys for: Passive acoustic recordings, counts, observation, photo-identification, photogrammetry, biopsy sampling, sloughed skin collection, tagging (suction-cup, dart, or implantable), tracking, and/or incidental harassment. Biological samples would be imported into the United States. See the application for complete numbers of animals requested by species and procedure.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 7, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–17211 Filed 8–9–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0096]

Agency Information Collection Activities; Comment Request; Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) Main Study First Follow-Up (MS2) Data Collection

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 11, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0096. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork

Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) Main Study First Follow-up (MS2) Data Collection.

OMB Control Number: 1850–0911.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 81,782.

Total Estimated Number of Annual Burden Hours: 41,105.

Abstract: The Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) is the first study conducted by the National Center for Education Statistics (NCES) to follow a nationally representative sample of students as they enter and move through the middle grades (grades 6–8). The data collected through repeated measures of key constructs will provide a rich descriptive picture of the academic experiences and development of students during these critical years and will allow researchers to examine associations between contextual factors and student outcomes. The study focuses on student achievement in mathematics and literacy along with measures of student socioemotional wellbeing and other outcomes. The study includes students with disabilities for whom descriptive information on their outcomes, educational experiences, and special education services are being collected. The MGLS:2017 Main Study (MS) Base Year (MS1) data collection took place from January to August 2018. The Main Study First Follow-up (MS2) recruitment, which began in began in January 2019, was approved in December 2018 with the latest update approved in May 2019 (OMB# 1850–0911 v.21–23). This submission is to conduct the MS2 data collection from January through July 2020 (when most sample students will be in the eighth grade).

Dated: August 7, 2019.

Stephanie Valentine,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–17177 Filed 8–9–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Part B Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation. As such, the Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2019 for a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, Catalog of Federal Domestic Assistance (CFDA) number 84.373Y. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications available: August 12, 2019.

Deadline for transmittal of applications: September 11, 2019.

Pre-application webinar information: No later than August 19, 2019, OSERS will post pre-recorded informational webinars designed to provide technical assistance (TA) to interested applicants.

Pre-application Q & A blog: No later than August 19, 2019, OSERS will open a blog where interested applicants may post questions about the application requirements for this competition and where OSERS will post answers to the questions received. OSERS will not respond to questions unrelated to the application requirements for this competition. The blog will remain open until September 3, 2019. After the blog closes, applicants should direct questions to the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

The pre-application webinars may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

The *pre-application Q & A blog* may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html*

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 5025A, Potomac Center Plaza, Washington, DC 20202–5108. Telephone: (202) 245–7401. Email: *Richelle.Davis@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: *Full Text of Announcement.*

I. Funding Opportunity Description

Purpose of Program: Section 616 of the IDEA requires States to submit to the Department, and make available to the public, a State performance plan (SPP) and an annual performance report (APR) with data on how each State implements both Parts B and C of the IDEA to improve outcomes for infants, toddlers, children, and youth with disabilities. Section 618 of the IDEA requires States to submit to the Department, and make available to the public, quantitative data on infants, toddlers, children, and youth with disabilities who are receiving early intervention and special education services under IDEA. The purpose of the Technical Assistance on State Data Collection Program is to improve the capacity of States to meet IDEA data collection and reporting requirements under Sections 616 and 618 of the IDEA.

Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve up to ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, Division H of the Consolidated Appropriations Act of 2018 gives the Secretary authority to use funds reserved under section 611(c) to ''carry out services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.'' Consolidated Appropriations Act, 2018; Div. H, Title III of Public Law 115–141; 132 Stat. 745 (2018).

Priority: This priority is from the notice of final priority and requirements for this program published elsewhere in this issue of the **Federal Register**.

Background: The Department has reviewed the data collection and analysis capacity of States to ensure that IDEA data are being collected and accurately reported to the Department and the public. Specifically, the Office of Special Education Programs (OSEP) has reviewed and analyzed information from multiple sources, including Data Quality Reviews conducted by OSEP to evaluate the accuracy of section 618 data, written and oral communication with States through the data quality process, and State-initiated requests for TA. The Department's assessment is that States have varying needs for TA to improve their data collection capacity and their ability to ensure data are accurate and can be reported to the Department and the public. States also need TA to help them improve their capacity to analyze and use data so they can provide more accurate information about their efforts to improve implementation of IDEA and more accurately target future improvement activities in their State Systemic Improvement Plans (SSIPs) submitted as part of their State Performance Plans/Annual Performance Reports (SPPs/APRs).

To meet the array of complex challenges regarding the collection, reporting, analysis, and use of data by States, OSEP is issuing this priority to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

This center will focus attention on an identified national need to provide TA to improve the capacity of States to meet the data collection and reporting requirements under Part B of the Individuals with Disabilities Education Act (IDEA). This center will support States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for each child with a disability and will customize its TA to meet each State's specific needs.

This priority aligns with two priorities from the Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096): Priority 2: Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Student Outcomes, and Providing Increased Value to Students and Taxpayers; and Priority 5: Meeting the Unique Needs of Students and Children With Disabilities and/or Those With Unique Gifts and Talents.

Projects under this program must be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

Absolute Priority: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

The purpose of this priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Data Center).

The Data Center will provide TA to help States better meet current and future IDEA Part B data collection and reporting requirements, improve data quality, and analyze and use section 616, section 618, and other IDEA data (*e.g.,* State Supplemental Survey-IDEA) to identify and address programmatic strengths and areas for improvement. This Data Center will focus on providing TA on collecting, reporting, analyzing, and using Part B data on children with disabilities ages 3 through 21 required under sections 616 and 618 of IDEA, including Part B data on children with disabilities ages 3 through 5 required under section 618 of IDEA for the Part B Child Count and Educational Environments data collection and under section 616 for indicators in the IDEA Part B SPP/APR that solely use the ED*Facts* data as the source for reporting, such as Indicator B–5 (Preschool Least Restrictive Environment). However, the Data Center will not provide TA on Part B data required under section 616 of IDEA for Indicators B7 (Preschool Outcomes) and B12 (Early Childhood Transition); TA on collecting, reporting, analyzing, and using Part B data associated with children with disabilities ages 3 through 5 for these indicators would be provided by the National IDEA Technical Assistance Center on Early Childhood Data Systems, CFDA number 84.373Z.

The Data Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Improved State data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant State offices, including State educational agencies (SEAs), local educational agencies (LEAs), and schools to improve the quality of IDEA data required under sections 616 and 618 of IDEA;

(b) Increased capacity of States to submit accurate and timely data, to enhance current State validation procedures, and to prevent future errors in State-reported IDEA Part B data;

(c) Improved capacity of States to meet the data collection and reporting requirements under sections 616 and 618 of IDEA by addressing personnel training needs, developing effective tools (*e.g.,* training modules) and resources (*e.g.,* documentation of State data processes), and providing in-person and virtual opportunities for cross-State collaboration about data collection and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(d) Improved capacity of SEAs and LEAs, in collaboration with SEAs, to collect, analyze, and use both SEA and LEA IDEA data to identify programmatic strengths and areas for improvement, address root causes of poor performance towards outcomes, and evaluate progress towards outcomes;

(e) Improved IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools that can be used by States to lead to improvements in the validity and reliability of data required by IDEA and enable States to communicate accurate data to local consumers (*e.g.,* parents, school boards, the general public); and

(f) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B data.

Requirements: The following requirements are from the NFP.

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and to increase their capacity to analyze and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of current educational issues and policy initiatives about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement; and

(iii) Describe how SEAs and LEAs are currently meeting IDEA Part B data collection and reporting requirements and using section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidenced-based [1] practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs and LEAs to report and use data, specifically section 616 and section 618 data, as a means of both improving data quality and identifying strengths and areas for improvement; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and SEA and LEA analysis and use of sections 616 and 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement;

(ii) Its proposed approach to universal, general TA,[2] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[3] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level;

(iv) Its proposed approach to intensive,[4] sustained TA, which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of SEA and LEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of States with known ongoing data quality issues, as measured by OSEP's review of

[1] For the purposes of this priority, ''evidence-based'' means the proposed project component is supported, at a minimum, by evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

[2] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[3] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[4] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

the quality of the IDEA sections 616 and 618 data;

(D) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems related to the IDEA Part B data collection and reporting requirements that include professional development based on adult learning principles and coaching;

(E) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs and LEAs to meet Part B data collection and reporting requirements under sections 616 and 618 of the IDEA; and

(F) Its proposed plan for collaborating and coordinating with Department-funded TA investments and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration;

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[5] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the APR; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes; and

(5) How the applicant will ensure that it will recover the lesser of: (a) Its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency; and (b) 40 percent of its modified total direct cost (MTDC) base as defined in 2 CFR 200.68.

Note: The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit. If a grantee's allocable indirect costs exceed 40 percent of its MTDC as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' meeting in Washington, DC, during each year of the project period;

[5] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget at least 50 percent of the grant award for providing targeted and intensive TA to States.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442, and the Department of Education Appropriations Act, 2018; Div. H, Title III of Public Law 115–141, Consolidated Appropriations Act, 2018; 132 Stat. 745 (2018).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR 300.702. (e) The NFP.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $6,500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2020 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding $6,500,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that operate as LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other:* (a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2019.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. and are as follows:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(vi) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(c) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The qualifications, including relevant training, experience, and independence, of the evaluator.

(v) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(vi) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(vii) The extent to which the budget is adequate to support the proposed project.

(viii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (25 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under

this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance on State Data Collection program. These measures are:

- *Program Performance Measure #1:* The percentage of technical assistance and dissemination products and services deemed to be of high quality by an independent review panel of experts qualified or individuals with appropriate expertise to review the substantive content of the products and services.
- *Program Performance Measure #2:* The percentage of technical assistance and dissemination products and services deemed by an independent review panel of qualified experts or members of the target audiences to be of high relevance to educational and early intervention policy or practice.
- *Program Performance Measure #3:* The percentage of all technical assistance and dissemination products and services deemed by an independent review panel of qualified experts or members of the target audiences to be useful in improving educational or early intervention policy or practice.
- *Program Performance Measure #4:* The cost efficiency of the Technical Assistance on State Data Collection Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by

contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue SW, Room 5074A, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2019–17181 Filed 8–7–19; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation. As such, the Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2019 for a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data, Catalog of Federal Domestic Assistance (CFDA) number 84.373Z. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES: *Applications available:* August 12, 2019.

Deadline for transmittal of applications: September 11, 2019.

Pre-application webinar information: No later than August 19, 2019, OSERS will post pre-recorded informational webinars designed to provide technical assistance (TA) to interested applicants.

Pre-application Q & A blog: No later than August 19, 2019, OSERS will open a blog where interested applicants may post questions about the application requirements for this competition and where OSERS will post answers to the questions received. OSERS will not respond to questions unrelated to the application requirements for this competition. The blog will remain open until September 3, 2019. After the blog closes, applicants should direct questions to the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

The pre-application webinars may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

The pre-application Q & A blog may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

FOR FURTHER INFORMATION CONTACT: Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5141, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6028. Email: *Meredith.Miceli@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Section 616 of the IDEA requires States to submit to the Department, and make available to the public, a State performance plan (SPP) and an annual performance report (APR) with data on how each State implements both Parts B and C of the IDEA to improve outcomes for infants, toddlers, children, and youth with disabilities. Section 618 of the IDEA requires States to submit to the Department, and make available to the public, quantitative data on infants, toddlers, children, and youth with disabilities who are receiving early intervention and special education services under IDEA. The purpose of the Technical Assistance on State Data Collection Program is to improve the capacity of States to meet IDEA data collection and reporting requirements under sections 616 and 618 of the IDEA. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve up to ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for the implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, Division H of the Consolidated Appropriations Act of 2018 gives the Secretary the authority to use funds reserved under section 611(c) to ''carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.'' Consolidated Appropriations Act, 2018; Div. H, Title III of Public Law 115–141; 132 Stat. 745 (2018).

Priority: This priority is from the notice of final priority and requirements for this program published elsewhere in this issue of the **Federal Register**.

Background: The purpose of this priority is to establish a TA center to provide TA to (1) improve States' capacity to collect, report, analyze, and use high-quality IDEA Part C early intervention data (including IDEA section 618 Part C data and section 616 Part C data) and IDEA Part B preschool special education data (limited to particular Part B preschool data elements required under IDEA sections 616); and (2) enhance, streamline, and integrate statewide, child-level early childhood data systems (including Part

C and Part B preschool special education data systems) to address critical policy questions that will facilitate program improvement, improve compliance accountability, and improve outcomes or results for children served under Part C early intervention and Part B preschool special education programs.

Through their State Systemic Improvement Plans (SSIPs), States identify data-related needs to improve outcomes of infants, toddlers, and young children with disabilities. In 2017, 78 percent of Part C State programs reported concerns or limitations with the quality or availability of the data used to report progress or results for the SSIP. Additionally, States identified limits on data system capacity as a barrier to implementing (1) improvement plans, (2) activities to improve practices, and (3) evaluation plans. In the SSIPs submitted to the Office of Special Education Programs (OSEP) in 2017, States reported a need for TA related to SSIP evaluation in the following areas: data collection procedures, data analysis, local data use, State-identified measurable result (SIMR) data quality, and State data use.

In addition, States need to establish and implement effective early childhood data management and, where appropriate, data system integration policies and procedures to support program improvement, compliance accountability, and Federal and public reporting. Improved policies and procedures will allow States, where appropriate, to link or integrate child-level data in Part C data systems, Part B preschool special education data systems, other early learning program data systems, and statewide longitudinal data systems for school-aged children. Building robust early childhood integrated data systems (ECIDS) that include Part C early intervention data and Part B preschool special education data that can be used to respond to critical policy questions will facilitate program improvement and improve compliance accountability for Part C early intervention and Part B preschool special education programs. This level of integration will support States' efforts to implement data-driven decision-making for program improvement and compliance accountability and will help ensure that States report high-quality IDEA data to the Department and the public.

ECIDS could allow States to identify what works best to improve outcomes for young children in their State. For instance, ECIDS could allow States to determine which characteristics of services are related to better outcomes for children and families or the relationship between early childhood setting and early childhood outcomes. An ECIDS that includes data from across various early care and education programs could also provide data that would better inform efforts to improve child find activities in the State by identifying strong referral sources and those where more outreach may be needed. An ECIDS could also help States determine the other early care and education programs that young children with disabilities and their families are participating in, allowing States to maximize efficiency in the operation of the early intervention or early childhood special education program while maintaining or improving outcomes. For more information on the Department's vision of integrated early childhood data, see The Integration of Early Childhood Data: State Profiles and a Report from the U.S. Department of Health and Human Services and the U.S. Department of Education (2016) available at *https://www2.ed.gov/rschstat/eval/early-childhood-data/integration-early-childhood-data.pdf.*

However, there are challenges in integrating data systems. These challenges include protecting the personally identifiable information and privacy interests of children with disabilities and their families under applicable Federal and State laws, determining the appropriate policy questions that need answering, and identifying resources for developing interoperable systems. These challenges would benefit from the TA of experts. In addition, stakeholders, including parents of children with disabilities, need to be part of the discussion to determine the appropriate extent of integration.

This center will provide TA to improve the capacity of States to meet both their identified needs and data collection requirements by (1) improving early childhood data management and data system integration policies and procedures; (2) enhancing Part C section 616 and 618 data and Part B preschool special education data (*e.g.,* preschool outcome indicators) collection processes to meet IDEA data reporting requirements; and (3) building and using robust ECIDS that include Part C early intervention data and Part B preschool special education data to respond to critical State-determined policy questions associated with program improvement and compliance accountability. This priority is designed to promote innovation and efficiency by funding a data center that will enhance, streamline, and integrate statewide, early childhood data systems.

TA on collecting, reporting, analyzing, and using the other Part B data required under sections 616 and 618 of IDEA will be provided through the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data competition, CFDA number 84.373Y, the priority for which is published elsewhere in this issue of the **Federal Register**.

This center will focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements under Parts C and B of the Individuals with Disabilities Education Act (IDEA). This center will support States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for each child with a disability and will customize its TA to meet each State's specific needs.

This priority aligns with two priorities from the Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096): Priority 2: Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Student Outcomes, and Providing Increased Value to Students and Taxpayers; and Priority 5: Meeting the Unique Needs of Students and Children With Disabilities and/or Those With Unique Gifts and Talents.

Projects under this program must be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

Absolute Priority: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data.

The purpose of this priority is to fund a cooperative agreement to establish and operate a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data (Center).

The Center will focus on providing TA on collecting, reporting, analyzing, and using Part C data required under sections 616 and 618 of IDEA and Part

B data on children with disabilities, ages 3 through 5, required under section 616 of IDEA for those indicators that are not solely based on IDEA section 618 data (*e.g.,* Annual Performance Report (APR) Indicators B7 (Preschool Children with Improved Outcomes) and B12 (Transition Between Part C and Part B). The Center will provide TA to (1) improve States' capacity to collect, report, analyze, and use high-quality IDEA Part C data (including IDEA section 618 Part C data and IDEA section 616 Part C data) and IDEA Part B preschool special education data; and (2) enhance, streamline, and integrate statewide, child-level early childhood data systems (including Part C and Part B preschool special education data systems) to address critical policy questions that will facilitate program improvement, improve compliance accountability, and improve outcomes or results for children served under Part C and Part B preschool special education programs. These Part C early intervention and Part B preschool special education data systems must allow the States to (1) effectively and efficiently respond to all IDEA-related data submission requirements (*e.g.,* Part C section 616 and 618 data and Part B preschool special education data); (2) respond to critical policy questions that will facilitate program improvement and compliance accountability; and (3) comply with applicable privacy requirements, including the confidentiality requirements under Parts B and C of IDEA, the Privacy Rule under the Health Insurance Portability and Accountability Act (HIPAA) (45 CFR part 160 and subparts A and E of part 164), and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and its regulations at 34 CFR part 99.

The Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data);

(b) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B preschool special education data;

(c) Increased number of States that use their Part C early intervention and Part B preschool special education data system to answer critical State-determined policy questions to drive program improvement, improve results for children with disabilities, and improve compliance accountability;

(d) Increased number of States with integrated or linked Part C early intervention and Part B preschool special education data;

(e) Increased number of States that use linked or integrated early childhood data to improve programs and compliance accountability;

(f) Increased number of States with data system integration plans that allow for the linking of Part C and Part B preschool special education data as well as linking to other statewide longitudinal and early learning data systems and that comply with all applicable privacy laws;

(g) Increased capacity of States to implement and document Part C and Part B preschool special education data management policies and procedures and data system integration activities and to develop a sustainability plan to continue this data management and data system integration work in the future; and

(h) Increased capacity of States to address personnel training needs to meet the Part C and Part B preschool special education data collection and reporting requirements under sections 616 and 618 of IDEA through development of effective tools (*e.g.,* training modules) and resources (*e.g.,* new Part C Data Managers resources), as well as providing opportunities for in-person and virtual cross-State collaboration about Part C data (required under sections 616 and 618 of IDEA) and Part B preschool special education data collection and reporting requirements that States can use to train personnel in local programs and agencies.

Requirements: The following requirements are from the NFP.

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address State challenges associated with early childhood data management and data system integration, including implementing early childhood data system integration and improvements; enhancing and streamlining Part C early intervention and Part B preschool special education data systems to respond to critical policy questions; using ECIDS for program improvement and compliance accountability for Part C early intervention and Part B preschool special education programs; and reporting high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data to the Department and the public. To meet this requirement the applicant must—

(i) Present applicable national, State, or local data demonstrating the challenges of States to implement effective early childhood data management policies and procedures and data system integration activities, including integrating early childhood data systems across IDEA programs, other early learning programs, and other educational programs for school-aged students; linking Part C and Part B preschool special education program data; and using their Part C and Part B preschool special education data systems to respond to critical State-determined policy questions for program improvement and compliance accountability;

(ii) Demonstrate knowledge of current educational and technical issues and policy initiatives relating to early childhood data management and data system integration, data use, data privacy, Part C IDEA sections 616 and 618 data, Part B preschool special education data, and Part C and Part B preschool special education data systems; and

(iii) Present information about the current level of implementation of integrating or linking Part C and Part B preschool special education data systems; integrating or linking Part C and/or Part B preschool special education data systems with other early learning data systems; using Part C and Part B preschool special education data systems to respond to critical State-determined policy questions; and collecting, reporting, analyzing, and using high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data; and

(2) Improve early childhood data management policies and procedures and data system integration activities used to collect, report, and analyze high-quality Part C and Part B preschool special education data; to integrate or link Part C and Part B preschool special education data systems as well as integrate or link these data with data on children participating in other early learning programs and data on school-aged children; and to develop and use robust early childhood data systems to answer critical State-determined policy questions and indicate the likely magnitude or importance of the improvements.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented

based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based [1] practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research on early childhood data management and data system integration, and related EBPs; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on early childhood data management and data system integration;

(ii) Its proposed approach to universal, general TA,[2] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[3] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the State and local levels; and

(C) The process by which the proposed project will collaborate with OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State;

(iv) Its proposed approach to intensive, sustained TA [4] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to addressing States' challenges associated with limited resources to engage in early childhood data system integration and enhancement activities that streamline the established Part C and Part B preschool special education data systems to respond to critical policy questions and to report high-quality IDEA data to the Department and the public, which should, at a minimum, include providing on-site consultants to the State lead agency (LA) or State educational agency (SEA) to—

(1) Model and document data management and data system integration policies, procedures, processes, and activities within the State;

(2) Develop and adapt tools and provide technical solutions to meet State-specific data needs; and

(3) Develop a sustainability plan for the State to continue the data management and data system integration work in the future;

(C) Its proposed approach to measure the readiness of the State LA and SEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local program and district levels;

(D) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of States with known ongoing data quality issues, as measured by OSEP's review of the quality of the IDEA sections 616 and 618 data;

(E) Its proposed plan for assisting State LAs and SEAs to build or enhance training systems that include professional development based on adult learning principles and coaching;

(F) Its proposed plan for working with appropriate levels of the education system (*e.g.,* State LAs, SEAs, regional TA providers, districts, local programs, families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data as well as early childhood data management and data system integration; and

(G) Its proposed plan for collaborating and coordinating with the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, Department-funded TA investments, other federally funded TA investments, and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this

[1] For the purposes of this priority, ''evidence-based'' means the proposed project component is supported, at a minimum, by evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

[2] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[3] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[4] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

priority and to develop and implement a coordinated TA plan when they are involved in a State;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[5] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the APR; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

[5] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes; and

(5) The applicant will ensure that it will recover the lesser of: (A) Its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency; and (B) 40 percent of its modified total direct cost (MTDC) base as defined in 2 CFR 200.68.

Note: The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit. If a grantee's allocable indirect costs exceed 40 percent of its MTDC costs as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half-day project directors' meeting in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget at least 50 percent of the grant award for providing targeted and intensive TA to States.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442, and the Department of Education Appropriations Act, 2018; Div. H, Title III of Public Law 115–141, Consolidated Appropriations Act, 2018; 132 Stat. 745 (2018).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The program regulations in 34 CFR 300.702. (e) The NFP.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $6,500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2020 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding $6,500,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; local educational agencies (LEAs), including public charter schools that operate as LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other:* (a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2019.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project

reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(vi) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(c) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The qualifications, including relevant training, experience, and independence, of the evaluator.

(v) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(vi) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(vii) The extent to which the budget is adequate to support the proposed project.

(viii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (25 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the

integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance on State Data Collection program. These measures are:

- *Program Performance Measure #1:* The percentage of technical assistance and dissemination products and services deemed to be of high quality by an independent review panel of experts qualified or individuals with appropriate expertise to review the substantive content of the products and services.
- *Program Performance Measure #2:* The percentage of technical assistance and dissemination products and services deemed by an independent review panel of qualified experts or members of the target audiences to be of high relevance to educational and early intervention policy or practice.
- *Program Performance Measure #3:* The percentage of all technical assistance and dissemination products and services deemed by an independent review panel of qualified experts or members of the target audiences to be useful in improving educational or early intervention policy or practice.
- *Program Performance Measure #4:* The cost efficiency of the Technical Assistance on State Data Collection Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue SW, Room 5081A, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2019–17217 Filed 8–7–19; 4:15 pm]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

ACTION: Election Security Forum.

DATE AND TIME: The Security Forum will be held on Thursday, August 15, 2019 from 12:30 p.m. until 3:30 p.m., Eastern Time.

PLACE: The Election Assistance Commission, 1st floor conference room, Silver Spring, MD 20910, Phone 301–563–3919. The meeting will also be streamed on *www.eac.gov.*

STATUS: This Hearing will be open to the public. Identification is required to enter the building.

AGENDA: The Commission will hold a public forum wherein it will facilitate a 3 panel discussion regarding election security and voting system certification. The full agenda of panelists will be posted in advance at *http://www.eac.gov.* Members of the public who wish to make a statement for the record may submit their statement to the EAC by 5:00 p.m. EDT on Wednesday August 14, 2019.

Clifford Tatum,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2019–17375 Filed 8–8–19; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

National Coal Council; Meeting

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meetings.

SUMMARY: This notice announces a meeting of the National Coal Council (NCC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 11, 2019, 8:00 p.m.–9:00 p.m.; Thursday, September 12, 2019, 8:30 a.m.–12:15 p.m.

ADDRESSES: Washington Marriott Wardman Park Hotel; 2660 Woodley Park Road NW, Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Thomas Sarkus, U.S. Department of Energy, National Energy Technology Laboratory, Mail Stop 920–125, 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940; Telephone: 412–386–5981; email: *thomas.sarkus@netl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Council: The National Coal Council provides advice and recommendations to the Secretary of Energy on general policy matters relating to coal and the coal industry.

Purpose of Meeting: The 2019 Fall Meeting of the National Coal Council.

Tentative Agenda

Wednesday, September 11, 2019, 8:00 p.m.–9:00 p.m.

1. Reception and dinner from 6:00 p.m. to 8:00 p.m. (RSVP and payment required.);
2. At 8:00 p.m., call to order and opening remarks by Steven Winberg, NCC Designated Federal Officer & Assistant Secretary for Fossil Energy, U.S. Department of Energy;
3. Keynote Remarks by Neil Chatterjee, Chairman, Federal Energy Regulatory Commission;
4. Closing Remarks by Steven Winberg, NCC Designated Federal Officer and Assistant Secretary for Fossil Energy, U.S. Department of Energy;
5. Adjourn for the day.

Thursday, September 12, 2019, 8:30 a.m.–12:15 p.m.

6. Call to order and opening remarks by Steven Winberg, NCC Designated Federal Officer and Assistant Secretary for Fossil Energy, U.S. Department of Energy;
7. Keynote remarks by Dr. Brian J. Anderson, Director, National Energy Technology Laboratory, U.S. Department of Energy;
8. Industry keynote remarks by Hal Quinn, President and CEO of the National Mining Association;
9. Presentation by Hilary Moffett, Senior Director Government Relations of Low Carbon Ventures, LLC—*A Subsidiary of Occidental Petroleum on Developing & Commercializing Innovative Low Carbon Technologies;*
10. Presentation by Jason B. Selch, CEO of Enchant Energy on *The Economic Case for Power Plant Carbon Capture Retrofits;*
11. Presentation by Dr. Ian Reid, International Energy Agency—*Clean Coal Centre on Non-Energy Uses for Coal;*
12. Public Comment Period;
13. Other Business; and
14. Adjourn.

Attendees are requested to register in advance for the meeting at: http://www.nationalcoalcouncil.org/page-NCC-Events.html.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Council, you may do so either before or after the meeting. If you would like to make oral statements regarding any item on the agenda, you should contact Thomas Sarkus, 412–386–5981 or *thomas.sarkus@netl.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include oral statements on the scheduled agenda. The Chairperson of the Council will lead the meeting in a manner that facilitates the orderly conduct of business. Oral statements are limited to 10-minutes per organization and per person.

Minutes: A link to the transcript of the meeting will be posted on the Council's website at: *https://www.nationalcoalcouncil.org/.*

Signed in Washington, DC, on August 6, 2019.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–17178 Filed 8–9–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Recurring Public Meetings of the Supercritical CO_2 Oxy-combustion Technology Group

AGENCY: National Energy Technology Laboratory, Office of Fossil Energy, Department of Energy.

ACTION: Notice of recurring public meetings.

SUMMARY: The National Energy Technology Laboratory (NETL) will host a public meeting via WebEx October 8, 2019, of the Supercritical CO_2 Oxy-combustion Technology Group, to address challenges associated with oxy-combustion systems in directly heated supercritical CO_2 (sCO_2) power cycles.

DATES: The next public meeting will be held on October 8, 2019, from 1:00 p.m. to 3:00 p.m. ET. NETL plans to hold meetings every two months. Future meetings will be announced on the Event page of the NETL website: *https://netl.doe.gov/events.*

ADDRESSES: The public meetings will be held via WebEx and hosted by NETL.

FOR FURTHER INFORMATION CONTACT: For further information regarding the public

meetings, or if you would like to receive email notifications on the occurrence of future meetings, please contact Seth Lawson by email at *Seth.Lawson@netl.doe.gov,* or by postal mail addressed to National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880. Please direct all media inquiries to the NETL Public Affairs Officer at (304) 285–0228.

Future meetings will be announced on the Event page of the NETL website: *https://netl.doe.gov/events.*

SUPPLEMENTARY INFORMATION:

Instructions and Information on the Public Meetings

The public meetings will be held via WebEx. The next public meeting on 10/8/2019 will begin at 1:00 p.m. and end at 3:00 p.m. NETL plans to hold meetings every two months. Future meetings will be announced on the Event page of the NETL website: *https://netl.doe.gov/events* Interested parties may RSVP, to confirm their participation and receive login instructions, by emailing *Seth.Lawson@netl.doe.gov.*

The objective of the Supercritical CO_2 Oxy-combustion Technology Group is to promote a technical understanding of oxy-combustion for direct-fired sCO_2 power cycles by sharing information or viewpoints from individual participants regarding risk reduction and challenges associated with developing the technology.

Oxy-combustion systems in directly heated supercritical CO_2 (SCO_2) power cycles utilize natural gas or syngas oxy-combustion systems to produce a high temperature SCO_2 working fluid and have the potential to be efficient, cost effective and well-suited for carbon dioxide (CO_2) capture. To realize the benefits of direct fired SCO_2 power cycles, the following challenges must be addressed: chemical kinetic uncertainties, combustion instability, flowpath design, thermal management, pressure containment, definition/prediction of turbine inlet conditions, ignition, off-design operation, transient capabilities, in-situ flame monitoring, and modeling, among others.

The format of the meetings will facilitate equal opportunity for discussion among all participants; all participants will be welcome to speak. Following a detailed presentation by one volunteer participant regarding lessons learned from his or her area of research, other participants will be provided the opportunity to briefly share lessons learned from their own research. Meetings are expected to take place every other month with a different volunteer presenting at each meeting. Meeting minutes shall be published for those who are unable to attend.

These meetings are considered ''open-to-the-public;'' the purpose for these meetings has been examined during the planning stages, and NETL management has made specific determinations that affect attendance. All information presented at these meetings must meet criteria for public sharing or be published and available in the public domain. Participants should not communicate information that is considered official use only, proprietary, sensitive, restricted or protected in any way. Foreign nationals, who may be present, have not been approved for access to DOE information and technologies.

Dated: August 1, 2019.

Heather Quedenfeld,

Associate Director, Coal Technology Development & Integration Center, National Energy Technology Laboratory.

[FR Doc. 2019–17206 Filed 8–9–19; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0271; FRL–9997–24]

Certain New Chemicals or Significant New Uses; Statements of Findings for June 2019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(g) of the Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from June 1, 2019 to June 30, 2019.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–8469; email address: *schweer.greg@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. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in 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–2018–0097, 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?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from June 1, 2019 to June 30, 2019.

III. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned

evaluation of the health and environmental effects of the chemical substance or significant new use;

• The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;

• The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or

• The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

• EPA case number assigned to the TSCA section 5(a) notice.

• Chemical identity (generic name, if the specific name is claimed as CBI).

• website link to EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

EPA case No.	Chemical identity	Website link
P–16–0417	Isocyanate terminated polyurethane resin (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-252.*
J–19–0021, J–19–0022	*Saccharomyces cerevisiae* strain (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-250.*
P–18–0241, P–18–0244–0245.	(P–18–0241) 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl acrylate, formates (salts), (P–18–0244) 2-Propenoic acid, 2-methyl, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl methacrylate, formates (salts), (P–18–0245) 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate, and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with alkylene glycol monoacrylate, formates (salts) (generic names).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-251.*
P–19–0071	Trimethylolpropane, alkenoic acid, triester (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-249.*
P–19–0031	Phenol, 4,4′-(1-methylethylidene)bis-, polymer with formaldehyde, 2-(chloromethyl)oxirane, alpha-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl), and polyamines (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-248.*
P–18–0402	Phenol, alkanepolyolbis(heteroalkylene)bis-, polyalkylene derivs. (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-247.*
P–18–0397	Substituted alkanedioic acid, polymer with substituted alkanoic acid (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-246.*

EPA case No.	Chemical identity	Website link
P–19–0072	1-Butanol, reaction products with 2-[(2-propen-1-yloxy)methyl]oxirane.	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-245.*
P–18–0170	1-Propanaminium, N,N′-(oxydi-2,1-ethanediyl)bis[3-chloro-2-hydroxy-N,N-dimethyl-, chloride (1:2) (CASRN: 96320–92–2).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-244.*
P–18–0011	1H-Imidazole, 1,2,4,5-tetramethyl- (CASRN: 1739-83-9)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-243.*
P–18–0239, P–18–0240	(P–18–0239) N-alkyl propanamide, (P–18–0240) N-alkyl acetamide (generic names).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-242.*
J–19–0019, J–19–0020	Genetically modified microorganism for the production of an enzyme substance (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-241.*
P–19–0065	2lambda5, 4lambda5, 6lambda5- 1,3,5,2,4,6 Triazatriphosphorine, 2,2,4,4,6,6—hexaphenoxy- (CASRN: 1184–10–7).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-240.*
P–19–0012	Benzenedicarboxylic acid, reaction products with isobenzofurandione and diethylene glycol (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-239.*
P–18–0404	Alkylmultiheteroatom,2-functionalisedalkyl-2-hydroxyalkyl-, polymer with alkylheteroatom-multialkylfunctionalised carbomonocyleheteroatom and multiglycidylether difunctionalised polyalkylene glycol (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-238.*
P–18–0260	Fatty acids, polymers with alkanoic acid and substituted carbomonocycle, peroxide-initiated, polymers with alkanoic acid esters and substituted carbomonocycle, ammonium salts; polymer exemption flag (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-237.*
P–18–0125	Oxoalkylcarboxylic acid, sodium salt (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-236*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 29, 2019.

Leo Schweer,

Chief, New Chemicals Management Branch, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–17151 Filed 8–9–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0235; FRL–9997–25]

1-Bromopropane (1–BP); Draft Toxic Substances Control Act (TSCA) Risk Evaluation and TSCA Science Advisory Committee on Chemicals (SACC) Meetings; Notice of Availability and Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of documents and dates for the peer review of the draft risk evaluation for 1-Bromopropane (1–BP). The purpose of the risk evaluations under the Toxic Substances Control Act (TSCA) is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. EPA is also submitting these same documents to the TSCA Science Advisory Committee on Chemicals (SACC) for peer review and is announcing that there will be a 3-day in-person meeting of the TSCA SACC to consider and review these draft risk evaluations. Preceding the in-person meeting, there will be a 3-hour preparatory virtual meeting for the panel to consider the scope and clarity of the draft charge questions for the peer reviews.

DATES:

Comments: Comments on the draft risk evaluation must be received on or before October 11, 2019. Please submit comments on the draft risk evaluation by August 30, 2019 to allow the SACC time to review and consider them before the peer review meeting. Comments received after August 30, 2019 will still be provided to the SACC for their consideration. For additional instructions, see Unit II.A. and Unit II.B. of the **SUPPLEMENTARY INFORMATION.**

Meetings: The preparatory virtual meeting will be held on August 21, 2019, from 1 p.m. to approximately 4 p.m. (EDT). The 3-day in-person meeting will be held on September 10–12, 2019 from 9:00 a.m. to approximately 5:30 p.m. (EDT).

ADDRESSES: *Virtual Meeting:* The preparatory virtual meeting will be conducted via webcast and telephone. Registration is open to the public and is required to participate during the preparatory virtual meeting. Please visit *https://www.epa.gov/tsca-peer-review* website for additional information including how to register.

In-Person Meeting: The location of the in-person meeting will be announced on the TSCA SACC website at *http://www.epa.gov/TSCA-Peer-Review.* The in-person meeting may also be webcast. Please refer to the TSCA SACC website at *https://www.epa.gov/tsca-peer-review* for information on how to access the webcast. Please note that for the in-person meeting, the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the in-person meeting will continue as planned.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0235, 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:* OPPT 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.*

Requests to present oral comments and requests for special accommodations. Submit requests for special accommodations, or requests to present oral comments *(in-person or over the telephone)* during the webcast and/or the public portion of the peer review meeting to the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** by the deadline identified in the **DATES** section. Comments received after the date set in the **DATES** section and prior to the end of the oral public comment period during the meeting for each chemical will still be provided to the SACC for their consideration.

FOR FURTHER INFORMATION CONTACT:

TSCA SACC meetings: Tamue Gibson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–7642; email address: *gibson.tamue@epa.gov.*

Risk Evaluations: Dr. Stan Barone, Office of Pollution Prevention and Toxics (7403M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–1169; email address: *barone.stan@epa.gov.*

Special accommodations for the SACC meeting: For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of interest to persons who are or may be required to conduct testing and risk evaluations of chemical substances under the TSCA, 15 U.S.C. 2601 *et seq.* Since other entities may also be interested in these risk evaluations, the EPA has not attempted to describe all the specific entities that may be affected by this action.

B. What action is the EPA taking?

EPA is announcing the availability of and seeking public comment on the draft risk evaluation for 1-Bromopropane (1–BP). EPA is seeking public comment on all aspects of the draft risk evaluation, including any conclusions, findings, and determinations, and the submission of any additional information that might be relevant to the science underlying the risk evaluation and the outcome of the systematic review associated with the chemical. This 60-day comment period on the draft risk evaluations satisfies TSCA section 6(b)(4)(H), which requires EPA to ''provide no less than 30 days public notice and an opportunity for comment on a draft risk evaluation prior to publishing a final risk evaluation'' and 40 CFR 702.49(a), which states that ''EPA will publish a draft risk evaluation in the **Federal Register**, open a docket to facilitate receipt of public comment, and provide no less than a 60-day comment period, during which time the public may submit comment on EPA's draft risk evaluation.'' In addition to any new comments on the draft risk evaluation, the public should resubmit or clearly identify any previously filed comments, modified as appropriate, that are relevant to the draft risk evaluation and that the submitter feels have not been addressed. EPA does not intend to respond to comments submitted prior to the release of the draft risk evaluation unless they are clearly identified in comments on the draft risk evaluation.

EPA is also submitting these same documents to the TSCA SACC for peer review and announcing the meetings for the peer review panel. All comments submitted to the dockets for consideration by the TSCA SACC by the deadline identified in the **DATES** section will be provided to the TSCA SACC peer review panel, which will have the opportunity to consider the comments during its discussions.

C. What is the EPA's authority for taking this action?

TSCA section 6, 15 U.S.C. 2605, requires EPA to conduct risk evaluations to ''determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' 15 U.S.C. 2605(b)(4)(A). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that direct which chemical substances must undergo evaluation, the development of criteria for manufacturer-requested evaluations, the minimum components of an EPA risk evaluation, and the timelines for public comment and completion of the risk evaluation. The law also requires that EPA operate in a manner that is consistent with the best available science and make decisions based on the weight of the scientific evidence. 15 U.S.C. 2625(h) and (i).

The statute identifies the minimum components EPA must include in all chemical substance risk evaluations. For each risk evaluation, EPA must publish a document that outlines the scope of the risk evaluation to be conducted, which includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations that EPA expects to consider. 15 U.S.C. 2605(b)(4)(D). The statute further provides that each risk evaluation must also: (1) Integrate and assess available information on hazards and exposure for the conditions of use of the chemical substance, including information on specific risks of injury to health or the environment and information on relevant potentially exposed or susceptible subpopulations; (2) describe whether aggregate or sentinel exposures were considered and the basis for that consideration; (3) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use; and (4) describe the weight of the scientific evidence for the identified hazards and exposure. 15 U.S.C. 2605(b)(4)(F)(i)–(ii) and (iv)–(v). Each risk evaluation must not consider costs or other nonrisk factors. 15 U.S.C. 2605(b)(4)(F)(iii).

The statute requires that the risk evaluation process last no longer than three years, with a possible additional six-month extension. 15 U.S.C.

2605(b)(4)(G). The statute also requires that the EPA allow for no less than a 30-day public comment period on the draft risk evaluation, prior to publishing a final risk evaluation. 15 U.S.C. 2605(b)(4)(H).

II. TSCA SACC Meetings

The focus of the public meeting is to peer review EPA's draft risk evaluation of 1–BP. After the peer review process, EPA will consider peer reviewer comments and recommendations and public comments, in finalizing the risk evaluation. The draft risk evaluation contains: discussion of chemistry and physical-chemical properties; characterization of conditions of use; environmental fate and transport assessment; human health exposures; environmental hazard assessment; risk characterization; risk determination; and a detailed description of the systematic review process developed by the Office of Pollution Prevention and Toxics to search, screen, and evaluate scientific literature for use in the risk evaluation process.

A. How may I participate in the in-person meeting?

You may participate in the in person meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify the corresponding docket ID number for 1–BP (EPA–HQ–OPPT–2019–0235) in the subject line on the first page of your request.

1. *Written comments.* To provide TSCA SACC the time necessary to consider and review your comments, written comments must be submitted by the date set in the **DATES** section and using the instructions in the **ADDRESSES** section and Unit II.C. Comments received after the date set in the **DATES** section and prior to the end of the oral public comment period during the meeting for each chemical will still be provided to the SACC for their consideration.

2. *Oral comments.* In order to be included on the meeting agenda, submit your request to make brief oral comments to the TSCA SACC during the in-person meeting to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before the date outlined in the **DATES** section. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. Oral comments before TSCA SACC during the in-person meeting are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation for distribution by the DFO to the TSCA SACC at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

B. How may I participate in the preparatory virtual meeting?

Registration for the August 21, 2019, preparatory virtual meeting is required. To participate by listening or making a comment during this meeting, please visit:*https://www.epa.gov/tsca-peer-review* website to register. Registration online will be confirmed by email that will include the webcast meeting link and audio teleconference information.

1. *Written comments.* Written comments for consideration during the preparatory virtual meeting should be submitted, using the instructions in **ADDRESSES** and Unit II.C., on or before August 20, 2019.

2. *Oral comments.* Requests to make brief oral comments to the TSCA SACC during the preparatory virtual meeting should be submitted when registering online or with the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before noon on August 20, 2019. Oral comments before TSCA SACC during the preparatory webcast are limited to approximately 5 minutes due to the time constraints of this webcast.

3. *Webcast.* The preparatory virtual meeting will be webcast only and will be open to the public. Please refer to the TSCA SACC website at *http://www.epa.gov/tsca-peer-review* for information on how to access the webcast. Registration is required.

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

III. Background

A. What is EPA's risk evaluation process for existing chemicals under TSCA?

The risk evaluation process is the second step in EPA's existing chemical process under TSCA, following prioritization and before risk management. As this chemical is part of the first ten chemical substances undergoing risk evaluation, the chemical substance was not required to go through prioritization (81 FR 91927, December 19, 2016) (FRL–9956–47). The purpose of risk evaluation is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. As part of this process, EPA must evaluate both hazard and exposure, not consider costs or other nonrisk factors, use scientific information and approaches in a manner that is consistent with the requirements in TSCA for the best available science, and ensure decisions are based on the weight-of-scientific-evidence.

The specific risk evaluation process that EPA has established by rule to implement the statutory process is set out in 40 CFR part 702 and summarized on EPA's website at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.* As explained in the preamble to EPA's final rule on procedures for risk evaluation (82 FR 33726, July 20, 2017) (FRL–9964–38), the specific regulatory process set out in 40 CFR part 702, subpart B will be followed for the first ten chemical substances undergoing risk evaluation to the maximum extent practicable.

B. What is 1-Bromopropane?

1-Bromopropane (1–BP) is primarily used as a solvent cleaner in vapor and immersion degreasing operations to clean optics, electronics and metals, and it has also been reported to be used as a solvent vehicle in industries using spray adhesives such as those used in foam cushion manufacturing. Information from the 2016 Chemical Data Reporting (CDR) for 1–BP indicates the reported production volume is 25.9 million lbs/year (manufacture and import).

Information about the problem formulation and scope phases of the risk evaluation for this chemical is available at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-1-bromopropane-1-bp.*

C. What is the purpose of the TSCA SACC?

The TSCA SACC was established by EPA in 2016 and operates in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2 *et seq.* The SACC supports activities under

TSCA, the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.,* and other applicable statutes. The TSCA SACC provides expert independent scientific advice and recommendations to the EPA on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA.

The TSCA SACC is comprised of experts in: Toxicology; human health and environmental risk assessment; exposure assessment; and related sciences (*e.g.,* synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, PBPK modeling, computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability). The TSCA SACC currently consists of 24 members. When needed, the committee will be assisted in their reviews by ad hoc participants with specific expertise in the topics under consideration.

D. TSCA SACC Documents and Meeting Minutes

EPA's background paper, related supporting materials, and draft charge questions to TSCA SACC are available on the TSCA SACC website and in the docket established for the specific chemical. In addition, the EPA will provide additional background documents (*e.g.,* TSCA SACC members participating in this meeting and the meeting agenda) as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available, at *http://www.regulations.gov* and the TSCA SACC website at *https://www.epa.gov/tsca-peer-review.*

TSCA SACC will prepare meeting minutes summarizing its recommendations to the EPA. The meeting minutes will be posted on the TSCA SACC website and in the relevant docket.

Authority: 15 U.S.C. 2601 *et seq.;* 5 U.S.C. Appendix 2 *et seq.*

Dated: August 5, 2019.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2019–17222 Filed 8–9–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0448; FRL–9997–71]

Nominations to the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, and professional affiliations of persons recently nominated to serve on the Scientific Advisory Panel (SAP) established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Panel was created on November 28, 1975, and made a permanent Panel by amendment to FIFRA, dated October 25, 1988. The Agency, at this time, anticipates selecting three new members to serve on the panel because of membership terms that will expire during the next year. Public comments on the current nominations are invited, as these comments will be used to assist the Agency in selecting the new members for the chartered Scientific Advisory Panel.

DATES: Comments identified by docket ID number EPA–HQ–OPP–2019–0448, must be received on or before September 11, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2019–0448, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or 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 *https://www.epa.gov/dockets/contacts.html.*

FOR FURTHER INFORMATION CONTACT: Steven Knott, M.S., Designated Federal Officer (DFO), Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–0103; email address: *knott.steven@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 persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Given other entities may also 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 DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.*

II. Background

The FIFRA SAP serves as a scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide independent scientific advice, information, and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is a federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix). The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). FIFRA established a Science Review Board (SRB) consisting of at least 60 scientists who are available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP. As a scientific peer review mechanism, the FIFRA SAP provides comments, evaluations, and recommendations to improve the

effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendations to the Agency.

The Agency, at this time, anticipates selecting three new members to serve on the panel because of membership terms that will expire during the next year. The Agency requested that NIH and NSF nominate experts for selection from the fields of ecological and human health risk assessment with specific expertise in mathematical biostatistics, ecotoxicology and environmental fate and transport of chemicals, and neurotoxicity (including developmental neurotoxicity). The Agency also noted that experts with specific experience in cheminformatics, bioinformatics, and genomics are preferred. Nominees should be well published and current in their fields of expertise.

III. Charter

A Charter for the FIFRA SAP, dated October 17, 2018, was issued in accordance with the requirements of the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770 (5 U.S.C. Appendix). The Charter provides for open meetings with opportunities for public participation.

IV. Nominees

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to provide expert comments on the impact of pesticides on human health and the environment. No persons shall be ineligible to serve on the FIFRA SAP by reason of their membership on any other advisory committee to a federal department or agency, or their employment by a federal department or agency (except the EPA). The Administrator appoints individuals to serve on the Panel for staggered terms of up to 3 years. Panel members are subject to the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 Code of Federal Regulations Part 2635, conflict of interest statutes in Title 18 of the United States Code, and related regulations. Each nominee selected by the Administrator, before being formally appointed, is required to submit a confidential statement of employment and financial interest, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

In accordance with section 25(d)(1) of FIFRA, the Administrator shall require nominees to the FIFRA SAP to furnish information concerning their professional qualifications, including educational background, employment history, and scientific publications. FIFRA further stipulates that the Agency publish the name, address, and professional affiliation of the nominees in the **Federal Register**.

B. Applicability of Existing Regulations

With respect to the requirements of section 25(d) of FIFRA that the Administrator promulgate regulations regarding conflicts of interest, FIFRA SAP members are subject to the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 Code of Federal Regulations Part 2635, conflict of interest statutes in Title 18 of the United States Code, and related regulations.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d) of FIFRA, EPA, on February 25, 2019, requested that the NIH and the NSF nominate scientists to fill vacancies occurring on the FIFRA SAP. The Agency requested nominations of experts in the fields of ecological and human health risk assessment with specific expertise in mathematical biostatistics, ecotoxicology and environmental fate and transport of chemicals, and neurotoxicity (including developmental neurotoxicity). The Agency also noted that experts with specific experience in cheminformatics, bioinformatics, and genomics are preferred. NIH and NSF responded, providing the Agency with a total of 35 nominees. Two nominees, Dr. Dana Barr of Emory University and Dr. Marion Ehrich of Virginia Tech, are recent members of the FIFRA SAP and, therefore, were not considered further for membership at this time. Of the remaining 33 nominees, 15 are interested and available to actively participate in FIFRA SAP meetings (see Section IV.D.). The following 18 individuals are not available:

1. *David Allison, Ph.D.,* Indiana University, Bloomington, Indiana.
2. *Asa Bradman, Ph.D.,* University of California, Berkeley, California.
3. *Alex Buerkle, Ph.D.,* University of Wyoming, Laramie, Wyoming.
4. *Atul Butte, M.D., Ph.D.,* University of California, San Francisco, California.
5. *Lucio Costa, Ph.D.,* University of Washington, Seattle, Washington.
6. *Rebecca Doerge, Ph.D.,* Carnegie Mellon University, Pittsburgh, Pennsylvania.
7. *Elaine Faustman, Ph.D..,* University of Washington, Seattle, Washington.
8. *Jodi Flaws, Ph.D.,* University of Illinois, Urbana-Champaign, Illinois.
9. *Brandon Gaut, Ph.D.,* University of California, Irvine, California.
10. *Phillipe Grandjean, M.D.,* Harvard University, Boston, Massachusetts.
11. *Linda Lee, Ph.D.,* Purdue University, West Lafayette, Indiana.
12. *Mary Kay O'Rourke, Ph.D.,* University of Arizona, Tucson, Arizona.
13. *Virginia Rauh, Ph.D.,* Columbia University, New York, New York.
14. *Rick Relyea, Ph.D.,* Rensselaer Polytechnic Institute, Troy, New York.
15. *Diane Rohlman, Ph.D.,* University of Iowa, Iowa City, Iowa.
16. *Jason Rohr, Ph.D.,* University of Notre Dame, Notre Dame, Indiana.
17. *Caroline Tanner, Ph.D.,* University of California, San Francisco, California.
18. *Cari Vanderpool, Ph.D.,* University of Illinois, Urbana-Champaign, Illinois.

D. Interested and Available Nominees

Following are the names, addresses, and professional affiliations of current nominees being considered for membership on the FIFRA SAP. Selected biographical data for each nominee is available in the public docket at *www.regulations.gov* (ID number EPA–HQ–OPP–2019–0448) and through the FIFRA SAP website at *https://www.epa.gov/sap.* The Agency anticipates selecting three individuals to fill vacancies occurring during the next year.

1. *Jeffrey Bloomquist, Ph.D.:* Professor, Entomology and Nematology Department, Emerging Pathogens Institute, University of Florida, Gainesville, Florida.
2. *Maria Braga, D.D.S., Ph.D.:* Professor, Department of Anatomy, Physiology and Genetics, Uniformed Services University of the Health Sciences, Bethesda, Maryland.
3. *Joseph Braun, R.N., M.S.P.H., Ph.D.:* Associate Professor, Department of Epidemiology, Brown University, Providence, Rhode Island.
4. *Celia Chen, Ph.D.:* Director, Dartmouth Toxic Metals Superfund Research Program and Research Professor, Department of Biological Sciences, Dartmouth College, Hanover, New Hampshire.
5. *Susan Fisher, Ph.D.:* Professor Emerita, Department of Entomology, Ohio State University, Columbus, Ohio.
6. *Jean Harry, M.S., Ph.D.:* Group Leader, Neurotoxicology Laboratory, National Toxicology Program, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina.

7. *Tyrone Hayes, Ph.D.:* Professor, Department of Integrative Biology, University of California, Berkeley, California.

8. *Lucille Lange, Ph.D.:* Research Psychologist, US Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, Maryland.

9. *James Lauderdale, Ph.D.:* Associate Professor, Department of Cellular Biology, University of Georgia, Athens, Georgia.

10. Maureen Lichtveld, M.D., M.P.H.: Professor and Chair, Department of Global Environmental Health Sciences, School of Public Health and Tropical Medicine, Tulane University, New Orleans, Louisiana.

11. *Lorenz Neuwirth, Ph.D.:* Assistant Professor, Department of Psychology and the Neuroscience Research Institute, State University of New York (SUNY), Old Westbury, New York.

12. *Edna Pereira, Ph.D.:* Associate Professor, Department of Epidemiology and Public Health and Director, Division of Translational Toxicology, University of Maryland School of Medicine, Baltimore, Maryland.

13. *Rebecca Smith, D.V.M., M.S., Ph.D.:* Assistant Professor, Department of Pathobiology, College of Veterinary Medicine, University of Illinois, Urbana-Champaign, Illinois.

14. *John Swaddle, Ph.D.:* Professor and Chair, Biology Department, College of William & Mary, Williamsburg, Virginia.

15. *Christopher Weis, Ph.D.:* Toxicology Liaison, National Toxicology Program, National Institute of Environmental Health Sciences, Bethesda, Maryland.

Authority: 7 U.S.C. 136 *et. seq.*; 21 U.S.C. 301 *et seq.*

Dated: August 2, 2019.

Hayley Hughes,

Director, Office of Science Coordination and Policy.

[FR Doc. 2019–17150 Filed 8–9–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0075; FRL–9992–80]

Certain New Chemicals; Receipt and Status Information for June 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 06/01/2019 to 06/30/2019.

DATES: Comments identified by the specific case number provided in this document must be received on or before September 11, 2019.

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 06/01/2019 to 06/30/2019. 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 Toxic Substances Control Act (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 06/01/2019 TO 06/30/2019

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
SN–19–0004A	4	06/04/2019	CBI	(S) A lubricating agent used in the production of automotive disc brakes.	(G) Pitch coke.
SN–19–0005A	2	05/28/2019	Molecular Rebar Design.	(G) Conductive ink	(S) Functionalized multiwall carbon nanotubes.
P–16–0442A	4	06/26/2019	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.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 06/01/2019 TO 06/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–16–0443A	4	06/26/2019	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	4	06/26/2019	CBI	(G) Polymer for coatings	(G) Amine salted polyurethane.
P–16–0445A	4	06/26/2019	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–17–0007A	5	06/13/2019	CBI	(S) Intermediate	(G) Dialkyl 7,10-dioxa, dithiahexadeca diene.
P–17–0239A	6	06/11/2019	CBI	(G) Adhesive for open non-descriptive use	(G) Substituted carboxylic acid, polymer with 2,4-diisocyanato-1-methylbenzene, hexanedioic acid, alpha-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,1′-methylenebis[4-isocyanatobenzene], 2,2′-oxybis[ethanol], 1,1′-oxybis[2-propanol] and 1,2-propanediol.
P–17–0299A	3	06/06/2019	CBI	(G) Paint additive	(G) 2-Propenoic acid, alkyl -, polymers with alkyl acrylate and polyethylene glycol methacrylate alkyl ether.
P–17–0345A	2	06/07/2019	CBI	(G) Resin intermediate	(G) Polyurethane, methacrylate blocked.
P–17–0389A	6	06/24/2019	CBI	(G) Polymer precursor	(G) Alkyl oil, polymer with 1,4-cyclohexanedimethanol, dehydrated Alkyl oil, hydrogentated rosin, phthalic anhydride and trimethylolpropane.
P–18–0009A	5	06/24/2019	CBI	(G) Lubricant additive	(G) Phosphonic acid, dimethyl ester, polymer with alkyl diols.
P–18–0044A	3	06/24/2019	CBI	(G) Intermediate species	(G) Fatty acids.
P–18–0045A	3	06/24/2019	CBI	(G) Application coating	(G) Fatty acids, alkyl esters.
P–18–0050	1	11/16/2017	CBI	(G) Raw material in industrial coatings	(G) Alkane, diisocyanato-, homopolymer, alkyl dihydrogen phosphate- and polyalkylene glycol mono-alkyl ether-.
P–18–0061A	3	06/24/2019	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–18–0078A	4	06/26/2019	CBI	(G) Paint	(G) 2-Alkenoic acid, 2-alkyl-, 2-alkyl ester, polymer with alkyl 2-alkenoate, 2-substitutedalkyl 2-alkenoate and 2-substitutedalkyl 2-alkyl-2-alkenoate, tert alkylperoxoate initiated.
P–18–0122A	6	06/04/2019	Polymer Ventures, Inc	(G) Paper additive	(G) Alkylamide, polymer with alkylamine, formaldehyde, and polycyanamide, alkyl acid salt.
P–18–0125A	2	06/18/2019	NOLTEX L.L.C	(G) Reagent in coating material	(G) Oxoalkylcarboxylic acid, sodium salt.
P–18–0197A	2	06/21/2019	CBI	(G) Polymer composite additive	(G) Metal, alkylcarboxylate oxo complexes.
P–18–0207A	3	06/21/2019	CBI	(G) Polymer composite additive	(G) Metal, oxo alkylcarboxylate complexes.
P–18–0239A	3	06/26/2019	CBI	(G) Reactant in coating	(G) N-alkyl propanamide.
P–18–0240A	3	06/26/2019	CBI	(G) Reactant in coating	(G) N-alkyl acetamide.
P–18–0260A	4	06/04/2019	Allnex USA Inc	(S) Binder for wood stains	(G) Fatty acids, polymers with alkanoic acid and substituted carbomonocycle, peroxide-initiated, polymers with alkanoic acid esters and substituted carbomonocycle, ammonium salts.
P–18–0263A	2	06/17/2019	CBI	(G) Solution additive	(G) Mixed alkyl esters-, polymer with N1-(2-aminoethyl)- l,2-ethanediamine, aziridine, N-acetyl derivs., acetates (salts).
P–18–0263A	3	06/26/2019	CBI	(G) Solution additive	(G) Mixed alkyl esters-, polymer with N1-(2-aminoethyl)- l,2-ethanediamine, aziridine, N-acetyl derivs., acetates (salts).
P–18–0274A	6	06/19/2019	CBI	(S) Chemical Intermediate. (G) Additive	(G) Heterocycle fluoroalkyl sulfonyl.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 06/01/2019 TO 06/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–18–0295	1	08/30/2018	CBI	(S) Use as an ingredient in the manufacture of consumer cleaning products. In these products, the notified chemical is not destroyed nor further reacted. (S) Use as monomer in the manufacture of resins for use in paint and coating products. Notified substance will not be present in the cured coating. (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	3	06/18/2019	Kuraray America, Inc	(G) Raw material for polymer manufacturing	(S) 2-Propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester.
P–18–0372A	4	06/11/2019	Hexion Inc	(G) Polyol. (S) Reactive modifier for Carbon, Fiber bonding, Friction, Coated abrasives, Glass Inserts, Refractory, and Bonded abrasives. (S) Reactive polyol for Sealants, Adhesives, 1 part coatings, 2 part coatings, and composites.	(G) Formaldehyde, polymer with phenol and heteroatom-substituted heteromonocycle, reaction products with 1,3-dioxolan-2-one and 4-methyl-1,3-dioxolan-2-one.
P–18–0372A	3	05/31/2019	Hexion Inc	(G) Polyol. (S) Reactive modifier for Carbon, Fiber bonding, Friction, Coated abrasives, Glass Inserts, Refractory, and Bonded abrasives. (S) Reactive polyol for Sealants, Adhesives, 1 part coatings, 2 part coatings, and composites.	(G) Formaldehyde, polymer with phenol and heteroatom-substituted heteromonocycle, reaction products with 1,3-dioxolan-2-one and 4-methyl-1,3-dioxolan-2-one.
P–18–0373A	4	06/11/2019	Hexion Inc	(G) Polyol	(G) Formaldehyde, polymer with 2-methyloxirane, oxirane, phenol and heteroatom-substituted heteromonocycle.
P–18–0373A	3	05/31/2019	Hexion Inc	(G) Polyol	(G) Formaldehyde, polymer with 2-methyloxirane, oxirane, phenol and heteroatom-substituted heteromonocycle.
P–19–0021A	3	06/26/2019	CBI	(G) Pigment ink	(G) Hydroxyalkyl carboxylic acid, polymer with alkylamine, alkylene carbonate, alkanediol, isocyanate, compd. with alkylamine.
P–19–0022A	3	06/26/2019	CBI	(G) Pigment ink	(G) Hydroxyalkyl carboxylic acid, polymer with alkylamine, alkyl carbonate, alkanediol, isocyanate, compd. with alkylamine.
P–19–0024A	4	06/12/2019	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. (S) Waterproofing Application: The PMN substance is expected to be used in waterproofing of building materials, including cementitious material, masonry, concrete, plaster, bricks, etc. It is initially intended to be used at a maximum of 5 sites by trained commercial applicators. The PMN substance is modification of a quaternary silane compound by a hydrolysis reaction with other silanes to make it an oligomeric compound. These quaternary silane products have been manufactured and marketed for waterproofing uses for over 35 years. The solution of PMN substance in water is applied as a waterproofing sealer for building materials by spray application. (S) 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 pickup 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–19–0031A	8	06/19/2019	CBI	(S) Curing agent for epoxy coating systems	(G) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with formaldehyde, 2-(chloromethyl)oxirane, alpha-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl), and polyamines.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 06/01/2019 TO 06/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0051A	5	06/21/2019	CBI	(G) UV curable inks	(G) 1,3-Propanediamine, N1,N1-dimethyl-, polymers with alkylene glycol ether with alkyltriol (3:1) mixed acrylates and adipates, and alkylene glycol monoacrylate ether with alkyltriol (3:1).
P–19–0053A	5	06/25/2019	Wacker Chemical Corporation.	(S) Used as a surface treatment, sealant, caulk, and coating for mineral building materials such as concrete, brick, limestone, and plaster, as well as on wood, metal and other substrates. Formulations containing the cross-linker provide release and anti-graffiti properties, water repellency, weather proofing, and improved bonding in adhesive/sealant applications. The new substance is a moisture curing cross-linking agent which binds/joins polymers together when cured. Ethanol is released during cure, and once the cure reaction is complete, the product will remain bound in the cured polymer matrix.	(S) 1-Butanamine, N-butyl-N-[(triethoxysilyl)methyl]-.
P–19–0071A	3	06/11/2019	CBI	(G) Physical property modifier for polymers	(G) Trimethylolpropane, alkenoic acid, triester.
P–19–0075A	3	05/30/2019	Allnex USA Inc	(S) The PMN substance is an intermediate incorporated as a component in VIACRYL SC 6841.	(G) Alkenoic acid, alkyl-, (alkylamino)alkyl ester, polymer with alkyl substituted carbomonocycle, substituted-[alkanenitrile]-initiated, formates.
P–19–0082A	3	06/20/2019	Bedoukian Research Inc.	(S) Fragrance uses per FFDCA: fine fragrance, creams, lotions, etc., Fragrance uses per TSCA: scented papers, candles, detergents, cleaners, etc.	(S) Heptanal, 6-hydroxy-2,6-dimethyl-.
P–19–0086A	3	05/31/2019	CBI	(G) Monitor oil and gas well performance	(G) Halogenated sodium alkylbenzoate.
P–19–0087A	3	05/31/2019	CBI	(G) Monitor oil and gas well performance	(G) Halogenated sodium alkylbenzoate.
P–19–0089A	5	06/04/2019	CBI	(G) Well performance tracer	(G) Halogenated sodium alkylbenzoate.
P–19–0090A	3	06/04/2019	CBI	(G) Well performance tracer	(G) Halogenated sodium benzoate.
P–19–0091A	3	06/04/2019	CBI	(G) Well performance tracer	(G) Halogenated alkylbenzoic acid.
P–19–0092A	2	06/04/2019	CBI	(G) Tracer of well performance	(G) Halogenated alkylbenzoic acid.
P–19–0093A	3	06/04/2019	CBI	(G) Tracer for well performance	(G) Halogenated benzoic acid.
P–19–0095	3	06/04/2019	CBI	(G) Consumer Disposables, Polymer Sheet, and Durable Goods.	(G) Poly hydroxy alkanoate.
P–19–0096	1	05/31/2019	CBI	(G) Additive for plastics industry	(G) Benzofuranone, bis(branched alkyl)-[dialkyl[tetrakis(branched alkyl)-alkyl-dibenzo-substituted phosphite-yl] phenyl]-.
P–19–0097	3	06/10/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0098	1	06/04/2019	Clariant Corporation	(S) Flame retardant additive for intumescent coatings.	(G) Phosphoric acid, polymer with (hydroxyalkyl)-alkanediol and alkanediol.
P–19–0100	5	06/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0101	4	06/14/2019	CBI	(G) Monitor well performance	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0102	3	06/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0103	2	06/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkyl benzoic acid.
P–19–0104	4	06/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0105	3	06/14/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid, ethyl ester.
P–19–0106	3	06/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0107	3	06/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0108	3	06/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0109	1	06/07/2019	Arch Chemicals, Inc	(S) Chemical is used as a component of a hoof cleaning formulation to improve the wettability of the overall cleaning solution on the hoof.	(S) Copper ethanolamine complex, mixed.
P–19–0110	3	06/14/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid, ethyl ester.
P–19–0112	1	06/12/2019	Shin-ETSU Microsi	(G) Contained use for microlithography for electronic device manufacturing.	(G) Substituted heterocyclic onium compound, salt with 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.13,7]decane-1-carboxylate (1:1), polymer with 3-etheylphenol, 1-(1-methylethyl)cyclopentyl 2-methyl-2-propenoate and 1-(7-oxabicyclo[2.2.1]hept-2-yl)cyclopentyl 2-methyl-2-propenoate, di-Me 2,2′-(1,2-diazenediyl)bis[2-methylpropenoate]-initiated.
P–19–0113	2	06/13/2019	CBI	(G) Flow cell additive	(G) Metal oxide-chloro.
P–19–0114	1	06/17/2019	Shin-ETSU Microsi	(G) Contained use for microlithography for electronic device manufacturing.	(G) Sulfonium, triphenyl-, trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1).
P–19–0115	1	06/17/2019	Tokyo Ohka Kogyo America, Inc.	(G) An ingredient used in the manufacture of photoresist.	(G) Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, substituted carbomonocyclic ester.
P–19–0117	2	06/21/2019	CBI	(G) Additive	(G) Polycyclic amine, reaction products with polyalkylalkene, polymers.
P–19–0118	1	06/21/2019	CBI	(G) Component of lubricant	(G) Substituted polyalkylenepoly, reaction products with alkene polymer.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 06/01/2019 TO 06/30/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0119	1	06/24/2019	Zschimmer & Schwarz	(S) Foaming additive used in building/construction, exposure would only occur during loading of finished product. Product application is used in a closed system with very low possibility for exposure. To be used on construction sites.	(S) Poly(oxy-1,2-ethanediyl), alpha-sulfo-omega-hydroxy-, C9-11-branched alkyl ethers, sodium salts.
P–19–0120	1	06/25/2019	CBI	(G) Component of ink	(G) Alkenoic acid, polymer with alkanediyl bis substituted alkylene bis heteromonocycle, substituted carbomonocycle and (alkylalkenyl) carbomonocycle, alkali metal salt.

*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 06/01/2019 TO 06/30/2019

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J–18–0002	6/28/2019	6/19/2018	N	(G) Biofuel producing Saccharomyces cerevisiae modified, genetically stable.
J–18–0003	6/28/2019	6/24/2018	N	(G) Biofuel producing Saccharomyces cerevisiae modified, genetically stable.
J–19–0011	6/3/2019	6/2/2019	N	(G) Genetically modified microorganism.
P–01–0767	6/10/2019	5/10/2019	N	(S) 2-Propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, 2-hydroxyethyl 2-methyl-2-propenoate, N- (hydroxymethyl)-2-propenamide, 2-methyl-2-propenamide and 2-propenenitrile, ammonium salt.
P–11–0080	6/7/2019	5/22/2019	N	(G) Polyether, .alpha.-hydro-.omega.-hydroxy-, polymer with .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)] ether with alkanepolyol, and 1,1′-methylenebis[4-isocyanatocyclohexane], hydroxyalkyl acrylates-blocked.
P–14–0742	6/13/2019	6/11/2019	N	(S) Isocyanic acid, polymethylenepolyphenylene ester, polymer with 1,2-propanediol, 2-(2-butoxyethoxy)ethanol- and n,n-dibutyl-2-hydroxyacetamide-blocked.
P–16–0375	6/10/2019	5/26/2019	N	(G) Alkyl methacrylates, polymer with olefines.
P–16–0400	6/18/2019	6/3/2019	N	(S) Alkanes, C11–16, branched and linear.
P–16–0532A ...	6/20/2019	4/17/2019	Y	(G) Oxo heteromonocycle.
P–17–0152	6/28/2019	6/4/2019	N	(G) Poly(alkyl-oxo-2-propen-1-yl)ester with alkaneaminium trialkyl chloride and alkoxy-poly(oxy-alkanediyl).
P–17–0152	6/28/2019	6/4/2019	N	(G) Alkylaminium-trialkyl-2-[(2-methyl-1-oxo-2-propen-1-yl)oxy]-, halide (1:1), polymer with alpha-(2-methyl-1-oxo-2-propen-1-yl)- omega-alkoxypoly(oxy-1,2-alkanediyl).
P–17–0253	6/10/2019	6/7/2019	N	(G) Oxirane, 2-methyl-, polymer with oxirane, methyl 2-(substituted carbomonocycle isoquinolin-2(3H)-yl) propyl ether.
P–18–0044A ...	6/13/2019	6/13/2018	Y	(G) Fatty acids.
P–18–0068A ...	6/28/2019	12/21/2018	Y	(G) Metal, alkylcarboxylate oxo complexes.
P–18–0137	6/24/2019	6/14/2019	N	(G) Alkylsilsesquioxane, ethoxy-terminated.
P–18–0186	5/30/2019	5/14/2019	N	(G) Polyolefin ester.
P–18–0261A ...	6/28/2019	12/5/2018	Y	(G) Metal, alkylcarboxylate oxo complexes.
P–18–0379A ...	6/3/2019	4/9/2019	Y	(G) Cashew, nutshell liq., polymer with bisphenol A, epichlorohydrin, amines, formaldehyde and glycol.

*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 06/01/2019 TO 06/30/2019

Case No.	Received date	Type of test information	Chemical substance
P–16–0150	6/10/2019	A 2-Week Toxicity Study of [claimed CBI] by Whole-Body Inhalation in CD–1 Mice (OECD 412); and A 2-Week Toxicity Study of [claimed CBI] by Whole-Body Inhalation in Rats (OECD 412).	(G) Chlorofluorocarbon.
P–16–0543	6/21/2019	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P–17–0339–0342.	6/26/2019	Supplemental Phase Transition	(S) Poly(oxy-1,2-ethanediyl), a-(2-butyloctyl)-w-hydroxy-.
P–18–0141	6/5/2019	Acute Inhalation Toxicity with Substance 2 in the Rat (Nose Only) (Acute Toxic Class Method).	(G) Ethyl modified lactam.
P–18–0263	6/27/2019	GPC Report	(G) Mixed alkyl esters-, polymer with N1-(2-aminoethyl)- I,2-ethanediamine, aziridine, N-acetyl derivs., acetates (salts),
P–18–0352	6/17/2019	Growth Inhibition of [claimed CBI] for Green Algae (Raphidocelis subcapitata) (OECD 201), Static Acute Toxicity of [claimed CBI] to Daphnia Magna (OECD 202), Determination of the Ready Biodegradability of [claimed CBI] (OECD 301D).	(G) Poly(hetero(alkyl-1,2-alkenyl)], alpha-[[[3-(1-heteromonocycle)alkyl)substituted heteroatom]heteroatom-substituted alkyl]]-omega-[[[[3-(1-heteromonocycle)alkyl]]substituted heteroatom] heteroatom-substituted alkyl]]heteroatom]-.
P–19–0073	6/13/2019	Acute Toxicity to Fish (OECD 203), Local Lymph Node Assay in Mice (OECD 442B).	(G) Propoxylated, ethoxylated alkoxyalkyl ether.

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: July 30, 2019.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–17149 Filed 8–9–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 19–3]

Establishment of the Fraud Division of the Enforcement Bureau

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: To reflect the activities, structure, and purpose of the Enforcement Bureau (EB), and the importance of protecting against fraud in programs that the Commission oversees, the Commission concluded that the public interest—namely, the proper dispatch of our business—would be served by creating an EB division specifically dedicated to investigating and pursuing fraud. This division will be called the Fraud Division. The purpose of this Order is to create a division comprised of existing EB staff that will be dedicated to taking enforcement actions against fraud in the Universal Service Fund and other funding programs that the Commission oversees. The Fraud Division will work with the Office of Inspector General and other law enforcement agencies, as appropriate, and will consist of the individuals who now focus on fraud cases. Establishing this division will capitalize on and enhance the Commission's expertise in rooting out fraud in programs over which the FCC has jurisdiction.

DATES: August 13, 2019.

ADDRESSES: The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Rm. CY–A257, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa Gelb, 202–418–2019.

SUPPLEMENTARY INFORMATION: The Commission finds that this change will be structural rather than substantive, and will not require change to the FCC's rules. The amendments adopted herein pertain to agency organization, procedure, and practice. Consequently, the notice and comment and effective date provisions of the Administrative Procedure Act contained in 5 U.S.C. 553(b) and (d) do not apply. Accordingly, it is ordered that, pursuant to sections 1, 4, 5(b), 5(c), 201(b), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155(b), 155(c), 201(b), 303(r), this Order is adopted.

This is a summary of the Commission's Order, FCC 19–3, adopted on January 29, 2019, and released on February 4, 2019. The document is available for download from the FCC's website at: *https://www.fcc.gov/document/establishment-fraud-division-enforcement-bureau.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–16388 Filed 8–9–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Notice of Mutual Holding Company Reorganization (FR MM–10(*o*)–1), Application for Approval of a Stock Issuance by a Subsidiary Holding Company of a Mutual Holding Company (FR MM–10(*o*)–2), Application for Conversion of a Mutual Holding Company to Stock Form (FR FR MM–AC), Proxy Statement (FR MM–PS), Offering Circular (FR MM–OC), and

Order Form (FR MM–OF) (OMB No. 7100–0340).

DATES: Comments must be submitted on or before October 11, 2019.

ADDRESSES: You may submit comments, identified by *FR MM–10(o)–1, FR MM–10(o)–2, FR MM–AC, FR MM–PS, FR MM–OC and FR MM–OF,* by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Board's public website at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal prior to giving final approval.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collections

Report title: Notice of Mutual Holding Company Reorganization, Application for Approval of a Stock Issuance by a Subsidiary Holding Company of a Mutual Holding Company, Application for Conversion of a Mutual Holding Company to Stock Form, Proxy Statement, Offering Circular, and Order Form.

Agency form number: FR MM–10(*o*)–1, FR MM–10(*o*)–2, FR MM–AC, FR MM–PS, FR MM–OC, and FR MM–OF.

OMB control number: 7100–0340.

Frequency: On occasion.

Respondents: Mutual savings associations that wish to reorganize to form a mutual holding company under the Home Owner's Loan Act, subsidiary holding companies of a mutual holding company, mutual holding companies, members of applying mutual organizations.

Estimated number of respondents: FR MM–10(*o*)–1: 4; FR MM–10(*o*)–2: 1; FR MM–AC: 2; FR MM–PS: 1; FR MM–OC: 1; and FR MM–OF: 1.

Estimated average hours per response: FR MM–10(*o*)–1: 60; FR MM–10(*o*)–2: 30; FR MM–AC: 60; FR MM–PS: 50; FR MM–OC: 50; and FR MM–OF: 1.

Estimated annual burden hours: FR MM–10(*o*)–1: 240; FR MM–10(*o*)–2: 30; FR MM–AC: 120; FR MM–PS: 50; FR MM–OC: 50; and FR MM–OF: 1.

General description of report: The Mutual Holding Company (MHC) Forms consist of information that must be filed in connection with certain proposals involving savings and loan holding companies that are organized in mutual form (MHCs), including the reorganization of a savings association into MHC form, stock issuances of holding company subsidiaries of MHCs, and conversions of MHCs to stock form. The Board requires the submission of these filings to allow the Board to fulfill its obligations to review such transactions under section 10(*o*) of the Home Owners' Loan Act, as amended (HOLA) (12 U.S.C. 1467a(*o*)), and the Board's Regulation MM (12 CFR part 239). The Board uses the information submitted by an applicant or notificant to evaluate these transactions with respect to the relevant statutory and regulatory factors.

Proposed revisions: The Board proposes numerous revisions to the MHC Forms, which were originally drafted by the Office of Thrift Supervision (OTS) when it supervised MHCs. Since supervisory functions of the OTS relating to savings and loan holding companies and MHCs were transferred to the Board, many of the proposed changes would modify the MHC Forms to make the forms consistent with the format of other Board forms. Additionally, the proposal includes revisions meant to (1) reduce the amount and types of data requested, (2) incorporate information on the Board's policies and procedures for

processing applications, (3) improve the clarity of the information requests, (4) reflect the impact of new laws, regulations, capital requirements, and accounting rules, (5) delete unnecessary information requests, and (6) improve or update grammar, comprehension, citations, and mailing addresses. The revisions are also intended to ensure that initial filings include the information the Federal Reserve System (Federal Reserve) requires to evaluate a transaction and thereby reduce the need for subsequent information requests.

Legal authorization and confidentiality: The MHC Forms are authorized pursuant to section 10(o) of HOLA, as amended (12 U.S.C. 1467a(o)). That section requires the Board to review transactions involving the reorganization of a savings association into MHC form, stock issuances of holding company subsidiaries of MHCs, and conversions of MHCs to stock form. The Board also has the authority to require reports from savings and loan holding companies (SLHCs) under Section 10(a) and (b) of HOLA (12 U.S.C. 1467a(b) and (g)). The MHC Forms are mandatory.

Individual respondents may request that certain information submitted on the MHC Forms be kept confidential on a case-by-case basis. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on an ad hoc basis. Requests may include information related to the SLHC's business operations, such as terms and sources of the funding for dividends and pro forma balance sheets. This information may be kept confidential under exemption 4 for the Freedom of Information Act, which protects privileged or confidential commercial or financial information (5 U.S.C. 552(b)(4)).

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17190 Filed 8–9–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Market Risk Capital Rule (FR 4201; OMB No. 7100–0314).

DATES: The revisions are applicable immediately.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Market Risk Capital Rule.

Agency form number: FR 4201.

OMB control number: 7100–0314.

Effective Date: Immediately.

Frequency: Reporting, annually; Recordkeeping, annually; Disclosure, annually and quarterly.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), intermediate holding companies (IHCs), and state member banks (SMBs) that meet certain risk thresholds. The market risk rule applies to any such banking organization with aggregate trading assets and trading liabilities equal to (1) 10 percent or more of quarter-end total assets or (2) $1 billion or more.[1]

Estimated number of respondents: 37.

Estimated average hours per response: Reporting, 1,088; Recordkeeping, 220; Disclosure, 68.

Estimated annual burden hours: 13,148.

General description of report: The market risk rule, which requires banking organizations to hold capital to cover their exposure to market risk, is an important component of the Board's regulatory capital framework (12 CFR part 217; Regulation Q). The Board may exclude a banking organization that is subject to the market risk rule if the Board determines that the exclusion is appropriate based on the level of market risk of the banking organization and is consistent with safe and sound banking practices.[2] The Board may further apply the market risk rule to any other banking organization if the Board deems it necessary or appropriate because of the level of market risk of the banking organization or to ensure safe and sound banking practices.[3]

The Board's market risk rule requires a subject banking organization to obtain the approval of the Board prior to (1) using any internal model to calculate its risk-based capital requirements under subpart F of the Board's Regulation Q; (2) including in its capital requirement for *de minimis* exposures the capital requirement for any *de minimis* exposures using alternative techniques that appropriately measure the market risk associated with those exposures; (3) including portfolios of equity positions in its incremental risk model if the banking organization measures the specific risk of a portfolio of debt positions using internal models; or (4) using the method specified in section 209(a) of Regulation Q to measure comprehensive risk for one or more portfolios of correlation trading positions. A subject banking organization also must obtain the prior approval of the Board for, and notify the Board if the banking organization makes any material changes to, the policies and procedures required by section 206(b)(3) of Regulation Q. Further, the market risk rule requires subject banking organizations to (1) have clearly defined policies and procedures for determining which trading assets and trading liabilities are trading positions and which trading positions are correlation trading positions; (2) have clearly defined trading and hedging strategies for trading positions; (3) retain certain financial and statistical information regarding the institution's Board-approved subportfolios of its portfolio exposures subject to the

[1] 12 CFR 217.201(b)(1).

[2] 12 CFR 217.201(b)(3).

[3] 12 CFR 217.201(b)(2).

market risk rule; (4) have a formal disclosure policy that addresses the banking organization's approach for determining the market risk disclosures; and (5) make certain public quantitative disclosures.

The collections of information provide current statistical data identifying market risk areas on which to focus onsite and offsite examinations. They also allow the Board to assess the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the market risk rule. Finally, these collections of information ensure capital adequacy of banking organizations according to their level of market risk and assist the Board in implementing and validating the market risk framework. There are no required reporting forms associated with this information collection.

Legal authorization and confidentiality: The recordkeeping provisions of the Market Risk Capital Rule are authorized to be collected from SMBs pursuant to sections 9(6) and 11 of the Federal Reserve Act;[4] from BHCs pursuant to section 5(c) of the Bank Holding Company Act (BHC Act)[5] and, in some cases, section 165 of the Dodd-Frank Act;[6] from foreign banking organizations (FBOs) pursuant to section 8(a) of the International Banking Act[7] and section 165 of the Dodd-Frank Act; and from SLHCs pursuant to section 10(b)(2) and (g) of the Home Owners' Loan Act (HOLA).[8] Sections 9(6) and 11 of the Federal Reserve Act authorize the Board to require SMBs to submit reports, as necessary. Section 5(c) of the BHC Act authorizes the Board to require BHCs to submit reports to the Board regarding their financial condition, and section 8(a) of the International Banking Act subjects FBOs to the provisions of the BHC Act. Section 10 of HOLA authorizes the Board to collect reports from SLHCs.

The information collections under FR 4201 are mandatory. The information collected through the FR 4201 is collected as part of the Board's supervisory process, and therefore may be afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act (FOIA).[9] In addition, individual respondents may request that certain data be afforded confidential treatment pursuant to exemption 4 of the FOIA if the data has not previously been publically disclosed and the release of the data would likely cause substantial harm to the competitive position of the respondent.[10] Determinations of confidentiality based on exemption 4 of the FOIA would be made on a case-by-case basis.

Current actions: On April 9, 2019, the Board published a notice in the **Federal Register** (84 FR 14113) requesting public comment for 60 days on the extension, with revision, of the Market Risk Capital Rule. The Board proposes to revise the collections of information associated with the market risk rule to include the prior approvals a banking organization must obtain from the Board pursuant to sections 203(c)(1) and 204(a)(2)(vi)(B) of Regulation Q. These revisions are intended to accurately reflect the information collection requirements of the market risk rule. The comment period for this notice expired on June 10, 2019. One public comment was received but it was outside the scope of the Board's review under the Paperwork Reduction Act (PRA). The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17191 Filed 8–9–19; 8:45 am]

BILLING CODE 6210–01–P

[4] 12 U.S.C. 324 and 248(a).

[5] 12 U.S.C. 1844(c).

[6] 12 U.S.C. 5365.

[7] 12 U.S.C. 3106(a).

[8] 12 U.S.C. 1467a(b)(2) and (g).

[9] 5 U.S.C. 552(b)(8).

[10] 5 U.S.C. 552(b)(4).

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Notice Claiming Status as an Exempt Transfer Agent (FR 4013; OMB No. 7100–0137). The revisions are applicable as of August 12, 2019.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Notice Claiming Status as an Exempt Transfer Agent.

Agency form number: FR 4013.

OMB control number: 7100–0137.

Effective date: August 12, 2019.

Frequency: On occasion.

Respondents: Banks, bank holding companies (BHCs), savings and loan holding companies (SLHCs), and certain trust companies.

Estimated number of respondents: 2.

Estimated average hours per response: 2 hours.

Estimated annual burden hours: 4 hours.

General description of report: Transfer agents, which are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers,[1] are generally subject to certain Securities and Exchange Commission (SEC) regulations. A transfer agent is Board-regulated if it is a state member bank or a subsidiary thereof, a BHC, or an SLHC. Certain transfer agent subsidiaries of BHCs are also Board-regulated.[2] A

[1] *See* 15 U.S.C. 78c(25) (defining ''transfer agent'').

[2] A transfer agent subsidiary of a BHC is Board-regulated if the subsidiary is, or is a subsidiary of, a bank, as defined by 15 U.S.C. 78c(6), that is not a national bank, Federal savings association, a bank insured by the Federal Deposit Insurance Corporation, or a state savings association.

Board-regulated transfer agent that transfers and processes a low volume of securities (a ''low-volume transfer agent'') may request an exemption from those regulations by filing with the Board a notice (an ''exemption notice'') certifying that it qualifies as a low-volume transfer agent.

Legal authorization and confidentiality: The FR 4013 is authorized pursuant to sections 2, 17(a)(3), 17A(c), and 23(a) of the Securities Exchange Act,[3] which, among other things, authorize the Board to promulgate regulations and establish recordkeeping and reporting requirements with respect to Board-registered transfer agents.[4] The exemption notice is mandatory for Board-registered transfer agents seeking the low-volume exemption. The obligation to respond for the exemption notice, therefore, is required to obtain a benefit. The exemption disqualification notice is mandatory for a transfer agent that no longer qualifies for the exemption. The information collected in the FR 4013 regarding a Board-registered transfer agent's volume of transactions is public information through the filing and publication of the transfer agents' Form TA–2 with the SEC. Therefore, individual respondent data collected by the FR 4013 are not confidential.

Current actions: On April 30, 2019, the Board published a notice in the **Federal Register** (84 FR 18285) requesting public comment for 60 days on the extension, with revision, of the Notice Claiming Status as an Exempt Transfer Agent. The FR 4013 is being revised to account for the existing regulatory requirement to file an exemption disqualification notice under certain circumstances. The comment period for this notice expired on July 1, 2019. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17189 Filed 8–9–19; 8:45 am]

BILLING CODE 6210–01–P

[3] 15 U.S.C. 78b, 78q(a)(3), 78q–1(c), and 78w(a).

[4] Additionally, the Board also has the authority to require reports from bank holding companies (12 U.S.C. 1844(c)), savings and loan holding companies (12 U.S.C. 1467a(b) and (g)), and state member banks (12 U.S.C. 248(a) and 324).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Reporting and Disclosure Requirements Related to Securities of State Member Banks as Required by Regulation H (FR H–1; OMB No. 7100–0091).

DATES: Comments must be submitted on or before October 11, 2019.

ADDRESSES: You may submit comments, identified by *FR H–1,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Reporting and Disclosure Requirements Related to Securities of State Member Banks as Required by Regulation H.

Agency form number: FR H–1.

OMB control number: 7100–0091.

Frequency: Annually, Quarterly, and on occasion.

Respondents: State member banks (SMBs).

Estimated number of respondents: 2.

Estimated average hours per response: Reporting requirements: Form 8–A, 3.0 hours; Form 10, 218 hours; Regulation 12B, 1 hour; Rule 13e–1, 13.0 hours; Regulation 14C and Schedule 14C, 98.2 hours; Regulation 14D and Schedule 14D, 65.14 hours; Rule 14f–l, 2.0 hours; Form 10–K, 2395.73 hours; Form 10–Q, 190.42 hours; and Form 8–K, 7.71 hours; Disclosure requirements: Form 3, 0.16 hours; Form 4, 0.16 hours; and Form 5, 0.16 hours; Reporting and Disclosure requirements: Regulation 14A and Schedule 14A, 12.75 hours; Rule 12b–25 and Form 12b–25, 2.50 hours; Rule 13e–3 and Schedule 13E–3, 34.36 hours; and Form 15, 1.50 hours.

Estimated annual burden hours: Reporting requirements: Form 8–A, 6 hours; Form 10, 436 hours; Regulation 12B, 2 hours; Rule 13e–1, 26 hours; Regulation 14C and Schedule 14C, 196 hours; Regulation 14D and Schedule 14D, 130 hours; Rule 14f–l, 4 hours; Form 10–K, 4,791 hours; Form 10–Q, 1,143 hours; and Form 8–K, 15 hours; Disclosure requirements: Form 3, 0.32 hours; Form 4, 11 hours; and Form 5, 3 hours; Reporting and Disclosure requirements: Regulation 14A and Schedule 14A, 26 hours; Rule 12b–25 and Form 12b–25, 5 hours; Rule 13e–3 and Schedule 13E–3, 69 hours; and Form 15, 3 hours.

General description of report: The Board's Regulation H requires SMBs whose securities are subject to registration pursuant to the Securities Exchange Act of 1934 (Exchange Act) [1] to disclose certain information to shareholders and securities exchanges and to report information relating to their securities to the Board using forms adopted by the Securities and Exchange Commission (SEC) and in compliance with certain rules and regulations adopted by the SEC.

Proposed revisions: The Board proposes to revise the FR H–1 to account for certain collections of information in SEC regulations that apply to SMBs with registered securities (that have not previously been accounted for) and the following relevant revisions to disclosure and reporting requirements associated with the FR H–1:

- In August 2015, the SEC adopted amendments to Item 402 of Regulation S–K and Form 8–K under the Exchange Act to implement Section 953(b) of the Dodd-Frank Act by requiring disclosure of the median of the annual total compensation of all employees of a registrant (excluding the chief executive officer), the annual total compensation of that registrant's chief executive officer, and the ratio of the median of the annual total compensation of all employees to the annual total compensation of the chief executive officer.[2] These revisions affect the collections associated with Regulation S–K, Regulation 14A and Schedule 14A, Regulation 14C and Schedule 14C, Form 8–K, and Form 10–K.
- In March 2017, the SEC adopted rule and form amendments that require registrants to include a hyperlink to the exhibits in their filings.[3] These revisions affect the collections associated with Regulation S–K, Regulation S–T, Form 10, Form 8–K, Form 10–Q, and Form 10–K.
- In June 2018, the SEC adopted amendments to the definition of ''smaller reporting company'' to expand the number of registrants that qualify as smaller reporting companies and thereby are eligible to rely on the scaled disclosure requirements.[4] These revisions affect the collections associated with Regulation S–K, Regulation 12B, Regulation 14A and Schedule 14A, Regulation 14C and Schedule 14C, Form 10, Form 10–Q, and Form 10–K.
- In October 2018, the SEC adopted rule and form amendments to address disclosure requirements that have become redundant, duplicative, overlapping, outdated, or superseded as a result of other SEC disclosure requirements, U.S. Generally Accepted Accounting Principles, International Financial Reporting Standards, or changes in the information environment.[5] These revisions affect the collections associated with Regulation S–X, Form 10–Q, Form 10–K, and Form 10.
- In December 2018, the SEC adopted amendments to implement Section 955 of the Dodd-Frank Act, which require a company to describe any practices or policies it has adopted regarding the ability of its employees (including officers) or directors to purchase financial instruments, or otherwise engage in transactions, that hedge or offset, or are designed to hedge or offset, any decrease in the market value of equity securities granted as compensation, or held directly or indirectly by the employee or director.[6] These revisions affect the collections associated with Regulation S–K, Regulation 14A and Schedule 14A, and Regulation 14C and Schedule 14C.
- In December 2018, the SEC adopted rule and form revisions that would modernize the property disclosure requirements for mining registrants.[7] These revisions affect the collections associated with Regulation S–K, Form 10, and Form 10–K.
- In March 2019, the SEC adopted rule amendments based on the recommendations made in the staff's Report on Modernization and Simplification of Regulation S–K, as required by Section 72003 of the Fixing America's Surface Transportation Act.[8] These amendments were designed to modernize and simplify disclosure requirements for public companies, investment advisers, and investment companies. These revisions affect the collections associated with Regulation S–K, Regulation S–T, Regulation 12B, Form 10, Form 8–K, Form 10–Q, and Form 10–K.

Legal authorization and confidentiality: Various provisions of the Exchange Act require issuers to file reports with the SEC and make certain disclosures, and sections 12(i) and 23(a)(1) of the Exchange Act authorize the Board to adopt rules and regulations requiring qualifying SMBs to file those reports with the Board (15 U.S.C. 78l(i) and 78w(a)(1)). The FR H–1 is mandatory. Reports filed with the Board pursuant to this collection are not considered confidential and must be disclosed publically under Regulation H (12 CFR 208.36(c)(3)). However, a SMB may request that a report or document not be disclosed to the public (12 CFR 208.36(d)). Should a SMB request confidential treatment of such information, the question of whether the information is entitled to confidential treatment would be determined on a case-by-case basis. Information may be kept confidential under exemption 4 of the Freedom of Information Act, which protects privileged or confidential commercial or financial information (5 U.S.C. 552(b)(4)).

[1] 15 U.S.C. 78a *et seq.*

[2] *See* 80 FR 50103 (August 8, 2015).

[3] *See* 82 FR 14130 (March 3, 2017).

[4] *See* 83 FR 31992 (July 10, 2018).

[5] *See* 83 FR 50148 (October 4, 2018).

[6] *See* 84 FR 2402 (February 6, 2019).

[7] *See* 83 FR 66344 (December 26, 2018).

[8] *See* 84 FR 12674 (April 2, 2019).

Consultation outside the agency: The reporting and disclosure requirements discussed in this supporting statement were promulgated by the SEC. The Board has not consulted with the SEC or any other parties with regard to the proposed extension for three years, with revision, of the FR H–1.

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17185 Filed 8–9–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Reporting Requirements Associated with Supervision and Regulation Assessments of Fees (Regulation TT) (FR TT; [1] OMB No. 7100–0369).

DATES: The revisions are applicable immediately.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Reporting Requirements Associated with Supervision and Regulation Assessments of Fees (Regulation TT).

Agency form number: FR TT.

OMB control number: 7100–0369.

Effective date: Immediately.

Frequency: On occasion.

Respondents: Bank holding companies (BHCs) and savings and loan holding companies (SLHCs) and all nonbank financial companies designated for Board supervision by the Financial Stability Oversight Council (FSOC).

Estimated number of respondents: 3.

Estimated average hours per response: 40.

Estimated annual burden hours: 120.

General description of report: The Board's Regulation TT [2] implements section 11(s) of the Federal Reserve Act (FRA),[3] which directs the Board to collect assessments, fees, or other charges (collectively, ''assessments'') from BHCs and SLHCs that meet a statutory size threshold and from all nonbank financial companies designated for Board supervision by FSOC (collectively, ''assessed companies'') in an amount equal to the total expenses the Board estimates are necessary or appropriate to carry out its supervisory and regulatory responsibilities with respect to such companies. Pursuant to Regulation TT, the Board issues an annual notice of assessment to each assessed company. Assessed companies may file a written appeal with the Board regarding the assessment.[4]

Legal authorization and confidentiality: The FR TT is authorized pursuant to section 11(i) of the FRA (12 U.S.C. 248(i)), which provides that the Board shall make all rules and regulations necessary to enable the Board to effectively perform the duties, functions, or services specified in the FRA. The FR TT is voluntary.

An assessed company may request confidential treatment of its appeal if it believes that disclosure of specific commercial or financial information in the statement would likely result in substantial harm to its competitive position. The determination that such information is confidential and not subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), would need to be made on a case-by-case basis, consistent with FOIA exemption 4 (5 U.S.C. 552(b)(4)).

Current actions: On April 8, 2019, the Board published an initial notice in the **Federal Register** (84 FR 13918) requesting public comment for 60 days on the extension, with revision, of Reporting Requirements Associated with Supervision and Regulation Assessments of Fees (Regulation TT). The comment period for this notice expired on June 7, 2019. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17187 Filed 8–9–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Interchange Transaction Fees Survey (FR 3064; OMB No. 7100–0344).

DATES: Comments must be submitted on or before October 11, 2019.

ADDRESSES: You may submit comments, identified by FR 3064, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.

[1] The internal Agency Tracking Number previously assigned by the Board to this information collection was Reg TT. The Board is changing the internal Agency Tracking Number for the purpose of consistency.

[2] 12 CFR part 246.

[3] 12 U.S.C. 248(s). Section 11(s) of the Federal Reserve Act was added by section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[4] 12 CFR 246.5(b).

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal under OMB Delegated Authority to Extend for Three Years, With Revision, the Following Information Collection:

Report title: Interchange Transaction Fees Survey.

Agency form number: FR 3064.

OMB control number: 7100–0344.

Frequency: Annually.

Respondents: Debit card issuers and payment card networks.

Estimated number of respondents: FR 3064a, 541 respondents; and FR 3064b, 15 respondents.

Estimated average hours per response: FR 3064a, 160 hours; and FR 3064b, 75 hours.

Estimated annual burden hours: FR 3064a, 86,560 hours; and FR 3064b, 1,125 hours.

General description of report: The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) requires the Board to disclose, at least every two years, such aggregate or summary information concerning the costs incurred for, and interchange transaction fees received by, issuers with respect to debit card transactions as the Board considers appropriate or in the public interest. The data from these surveys are used in fulfilling that disclosure requirement. In addition, the Board uses data from the payment card network survey (FR 3064b) to publicly report on an annual basis the extent to which networks have established separate interchange fees for exempt and covered issuers.[1] Finally, the Board uses the data from these surveys in determining whether to propose revisions to the interchange fee standards in Debit Card Interchange Fees and Routing (Regulation II) (12 CFR part 235). The Dodd-Frank Act provides the Board with authority to require debit card issuers and payment card networks to submit information in order to carry out provisions of the Dodd-Frank Act regarding interchange fee standards.

Proposed revisions: The Board proposes the following revisions to the FR 3064a:

Remove breakout of interchange fees reimbursed to acquirers as a result of chargebacks or returns (Section II, III, IV, and V, Question 6b.1 and 6b.2). Currently, debit card issuers are asked to break out separately the amount of interchange fees reimbursed to acquirers as a result of chargebacks and returns, as well as the total amount of interchange fees reimbursed to acquirers as a result of chargebacks or returns. Because only the total amount of interchange fees reimbursed to acquirers is needed to compute the net interchange fee revenue received by an issuer, the Board proposes deleting questions 6b.1 and 6b.2.

Add tokenization as an option for fraud prevention activity (Section II, III, IV, and V, Question 5c). The existing fraud prevention activities that an issuer has the option to select are transaction monitoring, merchant blocking, data security, and PIN customization. The Board views tokenization as an important emerging fraud prevention technique and proposes to add it the current list.

Update Survey Instructions and Glossary of Terms. The Board is proposing to add language in the instructions to address the situation where a debit card issuer has become newly covered by the interchange fee standards in the year that the survey is being conducted, after not having been covered in the previous year. The new language clarifies that such an issuer does not need to file a report with information for the previous calendar year, when it was not covered by the interchange fee standards. The Board is

[1] Average debit card interchange fee by payment card network *http://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm.*

also proposing updates to definitions in the survey glossary to provide more clarity.

The Board proposes the following revisions to the FR 3064b:

Remove question about number of merchant establishments (Section I, Question 5). Because information about the number of locations at which merchants accept payments on the respondent's network is not used in the Board's analysis, the Board is proposing to delete the question.

Remove question about offering an interchange fee schedules that differentiates between exempt and non-exempt issuers (Section I, Question 6). This question was originally included to enable the Board to establish whether payment card networks were offering interchange fee schedules that differentiate between issuers based on their status under Regulation II. The existence of such differential fee schedules has been established and can further be inferred from responses to subsequent questions in the survey. As a result, the Board is proposing to remove the question.

Remove questions about refunds of interchange fees to acquirers for chargebacks and returns (Section II, Question 2b, 2b.1, 2b.2, 2c, 2c.1, 2c.2, 2d, 2d.1, 2d.2, 2e, 2e.1, and 2e.2). Currently, the survey poses a series of yes/no questions asking payment card networks if they refund to acquirers the ad valorem component, fixed per-transaction component, or the entire interchange fee for returns and chargebacks that compose an entire purchase transaction or a portion of it. These questions were originally included to address a series of issues that now have been resolved, so the Board is proposing to remove them.

Update Survey Instructions and Glossary of Terms. The Board is proposing additional language in the instructions to clarify reporting expectations for entities who own multiple networks. The Board is also proposing updates to definitions in the survey glossary to provide more clarity.

Legal authorization and confidentiality: The FR 3064 is authorized by subsection 920(a) of the Electronic Fund Transfer Act, which was amended by section 1075(a) of the Dodd-Frank Act.[2] This statutory provision requires the Board, at least once every two years,[3] to disclose aggregate or summary information concerning the costs incurred and interchange transaction fees charged or received, by issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transaction as the Board considers appropriate and in the public interest.[4] It also provides the Board with authority to require issuers and payment card networks to provide information to enable the Board to carry out the provisions of the subsection.[5] The FR 3064 is mandatory. In accordance with the statutory requirement, the Board releases aggregate or summary information from the survey responses. In addition, the Board releases, at the network level, the percentage of total number of transactions, the percentage of total value of transactions, and the average transaction value for exempt and not-exempt issuers obtained on the FR 3064b. The Board has determined to release this information both because it can already be determined mathematically based on the information the Board currently releases on average interchange fees and because the Board believes the release of such information may be useful to issuers and merchants in choosing payment card networks in which to particulate and to policymakers in assessing the effect of Regulation II on the level of interchange fees received by issuers over time.

The remaining individual issuer and payment card information collected on these surveys is kept confidential under exemption (b)(4) of the Freedom of Information Act (FOIA) because, if released, this information would cause substantial harm to the competitive position of the survey respondents.[6]

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17186 Filed 8–9–19; 8:45 am]

BILLING CODE 6210–01–P

[2] 15 U.S.C. 1693o–2.

[3] The subsection refers to bi-annual disclosures and the Board interprets this to mean once every two years. *See* 76 FR 43458.

[4] 15 U.S.C. 1693o–2(a)(3)(B).

[5] *Id.*

[6] 5 U.S.C. 552(b)(4) (exempting from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'').

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Investment in Bank Premises Notification (FR 4014; OMB No. 7100–0139).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Investment in Bank Premises Notification.

Agency form number: FR 4014.

OMB control number: 7100–0139.

Frequency: Event-generated.

Respondents: State member banks.

Estimated number of respondents: 15.

Estimated average hours per response: 30 minutes.

Estimated annual burden hours: 8.

General description of report: The Federal Reserve Act (FRA) and the Board's Regulation H require a state member bank to seek the prior approval of the appropriate Federal Reserve Bank before making an investment in bank premises that exceeds certain thresholds. There is no required reporting form (the FR 4014 designation is for internal purposes only), and each request for prior approval must be filed with the Reserve Bank that has direct supervisory responsibility for the requesting state member bank.

Legal authorization and confidentiality: The FR 4014 is authorized by section 24A(a) of the FRA, which requires that state member banks obtain prior Board approval before investing in bank premises that exceed certain statutory thresholds.[1] The FR 4014 notification is required to obtain a benefit because banks wanting to make an investment in bank premises that exceed a certain threshold are required to notify the Federal Reserve. Generally, respondent data would not be confidential; however, individual respondents may request that the data be kept confidential on a case-by-case basis. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on an ad hoc basis in connection with the request. Any such determination will be made in accordance with the Freedom of Information Act[2] and the Board's rules regarding availability of information.[3]

Current actions: On April 12, 2019, the Board published a notice in the **Federal Register** (84 FR 14938) requesting public comment for 60 days on the extension, without revision, of the FR 4014. The comment period for this notice expired on June 11, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17188 Filed 8–9–19; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 371d(a). The Board has the authority to require state member banks to submit information as the Board deems necessary (12 U.S.C. 248(a)).

[2] 5 U.S.C. 552.

[3] 12 CFR 261.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN (FR NN; OMB No. 7100–0353).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN.

Agency form number: FR NN.

OMB control number: 7100–0353.

Frequency: Event generated.

Respondents: Banking institutions.

Estimated number of respondents: Reporting: 1; recordkeeping: 2; disclosure: 2.

Estimated average hours per response: Reporting: 16; recordkeeping: 183; disclosure: 787.

Estimated annual burden hours: Reporting: 16; recordkeeping: 366; disclosure, 1,574; total: 1,956.

General description of report: Regulation NN includes certain reporting, recordkeeping, and disclosure requirements for banking institutions that elect to provide foreign currency exchange services to retail consumers. The regulation applies to state member banks, uninsured state-licensed branches of foreign banks, financial holding companies, bank holding companies, savings and loan holding companies, agreement corporations, and Edge Act corporations (collectively, ''banking institutions'') that engage in retail foreign exchange transactions.

Legal authorization and confidentiality: The reporting, recordkeeping, and disclosure requirements in Regulation NN are authorized pursuant to section 2(c)(2)(E) of the Commodity Exchange Act (CEA) (7 U.S.C. 2(c)(2)(E)). Section 2(c)(2)(E) of the CEA prohibits a United States financial institution and its related persons under the supervision of a Federal regulatory agency, such as the Board, from offering or entering into certain types of foreign exchange transactions with retail customers except pursuant to a rule or regulation prescribed by the appropriate Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe.

Regulation NN's reporting requirement (12 CFR 240.4), recordkeeping requirements (12 CFR 240.7, 240.9(b)(2), and 240.13(a)) and disclosure requirements (240.5(a), 240.6, 240.7, 240.9(b)(2), 240.10, 240.13(a) & (c)–(d), 240.15, and 240.16(a) and (b)) are mandatory for banking institutions that engage in retail foreign exchange transactions.

The reporting requirement under section 240.4 of Regulation NN requires a banking institution to provide a prior written notice to the Board that includes information concerning customer due diligence; the policies and procedures for haircuts to be applied to noncash margin; information concerning new product approvals; and information on addressing conflicts of interest. The disclosure of this information is reasonably likely to result in substantial competitive harm to the banking institution, and therefore, may be kept confidential under exemption (b)(4) of the Freedom of Information Act (FOIA), which protects ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential'' (5 U.S.C. 552(b)(4)). In addition, the prior written notice must also include a resolution of the banking institution's board of directors certifying that the institution has written policies, procedures, and risk measurement and management systems and controls in place to ensure retail foreign exchange transactions are conducted in a safe and sound manner and in compliance with Regulation NN. Generally, this resolution by the board of directors would not be accorded

confidential treatment. If confidential treatment is requested by a banking institution, the Board will review the request to determine if confidential treatment is appropriate.

The recordkeeping and disclosures required under sections 240.5(a), 240.6, 240.7, 240.9(b)(2), 240.10, 240.13(a) & (c)–(d), 240.15, and 240.16(a) and (b) of Regulation NN generally are not submitted to the Board. Accordingly, no confidentiality issues will normally arise under the FOIA. In the event such records or disclosures are obtained by the Federal Reserve through the examination or enforcement process, such information may be kept confidential under exemption 8 of the FOIA, which protects information contained in or related to an examination of a financial institution (5 U.S.C. 552(b)(8)).

Current actions: On May 17, 2019, the Board published a notice in the **Federal Register** (84 FR 22494) requesting public comment for 60 days on the extension, without revision, of the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN. The comment period for this notice expired on July 16, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17184 Filed 8–9–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10383]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 11, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10383 Review and Approval Process for Waivers for State Innovation

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number)*; Title of information Collection:* Review and Approval Process for Waivers for State Innovation*; Use:* The information required under this collection is necessary to ensure that states comply with statutory and regulatory requirements related to the development and implementation of section 1332 waivers. States seeking waiver authority under section 1332 of the PPACA are required to meet certain requirements for applications, public notice, and reporting. The authority for these requirements is found in section 1332 of the PPACA. This information collection reflects the requirements provided in the final rules published February 27, 2012 (77 FR 11700). Additionally, on October 24 2018, the Departments published guidance (83 FR 53575), that provides supplementary information about the requirements that must be met for the approval of a section 1332 waiver, the Secretaries' application review procedures, the calculation of pass-through funding, certain analytical requirements, and operational considerations. This guidance supersedes the guidance related to section 1332 of the PPACA that was previously published on December 16, 2015. This information collection also reflects the requirements outlined in a state's specific terms and conditions (STCs), as part of the approval of a state's section 1332 waiver application. *Form Number:* CMS–10383 (OMB control number 0938–NEW); *Frequency:*

Occasionally; *Affected Public:* State Governments; *Number of Respondents:* 12; *Total Annual Responses:* 212; *Total Annual Hours:* 4,016. (For policy questions regarding this collection contact Michelle Koltov at 301–492–4225.)

Dated: August 6, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–17161 Filed 8–9–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Tribal Child Support Enforcement Annual Data Report (OMB #0970–0320)

AGENCY: Office of Child Support Enforcement; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting a three-year extension of the form OCSE–75—Tribal Child Support Enforcement Annual Data Report (OMB # 0970–0320, expiration 03/31/2020). There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The data collected by form OCSE–75 are used to prepare the OCSE preliminary and annual data reports. In addition, Tribes administering CSE programs under Title IV–D of the Social Security Act are required to report program status and accomplishments in an annual narrative report and submit the OCSE–75 report annually.

Respondents: Tribal Child Support Enforcement Organizations or the Department/Agency/Bureau responsible for Child Support Enforcement in each tribe.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
OCSE–75	60	1	60	3,600

Estimated Total Annual Burden Hours: 3,600.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Title IV–D of the Social Security ACT as required by CFR 45 Section 309.170(b).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–17168 Filed 8–9–19; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; ACF Performance Progress Report, ACF–OGM–SF–PPR–B

AGENCY: Office of Grants Management; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Grants Management (OGM), in the Administration for Children and Families (ACF) is requesting a 3-year extension of the form ACF–OGM–SF–PPR–B (OMB #0970–0406, expiration 9/30/2019). There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ACF Office of Grants Management proposes to continue collecting program performance data for

ACF's discretionary grantees using the existing ACF–OGM–SF–PPR–B (OMB #0970–0406, expiration 9/30/2019) form with no changes. The form, developed by OGM, was created from the basic template of the OMB-approved reporting format of the Program Performance Report. OGM uses this data to ensure grantees are proceeding in a satisfactory manner in meeting the approved goals and objectives of the project, and if funding should be continued for another budget period.

The requirement for grantees to report on performance is OMB grants policy. Specific citations are contained in 45 CFR part 75 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

Respondents: All ACF Discretionary Grantees. State governments, Native American Tribal governments, Native American Tribal Organizations, Local Governments, and Nonprofits with or without 501(c)(3) status with the IRS.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ACF–OGM–SF–PPR–B	6,000	6	1	36,000	12,000

Estimated Total Annual Burden Hours: 12,000.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 45 CFR part 75.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–17224 Filed 8–9–19; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Procedures for Requests From Tribal Lead Agencies To Use Child Care and Development Fund (CCDF) Funds for Construction or Major Renovation of Child Care Facilities (OMB #0970–0160)

AGENCY: Office of Child Care; Administration for Children and Families; HHS

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting proposed revisions with a three-year extension to an approved information collection: Procedures for Requests from Tribal Lead Agencies to use Child Care and Development Fund (CCDF) Funds for Construction or Major Renovation of Child Care Facilities (OMB #: 0970–0160, expiration date: 9/30/2019). There are minor changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Child Care and Development Block Grant Act, as amended, allows federally-recognized Tribes to use Child Care and Development Fund (CCDF) grant awards for construction and renovation of child care facilities. A tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily-mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update the procedures that were originally issued in August 1997 (and revised periodically) by making minor technical and formatting changes.

Respondents: CCDF tribal grantees requesting to use CCDF funds for construction or major renovation.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Annual burden hours
Procedures for Requests from Tribal Lead Agencies to use Child Care and Development Fund (CCDF) Funds for Construction or Major Renovation of Child Care Facilities (for all tribes)	50	1	20	1000

Estimated Total Annual Burden Hours: 1,000

Authority: 42 U.S.C. 9858(c)(6)

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–17167 Filed 8–9–19; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Public Comment Request; State Plan for Independent Living Instrument and Instructions OMB Control Number 0985–0044

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice.

This Proposed Revision of a Currently Approved Collection (ICR Rev) solicits comments on the information collection requirements related to the State Plan for Independent Living.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by October 11, 2019.

ADDRESSES: Submit electronic comments on the information collection request to: Peter Nye at *peter.nye@acl.hhs.gov.* Submit written comments on the collection of information to Administration for Community Living, Washington, DC 20201, Attention: Peter Nye.

FOR FURTHER INFORMATION CONTACT: Peter Nye, Administration for Community Living, Washington, DC 20201, (202) 795–7606, or *peter.nye@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor, including agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document. With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Legal authority for the State Plan for Independent Living (SPIL) is contained in Chapter 1 of Title VII of the Rehabilitation Act of 1973, as amended (the Act). Section 704 of the Rehabilitation Act requires that, to be eligible to receive financial assistance under Chapter 1, ''a State shall submit to the Department, and obtain approval of, a State plan containing such provisions as the Department may require.'' ACL approval of the SPIL is required for states to receive federal funding for both the Independent Living Services State grants and Centers for Independent Living (CIL) programs. Federal statute and regulations require the collection of this information every three years.

The SPIL is jointly developed by the chairperson of the Statewide Independent Living Council (SILC) and not less than 51% of the directors of the CILs, after receiving public input from individuals throughout the State. ACL reviews the SPIL for compliance with the Rehabilitation Act and its applicable regulations (Sec 704(a)(4); 45 CFR part 1329.17) and approves the SPIL. It serves statewide as a primary planning document that describe[s] strategies—including how, and to whom, the state will disburse what funds—for providing independent living services and designates the Designated State Entity. The SPIL also assures that all IL grantees in the state will comply with the Act's requirements. § 704(a)(5) of the Act; 45 CFR 1329.17(a–b), citing sec. 704(m) of the Act. The SPIL Instrument is the template for SPILs; the SPIL Instructions explain the Instrument and give tips about how to draft SPILs.

ACL is proposing this revision because ACL and the technical assistance provider have been revising the Instrument and Instructions to address changes to the Act that result from the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. 32, and to increase the Instrument's and Instructions' clarity, conciseness, and precision. For example,

- The revised Instrument and Instructions will reflect the core services that WIOA requires.
- The revised Instructions will explain the state matching requirement, and the revised Instrument will specify how to include the state match in the financial plan.
- The revised Instrument and Instructions will add legal basis and certifications and DSE assurances and SILC assurances.

• The Revised Instrument and Instructions will include a chart for the financial plan and a chart for the existing centers that specifies what counties they serve, what entities oversee them, and what oversight processes apply.

• The Revised Instrument will include a signatures section.

These revisions were recommended by the technical assistance provider and analyzed by all the independent living program officers who work directly with SPILs.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: ACL estimates the burden associated with this collection of information as follows: 56 SILCs will respond to the requirement for a SPIL every three years. Each state's SILC will take approximately 240 hours to develop the SPIL for a total of approximately 13,440 hours. This estimate is based on program knowledge.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Statewide Independent Living Councils	56	1	240	13,440
Total	56	1	240	13,440

Dated: August 6, 2019.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2019–17172 Filed 8–9–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–P–2290]

Determination That LEVITRA (Vardenafil Hydrochloride) Tablets, 2.5 Milligrams Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that LEVITRA (vardenafil hydrochloride) tablets, 2.5 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Daniel J. Ritterbeck, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6219, Silver Spring, MD 20993–0002, 301–796–4673, *Daniel.Ritterbeck@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

LEVITRA (vardenafil hydrochloride) tablets, 2.5 mg, are the subject of NDA 021400, held by Bayer HealthCare Pharmaceuticals, Inc., and initially approved on August 19, 2003. LEVITRA is a phosphodiesterase 5 (PDE5) inhibitor indicated for the treatment of erectile dysfunction. LEVITRA (vardenafil hydrochloride) tablets, 2.5 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

In a letter dated March 22, 2018, Bayer HealthCare Pharmaceuticals, Inc., notified FDA that LEVITRA (vardenafil hydrochloride) tablets, 2.5 mg, were being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

Alembic Pharmaceuticals Limited submitted a citizen petition received on May 9, 2019 (Docket No. FDA–2019–P–2290), under 21 CFR 10.30, requesting that the Agency determine whether LEVITRA (vardenafil hydrochloride) tablets, 2.5 mg, were withdrawn from sale for safety or effectiveness reasons and permit the filing of abbreviated new drug applications (ANDAs) referencing LEVITRA (vardenafil hydrochloride) tablets, 2.5 mg.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that LEVITRA (vardenafil hydrochloride) tablets, 2.5 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that LEVITRA (vardenafil hydrochloride) tablets, 2.5 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of LEVITRA (vardenafil hydrochloride) tablets, 2.5 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was

not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list LEVITRA (vardenafil hydrochloride) tablets, 2.5 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: August 7, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–17212 Filed 8–9–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3453]

Promoting Effective Drug Development Programs: Opportunities and Priorities for the Food and Drug Administration's Office of New Drugs; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is holding a public meeting on November 7, 2019 entitled ''Promoting Effective Drug Development Programs: Opportunities and Priorities for FDA's Office of New Drugs.'' The purpose of the public meeting is to solicit specific, actionable policy suggestions that could be implemented in the near-term by the review staff of the Center for Drug Evaluation and Research's (CDER's) Office of New Drugs to promote effective drug development programs without compromising our regulatory standards for the assessment of safety and effectiveness.

DATES: The public meeting will be held on November 7, 2019, from 9 a.m. to 5 p.m. The public meeting may be extended or may end early depending on the level of public participation. Persons can attend the event in-person or via webcast. In-person attendees can also request to give a formal presentation as part of the registration process. See the **SUPPLEMENTARY INFORMATION** section for registration date and information. Electronic or written comments will be accepted after the public hearing until January 7, 2020.

ADDRESSES: The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for public meeting participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 7, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 7, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–3453 for ''Promoting Effective Drug Development Programs: Opportunities and Priorities for FDA's Office of New Drugs.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/*

fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Eithu Lwin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6236, Silver Spring, MD 20993, 301–796–0728, *Eithu.Lwin@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA regulates drugs, including those that are licensed as biological products, under the Federal Food, Drug, and Cosmetic Act (FD&C Act), the Public Health Service Act (PHS Act), and relevant implementing regulations to promote and protect the public health.

The central mission of CDER's Office of New Drugs (OND) is the proper and, where appropriate, flexible implementation of review authorities to ensure that safe and effective drugs and biologics are available to the American people. Rapid scientific and technological advances have enhanced our understanding of disease pathologies and, in many cases, have identified potential actionable targets that translate into drug development programs with an increased emphasis on precision medicine, rare diseases, and defined subsets of common diseases. FDA can help to ensure these innovations reach patients through the development and dissemination of clear policies regarding our expectations and standards.

FDA is engaged in multiple, high-priority policy initiatives to facilitate effective drug development. Effective drug development programs leverage the best available scientific knowledge to characterize the benefits and risks of a potential product and generate the data necessary to support product approval. Current FDA endeavors in this area include evaluating the potential use of real-world evidence in regulatory decision-making and the incorporation of the patient perspective into drug development and review. FDA has previously released comprehensive plans or frameworks for the advancement of these efforts; therefore, these topics are not the focus of this meeting. Instead, stakeholders are encouraged to provide input on these initiatives at topic-specific public meetings or in response to draft guidance.

Consistent with FDA's broader initiatives and modernization efforts, the clinical and scientific leaders of OND are seeking suggestions on where we can provide regulatory clarity to promote innovative and effective drug development across multiple therapeutic areas. FDA will hold a public meeting on November 7, 2019, from 9 a.m. to 5 p.m., to solicit input from stakeholders regarding where the Office of New Drugs can focus policy priorities while those broader Agency- and Center-wide efforts, described above, continue. In particular, OND welcomes specific policy suggestions that can be implemented in the near-term.

The format of the meeting involves presentations from the public to a panel of leaders from OND review divisions. The Agency will not be inviting specific presenters; rather, with this document, FDA is soliciting presentations from interested stakeholders. FDA also invites interested stakeholders to submit written comments to the docket on the topics described below.

II. Topics for Discussion at the Public Meeting

FDA is soliciting specific, actionable policy suggestions that could be implemented in the near-term by the review staff of CDER's Office of New Drugs to promote effective drug development programs without compromising our regulatory standards for the assessment of safety and effectiveness.

The Agency welcomes any relevant information that stakeholders wish to share at the meeting or in a submission to the docket, but we emphasize that the focus of this meeting is to seek input that is distinct from parallel, topic-specific initiatives related to real-world evidence and patient-focused drug development. Furthermore, to best inform policy priorities, we anticipate that the most informative suggestions would not be specific to a therapeutic area or disease but rather apply across multiple therapeutic areas or diseases. We are particularly interested in the topics that follow.

1. We are interested in input from stakeholders about where OND can provide additional guidance or prioritize additional scientific discussion in the near-term to improve clarity and encourage effective drug development. Given that OND's portfolio includes a diverse spectrum of drugs and diseases, such input should focus on specific policy needs for various clinical areas linked by a shared therapeutic context (*e.g.,* drugs intended to treat serious, life-threatening rare diseases; non-serious, self-limited conditions; etc.), rather than focusing on any specific disease or condition.

2. Over the past decade, advances in scientific knowledge have led to unprecedented targeting of drugs to the underlying genetic or molecular pathophysiology of a disease. For many diseases, however, the current state of knowledge does not provide opportunities for such precise targeting, but patients living with these diseases require therapeutic innovation as well. Recognizing that each disease has unique considerations, we are interested in specific suggestions for guidance or policy development that OND could undertake to facilitate drug development for diseases not currently amenable to targeted therapies.

3. Some therapeutic areas, particularly those that include serious and life-threatening diseases, have begun to implement novel trial designs, such as the use of master protocols to study multiple therapies and/or multiple diseases under a common infrastructure. We are interested in stakeholders' views regarding the advantages and disadvantages of extending these approaches to additional therapeutic areas, and what guidance development would be most useful.

4. FDA has published many guidances intended to explain the Agency's current thinking regarding drug development topics that are not specific to a particular disease or indication. If stakeholders believe that OND review divisions are implementing these guidances in different ways, which are not explained by case-specific features, this may reflect a need for guidance revision or additional policy development. We are interested in hearing specific recommendations for topics where further clarity of the Agency's current thinking may be warranted.

5. Innovative approaches can bring additional uncertainty to drug development, since the advantages and disadvantages of the approaches may not yet be fully understood by either the Agency or sponsors because of their novelty. Sometimes, a well-understood development pathway may be chosen solely because of existing precedents in the therapeutic area. We would like to hear how OND can promote effective drug development programs when this tension exists.

III. Participating in the Public Meeting

Registration: Persons interested in attending this public meeting must register online at *https://promotingeffectivedrugdevelopmentprograms.eventbrite.com* by midnight on October 10, 2019. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Please also indicate whether attendance will be by webcast or in person. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. If registration reaches maximum capacity, FDA will post a notice closing registration at *https://www.fda.gov.*

If you need special accommodations due to a disability, please contact Eithu Lwin (see **FOR FURTHER INFORMATION CONTACT**) no later than October 30, 2019.

Requests for Oral Presentations: During online registration you may indicate if you wish to present. To facilitate agenda development, registrants requesting to present will be contacted to provide information regarding which topics they intend to address and the title of their presentation. We will do our best to accommodate requests to present. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate. All requests to make oral presentations must be received by the close of registration on October 10, 2019.

Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and we will select and notify participants by October 24, 2019. If selected for presentation, registered presenters planning to use an electronic slide deck should submit an electronic copy of their presentation (PowerPoint or PDF), to *ONDPublicMTGSupport@fda.hhs.gov* with the subject line ''Promoting Effective Drug Development Programs: Opportunities and Priorities for FDA's Office of New Drugs'' on or before October 31, 2019. If presenters choose not to use a slide deck, they are requested to submit a single slide with their name, affiliation, title of presentation, and contact information. Persons registered to present are encouraged to arrive at the meeting room early and check in at the onsite registration table to confirm their designated presentation time. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast. To join the meeting via the Webcast, visit *https://collaboration.fda.gov/ond110719/.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the Agency's website at *https://www.fda.gov.*

Dated: August 7, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–17209 Filed 8–9–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE II.

Date: September 18–19, 2019.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Washingtonian Marriott, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: John P. Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W244, National Cancer Institute, NIH, Bethesda, MD 20892, 240–276–5415, *paul.cairns@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Informatics Technologies for Cancer Research.

Date: September 26, 2019.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Road, Room 7W254, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Eduardo E. Chufan, Ph.D., Scientific Review Officer, Research Technology & Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Bethesda, MD 20892, 240–276–7975, *chufanee@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 6, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–17145 Filed 8–9–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee J—Career Development.

Date: October 10–11, 2019.

Time: 4:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources & Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20850, 240–276–6132, *tushar.deb@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Youth Science Research Education Program.

Date: October 16, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W234, Bethesda, MD, 20892–9750, 240–276–6368, *Stoicaa2@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee F—Institutional Training and Education.

Date: October 21–22, 2019.

Time: 7:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Timothy C. Meeker, M.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W624, Rockville, MD 20850, 240–276–6464, *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee I—Transition to Independence.

Date: October 23–24, 2019.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, MSC 9750, Bethesda, MD 20892, 240–276–6456, *tangd@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 6, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–17146 Filed 8–9–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX19LR000F60100; OMB Control Number 1028–0060]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Mine, Development, and Mineral Exploration Supplement

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 11, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov*. Please reference OMB Control Number 1028–0060 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Shonta E. Osborne by email at *sosborne@usgs.gov,* or by telephone at 703–648–7960. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 7, 2019, 84 FR 19934. We did not receive any public comments in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

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

Abstract: The National Mining and Minerals Policy Act of 1970 and the National Materials and Minerals Policy, Research and Development Act of 1980 mandate that the Secretary of the Interior collect, evaluate, and analyze information concerning mineral occurrence, production, and use for the domestic mineral industry and to inform Congress of important domestic mining and minerals industries developments. These responsibilities are delegated to the USGS and are carried out, in part, through this information collection.

Title of Collection: Mine, Development, and Mineral Exploration Supplement.

OMB Control Number: 1028–0060.

Form Number: USGS Form 9–4000–A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers and exploration operations.

Total Estimated Number of Annual Respondents: 324.

Total Estimated Number of Annual Responses: 324.

Estimated Completion Time per Response: 45 minutes.

Total Estimated Number of Annual Burden Hours: 243.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: There are no ''nonhour cost'' burdens associated with this IC.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), and the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)).

Michael Magyar,

Associate Director, National Minerals Information Center.

[FR Doc. 2019–17199 Filed 8–9–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKRO–DENA–CAKR–LACL–KOVA–WRST–GAAR–28459; PPAKAKROR4; PPMPRLE1Y.LS0000]

National Park Service Alaska Region Subsistence Resource Commission Program; Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service (NPS) is hereby giving notice that the Denali National Park Subsistence Resource Commission (SRC), the Cape Krusenstern National Monument SRC, the Lake Clark National Park SRC, the Kobuk Valley National Park SRC, the Wrangell-St. Elias National Park SRC, and the Gates of the Arctic National Park SRC will meet as indicated below.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates for specific commissions.

ADDRESSES: The *Denali National Park SRC* will meet at the Cantwell Lodge, at Denali Highway MM 136, Cantwell, AK 99726. The *Cape Krusenstern National Monument SRC* will meet in the conference room at the Northwest Arctic Heritage Center, 171 3rd Avenue, Kotzebue, AK 99752. The *Lake Clark National Park SRC* will meet at the Port Alsworth Community Hall, Port Alsworth, AK 99683. The *Kobuk Valley National Park SRC* will meet in the conference room at the Northwest Arctic Heritage Center, 171 3rd Avenue, Kotzebue, AK 99752. The *Wrangell-St. Elias National Park SRC* will meet at the NPS office in the Copper Center Visitor Center Complex, Wrangell-St. Elias National Park and Preserve, Mile 106.8 Richardson Highway, Copper Center, AK 99573. The *Gates of the Arctic National Park SRC* will meet at the Sophie Station Hotel, 1717 University Avenue South, Fairbanks, AK 99709.

SUPPLEMENTARY INFORMATION: The NPS is holding meetings pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16). The NPS SRC program is authorized under title VIII, section 808 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3118). The purpose of the SRC is to devise and recommend to the Governor of Alaska and the Secretary of the Interior a program for subsistence hunting within Alaska national parks and monuments where subsistence is authorized.

The *Denali National Park SRC* will meet from 10:00 a.m. to 5:00 p.m. or until business is completed on Wednesday, August 28, 2019. Teleconference participants must call the NPS office at (907) 644–3604 prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Don Striker, Superintendent, at (907) 683–9581, or via email at *don_striker@nps.gov* or Amy Craver, Subsistence Coordinator, at (907) 644–3604 or via email at *amy_craver@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603 or via email at *clarence_summers@nps.gov.*

The *Cape Krusenstern National Monument SRC* will meet from 1:00 p.m. to 5:00 p.m. or until business is completed on Tuesday, October 1, 2019, and from 9:00 a.m. to 12:00 p.m. on Wednesday, October, 2, 2019. Teleconference participants must call the NPS office at (907) 442–8342 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Maija Lukin, Superintendent, at (907) 442–8301, or via email at *maija_lukin@nps.gov* or Hannah Atkinson, Cultural Resource Specialist, at (907) 442–8342 or via email at *hannah_atkinson@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603 or via email at *clarence_summers@nps.gov.*

The *Lake Clark National Park SRC* will meet from 1:00 p.m. to 4:00 p.m. or until business is completed on Wednesday, October 2, 2019. The alternate meeting date is Wednesday, October 9, 2019, at the same time and location. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Susanne Green, Superintendent, at (907) 644–3627, or via email at *susanne_green@nps.gov* or Liza Rupp, Subsistence Manager, at (907) 644–3648 or via at email *elizabeth_rupp@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603 or via email at *clarence_summers@nps.gov.*

The *Kobuk Valley National Park SRC* will meet from 1:00 p.m. to 5:00 p.m. or until business is completed on Thursday, October 3, 2019, and from 9:00 a.m. to 12:00 p.m. on Friday, October 4, 2019. Teleconference participants must call the NPS office at (907) 442–8342 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Maija Lukin, Superintendent, at (907) 442–8301, or via email at *maija_lukin@nps.gov* or Hannah Atkinson, Cultural Resource Specialist, at (907) 442–8342 or via email at *hannah_atkinson@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603 or via email at *clarence_summers@nps.gov.*

The *Wrangell-St. Elias National Park SRC* will meet from 1:00 p.m. to 5:00 p.m. or until business is completed on Monday, October 7, 2019, and from 9:00 a.m. to 5:00 p.m. on Tuesday, October 8, 2019. The alternate meeting dates are Tuesday, October 29, 2019, from 9:00 a.m. to 5:00 p.m., and Wednesday, October 30, 2019, from 9:00 a.m. to 5:00 p.m. or until business is completed at the same location. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Ben Bobowski, Superintendent, (907) 822–7202, or via email at *ben_bobowski@nps.gov* or Barbara Cellarius, Subsistence Coordinator, at (907) 822–7236 or via email at *barbara_cellarius@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603 or via email at *clarence_summers@nps.gov.*

The *Gates of the Arctic National Park SRC* will meet from 8:30 a.m. to 5:00 p.m. or until business is complete on

both Wednesday, November 6, 2019, and Thursday, November 7, 2019. Teleconference participants must call the NPS office at (907) 455–0639 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Greg Dudgeon, Superintendent, at (907) 457–5752, or via email at *greg_dudgeon@nps.gov* or Marcy Okada, Subsistence Coordinator, at (907) 455–0639 or via email at *marcy_okada@nps.gov* or Clarence Summers, Federal Advisory Committee Group Federal Officer, at (907) 644–3603 or via email at *clarence_summers@nps.gov.*

SRC meetings are open to the public and will have time allocated for public comments. The public is welcome to present written or oral comments to the SRC. SRC meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately six weeks after the meeting.

Purpose of the Meeting: The agenda may change to accommodate SRC business. The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introduction
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Superintendent's Welcome and Review of the SRC Purpose
6. SRC Membership Status
7. SRC Chair and Members' Reports
8. Superintendent's Report
9. Old Business
10. New Business
11. Federal Subsistence Board Update
12. Alaska Boards of Fish and Game Update
13. National Park Service Staff Reports
    a. Superintendent/Ranger Reports
    b. Resource Manager's Report
    c. Subsistence Manager's Report
14. Public and Other Agency Comments
15. Work Session
16. Set Tentative Date and Location for Next SRC Meeting
17. Adjourn Meeting.

SRC meeting location and date may change based on inclement weather or exceptional circumstances. If the meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and radio stations to announce the rescheduled meeting.

Public Disclosure 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.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2019–17221 Filed 8–9–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–455 and 731–TA–1149 (Second Review)]

Circular Welded Carbon Quality Steel Line Pipe From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty and countervailing duty orders on circular welded carbon quality steel line pipe from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: July 5, 2019.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones ((202) 205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 5, 2019, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 12285, April 1, 2019) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 8, 2019, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 15, 2019 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by August 15, 2019. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25,

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the responses submitted by California Steel Industries, IPSCO Tubulars Inc., Welspun Tubular LLC, and Wheatland Tubular LLC to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

2014), and the revised Commission Handbook on E-filing, available from the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 6, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–17166 Filed 8–9–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1206 (Review)]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan; Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on diffusion-annealed, nickel-plated flat-rolled steel products from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: July 5, 2019.

FOR FURTHER INFORMATION CONTACT: Abu Kanu (202–205–2597), 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 review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 5, 2019, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 12282, April 1, 2019) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 13, 2019, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 20, 2019 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by August 20, 2019. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 6, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–17165 Filed 8–9–19; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response submitted by Thomas Steel Strip Corporation to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. Deutsche Telekom AG et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America et al.* v. *Deutsche Telekom AG et al.,* Civil

Action No. 1:19–cv–02232–TJK. On July 26, 2019, the United States, together with the State of Kansas, State of Nebraska, State of Ohio, State of Oklahoma and the State of South Dakota, filed a Complaint alleging that the proposed acquisition of Sprint Corp. by T-Mobile US, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires T-Mobile and Sprint to divest to DISH Corporation certain retail wireless business and network assets and to provide to DISH certain transition and network services to facilitate DISH's building and operating of its own nationwide mobile wireless network.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Scott Scheele, Chief, Telecommunications and Broadband Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 7000, Washington, DC 20530 (telephone: 202–514–5621).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Department of Justice, Antitrust Division, 450 5th Street NW, Washington, DC 20530, State of Kansas, 120 SW 10th Avenue, 2nd Floor, Topeka, Kansas 66612-1597, State of Nebraska, 2115 State Capitol, Lincoln, Nebraska 68509, State of Ohio, 150 East Gay Street, 22nd Floor, Columbus, Ohio 43215, State of Oklahoma, 313 NE, 21st Street, Oklahoma City, Oklahoma 73105-4894 and *State of South Dakota, 1302 E Highway 14, Suite 1, Pierre, South Dakota 57501-8501 Plaintiffs*, v. *Deutsche Telekom AG, Friedrich-Ebert-Allee 140, Bonn, Germany 53113, T-Mobile US, Inc., 12920 SE 38th Street, Bellevue, Washington 98006, SoftBank Group Corp., 1-9-1 Higashi-shimbashi, Minato-ku, Tokyo, Japan 105-7303* and *Sprint Corporation, 6200 Sprint Parkway, Overland Park, Kansas 66251-4300 Defendants.*

Case No. 1:19-cv-02232-TJK
Filed: July 26, 2019

COMPLAINT

The United States of America and the States of Kansas, Nebraska, Ohio, Oklahoma, and South Dakota (''Plaintiff States'') bring this civil antitrust action to prevent the merger of T-Mobile and Sprint, two of the four national facilities-based mobile wireless carriers in the United States. The United States and Plaintiff States allege as follows:

I. NATURE OF THE ACTION

1. Mobile wireless service is an integral part of modern American life. The average American household spends over $1,000 a year on mobile wireless service, not including the additional costs of wireless devices, applications, media content, and accessories. Many Americans now rely on mobile wireless service to communicate, pay bills, apply for jobs, do schoolwork, get directions, shop, read the news, and otherwise stay informed and connected from nearly any location in the country.

2. Competition has kept mobile wireless service prices down and served as a catalyst for innovation. Preserving this competition is critical to ensuring that consumers will continue to have reasonable and affordable access to an essential service that, for many, serves as a gateway to the modern economy.

3. By combining two of the only four national mobile facilities-based wireless carriers, without appropriate remedies, the merger of T-Mobile and Sprint would extinguish substantial competition.

4. As the nation's third and fourth largest mobile wireless carriers, T-Mobile and Sprint have positioned themselves as challengers to Verizon and AT&T, their larger and more expensive rivals, targeting retail customers who particularly value affordability. Some of these customers purchase mobile wireless service on a postpaid basis and are billed monthly after receiving service. Others, including those who may lack ready access to credit, purchase prepaid mobile wireless service and pay for service in advance of using it.

5. The merger would eliminate Sprint as an independent competitor, reducing the number of national facilities-based mobile wireless carriers from four to three. The merger would cause the merged T-Mobile and Sprint (''New T-Mobile'') to compete less aggressively. Additionally, the merger likely would make it easier for the three remaining national facilities-based mobile wireless carriers to coordinate their pricing, promotions, and service offerings. The result would be increased prices and less attractive service offerings for American consumers, who collectively would pay billions of dollars more each year for mobile wireless service.

6. Because the merger of T-Mobile and Sprint likely would substantially lessen competition for retail mobile wireless service, the Court should permanently enjoin the proposed transaction.

II. THE PARTIES AND THE PROPOSED MERGER

7. Deutsche Telekom AG (''Deutsche Telekom'') is a German corporation headquartered in Bonn, Germany, and is the controlling shareholder of T-Mobile US, Inc. (''T-Mobile''), with 63% of T-Mobile's shares. Deutsche Telekom is the largest telecommunications operator in Europe, with net revenues of €75.7 billion (approximately $85 billion) in 2018.

8. T-Mobile is a Delaware corporation headquartered in Bellevue, Washington, and is the third largest mobile wireless carrier in the United States. In 2018, T-Mobile had nearly 80 million wireless subscribers, and approximately $43.3 billion in total revenues. T-Mobile sells postpaid mobile wireless service under its T-Mobile brand, and prepaid mobile wireless service primarily under its Metro by T-Mobile brand. T-Mobile also sells mobile wireless service indirectly through mobile virtual network operators (''MVNOs''), such as TracFone and Google Fi, that lack wireless networks of their own. These MVNOs obtain network access from T-Mobile and resell mobile wireless service to consumers.

9. SoftBank Group Corp. (''SoftBank''), a Japanese corporation and the controlling shareholder of Sprint, owns 85% of Sprint's shares. SoftBank's operating income during its 2018 fiscal year was ¥2.3539 trillion (approximately $21.25 billion).

10. Sprint Corporation (''Sprint'') is a Delaware corporation headquartered in Overland Park, Kansas. It is the fourth largest mobile wireless carrier in the United States. At the end of its 2018 fiscal year, Sprint had over 54 million wireless subscribers, and its fiscal year 2018 operating revenues were approximately $32.6 billion. Sprint sells postpaid mobile wireless service under its Sprint brand, and prepaid mobile wireless service primarily under its Boost Mobile and Virgin Mobile brands. Sprint also sells mobile wireless service indirectly through MVNOs, which resell the service to consumers.

11. On April 29, 2018, T-Mobile and Sprint agreed to combine their respective businesses in an all-stock

transaction, pursuant to a Business Combination Agreement. The merged firm would be owned 42% by Deutsche Telekom and 27% by SoftBank.

III. INDUSTRY OVERVIEW AND RELEVANT MARKETS

A. Industry Overview

12. Mobile wireless service includes voice, text messaging, and data service used to access the internet from a mobile device. Consumers access these services through a variety of devices, including phones, tablets, and smart watches. Mobile wireless carriers compete for retail customers by offering a variety of service plans and devices at a variety of prices.

13. Mobile wireless carriers deliver service over certain frequencies of spectrum. To build a national wireless network and become a facilities-based wireless carrier, a firm must acquire licenses to a sufficient amount of spectrum across a sufficiently wide geographic footprint. The firm also must deploy network infrastructure—including cell sites, radio transmitters and receivers, and equipment to transmit (or ''backhaul'') signals to a core network—to transmit and receive signals over its licensed spectrum. The firm also must invest in building a distribution network and marketing its services to retail customers. Facilities-based mobile wireless carriers like T-Mobile and Sprint promote their prices, plan features, device offerings, customer service, and network quality as they compete for retail customers. MVNOs typically do not operate their own mobile wireless networks. Instead, these providers buy capacity wholesale from facilities-based providers like T-Mobile and Sprint and then resell mobile wireless service to consumers under their own brand name.

B. Retail Mobile Wireless Service Is a Relevant Product Market

14. Retail mobile wireless customers include consumers and small and medium businesses who use mobile wireless service for voice communications, text messaging, and internet access. These customers purchase mobile wireless service at retail stores or online, and choose from pricing and service plans made available to the general public. Retail customers are distinct from large business and government customers, who purchase mobile wireless service through a bid process and receive different pricing than that available to the general public. A hypothetical monopolist of retail mobile wireless service profitably could raise prices by at least a small but significant, non-transitory amount. Accordingly, retail mobile wireless service is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. § 18.

C. The United States Is a Relevant Geographic Market

15. Mobile wireless carriers generally price, advertise, and market their services on a nationwide basis. Consumers who seek mobile wireless service in the United States cannot turn to carriers who do not provide service in the United States. A hypothetical monopolist of retail mobile wireless service in the United States profitably could raise prices by at least a small but significant, non-transitory amount. Thus, the United States is a relevant geographic market under Section 7 of the Clayton Act, 15 U.S.C. § 18.

IV. ANTICOMPETITIVE EFFECTS

16. The proposed merger would substantially lessen competition and harm consumers in the relevant market. Post-merger, the combined share of T-Mobile and Sprint would account for roughly one-third of the national retail mobile wireless service market, leaving only two other national wireless carriers of roughly equal size (AT&T and Verizon).

17. American consumers, including those who are customers of Verizon and AT&T, have benefitted from the competition T-Mobile and Sprint have brought to the mobile wireless industry. For instance, it was not until after T-Mobile and Sprint introduced unlimited data plans to retail customers in 2016 that Verizon and AT&T followed with their own standalone unlimited data offerings to retail customers in 2017.

18. T-Mobile and Sprint have been particularly intense competitors for the roughly 30% of retail subscribers who purchase prepaid mobile wireless service. These customers tend to be even more value conscious, on average, than postpaid subscribers.

19. The head-to-head competition between T-Mobile's Metro brand and Sprint's Boost Mobile brand has exerted significant downward pressure on prices. When Boost introduced a family plan of four lines for $100 in February 2017, Metro countered with an aggressive promotion that a Sprint executive described this way: ''We gave them a jab and they punched back with a left hook.'' In the fall of 2017, when Metro responded to a Boost four lines for $100 promotion with a three lines for $90 promotion of its own, Boost executives countered with a ''Metro attack plan.'' Boost's ''Combat Metro'' strategy upped the ante further by offering five lines for $100. Observing in March 2018 that Sprint postpaid and prepaid plans were priced 50% lower than the competition, the senior leadership at T-Mobile's Metro reduced prices to $40 per month and then to $30 per month for entry level plans.

20. The competition between T-Mobile and Sprint also has led to improvements in the quality of devices and the plan features available to prepaid subscribers. As one Sprint senior executive observed in 2015, ''The prepaid space is experiencing a severe price war. We now have two competitors (Cricket and Metro) spending at postpaid-like advertising levels with strong, best in class nation-wide networks. We need to find ways to differentiate our service beyond device and rate plan price.'' To ''one up Metro'' in May 2017, for example, Boost offered unlimited calling to Mexico and unlimited voice roaming to customers traveling in Mexico. That same year, Boost introduced its ''BoostUp!'' program, which allowed prepaid customers with a solid payment history to purchase a phone for $1 down and pay for it over 18 months with no interest. And in February 2018, Boost offered an iPhone 6 for $49 to customers who switched to Boost and kept their phone number.

21. If the merger were allowed to proceed, this competition would be lost. After the elimination of Sprint, the industry's low-price leader, New T-Mobile would have the incentive and the ability to raise prices. In a post-merger world, the other remaining national facilities-based mobile wireless carriers, Verizon and AT&T, also would have the incentive and the ability to raise prices. Additionally, the merger would leave the market vulnerable to increased coordination among these three competitors. Increased coordination harms consumers through a combination of higher prices, reduced quality, reduced innovation, and fewer choices.

22. Competition between Sprint and T-Mobile to sell mobile wireless service wholesale to MVNOs has benefited consumers by furthering innovation, including the introduction of MVNOs with some facilities-based infrastructure. The merger's elimination of this competition likely would reduce future innovation.

V. ABSENCE OF COUNTERVAILING FACTORS

23. Given the high barriers to entry in the retail mobile wireless service market, entry or expansion of other firms is unlikely to occur in a timely manner or on a scale sufficient to

replace the competitive influence now exerted on the market by Sprint.

24. Any efficiencies generated by this merger are unlikely to be sufficient to offset the likely anticompetitive effects on American consumers in the retail mobile wireless service market, particularly in the short term, unless additional relief is granted.

VI. JURISDICTION AND VENUE

25. The United States brings this action, and the Court has subject matter jurisdiction over this action, under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain Defendants Deutsche Telekom, Softbank, T-Mobile, and Sprint (''Defendants'') from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

26. The Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain the Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The Plaintiff States, by and through their respective Attorneys General, bring this action as *parens patriae* on behalf of and to protect the health and welfare of their citizens and the general economy of each of their states.

27. T-Mobile and Sprint are engaged in, and their activities substantially affect, interstate commerce. T-Mobile and Sprint sell mobile wireless service throughout the United States. As parties to the Business Combination Agreement, which will have effects throughout the United States, Deutsche Telekom and Softbank have submitted to the jurisdiction of the United States. All four of the Defendants have consented to venue and personal jurisdiction in this District.

28. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) and (c)(2), for Defendants T-Mobile and Sprint, and venue is proper for Defendants Deutsche Telekom, a German corporation, and SoftBank, a Japanese corporation, under 28 U.S.C. § 1391(c)(3).

VII. VIOLATION ALLEGED

29. The merger of T-Mobile and Sprint likely would lessen competition substantially in interstate trade and commerce in the relevant geographic market for retail mobile wireless service, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

30. Unless enjoined, the transaction likely would have the following effects in the national retail mobile wireless market described above:

a. competition would be lessened substantially; and

b. prices likely would be higher, quality of service likely would be lower, innovation likely would be lessened, and consumer choice likely would be more restricted than in the absence of the merger.

VIII. REQUEST FOR RELIEF

31. Plaintiffs request that this Court do the following:

a. adjudge the combination of T-Mobile and Sprint's mobile wireless businesses to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. permanently enjoin T-Mobile and Sprint from carrying out the Business Combination Agreement dated April 29, 2018, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring the mobile wireless businesses of T-Mobile and Sprint under common ownership or control;

c. award Plaintiffs costs of this action; and

d. award Plaintiffs other relief as the Court may deem just and proper.

Dated this 26th day of July, 2019.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America et al., Plaintiffs, v. *Deutsche Telekom AG, T-Mobile US, Inc., SoftBank Group Corp., Sprint Corporation, and Dish Network Corporation, Defendants.*

Case No. 1:19-cv-02232-TJK
Filed: July 26, 2019

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs, United States of America and the States of Kansas, Nebraska, Ohio, Oklahoma, and South Dakota (''Plaintiff States''), filed their Complaint on July 26, 2019, the Plaintiffs and Defendants Deutsche Telekom AG, T-Mobile US, Inc., SoftBank Group Corp., and Sprint Corp., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, pursuant to a Stipulation and Order among Deutsche Telekom AG, T-Mobile US, Inc., SoftBank Group Corp., Sprint Corp., and DISH Network Corp. (collectively, ''Defendants'') and the United States, the Court has joined DISH Network Corp. as a defendant to this action for the purposes of settlement and for the entry of this Final Judgment;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the purpose of this Final Judgment is to preserve

competition by enabling the entry of another national facilities-based mobile wireless network operator;

AND WHEREAS, Plaintiffs require Divesting Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to Plaintiffs that the divestitures and other relief required by this Final Judgment can and will be made and carried out, and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

JURISDICTION

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Divesting Defendants and Parent Defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18. Pursuant to the Stipulation and Order filed simultaneously with this Final Judgment joining DISH as a defendant to this action, DISH has consented to this Court's exercise of specific personal jurisdiction over DISH in this matter solely for the purposes of settlement and for the entry and enforcement of the Final Judgment.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Acquiring Defendant'' or ''Acquirer'' or ''DISH'' mean Defendant DISH Network Corporation, a Nevada corporation with its headquarters in Englewood, Colorado; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Assurance Wireless'' means the prepaid wireless business conducted by Virgin Mobile under the Assurance Lifeline brand.

C. ''Cell Site'' or ''Tower Site'' mean any wireless communications towers, rooftops, water towers, or other wireless communications facilities owned or leased by Divesting Defendants and the physical location and wireless equipment thereto.

D. ''Decommissioned'' or ''Decommissioning'' means, with respect to a Cell Site, when the Cell Site is no longer transmitting on Divesting Defendants' networks. With respect to Retail Locations, Decommissioned or Decommissioning means when Divesting Defendants cease customer service operations.

E. ''Deutsche Telekom'' means Deutsche Telekom AG, a German corporation headquartered in Bonn, Germany, that is the controlling shareholder of T-Mobile; its successors and assigns; and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''Divesting Defendants'' means T-Mobile and Sprint.

G. ''Divestiture Assets'' means the Prepaid Assets, the 800 MHz Spectrum Licenses, the Decommissioned Retail Locations, and the Decommissioned Cell Sites.

H. ''Fifth Generation Broadband Services'' or ''5G Services'' means at least 3GPP Release 15, capable of providing enhanced mobile broadband (eMBB) functionality.

I. ''Full MVNO Agreement'' means an agreement that (1) provides the Acquiring Defendant the ability to sell retail mobile wireless services as an MVNO using the Divesting Defendants' wireless networks, (2) provides Acquiring Defendant the option to deploy its own core network with all associated service platforms to be offered in combination with services provided by Divesting Defendants' wireless networks, and (3) requires Divesting Defendants to provide network connectivity between Divesting Defendants and Acquiring Defendant's network for all traffic.

J. ''MVNO'' means a mobile virtual network operator, such as TracFone and Google Fi, that obtains network access from facilities-based providers like T-Mobile and Sprint and resells that mobile wireless service to consumers under its own brand name.

K. ''Parent Defendants'' means Deutsche Telekom and SoftBank.

L. ''Prepaid Assets'' means all tangible and intangible assets primarily used by the Boost Mobile, Sprint-branded prepaid, and Virgin Mobile businesses today, including but not limited to Boost and Virgin Mobile Retail Locations, licenses, personnel, facilities, data, and intellectual property, as well as all relationships and/or contracts with prepaid customers served by Sprint, Boost Mobile, and Virgin Mobile. Prepaid Assets do not include the Assurance Wireless business and the prepaid wireless customers of Shenandoah Telecommunications Company and Swiftel Communications, Inc.

M. ''Prepaid Assets Personnel'' means all employees whose jobs currently focus on the support of the Prepaid Assets, or whose jobs have previously focused on supporting the Prepaid Assets at any time between January 1, 2016 and the date on which the Prepaid Assets are divested to the Acquirer. Prepaid Assets Personnel shall include no fewer than 400 current employees of the Divesting Defendants, which shall include employees involved in sales management, marketing management, distribution support, sales support, and finance.

N. ''Retail Locations'' means any retail locations owned or operated by Divesting Defendants and from which either T-Mobile or Sprint sells mobile wireless service under any of their affiliated brands, including Sprint, Boost Mobile, Virgin Mobile, T-Mobile, Metro by T-Mobile, and MetroPCS.

O. ''800 MHz Spectrum Licenses'' means all of Sprint's 800 MHz spectrum holdings as listed and described in Attachment A to this Final Judgment.

P. ''600 MHz Spectrum Licenses'' means all of DISH's 600 MHz spectrum holdings as listed and described in Attachment B to this Final Judgment.

Q. ''SoftBank'' means SoftBank Group Corp., a Japanese corporation and controlling shareholder of Sprint; its successors and assigns; and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

R. ''Sprint'' means Defendant Sprint Corporation, a Delaware corporation with its headquarters in Overland Park, Kansas; its successors and assigns; and its subsidiaries, divisions, groups, affiliates (other than SoftBank), partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

S. ''T-Mobile'' means Defendant T-Mobile US, Inc., a Delaware corporation with its headquarters in Bellevue, Washington; its successors and assigns; and its subsidiaries, divisions, groups, affiliates (other than Deutsche Telekom), partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

III. *APPLICABILITY*

A. This Final Judgment applies to the Divesting Defendants, Parent Defendants, and Acquiring Defendant, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If any of the terms of an agreement between (i) Divesting Defendants and

the Acquiring Defendant to effectuate the divestitures required by the Final Judgment or (ii) Defendants and the Federal Communications Commission (FCC) to effectuate the divestitures required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms due to a conflict between the terms, this Final Judgment will determine Defendants' obligations. Provided, however, that if there is an inconsistency between this Final Judgment and any commitment any of the Defendants have made to the FCC, the more stringent obligations will control.

IV. *DIVESTITURES*

A. **Prepaid Assets**

1. The Divesting Defendants shall take all actions required to enable Acquiring Defendant to have, within ninety (90) days after notice of the entry of this Final Judgment by the Court, the ability to provision any new or existing customer of the Prepaid Assets holding a compatible handset device onto the T-Mobile network pursuant to the terms of any Full MVNO Agreement. Divesting Defendants are ordered and directed, not more than fifteen (15) days after Divesting Defendants can provide Acquiring Defendant the ability to provision any new or existing customer of the Prepaid Assets holding a compatible handset device onto the T-Mobile network pursuant to the terms of any Full MVNO Agreement, or the first business day of the month following the later of the consummation of the merger of T-Mobile and Sprint and the receipt of any approvals required for the divestiture of the Prepaid Assets from the FCC and any material state public utility commission, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Prepaid Assets to Acquiring Defendant in a manner acceptable to the United States, in its sole discretion.

2. Employees

a. Within ten (10) business days following the filing of the Complaint in this matter, Divesting Defendants shall provide to Acquiring Defendant, the United States, the Plaintiff States, and the Monitoring Trustee, organization charts covering all Prepaid Assets Personnel for each year from January 1, 2016 to present. Within ten (10) business days of receiving a request from Acquiring Defendant, Divesting Defendants shall provide to Acquiring Defendant, the United States, the Plaintiff States, and the Monitoring Trustee, additional information related to identified Prepaid Assets Personnel, including name, job title, reporting relationships, past experience, responsibilities from January 1, 2016 through the date on which the Prepaid Assets are transferred to Acquirer, training and educational history, relevant certifications, job performance evaluations, and current salary and benefits information to enable Acquiring Defendant to make offers of employment. If Divesting Defendants are barred by any applicable laws from providing any of this information to Acquiring Defendant, within ten (10) business days of receiving Acquiring Defendant's request, Divesting Defendants will provide the requested information to the greatest extent possible under applicable laws and also provide a written explanation of their inability to comply fully with Acquiring Defendant's request for information regarding Prepaid Assets Personnel.

b. Upon request, Divesting Defendants shall make Prepaid Assets Personnel available for interviews with Acquiring Defendant during normal business hours at a mutually agreeable location. Divesting Defendants will not interfere with any negotiations by Acquiring Defendant to employ any Prepaid Assets Personnel. Interference includes but is not limited to offering to increase the salary or benefits of or offering bonuses to Prepaid Assets Personnel other than as part of a company-wide increase in salary or benefits or company-wide provision of bonuses granted in the ordinary course of business. If Divesting Defendants have offered Prepaid Assets Personnel incentives to remain employed with Divesting Defendants until a certain date (e.g., retention bonuses), Divesting Defendants must warrant to those Prepaid Assets Personnel and the Acquiring Defendant that the Prepaid Assets Personnel will receive all promised incentives if they accept an offer of employment with the Acquiring Defendant and remain employed with the Acquiring Defendant until the date contemplated by the originally agreed-upon incentive. Divesting Defendants shall be responsible for reimbursing Acquiring Defendant the costs associated with such incentives.

c. For any Prepaid Assets Personnel who elect employment with Acquiring Defendant, Divesting Defendants shall waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits to which Prepaid Assets Personnel would be provided if transferred to a buyer of an ongoing business.

d. For a period of two (2) years from the date of filing of the Complaint in this matter, Divesting Defendants may not solicit to hire, or hire, any Prepaid Assets Personnel who was hired by Acquiring Defendant, unless (a) such individual is terminated or laid off by Acquiring Defendant or (b) Acquiring Defendant agrees in writing that Divesting Defendants may solicit or hire that individual.

e. Nothing in this Section prohibits Divesting Defendants from maintaining any reasonable restrictions on the disclosure by any employee who accepts an offer of employment with Acquiring Defendant of Divesting Defendants' proprietary non-public information that is (a) not otherwise required to be disclosed by this Final Judgment, (b) related solely to Divesting Defendant's businesses and clients, and (c) unrelated to the Divestiture Assets.

f. Acquiring Defendant's right to hire Prepaid Assets Personnel pursuant to Paragraph IV(A)(2) and Divesting Defendants' obligations under Paragraphs IV(A)(2)(a)-(c) lasts for a period of one hundred and eighty (180) days after the closing of the divestiture of the Prepaid Assets.

3. Divesting Defendants shall warrant to Acquiring Defendant that the Prepaid Assets will be fully operational on the date of transfer.

4. At the option of Acquiring Defendant, Divesting Defendants shall enter into one or more transition services agreements to provide billing, customer care, SIM card procurement, device provisioning, and all other services used by the Prepaid Assets prior to the date of their transfer to Acquirer for an initial period of up to two (2) years after the transfer of the Prepaid Assets. During the initial two-year term of the agreement, Divesting Defendants shall provide the transition services at no greater than cost to Acquiring Defendant. All other terms and conditions of any such agreement must be reasonably related to market conditions for the provision of the relevant services and must be acceptable to the United States in its sole discretion, after consultation with the affected Plaintiff States. Upon Acquiring Defendant's request, the United States, in its sole discretion, after consultation with the affected Plaintiff States, may approve one or more extensions of such agreement(s) for a total of up to an additional one (1) year.

5. At Acquiring Defendant's option, on or before the divestiture of the Prepaid Assets, Divesting Defendants shall assign or otherwise transfer to

Acquiring Defendant all transferable or assignable agreements, or any assignable portions thereof, related to the Prepaid Assets, including, but not limited to, all supply contracts, licenses, and collaborations. Divesting Defendants shall use best efforts to expeditiously obtain from any third parties any consent necessary to transfer or assign to Acquiring Defendant all agreements related to the Prepaid Assets. To the extent consent cannot be obtained and the agreement is not otherwise assignable, Divesting Defendants shall use best efforts to obtain or provide for Acquiring Defendant, as expeditiously as possible, the full benefits of any such agreement as it relates to the Prepaid Assets by assisting Acquiring Defendant to secure a new agreement and by taking any other steps necessary to ensure that Acquiring Defendant obtains the full benefit of the agreement as it relates to the Prepaid Assets. Divesting Defendants will not assert, directly or indirectly, any legal claim that would interfere with Acquiring Defendant's ability to obtain the full benefit from any transferred third-party agreement to the same extent enjoyed by Divesting Defendant prior to the transfer.

6. At Acquiring Defendant's option, on or before the divestiture of the Prepaid Assets, Divesting Defendants shall provide contact information and make introductions to distributors and suppliers that support the Prepaid Assets. Divesting Defendants shall not interfere with Acquiring Defendant's attempts to negotiate with these distributors or suppliers.

B. **800 MHz Spectrum License Transfer**

1. Divesting Defendants are ordered and directed, within three (3) years after the closing of the divestiture of the Prepaid Assets or within five (5) business days of the approval by the FCC of the transfer of the 800 MHz Spectrum Licenses, whichever is later, to divest the 800 MHz Spectrum Licenses in a manner acceptable to the United States, in its sole discretion, after consultation with the affected Plaintiff States. The United States, in its sole discretion, after consultation with the affected Plaintiff States, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and will notify the Court in such circumstances. Acquiring Defendant will make timely application to the FCC for the transfer of the spectrum to comply with this Paragraph.

2. Acquiring Defendant shall pay a penalty of $360,000,000 to the United States if it elects not to purchase the 800 MHz Spectrum Licenses. The Acquiring Defendant shall pay the penalty within thirty (30) days of declining to purchase the 800 MHz Spectrum Licenses. Notwithstanding the foregoing, the Acquiring Defendant will not be required to pay such penalty if it has deployed a core network and offered 5G Service to at least 20% of the U.S. population over DISH's facilities-based network within three (3) years of the closing of the divestiture of the Prepaid Assets.

3. If, at the expiration of this Final Judgment, Acquiring Defendant has acquired the 800 MHz Spectrum Licenses, but has not deployed all of the 800 MHz Spectrum Licenses for use in the provision of retail mobile wireless services, Acquiring Defendant shall forfeit to the FCC, at the United States' sole discretion, after consultation with the affected Plaintiff States, all of the 800 MHz Spectrum Licenses that are not being used to provide retail mobile wireless services, unless Acquiring Defendant already is providing nationwide retail mobile wireless services over DISH's facilities-based network.

4. If the Acquiring Defendant does not purchase the 800 MHz Spectrum Licenses, Divesting Defendants shall conduct an auction of the 800 MHz Spectrum Licenses within six (6) months of Acquiring Defendant declining to purchase the licenses. In such auction, Divesting Defendants will not divest the 800 MHz Spectrum Licenses to any other national facilities-based mobile wireless network operator, without the prior written approval of the United States, in its sole discretion, after consultation with the affected Plaintiff States, and will not be required to divest the 800 MHz Spectrum Licenses at a price that is lower than the price the Acquiring Defendant originally agreed to pay for such licenses. In addition, Divesting Defendants may apply to the United States to be relieved from the commitment to sell the 800 MHz Spectrum Licenses if (i) Acquiring Defendant declines to purchase the 800 MHz Spectrum License and (ii) the sale of the 800 MHz Spectrum Licenses is no longer needed fully to remedy the competitive harms of the merger, as determined by the United States in its sole discretion, after consultation with the affected Plaintiff States.

C. **Decommissioned Cell Sites**

1. Divesting Defendants shall make all Cell Sites Decommissioned by Divesting Defendants within five (5) years of the closing of the divestiture of the Prepaid Assets, which shall not be fewer than 20,000 Cell Sites, available to Acquiring Defendant immediately after such Decommissioning.

2. Divesting Defendants shall provide, no later than the closing of the Prepaid Assets divestiture, the Acquiring Defendant and Monitoring Trustee with a detailed schedule identifying, over the next five (5) years: (i) each Cell Site that the Divesting Defendants plan to Decommission; (ii) the forecasted date for Decommissioning; and (iii) whether a given Cell Site is freely transferrable. For a period of five (5) years following the closing of the divestiture of the Prepaid Assets, on the first day of each month Divesting Defendants shall submit to the Acquiring Defendant and Monitoring Trustee updated Cell Site Decommissioning schedules that include a rolling monthly forecast projected out two hundred and seventy (270) days. All forecasted Decommissionings within one hundred and eighty (180) days will be binding, subject to any mandatory restrictions on transfer imposed by federal or state law, unless the Monitoring Trustee determines that the Decommissioning was changed for good cause, and the changes and justifications are reported by the Divesting Defendants to the United States.

3. Divesting Defendants are ordered to pay to the United States, within ninety (90) days following the end of each fiscal quarter, $50,000 multiplied by the total number of Cell Sites in excess of two (2) percent of Cell Sites in any 180-day Cell Site forecast: (a) for which the Acquiring Defendant exercised its option to acquire such Cell Site that was Decommissioned more than ten (10) days after the date forecasted in the 180-day Cell Site forecast or (b) that were Decommissioned but did not appear on any 180-day Cell Site forecast. If Divesting Defendants are incorrect, and have not cured within ten (10) days, on more than ten (10) percent of Cell Sites in any three 180-day Cell Site forecasts, the penalty shall increase to $100,000 per incorrect Cell Site for which the Acquiring Defendant exercised its option to acquire such Cell Site starting on the fourth 180-day Cell Site forecast that is incorrect on at least ten (10) percent of Cell Sites and continuing at that level for any penalties imposed pursuant to this Paragraph. If Divesting Defendants demonstrate that there was good cause for the forecast to have been inaccurate with regard to an individual Cell Site, the United States may, in its sole discretion, after consultation with the affected Plaintiff States, waive some or all of the payments.

4. Divesting Defendants shall assign or transfer any rights that are assignable or transferrable and are useful for

Acquiring Defendant to deploy infrastructure on the Decommissioned Cell Sites and will waive or terminate any rights Divesting Defendants may have to impede or prevent Acquiring Defendant from doing so. Where Divesting Defendants do not have the right to assign or transfer such rights, Divesting Defendants will cooperate with Acquiring Defendant in its attempt to obtain the rights.

5. Divesting Defendants shall Decommission unnecessary Cell Sites promptly. Divesting Defendants will vacate a Decommissioned Cell Site as soon as reasonably possible after the site is no longer in use on any of the Divesting Defendants' networks. As soon as reasonably possible after making Decommissioned Cell Sites available to the Acquiring Defendant, Divesting Defendants shall also make any Decommissioned transport-related equipment (including microwave backhaul gear and network switches) on such cell sites available for purchase by the Acquiring Defendant. If the Monitoring Trustee determines that Divesting Defendants have not complied with this Paragraph, the Monitoring Trustee may recommend and the United States may impose a fine of up to $50,000 per Cell Site per week for which Acquiring Defendant exercised its option to acquire such Cell Site or transport-related equipment for any violation.

6. Subject to the terms and conditions of the applicable lease or easement for such Cell Site, Divesting Defendants shall provide Acquiring Defendant reasonable access to inspect Decommissioned Cell Sites prior to the deadline for Acquiring Defendant to exercise its option on the Decommissioned Cell Sites.

D. **Decommissioned Retail Locations**

1. Divesting Defendants shall make all assignable or transferrable Retail Locations Decommissioned by Divesting Defendants within five (5) years of the closing of the divestiture of the Prepaid Assets, which will not be fewer than four hundred (400) Retail Locations, available to Acquiring Defendant immediately after such Decommissioning.

2. Divesting Defendants shall notify Acquiring Defendant of Retail Locations that Divesting Defendants plan to Decommission as soon as the locations are identified.

3. Divesting Defendants shall waive or terminate any rights they have to impede or prevent Acquiring Defendant from using the Retail Locations.

4. Subject to the terms and conditions of the applicable lease for such Retail Location, Divesting Defendants shall provide Acquiring Defendant reasonable access to inspect Decommissioned Retail Locations prior to the deadline for Acquiring Defendant to exercise its option on the Decommissioned Retail Locations.

E. Unless the United States otherwise consents in writing or the Acquiring Defendant declines its option to purchase certain Decommissioned Cell Sites or Decommissioned Retail Locations, the divestitures pursuant to this Final Judgment will include the entire Divestiture Assets. The divestitures will be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquiring Defendant as part of a viable, ongoing operation relating to the provision of retail mobile wireless service. The divestitures will be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Acquiring Defendant and Divesting Defendants gives the Divesting Defendants the ability unreasonably to raise the Acquiring Defendant's costs, to lower the Acquiring Defendant's efficiency, or otherwise to interfere with the ability of the Acquiring Defendant to compete.

F. Acquiring Defendant shall use the Divestiture Assets to offer retail mobile wireless services, including offering nationwide postpaid retail mobile wireless service within one (1) year of the closing of the sale of the Prepaid Assets.

G. Divesting Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. Divesting Defendants shall warrant to Acquiring Defendant (1) that there are no material defects known to the Divesting Defendants in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets, (2) that following the sale of the Divestiture Assets, Divesting Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets in a manner adverse to the Acquiring Defendant, and (3) that the Divestiture Assets will be capable of full operation on the date of transfer. For purposes of this Paragraph, the Divestiture Assets shall not include any Decommissioned Cell Sites or Decommissioned Retail Locations as to which the Acquiring Defendant declined its option to acquire the assets.

I. For a period of up to one (1) year following the divestiture closing, if the Acquiring Defendant determines that any assets not included in the Divestiture Assets were previously used by the divested business and are reasonably necessary for the continued competitiveness of the Divestiture Assets, it shall notify the United States, the Plaintiff States, and the Divesting Defendants in writing that it requires such assets. Provided, however, that such assets shall not include any tangible or intangible wireless network or spectrum assets (except as provided herein), or any tangible or intangible IT assets or software licenses used by the remaining Sprint business. The United States, in its sole discretion, after consultation with the affected Plaintiff States, taking into account Acquiring Defendant's assets and business, shall determine whether any of the assets identified should be divested to Acquiring Defendant. If the United States determines that such assets should be divested, Divesting Defendants and Acquiring Defendant will negotiate an agreement within thirty (30) calendar days providing for the divestiture of such assets in a period to be determined by the United States in consultation with the affected Plaintiff States and Divesting Defendants and Acquiring Defendant.

V. *600 MHz SPECTRUM DEPLOYMENT*

A. Acquiring Defendant and Divesting Defendants agree to negotiate in good faith to reach an agreement for Divesting Defendants to lease some or all of Acquiring Defendant's 600 MHz Spectrum Licenses for deployment to retail consumers by Divesting Defendants. Defendants shall report to the Monitoring Trustee within ninety (90) days after the filing of this Final Judgment regarding the status of these negotiations. If, at the end of one hundred and eighty (180) days, Defendants have not reached an agreement to lease some or all of Acquiring Defendant's 600 MHz Spectrum Licenses for deployment by Divesting Defendants and use by retail consumers, the Monitoring Trustee shall report to the United States, which may then resolve any dispute at the United States' sole discretion, provided such resolution shall be based on commercially reasonable and mutually beneficial terms for both parties, recognizing that the lease(s) must be for a sufficient period of time for Divesting Defendants to make adequate commercial use of the 600 MHz Spectrum Licenses.

VI. *FULL MOBILE VIRTUAL NETWORK OPERATOR*

A. Divesting Defendants and Acquiring Defendant shall enter into a Full MVNO Agreement for a term of no fewer than seven (7) years. The terms and conditions of the Acquiring Defendant's use of Divesting Defendants' wireless networks pursuant to any Full MVNO Agreement shall be commercially reasonable and must be acceptable to the United States, in its sole discretion, after consultation with the affected Plaintiff States.

B. In carrying out its obligations under any Full MVNO Agreement, Divesting Defendants:

1. shall not reject any of Acquiring Defendant's lawful traffic, unless authorized to do so by any Full MVNO Agreement and accepted by the United States, in its sole discretion, after consultation with the affected Plaintiff States;

2. shall not unreasonably discriminate against Acquiring Defendant or Acquiring Defendant's subscribers, including by blocking, throttling, or otherwise deprioritizing the Acquiring Defendant's customers differently than Divesting Defendants' own similarly situated customers, unless authorized to do so by any Full MVNO Agreement;

3. shall use reasonable best efforts to provide Acquiring Defendant all operational support required for Acquiring Defendant's customers (including, but not limited to, customers of the Prepaid Assets) to be able to use the Divesting Defendants' wireless networks;

4. shall not unreasonably refuse to allow any device used by Acquiring Defendant's customers to access the Divesting Defendants' wireless networks, or otherwise unreasonably refuse to approve or support any such devices, and shall approve such devices for use upon request as soon as reasonably practicable, and shall use commercially reasonable efforts to provide technical support or other assistance to the Acquiring Defendant as requested to facilitate approval of any devices for use on Divesting Defendants' wireless networks;

5. shall configure its wireless network as necessary to enable the provision of handover mobility for the Acquiring Defendant's customers in the boundary areas between the Acquiring Defendant's network, built out in contiguous coverage areas (e.g., city-wide coverage), and the Divesting Defendants' wireless networks; and

6. shall not otherwise unreasonably delay, impede, or frustrate Acquiring Defendant's ability to use any Full MVNO Agreement and the Divesting Defendants' networks to become a nationwide facilities-based retail mobile wireless services provider.

VII. *MOBILE VIRTUAL NETWORK OPERATOR COMPETITION*

A. Divesting Defendants shall abide by all terms of their existing MVNO agreements. Divesting Defendants shall agree to extend existing MVNO agreements on their existing terms (other than any ''most favored nation'' provisions) until the expiration of this Final Judgment unless the Divesting Defendants demonstrate to the Monitoring Trustee that doing so will result in a material adverse effect, other than as a result of competition, on the Divesting Defendants' ongoing business. For the avoidance of doubt, Divesting Defendants are not required to extend any MVNO agreements beyond the expiration of this Final Judgment or any existing infrastructure-based MVNO agreement that includes a reciprocal facility sharing arrangement unless it includes a mutually beneficial reciprocal facility sharing arrangement for the duration of the MVNO agreement. Any disputes arising from the negotiation of an agreement pursuant to this Paragraph shall be resolved by the United States in its sole discretion.

B. Divesting Defendants and Acquiring Defendant agree to support eSIM technology on smartphones, including working with handset equipment manufacturers to support eSIM-capable phones to the extent such phones are technically capable of operating on Divesting Defendants or Acquiring Defendant's wireless networks.

C. Divesting Defendants and Acquiring Defendant shall not discriminate against devices for the reason that the device uses remote SIM provisioning and eSIM technology to connect to the Defendants' wireless networks. Examples of discrimination would include, but are not limited to, refusing to sell a device because it contains or uses an eSIM, and refusing to certify for network access a device because it uses an eSIM, but discrimination would not include the application of the Defendant's generally applicable device-locking policies to devices sold or leased by Defendant, provided that the locking policy is consistent with Paragraph VII(F), below.

D. Divesting Defendants and Acquiring Defendant shall not discriminate against devices for the reason that the device allows multiple active profiles or for the reason that the device allows automatic switching between those profiles. Examples of discrimination would include, but are not limited to, refusing to sell a device because it has these functions, and refusing to certify for network access a device because it has these functions. For avoidance of doubt, nothing contained in this provision will prohibit Defendants from exercising discretion to determine whether a device or technology will harm or impede the operation of their respective wireless networks.

E. Divesting Defendants and Acquiring Defendant shall make their network plans available to consumers who use on-screen selection software or applications from devices capable of being remotely provisioned on the same terms as offered to other consumers in that geographic area. This provision will apply to any device that is the same make and model as any device Defendants sell or otherwise certify for network access.

F. Divesting Defendants and Acquiring Defendant agree to abide by the following unlocking principles for all methods of locking (including any limitation on the use of an eSIM to switch between profiles) for any postpaid or prepaid mobile wireless device that they lock to their network: (i) Divesting Defendants and Acquiring Defendant will post on their respective websites their clear, concise, and readily accessible policies on postpaid and prepaid mobile device unlocking; (ii) Divesting Defendants and Acquiring Defendant will unlock mobile wireless devices for their customers and former customers in good standing and individual owners of eligible devices after the fulfillment of the applicable postpaid service contract, device financing plan, or payment of applicable early termination fee; (iii) Divesting Defendants and Acquiring Defendant will unlock prepaid mobile wireless devices no later than one (1) year after initial activation, consistent with reasonable time, payment, or usage requirements; and (iv) Divesting Defendants and Acquiring Defendant will automatically unlock devices remotely within two (2) business days of devices becoming eligible for unlocking, and without additional fee, provided, however, that if not technically possible to automatically unlock devices remotely, Divesting Defendants and Acquiring Defendant shall instead provide immediate notice to consumers that the devices are eligible to be unlocked.

VIII. *FACILITIES-BASED EXPANSION AND ENTRY*

A. Divesting Defendants shall comply with all network build commitments made to the FCC related to the merger of T-Mobile and Sprint or the divestiture to Acquiring Defendant as of the date of entry of this Final Judgment, subject to verification by the FCC. Acquiring Defendant shall comply with the June 14, 2023 AWS-4, 700 MHz, H Block, and Nationwide 5G Broadband network build commitments made to the FCC as of the date of entry of this Final Judgment, subject to verification by the FCC. Defendants shall provide to the United States and the Plaintiff States copies of any reports or submissions to the FCC that are associated with any FCC order(s) within three (3) business days of submission to the FCC.

B. Divesting Defendants shall not interfere with Acquiring Defendant's efforts to deploy a nationwide facilities-based mobile wireless network, or to operate that network. Acquiring Defendant shall use its best efforts to serve subscribers over its facilities-based wireless network rather than over Divesting Defendants' wireless networks.

C. On the first day of the first fiscal quarter following the entry of this Final Judgment and every one hundred and eighty (180) days thereafter, Acquiring Defendant shall submit to the United States and the Plaintiff States an update on the status of its wireless network deployment. This update will include a description of Acquiring Defendant's deployment efforts since Acquiring Defendant's last report, including (a) the number of towers and small cells deployed by Acquiring Defendant; (b) the spectrum bands over which Acquiring Defendant has deployed equipment; (c) Acquiring Defendant's progress in obtaining subscriber devices that operate on each of its licensed spectrum bands; (d) the percentage of the population of the United States covered by Acquiring Defendant's wireless network; (e) the number of mobile wireless subscribers served by Acquiring Defendant; (f) the amount of traffic transmitted to and from these subscribers over Acquiring Defendant's facilities-based wireless network; (g) the amount of traffic transmitted to and from these subscribers over Divesting Defendants' network pursuant to a Full MVNO Agreement; and (h) any efforts by Divesting Defendants to interfere with Acquiring Defendant's efforts to deploy and operate its facilities-based wireless network.

IX. *FINANCING*

Divesting Defendants and Parent Defendants shall not finance any part of any purchase made pursuant to this Final Judgment, unless the United States approves such financing in its sole discretion.

X. *STIPULATION AND ORDER*

Until the divestitures required by this Final Judgment have been accomplished, Divesting Defendants shall take all steps necessary to comply with the Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

XI. *AFFIDAVITS*

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, Divesting Defendants shall deliver to the United States and the Plaintiff States an affidavit that describes in reasonable detail all actions Divesting Defendants have taken and all steps Divesting Defendants have implemented on an ongoing basis to comply with Section X of this Final Judgment. Divesting Defendants shall deliver to the United States and the Plaintiff States an affidavit describing any changes to the efforts and actions outlined in Divesting Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

B. Divesting Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

XII. *APPOINTMENT OF MONITORING TRUSTEE*

A. Upon application of the United States, after consultation with the Plaintiff States, the Court shall appoint a Monitoring Trustee selected by the United States and approved by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Stipulation and Order entered by the Court, and shall have such other powers as the Court deems appropriate. The Monitoring Trustee shall be required to investigate and report on the Defendants' compliance with this Final Judgment and the Stipulation and Order, and the Defendants' progress toward effectuating the purposes of this Final Judgment, including but not limited to: Divesting Defendants' sale of the Divestiture Assets, Divesting Defendants' compliance with its requirements to make Cell Sites and Retail Locations available to Acquiring Defendant, and Acquiring Defendant's progress toward using the Divestiture Assets and other company assets to operate a retail mobile wireless network.

C. Subject to Paragraph XII(E) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Divesting Defendants any agents, investment bankers, attorneys, accountants, or consultants, who will be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment. Any such agents or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of the Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to Defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of Divesting Defendants pursuant to a written agreement with Divesting Defendants and on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The compensation of the Monitoring Trustee and any agents or consultants retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the Monitoring Trustee and Divesting Defendants are unable to reach agreement on the Monitoring Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Monitoring Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Monitoring Trustee shall, within three (3) business days of hiring any agents or consultants, provide written notice of such hiring and the rate of compensation to Divesting Defendants and the United States.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance

with their individual obligations under this Final Judgment and under the Stipulation and Order. The Monitoring Trustee and any agents or consultants retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports monthly, or more frequently as needed, with the United States setting forth Defendants' efforts to comply with Defendants' obligations under this Final Judgment and under the Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports will not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to this Final Judgment, until the buildout requirements are complete pursuant to Section VIII of this Final Judgment, until any Full MVNO Agreement expires or otherwise terminates, or until the term of any transition services agreement pursuant to Paragraph IV(A)(4) of this Final Judgment has expired, whichever is later.

J. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend that the Court appoint a substitute Monitoring Trustee.

XIII. *FIREWALL*

A. During the term of this Final Judgment, the Divesting Defendants and Acquiring Defendant shall implement and maintain reasonable procedures to prevent competitively sensitive information from being disclosed by or through implementation and execution of the obligations in this agreement or any associated agreements to components or individuals within the respective companies involved in the marketing, distribution, or sale of competing products.

B. Divesting Defendants and Acquiring Defendant each shall, within thirty (30) business days of the entry of the Stipulation and Order, submit to the United States, the Plaintiff States, and the Monitoring Trustee a document setting forth in detail the procedures implemented to effect compliance with this Section. Upon receipt of the document, the United States shall inform Divesting Defendants and Acquiring Defendant within thirty (30) business days whether, in its sole discretion, it approves of or rejects each party's compliance plan. In the event that Divesting Defendants' or Acquiring Defendant's compliance plan is rejected, the United States shall provide Divesting Defendants or Acquiring Defendant, as applicable, the reasons for the rejection. Divesting Defendants or Acquiring Defendant, as applicable, shall be given the opportunity to submit, within ten (10) business days of receiving a notice of rejection, a revised compliance plan. If Divesting Defendants or Acquiring Defendant cannot agree with the United States on a compliance plan, the United States shall have the right to request that this Court rule on whether Divesting Defendants' or Acquiring Defendant's proposed compliance plan fulfills the requirements of this Section.

C. ***Divesting Defendants and Acquiring Defendant shall:***

1. furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty (60) calendar days of entry of the Stipulation and Order to (a) each officer, director, and any other employee that will receive competitively sensitive information; and (b) each officer, director, and any other employee that is involved in (i) any contacts with the other companies that are parties to any transition services agreement contemplated by this Final Judgment, or (ii) making decisions under any transition services agreement entered into pursuant to this Final Judgment;

2. furnish a copy of this Final Judgment and related Competitive Impact Statement to any successor to a person designated in Paragraph XIII(C)(1) upon assuming that position;

3. annually brief each person designated in Paragraph XIII(C)(1) and Paragraph XIII(C)(2) on the meaning and requirements of this Final Judgment and the antitrust laws; and

4. obtain from each person designated in Paragraph XI(C)(1) and Paragraph XI(C)(2), within thirty (30) calendar days of that person's receipt of the Final Judgment, a certification that he or she (a) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (b) is not aware of any violation of the Final Judgment that has not been reported to the company; and (c) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for contempt of court against each Defendant or any person who violates this Final Judgment.

XIV. *COMPLIANCE INSPECTION*

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States, including agents and consultants retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews will be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section will be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time that Defendants furnish information or documents to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of

such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XV. *NO REACQUISITION OR SALE TO COMPETITOR*

A. Divesting Defendants and Parent Defendants shall not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

B. Divesting Defendants and Parent Defendants shall not acquire any other assets that are substantially similar to the Divestiture Assets from the Acquiring Defendant during the terms of this Final Judgment.

C. Acquiring Defendant shall not sell, lease, or otherwise provide the right to use the Divestiture Assets (including, but not limited to, selling wholesale wireless network capacity) to any national facilities-based mobile wireless provider during the term of this Final Judgment, except for a roaming arrangement, without prior approval of the United States; provided, however, that following the divestiture of the 800 MHz Spectrum Licenses, the Divesting Defendants will be permitted to lease back from the Acquiring Defendant up to 4 MHz of spectrum as needed for up to two (2) years following the divestiture of the 800 MHz Spectrum Licenses.

XVI. *NOTIFICATIONS*

A. Acquiring Defendant shall notify the United States at least thirty (30) calendar days prior to any change in the corporation(s) that may affect compliance obligations arising under this Final Judgment, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Judgment; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation(s) about which Acquiring Defendant learns fewer than thirty (30) calendar days prior to the date such action is to take place, Acquiring Defendant shall notify the United States as soon as is practicable after obtaining such knowledge.

B. For transactions that are not subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the ''HSR Act''), Divesting Defendants shall not, without providing advanced notification to the United States, directly or indirectly acquire a financial interest, including through securities, loan, equity, or management interest, in any company that competes for the provision of mobile wireless retail services. Acquiring Defendant shall not sell any of the Divestiture Assets or any currently held substantially similar assets, directly or indirectly, without providing advance notification to the United States.

C. Such notification will be provided to the United States in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Notification will be provided at least thirty (30) calendar days prior to acquiring any such interest, and will include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within thirty (30) calendar days after notification, the United States makes a written request for additional information, Defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting and certifying, in the manner described in Part 803 of Title 16 of the Code of Federal Regulations as amended, the truth, correctness, and completeness of all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section will be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section will be resolved in favor of filing notice. Defendants may, however, provide informal notice and request that the United States waive the requirement of formal notice for any transaction.

D. Defendants represent and warrant to the United States that they have disclosed all agreements between Acquiring Defendant and either Divesting Defendants or Parent Defendants related to the settlement of this action and their obligations and commitments put forth in this Final Judgment. Defendants will provide thirty (30) days written notice to the United States of any intent to enter into or execute any amendment, supplement, or modification to any of the agreements between Divesting Defendants or Parent Defendants and Acquiring Defendant. Notwithstanding any provision to the contrary in the agreements between Divesting Defendants or Parent Defendants and Acquiring Defendant, Divesting Defendants or Parent Defendants may not amend, supplement, terminate, or modify any of the agreements or any portion thereof without obtaining the consent of the United States in its sole discretion. The United States will not withhold consent to amendment, supplementation, modification, or termination of any of the agreements or portion thereof if Divesting Defendants demonstrate to the United States, in its sole discretion, that a refusal to amend, supplement, modify, or terminate the agreements would prevent Divesting Defendants from meeting any build out requirements imposed by the FCC.

XVII. *RETENTION OF JURISDICTION*

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XVIII. *ENFORCEMENT OF FINAL JUDGMENT*

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefore by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of

this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved prior to litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years after the expiration or termination of the Final Judgment pursuant to Section XIX, if the United States has evidence that a Defendant violated this Final Judgment before it expired or was terminated, the United States may file an action against that Defendant in this Court requiring that the Court order (i) Defendant to comply with the terms of this Final Judgment for an additional term of at least four (4) years following the filing of the enforcement action under this Section, (ii) any appropriate contempt remedies, (iii) any additional relief needed to ensure that Defendant complies with the terms of the Final Judgment, and (iv) fees or expenses as called for in Paragraph XVIII(C).

XIX. *EXPIRATION OF FINAL JUDGMENT*

Unless the Court grants an extension, this Final Judgment expires seven (7) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures, buildouts and other requirements have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XX. *PUBLIC INTEREST DETERMINATION*

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

_____

United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, et al., Plaintiffs, v. *Deutsche Telekom AG, et al.*, Defendants.

Civil Action No. 1:19-cv-02232-TJK

COMPETITIVE IMPACT STATEMENT

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On April 29, 2018, Defendant T-Mobile US, Inc. (''T-Mobile'') agreed to acquire Defendant Sprint Corporation (''Sprint'') in an all-stock transaction valued at approximately $26 billion. The United States filed a civil antitrust Complaint on July 26, 2019, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for retail mobile wireless service in the United States, resulting in increased prices and less attractive service offerings for American consumers, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States filed a Stipulation and Order and proposed Final Judgment, which are designed to preserve competition by enabling the entry of another national facilities-based mobile wireless network carrier. The proposed Final Judgment, which is explained more fully below, requires T-Mobile to divest to DISH Network Corporation (''DISH'') certain retail wireless business and network assets, and supporting assets (collectively, the ''Divestiture Assets''). It also requires that T-Mobile provide to DISH certain transition services in support thereof and all services, access, and assets necessary to facilitate DISH operating as a Full Mobile Virtual Network Operator (''Full MVNO'', and together with the Divestiture Assets, the ''Divestiture Package'').[1] Additionally, the Final Judgment requires that T-Mobile and Sprint extend their current Mobile Virtual Network Operator (''MVNO'') agreements until the expiration of the Final Judgment, and that T-Mobile, Sprint, and DISH support remote SIM provisioning and eSIM technology.

The primary purpose of the proposed Final Judgment is to facilitate DISH building and operating its own mobile wireless services network by combining the Divestiture Package of assets and other relief with DISH's existing mobile wireless assets, including substantial and currently unused spectrum holdings, to enable it to compete in the marketplace. The proposed Final Judgment thus obligates DISH to build out its own mobile wireless services network and offer retail mobile wireless service to American consumers. DISH's long-term build out of a new network, along with the short-term requirement that DISH and T-Mobile negotiate a lease for DISH's currently unused 600 MHz spectrum, promise to increase output and put currently fallow spectrum into use by American consumers. The required Divestiture Package and related obligations in the proposed Final Judgment are intended to ensure that DISH can begin to offer competitive services and grow to replace Sprint as an independent and vigorous competitor in the retail mobile wireless service market in which the proposed merger would otherwise lessen competition. Further, the proposed Final Judgment would allow the potential benefits of the merger to be realized, including expanding American consumers' access to high quality networks.

Under the terms of the Stipulation and Order, T-Mobile will take certain steps to ensure that, prior to the completion of all of the proposed divestitures, the Divestiture Assets are preserved and remain economically viable and ongoing business concerns.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

[1] Deutsche Telekom, T-Mobile, SoftBank, Sprint, and DISH are referred to collectively as ''Defendants.''

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Deutsche Telekom AG (''Deutsche Telekom''), a German corporation headquartered in Bonn, Germany, is the controlling shareholder of T-Mobile, with 63% of T-Mobile's shares. Deutsche Telekom is the largest telecommunications operator in Europe, with net revenues of €75.7 billion (approximately $85 billion) in 2018.

T-Mobile, a Delaware corporation headquartered in Bellevue, Washington, is the third largest mobile wireless carrier in the United States. In 2018, T-Mobile had nearly 80 million wireless subscribers and approximately $43.3 billion in total revenues. T-Mobile sells postpaid mobile wireless service under its T-Mobile brand and prepaid mobile wireless service primarily under its Metro by T-Mobile brand. T-Mobile also sells mobile wireless service to businesses and indirectly through MVNOs, which resell the service to consumers.

SoftBank Group Corp. (''SoftBank''), a Japanese corporation and the controlling shareholder of Sprint, owns 85% of Sprint's shares. SoftBank's operating income during its 2018 fiscal year was ¥2.3539 trillion (approximately $21.25 billion).

Sprint is a Delaware corporation headquartered in Overland Park, Kansas. It is the fourth largest mobile wireless carrier in the United States. At the end of its 2018 fiscal year, Sprint had over 54 million wireless subscribers, and its fiscal year 2018 operating revenues were approximately $32.6 billion. Sprint sells postpaid mobile wireless service under its Sprint brand, and prepaid mobile wireless service primarily under its Boost and Virgin Mobile brands. Sprint also sells mobile wireless service to businesses and indirectly through MVNOs, which resell the service to consumers. Sprint also operates a wireline telecommunications business throughout the United States.

DISH is a Nevada corporation with its headquarters in Englewood, Colorado. It is the owner of satellite and wireless spectrum assets and currently offers television and related services and products to American consumers nationwide. At the end of its 2018 fiscal year, DISH had over 12 million Pay-TV subscribers, and its fiscal year 2018 operating revenues were approximately $13.6 billion.

On April 29, 2018, T-Mobile and Sprint agreed to combine their respective businesses in an all-stock transaction. In recognition of the significant competitive concerns raised by the proposed merger, T-Mobile has agreed to divest certain retail mobile wireless business and spectrum assets, and supporting assets, and to provide certain transitional and network services. As discussed in Section III.E, *infra*, DISH has agreed to be bound by the terms of the proposed Final Judgment.

T-Mobile and Sprint also are subject to obligations contained in their commitments to the Federal Communications Commission (''FCC'') as reflected in a statement issued by FCC Chairman Ajit Pai on May 20, 2019.

B. The Competitive Effects of the Transaction

The Complaint alleges that the proposed merger likely would substantially lessen competition in the retail mobile wireless service market in the United States. Retail mobile wireless service includes voice, text, and data services that consumers access on phones, tablets, and other devices. Mobile wireless carriers deliver retail mobile wireless service over a network of facilities, including, for example, towers, radios, antennas, and fiber, that support the various frequencies of spectrum that transmit wireless service. Mobile wireless carriers with their own such facilities that offer service throughout the United States are called national facilities-based mobile wireless carriers. Unlike the facilities-based mobile wireless carriers, traditional MVNOs do not operate their own mobile wireless networks and instead buy capacity wholesale from facilities-based carriers and then resell mobile wireless service to consumers. By contrast, a Full MVNO owns some facilities that it can use to carry a portion of its traffic, while relying on wholesale agreements to carry the remainder.

Currently, the national facilities-based mobile wireless carriers in the United States are Verizon Communications, Inc., AT&T Inc., T-Mobile, and Sprint. These four national facilities-based mobile wireless carriers compete for retail mobile wireless service customers by offering a variety of service plans and devices at different price points and by promoting their prices, plan features, device offerings, customer service, and network quality. Without the merger, T-Mobile and Sprint would continue competing vigorously for market share as ''challenger'' brands to Verizon and AT&T, the largest and second largest national facilities-based mobile wireless carriers in the United States, respectively. If the merger is permitted to proceed unremedied, that competition would be lost.

1. Relevant Market

As alleged in the Complaint, retail mobile wireless service is a relevant product market under Section 7 of the Clayton Act. Retail mobile wireless customers include consumers and small and medium businesses who buy their mobile wireless services at retail stores or online, choosing pricing and plans made available to the general public. Retail customers cannot substitute the mobile wireless service they purchase with the mobile wireless service purchased by large businesses and government entities, who purchase services through a distinct process and receive different pricing than the general public. Accordingly, a hypothetical monopolist of retail mobile wireless service profitably could raise prices.

The Complaint alleges a national geographic market for retail mobile wireless service. Wireless carriers generally price, advertise, and market their retail mobile wireless service on a nationwide basis. Because the wireless carriers compete against each other on a nationwide basis, a hypothetical monopolist of retail mobile wireless service in the United States profitably could raise prices.

2. Competitive Effects

The market for retail mobile wireless service in the United States is highly concentrated and would become more so if T-Mobile were allowed to acquire Sprint. As discussed above, currently four national facilities-based mobile wireless carriers compete for retail mobile wireless service customers: Verizon and AT&T are the two largest, and T-Mobile and Sprint are the smaller two. The merger would result in three national facilities-based mobile wireless carriers, each with roughly one-third share of the national market.

The elimination of a fourth national facilities-based mobile wireless carrier would remove competition from Sprint and restructure the retail mobile wireless service market. The combination of T-Mobile and Sprint would eliminate head-to-head competition between the companies and threaten the benefits that customers have realized from that competition in the form of lower prices and better service. The merger would also leave the market vulnerable to increased coordination among the remaining three carriers. Increased coordination harms consumers through a combination of higher prices, reduced innovation, reduced quality, and fewer choices.

Finally, competition between Sprint and T-Mobile to sell wireless service wholesale to MVNOs has benefited consumers by facilitating innovation by some MVNOs. The merger's elimination of this competition likely would reduce future innovation.

3. Entry and Expansion

A national facilities-based mobile wireless carrier needs to have spectrum and network assets deployed nationwide to provide retail mobile wireless service in the United States. Thus, de novo entry by a facilities-based mobile wireless carrier is very difficult. Without the relief provided in the proposed Final Judgment, neither entry nor expansion is likely to occur in a timely manner or on a scale sufficient to replace the competitive influence now exerted on the market by Sprint.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires structural relief in the form of divestitures designed to ensure the development of a new national facilities-based mobile wireless carrier competitor to ultimately remedy the anticompetitive harms that flow from the change in the market structure that otherwise would have occurred as a result of the merger.

After careful scrutiny of Defendants' businesses, the United States identified a divestiture package to address the United States' concerns about the likely anticompetitive effects of the acquisition. The proposed divestiture requires T-Mobile to divest to DISH certain retail mobile wireless business assets and to facilitate DISH building its own mobile wireless network with which it will compete in the retail mobile wireless service market.

A. Divestitures and Other Relief

1. Divestitures

Under the terms of the proposed Final Judgment, T-Mobile must divest to DISH certain assets, including Sprint's prepaid retail wireless service business and certain spectrum licenses, and provide DISH an exclusive option to acquire cell sites and retail stores decommissioned by the merged firm.

• Prepaid Assets. The proposed Final Judgment requires T-Mobile to divest to DISH almost all of Sprint's prepaid wireless business,[2] including the Boost-branded, the Virgin-branded, and the Sprint-branded businesses. These Prepaid Assets, coupled with required network support from T-Mobile described more fully below, will provide an existing business, with assets including customers, employees, and intellectual property, that will enable DISH to offer retail mobile wireless service. Acquiring this existing business will enhance DISH's incentives to invest in a robust facilities-based network, because acquiring an installed base of existing customers is expected to increase the returns on such investment.

• 800 MHz Spectrum Licenses. The proposed Final Judgment further requires T-Mobile to divest to DISH Sprint's 800 MHz spectrum licenses. This spectrum would add to DISH's existing spectrum assets in order to ensure DISH has sufficient spectrum to meet its buildout and service requirements and provide mobile wireless service to customers. DISH may, at its option, elect not to acquire the spectrum if DISH can meet certain network buildout and service requirements without it. In such case, T-Mobile will auction the 800 MHz spectrum licenses to any person who is not already a national facilities-based wireless carrier.

• Cell Sites and Retail Stores. The proposed Final Judgment also requires T-Mobile to provide to DISH an exclusive option to acquire all cell sites and retail store locations being decommissioned by the merged firm. This requirement will enable DISH to utilize such existing cell sites and retail stores that are useful to DISH in building out its own wireless network and providing mobile wireless service to consumers.

The assets must be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by DISH as a viable, ongoing business that can compete effectively in the retail mobile wireless service market. DISH is required to use the Divestiture Assets to offer retail mobile wireless services, including offering nationwide postpaid retail mobile wireless service within one year of the closing of the sale of the Prepaid Assets. Defendants are also prohibited from taking any action that would jeopardize the divestitures ordered by the Court.

2. Transition Services

Under the terms of the proposed Final Judgment, and at DISH's option, T-Mobile and Sprint shall enter into one or more transition services agreements to provide billing, customer care, SIM card procurement, device provisioning, and all other services used by the Prepaid Assets prior to the date of their transfer to DISH for an initial period of up to two years after transfer. Such transition services will enable DISH to use the Prepaid Assets as quickly as possible and will help prevent disruption for Boost, Virgin, and Sprint prepaid customers as the business is transferred to DISH.

3. 600 MHz Spectrum Deployment

The proposed Final Judgment requires DISH and T-Mobile to enter into good faith negotiations to allow T-Mobile to lease some or all of DISH's 600 MHz spectrum for use in offering mobile wireless services to its subscribers. Such an agreement would expand output by making the 600 MHz spectrum available for use by consumers even before DISH has completed building out its network, and would assist T-Mobile in transitioning consumers to its 5G network.

4. Full MVNO Agreement

The proposed Final Judgment requires T-Mobile and Sprint to enter into a Full MVNO Agreement with DISH for a term of no fewer than seven years. Under the agreement outlined in the proposed Final Judgment, T-Mobile and Sprint must permit DISH to operate as an MVNO on the merged firm's network on commercially reasonable terms and to resell the merged firm's mobile wireless service. As DISH deploys its own mobile wireless network, T-Mobile and Sprint must also facilitate DISH operating as a Full MVNO by providing the necessary network assets, access, and services. These requirements will enable DISH to begin operating as an MVNO as quickly as possible after entry of the Final Judgment, and provide DISH the support it needs to offer retail mobile wireless service to consumers while building out its own mobile wireless network.

5. Facilities-Based Entry and Expansion

The proposed Final Judgment requires T-Mobile and Sprint to comply with all network build commitments made to the Federal Communications Commission (FCC) related to their merger or the divestiture to DISH as of the date of entry of the Final Judgment, subject to verification by the FCC.[3] In turn, DISH is required to comply with the June 14, 2023 AWS-4, 700 MHz, H Block, and Nationwide 5G Broadband network build commitments made to

[2] The divestiture would not include subscribers to the Assurance Lifeline program (part of the Virgin Wireless business), or Sprint's prepaid customers receiving services through its Swiftel and Shentel affiliates, due to various contractual and regulatory obligations.

[3] *See* Letter to Marlene Dortch (FCC) from Nancy J. Victory and Regina M. Keeney (Counsel for T-Mobile and Sprint, respectively), May 20, 2019 at Attachment 1, *available at* https://www.fcc.gov/sites/default/files/t-mobile-us-sprint-letter-05202019.pdf.

the FCC on July 26, 2019, subject to verification by the FCC.[4] Incorporating these obligations into the proposed Final Judgment is intended to increase the incentives for the merged firm to achieve the promised efficiencies from the merger and for DISH to build out its own national facilities-based mobile wireless network to replace the competition lost as a result of Sprint being acquired by T-Mobile. Increasing DISH's incentives to complete the buildout of a fourth nationwide wireless network also serves to decrease the likelihood of coordinated effects that arise out of the merger.

6. MVNO Requirements

The proposed Final Judgment obligates T-Mobile and Sprint to extend all of its current MVNO agreements until the expiration of the proposed Final Judgment. This obligation will ensure that T-Mobile's and Sprint's MVNO partners remain options for the consumers who currently use them. It also permits T-Mobile's and Sprint's MVNO partners to retain their current presence until the expiration of the proposed Final Judgment, by which time DISH is expected to have become an additional potential provider of services.

7. T-Mobile's and DISH's eSIM Obligations

The proposed Final Judgment requires T-Mobile and DISH to support eSIM technology and prohibits T-Mobile and DISH from discriminating against devices based on their use of remote SIM provisioning or use of eSIM technology. The more widespread use of eSIMs and remote SIM provisioning may help DISH attract consumers as it launches its mobile wireless business. These provisions are intended to increase the disruptiveness of DISH's entry by making it easier for consumers to switch between wireless carriers and to choose a provider that does not have a nearby physical retail location, thus lowering the cost of DISH's entry and expansion. These benefits also decrease the likelihood of coordinated effects by increasing DISH's ability to reach consumers with innovative offerings.

B. Monitoring Trustee

The proposed Final Judgment provides that the United States may appoint a monitoring trustee with the power and authority to investigate and report on the Defendants' compliance with the terms of the Final Judgment and the Stipulation and Order during the pendency of the divestiture, including, but not limited to, T-Mobile's sale of the Divestiture Assets, T-Mobile's compliance with exclusive option requirements for cell sites and retail store locations, and DISH's progress toward using the Divestiture Assets to operate a retail mobile wireless network. The United States intends to recommend a monitoring trustee for the Court's approval. The monitoring trustee will not have any responsibility or obligation for the operation of the Defendants' businesses. The monitoring trustee will serve at T-Mobile's and Sprint's expense, on such terms and conditions as the United States approves, and Defendants must assist the trustee in fulfilling its obligations. The monitoring trustee will provide periodic reports to the United States and will serve until the divestiture of all the Divestiture Assets is finalized and the buildout requirements are complete, or until the term of any Transition Services Agreement has expired, whichever is later.

C. Firewall

Section XIII of the proposed Final Judgment requires T-Mobile and DISH to implement firewall procedures to prevent each company's confidential business information from being used by the other for any purpose that could harm competition. Within thirty days of the Court approving the Stipulation and Order, T-Mobile and DISH must submit their planned procedures for maintaining firewalls. Additionally, T-Mobile and DISH must explain the requirements of the firewalls to certain officers and other business personnel responsible for the commercial relationships between the two companies about the required treatment of confidential business information. T-Mobile and DISH's adherence to these procedures is subject to audit by the monitoring trustee. These measures are necessary to ensure that the implementation and execution of the obligations in the proposed Final Judgment and any associated agreements between T-Mobile and DISH do not facilitate coordination or other anticompetitive behavior during the interim period before DISH becomes fully independent of T-Mobile.

D. Prohibition on Reacquisition or Sale to Competitor

To ensure that DISH and T-Mobile remain independent competitors, Section XV of the proposed Final Judgment prohibits T-Mobile from reacquiring from DISH any part of the Divestiture Assets, other than a limited carveout for T-Mobile to lease back a small amount of spectrum for a two-year period. Further, Section XV of the proposed Final Judgment prohibits DISH from selling, leasing, or otherwise providing the right to use the Divestiture Assets to any national facilities-based mobile wireless carrier. These provisions ensure that T-Mobile and DISH cannot undermine the purpose of the proposed Final Judgment by later entering into a new transaction, with each other or with another competitor, that would reduce the competition that the divestitures have preserved.

E. Enforcement Provisions

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. As set forth in the Stipulation and Order, DISH has agreed to be joined to this action for purposes of the divestiture. Including DISH is appropriate because the United States has determined that DISH is a necessary party to effectuate the relief obtained; the divestiture package was crafted specifically taking into consideration DISH's existing assets and capabilities, and divesting the package to another purchaser would not preserve competition. Thus, as discussed above, the proposed Final Judgment imposes certain obligations on DISH to ensure that the divestitures take place expeditiously and DISH meets certain deadlines in building out and operating its own mobile wireless services network to provide competitive retail mobile wireless service.

Paragraph XVIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XVIII(B) provides additional clarification regarding the

[4] *See* Letter to Donald Stockdale (FCC) from Jeffrey H. Blum (DISH's S.V.P. for Public Policy & Government Affairs), July 26, 2019 at Attachment A, *available at* https://www.fcc.gov/sites/default/files/dish-letter-07262019.pdf.

interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment seeks to restore competition that would otherwise be permanently harmed by the merger. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XVIII(C) of the proposed Final Judgment further provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph XVIII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Section XVIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIX of the proposed Final Judgment provides that the Final Judgment will expire seven years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

F. Stipulation and Order

Until the divestitures required by the proposed Final Judgment are accomplished, the Defendants are required to take all steps necessary to comply with a Stipulation and Order entered by the Court.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to: Scott Scheele, Chief, Telecommunications and Broadband Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 7000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits challenging the merger. The United States could have continued this litigation and sought preliminary and permanent injunctions against T-Mobile's acquisition of Sprint. The United States is satisfied, however, that the relief described in the proposed Final Judgment will provide a reasonably adequate remedy for the harm to competition in the retail mobile wireless service market. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the

violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[5]

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged[.]''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237, § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000)).

VIII. DETERMINATIVE DOCUMENTS

In formulating the proposed Final Judgment, the United States considered (1) the ''Network and In-Home Commitments'' commitments made to the FCC by T-Mobile and Sprint,[6] and (2) the ''DISH Network 5G Buildout Commitments and Related Penalties'' commitments made to the FCC by DISH.[7] These documents were determinative in formulating the proposed Final Judgment, and the Department will file a notice with the

[5] *See also BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

[6] *See* Letter to Marlene Dortch (FCC) from Nancy J. Victory and Regina M. Keeney (Counsel for T-Mobile and Sprint, respectively), May 20, 2019 at Attachment 1, available at *https://www.fcc.gov/sites/default/files/t-mobile-us-sprint-letter-05202019.pdf.*

[7] *See* Letter to Donald Stockdale (FCC) from Jeffrey H. Blum (DISH's S.V.P. for Public Policy & Government Affairs), July 26, 2019 at Attachment A, *available at https://www.fcc.gov/sites/default/files/dish-letter-07262019.pdf.*

Court that includes these documents to comply with 15 U.S.C. § 16(b).

Dated: July 30, 2019.

Respectfully submitted,

Frederick S. Young

D.C. Bar No. 421285, Trial Attorney, Telecommunications and Broadband Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 7000, Washington, D.C. 20530, Telephone (202) 307–2869

[FR Doc. 2019–17153 Filed 8–9–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act

On August 6, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Oregon in the lawsuit entitled *United States* v. *Cannery Pier Hotel, LLC, and Terry Rosenau solely in his capacity as Personal Representative for the Estate of Robert H. Jacob,* Civil Action No. 19–cv–01217.

The United States brought this action under the Oil Pollution Act of 1990 (''OPA''), 33 U.S.C. 2701, *et seq.,* to recover from defendants Cannery Pier Hotel, LLC, and Terry Rosenau solely in his capacity as Personal Representative for the Estate of Robert H. Jacob, $994,146.43 in costs and damages incurred by the National Pollution Funds Center of the United States Coast Guard (''the NPFC'') for actions undertaken and damages paid by the Coast Guard in response to discharges of oil from a fuel storage tank located under a partially-collapsed pier on the Columbia River in Astoria, Oregon. The Consent Decree resolves the United States' claims against the defendants. Under the Consent Decree, the defendants will pay the NPFC $994,146.43, which is the full amount of its claim. The United States will, in return, grant the defendants a covenant not to sue under OPA, subject to standard re-openers and reservations of rights.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Cannery Pier Hotel, LLC, and Terry Rosenau solely in his capacity as Personal Representative for the Estate of Robert H. Jacob,* D.J. Ref. No. 90–5–1–1–12151. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–17163 Filed 8–9–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed New Information Collection Activity; Comment Request, Proposed Study Entitled ''The National Baseline Study on Public Health, Wellness, & Safety''

AGENCY: National Institute of Justice, U.S. Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, National Institute of Justice, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until October 11, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christine Crossland, National Institute of Justice, Office of Research, Evaluation, and Technology, 810 Seventh Street NW, Washington, DC 20531 (overnight 20001), (202) 616–5166 or via email at *NIJ_NationalBaselineStudy@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the National Institute of Justice, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New survey.

2. *The Title of the Form/Collection:* ''The National Baseline Study on Public Health, Wellness, & Safety''.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The applicable component within the U.S. Department of Justice is the National Institute of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Title IX, Section 904(a) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162 (codified at 42 U.S.C. 3796gg–10 note), as amended by Section 907 of the Violence Against Women Reauthorization Act, Public Law 113–4, mandates that the National Institute of Justice (NIJ), in consultation with the U.S. Department of Justice's Office on

Violence Against Women (OVW), conduct a National Baseline Study (NBS) on violence against American Indian (AI) and Alaska Native (AN) women living in tribal communities. NIJ's NBS will examine violence against AI and AN women (including domestic violence, dating violence, sexual assault, and stalking) and identify factors that place AI and AN women at risk for victimization and propose recommendations to improve effectiveness of these responses. NIJ's NBS survey was designed to: (1) Provide an accurate reporting of violence against AI and AN women in tribal communities; (2) provide reliable, valid estimates of the scope of the problem; and (3) identify barriers to and possible solutions for dealing with these significant public safety issues.

The NBS will be conducted in geographically dispersed tribal communities across the U.S. (lower 48 and Alaska) using a NIJ-developed sampling strategy for which the primary aim is to provide an accurate *national* victimization rate of violence against adult AI and AN women specifically living in tribal communities. This information collection is a one-time information collection and is expected to take approximately thirty-six months from the time the first participant is enrolled until the last survey is administered.

The NBS is critical to quantifying the magnitude of violence and victimization in tribal communities and understanding service needs. At the end of this study, the NBS is expected to produce a deeper understanding of the issues faced by Native American women living in Indian Country and Alaska Native villages and help formulate public policies and prevention strategies to decrease the incidence of violent crimes against AI and AN women.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated range of burden for respondents is expected to be between 30 minutes to 1.5 hours for completion. Based on instrument testing results, we expect an average of 60 minutes per respondent. The following factors were considered when creating the burden estimate: The estimated total number of sites (40), households within sites (25), and respondents within households (1.5) in the sampling plan for a total of 1,500 expected respondents. NIJ estimates that nearly all of the approximately 1,500 respondents will fully complete the questionnaire.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1,500 hours. It is estimated that each of the 1,500 respondents will take 1 hour to complete a questionnaire (1,500 respondents × 1 hour = 1,500 hours). We estimate a 36-month data collection period, with approximately half of the interviews completed each year, or an annualized burden of 500 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 30, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–16597 Filed 8–9–19; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2019–034]

Freedom of Information Act (FOIA) Advisory Committee; Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: We are announcing an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meeting will be on September 5, 2019, from 10:00 a.m. to 1:00 p.m. EDT. You must register for the meeting by midnight EDT September 2, 2019.

ADDRESSES: National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW; William G. McGowan Theater; Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by mail at National Archives and Records Administration, Office of Government Information Services, 8601 Adelphi Road—OGIS; College Park, MD 20740–6001, by telephone at 202–741–5770, or by email at *foia-advisory-committee@nara.gov.*

SUPPLEMENTARY INFORMATION: *Agenda and meeting materials:* This is the fifth meeting of the third committee term. The Committee will hear about the work of the Technology Subcommittee of the Chief FOIA Officers' Council, and review and discuss the work of the FOIA Advisory Committee's three subcommittees, focusing on records management, FOIA vision, and time/volume. We will post meeting materials online at *https://www.archives.gov/ogis/foia-advisory-committee/2018-2020-term/meetings.*

Procedures: The meeting is open to the public. Due to building access restrictions, you must register through Eventbrite in advance if you wish to attend. You will also go through security screening when you enter the building. To register, use this link: *https://foia-advisory-committee-meeting.eventbrite.com.* We will also live-stream the meeting on the National Archives' YouTube channel at *https://www.youtube.com/user/usnationalarchives,* and include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202–741–5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Miranda J. Andreacchio,

Committee Management Officer.

[FR Doc. 2019–17152 Filed 8–9–19; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATE: The Members of the National Council on Disability (NCD) will meet by phone on Thursday, August 22, 2019, 11:00 a.m.–1:00 p.m., ET.

PLACE: The meeting will occur by phone. Interested parties may join the meeting via phone in a listening-only capacity using the following call-in information: Call-in number: 800–353–6461; Passcode: 8134951; Host Name: Neil Romano. The phone line will open for Public Comment at 12:15 p.m.

MATTERS TO BE CONSIDERED: The Council will conduct a business meeting followed by public comment.

Agenda: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern):

Thursday, August 22

11:00 a.m.–11:15 a.m.—Welcome and Introductions, Acceptance of Agenda, Approval of Minutes
11:15 a.m.–12:15 p.m.—Executive Reports
12:15 p.m.–12:45 p.m.—Public Comment
12:45 p.m.–1:00 p.m.—Unfinished Business
1:00 p.m.—Adjourn

Public Comment: To better facilitate NCD's public comment, any individual interested in providing public comment is asked to register his or her intent to provide comment in advance by sending an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. Full-length written public comments may also be sent to that email address. Please register for public comment at the quarterly meeting by the close of business, Wednesday, August 21, 2019. Commenters on the phone will be called on per the list of those registered via email. Due to time constraints, each person will be given three minutes to present comment. If you are presenting as a group and prefer to choose a spokesperson, your representative will be given six minutes to provide comment. To ensure your comments are accurately reflected and become part of the public record, submission prior to the meeting or immediately after to *PublicComment@ncd.gov* is requested.

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street NW, Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

Accommodations: A CART streamtext link has been arranged for this meeting. The web link to access CART on Thursday, August 22, 2019 is: *http://www.streamtext.net/player?event=NCD.*

Dated: August 7, 2019.

Sharon M. Lisa Grubb,

Executive Director.

[FR Doc. 2019–17253 Filed 8–8–19; 11:15 am]

BILLING CODE 8421–02–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 1 meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Theater (review of applications): This meeting will be closed.

Date and time: August 27, 2019; 2:00 p.m. to 3:00 p.m.

Dated: August 7, 2019.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2019–17174 Filed 8–9–19; 8:45 am]

BILLING CODE 7537–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–181 and CP2019–203; MC2019–182 and CP2019–204; MC2019–183 and CP2019–205; MC2019–184 and CP2019–206; MC2019–185 and CP2019–207]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 14, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–181 and CP2019–203; *Filing Title:* USPS Request to Add Priority Mail Contract 545 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 14, 2019.

2. *Docket No(s).:* MC2019–182 and CP2019–204; *Filing Title:* USPS Request to Add Priority Mail Contract 546 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 14, 2019.

3. *Docket No(s).:* MC2019–183 and CP2019–205; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 111 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 14, 2019.

4. *Docket No(s).:* MC2019–184 and CP2019–206; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 112 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 14, 2019.

5. *Docket No(s).:* MC2019–185 and CP2019–207; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 113 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 6, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 14, 2019.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019–17182 Filed 8–9–19; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86587; File No. 4–747]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Approving and Declaring Effective a Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and the Long-Term Stock Exchange, Inc.

August 7, 2019.

On July 11, 2019, the Financial Industry Regulatory Authority, Inc. (''FINRA'') and the Long-Term Stock Exchange, Inc. (''LTSE'') (together with FINRA, the ''Parties'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a plan for the allocation of regulatory responsibilities, dated July 11, 2019 (''17d–2 Plan'' or the ''Plan''). The Plan was published for comment on July 17, 2019.[1] The Commission received no comments on the Plan. This order approves and declares effective the Plan.

I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 (''Act''),[2] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[3] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[4] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[5] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[6] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[7] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[8] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance

[1] *See* Securities Exchange Act Release No. 86356 (July 11, 2019), 84 FR 34225.

[2] 15 U.S.C. 78s(g)(1).

[3] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[4] 15 U.S.C. 78q(d)(1).

[5] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[6] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[7] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[8] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both LTSE and FINRA.[9] Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the ''LTSE Certification of Common Rules,'' referred to herein as the ''Certification'') that lists every LTSE rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to LTSE members that are also members of FINRA and the associated persons therewith (''Dual Members'').

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of LTSE that are substantially similar to the applicable rules of FINRA,[10] as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification (''Common Rules''). In the event that a Dual Member is the subject of an investigation relating to a transaction on LTSE, the plan acknowledges that LTSE may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.[11]

Under the Plan, LTSE would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving LTSE's own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any LTSE rules that are not Common Rules.[12]

III. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act[13] and Rule 17d–2(c) thereunder[14] in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for common members that would otherwise be performed by LTSE and FINRA. Accordingly, the proposed Plan promotes efficiency by reducing costs to common members. Furthermore, because LTSE and FINRA will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

The Commission notes that, under the Plan, LTSE and FINRA have allocated regulatory responsibility for those LTSE rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a common member's activity, conduct, or output in relation to such rule. In addition, under the Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Plan, LTSE will review the Certification, at least annually, or more frequently if required by changes in either the rules of LTSE or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add LTSE rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete LTSE rules included in the then-current list of Common Rules that are no longer substantially similar to FINRA rules; and confirm that the remaining rules on the list of Common Rules continue to be LTSE rules that are substantially similar to FINRA rules.[15] FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. Under the Plan, LTSE will also provide FINRA with a current list of common members and shall update the list no less frequently than once each quarter.[16] The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective a Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all LTSE rules that are substantially similar to the rules of FINRA for common members of LTSE and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to LTSE rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should the Parties decide to add an LTSE rule to the Certification that is not substantially similar to a FINRA rule; delete an LTSE rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification an LTSE rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act.[17]

IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–747. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan

[9] The proposed 17d–2 Plan refers to these common members as ''Dual Members.'' *See* Paragraph 1(c) of the proposed 17d–2 Plan.

[10] *See* paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). *See also* paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either LTSE rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that LTSE shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

[11] *See* paragraph 6 of the proposed 17d–2 Plan.

[12] *See* paragraph 2 of the proposed 17d–2 Plan.

[13] 15 U.S.C. 78q(d).

[14] 17 CFR 240.17d–2(c).

[15] *See* paragraph 2 of the Plan.

[16] *See* paragraph 3 of the Plan.

[17] The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Plan for examining, and enforcing compliance by, common members, also would constitute an amendment to the Plan.

in File No. 4–747, between FINRA and LTSE, filed pursuant to Rule 17d–2 under the Act, is approved and declared effective.

It is further ordered that LTSE is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4–747.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17208 Filed 8–9–19; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 84 FR 38321, August 6, 2019.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, August 8, 2019 at 10:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Thursday, August 8, 2019 at 10:00 a.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: August 7, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–17248 Filed 8–8–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, August 15, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: August 8, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–17353 Filed 8–8–19; 4:15 pm]

BILLING CODE 8011–01–P

TENNESSEE VALLEY AUTHORITY

Sugar Camp Energy LLC Mine Expansion (Revision 6) Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) intends to prepare an Environmental Impact Statement (EIS) on the proposed expansion of mining operations by Sugar Camp Energy, LLC to extract TVA-owned coal reserves in Hamilton and Franklin counties, Illinois. A portion of the expansion area contains coal reserves owned by TVA that are leased to Sugar Camp Energy, LLC. TVA will consider whether to approve the company's application to mine approximately 12,125 acres (''project area'') of TVA-owned coal reserves.

DATES: Comments must be received or postmarked by September 11, 2019.

ADDRESSES: Written comments should be sent to Elizabeth Smith, NEPA Specialist, Tennessee Valley Authority, 400 W Summit Hill Drive #WT11B, Knoxville, Tennessee 37902. Comments may be sent electronically to *esmith14@tva.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Smith, by phone at 865–632–3053, by email at *esmith14@tva.gov,* or by mail at the address above.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations (36 CFR part 800).

Sugar Camp Energy, LLC (Sugar Camp) proposes to expand its underground longwall mining operations at its Sugar Camp Mine No. 1 in southern Illinois by approximately 37,972 acres. TVA owns coal reserves underlying approximately 12,125 acres of the Herrin No. 6 seam within the expansion area. In November 2017, Sugar Camp obtained approval for the expansion from the State of Illinois, when the Illinois Department of Natural Resources (IDNR), Office of Mines and Minerals (OMM) Land Reclamation Division (LRD) approved Significant Revision (SR) No. 6 to the company's Surface Coal Mining and Reclamation Operations Permit—Underground Operations (Number 382). TVA will consider whether to approve the company's application to mine approximately 12,125 acres (''project area'') of the TVA-owned coal reserves.

Under the proposal, surface and underground disturbance would occur. Surface activities to support the underground mining would be limited to the construction of bleeder shafts and installation of associated utilities to operate the bleeder shafts to support the extraction of TVA-owned coal. The exact location of these surface activities is unknown at this time, but they would occur within the project area. Other activities to support the underground mining of TVA-owned coal would be located outside of the project area and include operation of the coal preparation plant (approximately 3.5 miles southwest of Macedonia, Illinois).

Underground mining would be performed using two techniques. Coal would be extracted using room and pillar and continuous mining techniques during a development period, followed by longwall mining and associated planned subsidence. Subsidence would only occur under a portion of the project area. Sugar Camp would utilize its existing Mine No. 1

facilities to process and ship extracted coal.

Background

TVA is a federal corporation and instrumentality of the United States government, created in 1933 by an act of Congress to foster the social and economic well-being of the residents of the Tennessee Valley region. As part of its diversified energy strategy, TVA completed a series of land and coal mineral acquisitions from the 1960s through the mid-1980s that resulted in the coal ownership of two large coal reserve blocks in the southwestern section of the Illinois Basin. TVA owns coal reserves underlying approximately 65,000 acres of land containing approximately 1.35 billion tons of Illinois No. 5 and No. 6 coal seams.

TVA executed a coal lease agreement with Sugar Camp in July 2002 which allows Sugar Camp to mine the TVA coal reserves in the Illinois Basin coalfield. The purpose of this agreement is to facilitate the recovery of TVA coal resources in an environmentally sound manner. Under the terms of the agreement, Sugar Camp may not commence any mining activity pursuant to a mining plan or revisions until satisfactory completion of all environmental and cultural resource reviews by TVA required for compliance with all applicable law and regulations. Sugar Camp submitted to TVA a plan for the mining of 12,125 acres of coal reserves within the area previously approved by the State of Illinois as SBR No. 6. The EIS initiated by TVA will assess the environmental impact of approving this plan. In doing so, TVA also expects to address the cumulative impacts from the mining of the larger 37,972-acre area previously approved by the State of Illinois as SBR No. 6.

The operations of Sugar Camp Mine No. 1 have previously been subject to TVA review and approval. In 2008, Sugar Camp obtained a permit from the State of Illinois for underground longwall mining operations on approximately 12,103 acres in Franklin and Hamilton counties; the original permit did not include TVA-owned coal reserves. In 2010, Sugar Camp applied to the state for a SBR of that permit to mine TVA-owned coal under an additional 817-acre area. The permit was issued in May 2010. In 2011, TVA prepared an EA to document the potential effects of Sugar Camp's proposed mining of TVA-owned coal underneath a 2,600-acre area for Sugar Camp Mine No. 1.

In November 2017, Sugar Camp obtained approval from the IDNR to expand Sugar Camp Mine No. 1 by 37,792 acres. The Sugar Camp proposal included the expansion of operations along the north perimeter of its original mine perimeter, into a 2,250-acre area referred to as Viking District #2. In November 2018, TVA completed an EA entitled ''Sugar Camp Coal Mine Expansion Viking District #2'' which addressed expansion of mining operations into the area. In May 2019, TVA supplemented this EA to consider Sugar Camp's proposal to expand its mining into a 155-acre area within the Viking District #3, adjacent to Viking District #2.

Alternatives

TVA has initially identified two alternatives for consideration in the EIS: TVA's approval of Sugar Camp's application to mine 12,125 acres of TVA-owned coal reserves within the expansion area of Sugar Camp Mine No. 1, as approved by the State of Illinois; and the No Action Alternative. Under the action alternative, TVA proposes to assess the direct and indirect effects of the mining operations to extract TVA-owned coal reserves underlying approximately 12,125 acres within the expansion area. The mining of the remaining acreage within the 37,792-acre expansion area is not a connected action; however, TVA will address the effects of mining the remaining acreage in the cumulative impacts section of the EIS. The description and analysis of these alternatives in the EIS will inform decision makers, other agencies and the public about the potential for environmental impacts associated with the mining operations. TVA solicits comment on whether there are other alternatives that should be assessed in the EIS.

Proposed Resources and Issues To Be Considered

Public scoping is integral to the process for implementing NEPA and ensures that issues are identified early and properly studied, issues of little significance do not consume substantial time and effort, and the analysis of those issues is thorough and balanced. This EIS will identify the purpose and need of the project and will contain descriptions of the existing environmental and socioeconomic resources within the area that could be affected by mining operations. Evaluation of potential environmental impacts to these resources will include, but not be limited to, water quality, soil erosion, floodplains, aquatic and terrestrial ecology, threatened and endangered species, botany, wetlands, land use, historic and archaeological resources, as well as solid and hazardous waste, safety, socioeconomic and environmental justice issues. The final range of issues to be addressed in the environmental review will be determined, in part, from scoping comments received. TVA is particularly interested in public input on other reasonable alternatives that should be considered in the EIS. The preliminary identification of reasonable alternatives and environmental issues in this notice is not meant to be exhaustive or final.

Public Participation

The public is invited to submit comments on the scope of this EIS no later than the date identified in the **DATES** section of this notice. Federal, state and local agencies and Native American Tribes are also invited to provide comments. After consideration of comments received during the scoping period, TVA will develop and distribute a scoping document that will summarize public and agency comments that were received and identify the schedule for completing the EIS process. Following analysis of the issues, TVA will prepare a draft EIS for public review and comment; the draft EIS is scheduled for completion in late 2020. In finalizing the EIS and in making its final decision, TVA will consider the comments that it receives on the Draft EIS.

Authority: 40 CFR 1501.7.

M. Susan Smelley,

Director, Environmental Compliance and Operations.

[FR Doc. 2019–17214 Filed 8–9–19; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modifications to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for

which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 27, 2019.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 31, 2019.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application number	Applicant	Regulation(s) affected	Nature of the special permits thereof
11489–M	JOYSON SAFETY SYSTEMS	172.320, 173.56(b)	To modify the special permit to clarify origination and destination for testing and to remove the no other hazardous materials may be transported within the same cargo carrying body on a transport vehicle or freight container restriction. (modes 1, 3)
15335–M	SEASTAR CHEMICALS INC	173.158(f)(3)	To modify the special permit to reference new, improved testing of the package. (modes 1, 2, 3)
15552–M	POLY–COAT SYSTEMS, INC	107.503(b), 107.503(c), 173.241, 173.242, 173.243.	To modify the special permit to remove the request to get authorization from the Approvals and Permits Division before modifying, stretching or re-barreling. (mode 1)
16518–M	MIDWEST HELICOPTER AIRWAYS.	172.200, 172.301(c), 175.33	To modify the special permit to authorize additional hazmat. (mode 4)
20396–M	HEXAGON DIGITAL WAVE LLC.	180.205(g)	To modify the special permit to authorize MA testing of certain DOT–CFFC cylinders. (modes 1, 2, 3, 4, 5)
20432–M	PROCYON-ALPHA SQUARED, INC.	172.200, 172.300, 172.400, 173.185(f).	To modify the special permit to authorize the use of QR codes for marking (modes 1, 2, 3)
20893–M	DAIMLER AG	172.301(c), 173.220(d)	To modify the special permit to authorize the transportation in commerce of untested pre-production lithium ion batteries contained in a flammable liquid powered vehicle. (mode 4)

[FR Doc. 2019–17169 Filed 8–9–19; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before September 11, 2019.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC, or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 02, 2019.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA—GRANTED

Application number	Applicant	Regulation(s) affected	Nature of the special permits thereof
7657–M	WELKER, INC	173.201, 173.202, 173.203, 173.301(f)(2), 173.302a(a)(1), 173.304(a), 177.840(a)(1).	To modify the special permit to add additional hazmat.
10370–M	WELKER, INC	173.201, 173.202, 173.202, 173.203, 173.301(f)(2), 173.302a(a)(1), 173.304(a), 177.840(a)(1).	To modify the special permit to make editorial changes to bring it more in line with other special permits, (*i.e.,* 9657, 11054).
12098–M	CARLETON TECHNOLOGIES, INC.	173.301(f), 173.302a(a)(1)	To modify the special permit to authorize a re-design of the cylinder due to a new welding procedure and to update the drawings on file with PHMSA.
14526–M	KIDDE TECHNOLOGIES INC	173.302, 173.302a	To modify the special permit to add additional safety control measures.
15509–M	ORBITAL SCIENCES CORPORATION.	173.301, 173.302a	To modify the special permit to authorize the transportation in commerce of additional hazmat in non-DOT specification cylinders.
16095–M	CLAY AND BAILEY MANUFACTURING COMPANY.	172.203(a), 178.345–1, 180.413.	To modify the special permit to authorize a new design with a gasket in the cover vs. an O-ring in the base for sealing the manway.
16118–M	TOYOTA MOTOR SALES USA INC.	173.301(a)(1)	To modify the special permit to include language that the special permit acts as a competent authority.
20251–M	SALCO PRODUCTS INC	172.203(a), 178.345–1, 180.413.	To modify the special permit to authorize a new manway cover design.
20788–N	TRINITY TANK CAR, INC	172.203(a), 179.200–10(a), 179.220–10(a), 179.100–9(a), 179.400–11(c).	To authorize the manufacture, mark, sale, and use of DOT specification tank car tanks with nozzle flanges manufactured using methods not currently identified in the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section C-Part III, Specifications for Tank Cars, Specification M–1002, except as specified herein, for the transportation in commerce of the hazardous materials authorized by this special permit.
20828–N	BATTERIES PLUS, LLC	173.159(e)(1)	To authorize the transportation in commerce of batteries and lightbulbs containing mercury on the same transport vehicle without being subject to the requirements of the HMR.
20830–N	ARKEMA, INC	173.302a(a)(1)	To authorize the transportation of boron trifluoride in non-DOT specification spherical pressure vessels.
20838–N	AIR LIQUIDE ELECTRONICS U.S. LP.	180.205(g)	To authorize filling and transportation in commerce of certain 4BW cylinders and certain DOT–SP 12531 cylinders which are dedicated to transport Dichlorosilane and have been periodically requalified using alternative methods.
20845–N	Lithos Energy Inc	172.101(j), 173.185(a)	To authorize the transportation in commerce of low production lithium ion batteries exceeding 35 kg by cargo-only aircraft.
20850–N	INSITUFORM TECHNOLOGIES, LLC.	173.203, 173.242	To authorize the transportation in commerce of non-DOT specification bulk packagings containing resin solutions.
20853–N	SOLIDENERGY SYSTEMS CORP.	173.185(a)	To authorize the transportation in commerce of prototype and low production lithium ion and lithium metal cells that are not individually packaged in inner packagings.
20856–N	SAMSUNG SDI AMERICA, INC.	172.101(j)	To authorize the transportation of lithium ion batteries exceeding 35 kg net weight via cargo-only aircraft.
20861–N	AYALYTICAL INSTRUMENTS INC.	173.120(c)	To authorize the use of an alternate method for determining flash point for Class 3 materials.
20865–N	PORSCHE LOGISTIK GMBH	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg aboard cargo-only aircraft.
20866–N	ARGON ST INC	172.101(j)	To authorize the transportation in commerce of lithium ion batteries contained in equipment with a net weight in excess of 35 kg by cargo-only aircraft.
20875–N	AIR LIQUIDE ADVANCED MATERIALS INC.	173.3(d)(2)	To authorize the transportation in commerce of leaking or damaged cylinders containing Division 4.2 hazardous materials in a salvage cylinder.
20893–N	DAIMLER AG	173.220(d)	To authorize the transportation in commerce of untested lithium batteries contained in a flammable liquid powered vehicle.
20895–N	Innolith Snook LLC	173.185(b)(3)(i), 173.185(b)(3)(ii).	To authorize the transportation in commerce of lithium ion batteries and cells in alternative packagaing.

SPECIAL PERMITS DATA—DENIED

Application number	Applicant	Regulation(s) affected	Nature of the Special permits thereof
14576–M	STRUCTURAL COMPOSITES INDUSTRIES LLC.	172.101(j), 173.302a(a)(1), 173.304a(a)(1).	To modify the special permit to reduce the burst pressure from 3.4 times service pressure to 3.0 times the service pressure.
15788–M	AMTROL–ALFA, METALOMECÂNICA, S.A.	173.302a(a), 173.304a(a), 178.71, 180.205, 180.207.	To modify the special permit to authorize hydrogen to be transported in the approved cylinders.
20323–M	Cuberg, Inc	173.185(a)(1)(i)	To modify the special permit to authorize an additional outer packaging.
20815–N	COLEP PORTUGAL, S.A	178.33–7(a)	To authorize the manufacture, mark, sale, and use of non-DOT specification receptacles with a reduced wall thickness.

SPECIAL PERMITS DATA—WITHDRAWN

Application number	Applicant	Regulation(s) affected	Nature of the Special permits thereof
8451–M	AUTOLIV ASP, INC	172.320, 173.54(a), 173.54(j), 173.56(b), 173.57, 173.58, 173.60.	To increase the weight of the explosives.
20391–M	Hexagon Purus LLC	173.301(f), 173.301(f), 173.302(a).	To modify the special permit to authorize a new 2 cylinder design module for storing and transporting compressed gas.
20903–N	SPACEFLIGHT, INC	173.185(a)	To authorize the transportation in commerce of low production lithium ion batteries contained in equipment via ground, cargo vessel, and cargo air.
20905–N	POLLUTION CONTROL INC.	173.56(b)	To authorize the one-way transportation in commerce of waste explosive substances that had previously been approved.

[FR Doc. 2019–17170 Filed 8–9–19; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 11, 2019.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC, or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 02, 2019.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application number	Applicant	Regulation(s) affected	Nature of the special permits thereof
20914–N	SILK WAY WEST AIRLINES, LLC.	172.101(j), 173.27, 175.30(a)(1).	To authorize the transportation in commerce of explosives forbidden aboard cargo-only aircraft. (mode 4)
20916–N	MESSER LLC	180.407(d)(2)(vi)	To authorize the replacement of cargo tank data plates without requiring the original manufacturers ASME U stamp. (mode 1)

SPECIAL PERMITS DATA—Continued

Application number	Applicant	Regulation(s) affected	Nature of the special permits thereof
20917–N	Goldstar Manufacturing L.L.C.	173.4(a)(1)(iii), 173.4(a)(9), 173.4(a)(10).	To authorize the transportation in commerce of methyl isothiocyanate under the small quantities exception. (mode 1)
20918–N	SALCO PRODUCTS INC	172.704, 179.7	To authorize the use of packaging components that have been manufactured by entity that has not obtained its AAR facility certification. (mode 2)
20919–N	VERSUM MATERIALS, INC.	173.338(a)	To authorize the transportation in commerce of tungsten hexafluoride in UN specification tubes. (modes 1, 3)
20923–N	CATALINA CYLINDERS, INC.	173.302a(a)(1), 178.71(l)(1)(i)	To authorize the manufacture, mark, sale, and use of non-DOT specification fully wrapped fiber reinforced composite gas cylinder with an aluminum alloy 6061–T6 liner. (mode 1, 2, 3, 4)
20924–N	Candesant Biomedical, Inc	172.402(c), 173.4b(a)	To authorize the transportation in commerce of PG I Division 4.3 materials as de minimis quantities. (modes 1, 2, 4)
20925–N	Flowserve Corporation	179.7	To authorize the use of lined plug valves that were not manufactured by an AAR approved facility. (mode 2)
20926–N	Cold Box Express, Inc	Subchapter C	To authorize the transportation in commerce of lithium ion batteries in temperature-controlled shipping containers as not subject to the requirements 49 CFR Subchapter C. (mode 1, 2)
20927–N	Melrose Pyrotechnics	172.504(a)	To authorize the transportation in commerce of 1.3G fireworks without requiring the vehicle to be placarded. (mode 1)

[FR Doc. 2019–17171 Filed 8–9–19; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2009–83

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments Credit for Carbon Dioxide Sequestration Under Section 45Q.

DATES: Written comments should be received on or before October 11, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this notice should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Credit for Carbon Dioxide Sequestration Under Section 45Q.

OMB Number: 1545–2153.

Notice Number: Notice 2009–83.

Abstract: The notice sets forth interim guidance, pending the issuance of regulations, relating to the credit for carbon dioxide sequestration (CO_2 sequestration credit) under § 45Q of the Internal Revenue Code.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business and for-profit.

Estimated Number of Respondents: 30.

Estimated Time per Respondent: 6 hrs.

Estimated Total Annual Reporting Burden Hours: 180 hrs.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 6, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–17159 Filed 8–9–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 11–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 11–C, Occupational Tax and Registration Return for Wagering.

DATES: Written comments should be received on or before October 11, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Occupational Tax and Registration Return for Wagering.

OMB Number: 1545–0236.

Form Number: 11–C.

Abstract: Form 11–C is used to register persons accepting wagers, as required by Internal Revenue Code section 4412. The IRS uses this form to register the respondent, collect the annual stamp tax imposed by Code section 4411 and to verify that the tax on wagers is reported on Form 730, Monthly Tax Return for Wagers.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 11,500.

Estimated Time per Respondent: 7 hours, 4 minutes.

Estimated Total Annual Burden Hours: 81,190.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 6, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–17157 Filed 8–9–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Rev. Proc. 2001–29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Revenue Procedure 2001–29, Leveraged Leases.

DATES: Written comments should be received on or before October 11, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this notice should be directed to

Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Leveraged Leases.

OMB Number: 1545–1738.

Abstract: Revenue Procedure 2001–29 sets forth the information and representations required to be furnished by taxpayers in requests for an advance ruling that a leveraged lease transaction is, in fact, a valid lease for federal income tax purposes.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Average Time per Respondent: 80 hours.

Estimated Total Annual Burden Hours: 800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 6, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–17158 Filed 8–9–19; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Registration System Subcommittee Meeting

TIME AND DATE: August 20, 2019, from 1:00 p.m. to 4:00 p.m., Mountain daylight time.

PLACE: Fairfield Inn & Suites, 1293 West Broadway, Idaho Falls, ID 83402. This meeting will also be accessible via conference call. Any interested person may call 1–866–210–1669, passcode 5253902#, to listen and participate in the meeting.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Registration System Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—Subcommittee Chair

Chair will call the meeting to order.

II. Verification of Meeting Notice—Chief Legal Officer

Chief Legal Officer will verify the publication of meeting notice in the **Federal Register**.

III. Approval of Minutes From June 3, 2019 Meeting—Subcommittee Chair

Minutes from the June 3, 2019 Registration System Subcommittee meeting will be reviewed and the Subcommittee will consider approval.

IV. Independent State System Transitions—Subcommittee Chair

Chair will report on status of the Missouri Department of Transportation's transition to the UCR National Registration System. The Chair will also report on the status of the ongoing discussions regarding the possibility of the Kansas Corporation Commission transitioning to the UCR National Registration System.

V. Independent State System Interconnection—Subcommittee Chair

For Discussion and Possible Subcommittee Action: Subcommittee will consider and possibly recommend to the Board criteria for interconnecting the remaining independent UCR registration systems (Illinois, Maine, and Kansas) to the National Registration System.

VI. Amendment to UCR Refund Procedure—Subcommittee Chair

For Discussion and Possible Subcommittee Action: Subcommittee will consider and possibly approve a recommendation to the Board amending the UCR refund procedure to require confirmation from permit agents that they are authorized to register their clients for UCR using the National Registration System.

VII. List of Non-Registered Carriers

For Discussion and Possible Subcommittee Action: Subcommittee will consider the development of a policy concerning the periodic public release of those commercial entities eligible for UCR but not registered. Subcommittee will also consider whether to recommend to the Board the adoption of such a policy in an effort to increase UCR compliance.

VIII. Merchant Service Provider—Subcommittee Chair

For Discussion and Possible Subcommittee Action: Subcommittee will consider and possibly approve a recommendation to the Board authorizing and directing the Administrator to contract with a new merchant service provider for improved terms.

IX. Permit Agent Module—Subcommittee Chair

The Chair will lead a discussion on the outstanding issues which must be resolved in order to complete development of a new module specifically designed for use by third-party permit agents to register clients subject to UCR.

X. National Registration System—Seikosoft

- Registrations YTD

Subcommittee will receive an update on total carrier registrations year to date.

- Administrator Tools

Subcommittee will receive an update on the utilization to date of new tools for administrators within the National Registration System, including new functionality for conducting annual carrier audits and soliciting carriers by email.

- Administrator Dashboard

Subcommittee will receive a report on the development of a dashboard for use by state administrators within the National Registration System.

XI. Feedback on Reports Produced by National Registration System—Subcommittee Chair

Chair will open the floor and solicit feedback on potential modifications to the reports currently provided by the National Registration System.

XII. Education & Training Topics—Subcommittee Chair

Chair will open the floor for discussion of potential topics, specific to the National Registration System, to be included in the curriculum for the forthcoming UCR Education & Training Program.

XIII. Other Items—Subcommittee Chair

The Subcommittee Chair will call for any other items the Subcommittee members would like to discuss.

XIV. Adjourn—Subcommittee Chair

Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Mountain daylight time, August 9, 2019 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Acting Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *elizabeth.leaman@state.ma.us.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2019–17340 Filed 8–8–19; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

Agency Information Collection Activity: Application for VA Education Benefits; Application for Family Member To Use Transferred Benefits; Application for VA Benefits Under the National Call to Service Program

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of

1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 11, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0154'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, Veterans Benefits Administration (VBA) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 3034; 3241, 3323(a), 3471, 5101(a); Public Law 96–342, sections 901 and 903; and 10 U.S.C. 16166(b).

Title: Application For VA Education Benefits (VA Form 22–1990); Application For Family Member To Use Transferred Benefits (VA Form 22–1990E); Application For VA Benefits Under The National Call To Service Program (VA Form 22–1990N).

OMB Control Number: 2900–0154.

Type of Review: Revision of a currently approved collection.

Abstract: The claimant uses this form to submit an initial (or ''original'') claim for VA education benefits. The information requested on this form helps VA determine the applicant's eligibility to education benefits. To streamline the application process for the claimant, we have divided one large application into three, removing the two least used programs National Call to Service (NCS) Transfer of Entitlement (TOE) and developed separate applications for those programs, the VA Form 22–1990E and VA Form 22–1990N.

Affected Public: Individual and households.

Estimated Annual Burden: 248,916 hours.

Estimated Average Burden per Respondent: 20 minutes (Electronic Submissions); 15 minutes (Paper Submissions).

Frequency of Response: Once.

Estimated Number of Respondents: 807,296.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–17147 Filed 8–9–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0784]

Agency Information Collection Activity: Application for Pre-Need Determination of Eligibility for Burial

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revised collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's eligibility for burial at a National Cemetery.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 11, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Cynthia Harvey-Pryor, National Cemetery Administration (42E), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; or email: *NCA42EACTION@va.gov.* Please refer to ''OMB Control No. 2900–0784'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or FAX (202) 501–2240.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–21.

Title: Application for Pre-Need Determination of Eligibility for Burial, VA Form 40–10007.

OMB Control Number: 2900–0784.

Type of Review: Revision of an approved collection.

Abstract: VA Form 40–10007 is used to collect information from Veterans and service members who wish to determine their eligibility for burial in a VA national cemetery prior to their time of need for planning purposes. The data will be used for this purpose.

Affected Public: Individuals or households.

Estimated Annual Burden: 15,800 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 47,400.

By direction of the Secretary.

Danny S. Green,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2019–17154 Filed 8–9–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0099]

Agency Information Collection Activity: Dependent's Request for Change of Program or Place of Training

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 11, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0099'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, Veterans Benefits Administration (VBA) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 United States Code 3034(a), 3034(b), 3323(a), 3323(b), 3471, 3513, 3521, 3691, and 38 Code of Federal Regulations 21.4234.

Title: Dependent's Request for Change of Program or Place of Training (VA Form 22–5495).

OMB Control Number: 2900–0099.

Type of Review: Extension a currently approved collection.

Abstract: VA has used the current information collection to determine (1) if the claimant continues to qualify for education benefits when taking a different program of training and (2) to verify that a new place of training is approved for benefits. The information on the form can be obtained only from the individual claimant. VA cannot make an eligibility determination without this information.

Affected Public: Individual and households.

Estimated Annual Burden: 27,440 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 109,760.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–17141 Filed 8–9–19; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Low-Energy Geophysical Survey in the Southwest Atlantic Ocean; Notices

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR007

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Low-Energy Geophysical Survey in the Southwest Atlantic Ocean

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Scripps Institute of Oceanography (SIO) for authorization to take marine mammals incidental to a low-energy marine geophysical survey in the Southwest Atlantic Ocean. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year Renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than September 11, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On March 13, 2019, NMFS received a request from SIO for an IHA to take marine mammals incidental to conducting a low-energy marine geophysical survey in the Southwest Atlantic Ocean. The application was deemed adequate and complete on May 20, 2019. SIO's request is for take of a small number of 49 species of marine mammals by Level B harassment. Neither SIO nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. The planned activity is not expected to exceed one year, hence, we do not expect subsequent MMPA incidental harassment authorizations would be issued for this particular activity.

Description of Proposed Activity

Overview

SIO plans to conduct low-energy marine seismic surveys in the Southwest Atlantic Ocean during September–October 2019. The seismic surveys would be conducted in the Exclusive Economic Zone (EEZ) of the Falkland Islands and International Waters, with water depths ranging from ~50–5700 meters (m) (See Figure 1 in the IHA application). The surveys would involve one source vessel, R/V

Thomas G. Thompson (R/V *Thompson*). The *Thompson* would deploy up to two 45-in^3 GI airguns at a depth of 2–4 m with a maximum total volume of ~90 in^3 along predetermined tracklines associated with potential coring sites.

Dates and Duration

The seismic survey would be carried out for approximately 28 days. The *Thompson* would likely depart from Montevideo, Uruguay, on or about September 12, 2019 and would return to Montevideo on or about October 29, 2018. An additional 10 days are allotted to collecting cores and measuring water properties/collecting water samples and 5 contingency days have been allotted for adverse weather conditions. Transits from Montevideo to and from the project area would take approximately 2.5 days each, for a total of 5 transit days. Some deviation in timing could result from unforeseen events such as weather, logistical issues, or mechanical issues with the research vessel and/or equipment. Seismic activities would occur 24 hours per day during the proposed survey.

Specific Geographic Region

The proposed surveys would take place within the EEZ of the Falkland Islands and in International Waters of the Southwest Atlantic Ocean, between approximately 42.75° and 49.5° S, and 55.75° and 61.1° W. Work with occur over three survey areas, with these survey areas and representative tracklines shown in Figure 1 of the IHA application. The *Thompson* would depart from and return to Montevideo, Uruguay.

Detailed Description of Specific Activity

SIO proposes to conduct low-energy seismic surveys low-energy seismic surveys in the Southwest Atlantic Ocean in the EEZ of the Falkland Islands and in International Waters between approximately 42.75° and 49.5° S, and 55.75° and 61.1° W. Within this larger area, there are 3 separate survey areas with these survey areas and representative survey tracklines shown in Figure 1 in the IHA application. All data acquisition in Survey Areas 1 and 3 would occur in water >1,000 m deep. Area 2 ranges in depth from 50–5,700 m. The proposed surveys would be in support of a potential future International Ocean Discovery Program (IODP) project and would examine the histories of important deep ocean water masses that originate in the Southern Ocean and intersect the continental margin of Argentina. The proposed surveys would thus take place in an area that is of interest to the IODP. To achieve the program's goals, the Principal Investigators propose to collect low-energy, high-resolution multi-channel seismic (MCS) profiles and sediment cores, and measure water properties.

The procedures to be used for the seismic surveys would be similar to those used during previous seismic surveys by SIO and would use conventional seismic methodology. The surveys would involve one source vessel, R/V *Thompson,* which is managed by University of Washington (UW). The R/V *Thompson* would deploy up to two 45-in^3 GI airguns as an energy source with a maximum total volume of ~90 in^3. The receiving system would consist of one hydrophone streamer, 200–1,600 m in length, as described below. As the airguns are towed along the survey lines, the hydrophone streamer would receive the returning acoustic signals and transfer the data to the on-board processing system.

The proposed cruise would consist of digital bathymetric, echosounding, and MCS surveys within three areas to collect data on ocean circulation and climate evolution and to enable the selection and analysis of potential future IODP drillsites (Survey Areas 1–3 in Fig. 1). The airgun array would be operated in one of two different types of array modes. The first would be highest-quality survey mode to collect the highest-quality seismic reflection data at approximately 18 potential IODP drill sites. The second mode would be a reconnaissance mode, which is quicker, and will occur at approximately 75 coring locations, primarily in Survey Area 2. The reconnaissance mode also allows for operations to occur in poor weather where the use of streamer longer than 200-m may not be possible safely.

The reconnaissance mode is carried out using either one or two 45-in^3 airguns, with airguns spaced 8 m apart (if 2 are being used) at a water depth of 2–4 m, with a 200 m hydrophone streamer and with the vessel traveling at 8 knots (kn). The highest-quality mode is carried out using a pair of 45-in^3 airguns, with airguns spaced 2 m apart at a depth of 2–4 m, with a 400, 800, or 1,600 m hydrophone streamer and with the vessel traveling at to 5 kn to achieve high-quality seismic reflection data.

At the three proposed Survey Areas, ~7,500 km of seismic data would be collected. All data acquisition in Areas 1 and 3 would occur in water >1,000 m deep. Area 2 ranges in depth from 50–5,700 m; most of the survey effort (60 percent) would occur in water >1,000 m deep; less than one percent would occur in shallow water <100 m deep. There could be additional seismic operations in the project area associated with equipment testing, re-acquisition due to reasons such as but not limited to equipment malfunction, data degradation during poor weather, or interruption due to shutdown or track deviation in compliance with IHA requirements. To account for these additional seismic operations, 25 percent has been added in the form of operational days, which is equivalent to adding 25 percent to the proposed line km to be surveyed.

In addition to the operations of the airgun array, a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) would also be operated continuously throughout the survey, but not during transits to and from the project area. MBES and SBP data are essential for selecting core sites and for interpreting geological and oceanographic processes that affect the southern Argentine margin. A 12-kilohertz (kHz) pinger would be used during coring to track the depth. All planned geophysical data acquisition activities would be conducted by SIO and UW with on-board assistance by the scientists who have proposed the study. The vessel would be self-contained, and the crew would live aboard the vessel for the entire cruise.

R/V *Thompson* has a length of 83.5 m, a beam of 16 m, and a full load draft of 5.8 m. It is equipped with twin 360°-azimuth stern thrusters each powered by 3,000-hp DC motors and a water-jet bow thruster powered by a 1100-hp DC motor. An operation speed of ~9–15 km/h (~5–8 kn) would be used during seismic acquisition. When not towing seismic survey gear, R/V *Thompson* cruises at 22 km/h (12 kn) and has a maximum speed of 26.9 km/h (14.5 kn). It has a normal operating range of ~24,400 km. R/V *Thompson* would also serve as the platform from which vessel-based protected species visual observers (PSVO) would watch for marine mammals and before and during airgun operations.

During the survey, R/V *Thompson* would tow two 45-in^3 GI airguns and a streamer containing hydrophones. The generator chamber of each GI gun, the one responsible for introducing the sound pulse into the ocean, is 45 in^3. The larger (105 in^3) injector chamber injects air into the previously generated bubble to maintain its shape and does not introduce more sound into the water. The 45-in^3 GI airguns would be towed 21 m behind R/V *Thompson,* 2 m (during 5-kn high-quality surveys) or 8 m (8-kn reconnaissance surveys) apart, side by side, at a depth of 2–4 m. High-

quality surveys with the 2-m airgun separation configuration would use a streamer up to 1,600-m long, whereas the reconnaissance surveys with the 8-m airgun separation configuration would use a 200-m streamer. Seismic pulses would be emitted at intervals of 25 m for the 5-kn surveys using the 2-m GI airgun separation and at 50 m for the 8-kn surveys using the 8-m airgun separation.

TABLE 1—SPECIFICATIONS OF THE R/V THOMPSON AIRGUN ARRAY

Number of airguns	2.
Gun positions used	Two inline airguns 2- or 8-m apart.
Tow depth of energy source.	2–4 m.
Dominant frequency components.	0–188 hertz (Hz).
Air discharge volume	Approximately 90 in^3.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Section 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

The populations of marine mammals considered in this document do not occur within the U.S. EEZ and are therefore not assigned to stocks and are not assessed in NMFS' Stock Assessment Reports (SAR). As such, information on potential biological removal (PBR; defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population) and on annual levels of serious injury and mortality from anthropogenic sources are not available for these marine mammal populations. Abundance estimates for marine mammals in the survey location are lacking; therefore estimates of abundance presented here are based on a variety of proxy sources including International Whaling Commission population estimates (IWC 2019), the U.S. Atlantic SARs (Hayes *et al.,* 2018), and various literature estimates (see IHA application for further detail), as this is considered the best available information on potential abundance of marine mammals in the area. However, as described above, the marine mammals encountered by the proposed survey are not assigned to stocks. All abundance estimate values presented in Table 2 are the most recent available at the time of publication and are available in the 2018 U.S. Atlantic SARs (*e.g.,* Hayes *et al.* 2018) available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments,* except where noted otherwise.

Table 2 lists all species with expected potential for occurrence in the Argentine Basin, Southwest Atlantic Ocean, and summarizes information related to the population, including regulatory status under the MMPA and ESA. For taxonomy, we follow Committee on Taxonomy (2018).

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA EXPECTED TO BE AFFECTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock [1]	ESA/MMPA status; strategic (Y/N) [2]	Abundance	PBR	Relative occurrence in project area
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
Southern right whale	Eubalaena australis	n/a	E/D;N	12,000 [3] 3,300 [4]	N.A.	Uncommon.
Family Cetotheriidae:						
Pygmy right whale	Caperea marginata	n/a		N.A	N.A.	Rare.
Family Balaenopteridae (rorquals):						
Blue whale	Balaenoptera musculus	n/a	E/D;Y	2,300 true [3] 1,500 pygmy [5]	N.A.	Rare.
Fin whale	Balaenoptera physalus	n/a	E/D;Y	15,000 [5]	N.A.	Uncommon.
Sei whale	Balaenoptera borealis	n/a	E	10,000 [5]	N.A.	Uncommon.
Common minke whale	Balaenoptera acutorostrata	n/a	-	515,000 [3 6]	N.A.	Common.
Antarctic minke whale	Balaenoptera bonaerensis	n/a	-	515,000 [3 6]	N.A.	Common.
Humpback whale	Megaptera novaeangliae	n/a	-	42,000 [3]	N.A.	Rare.
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	n/a	E	12,069 [8]	N.A.	Uncommon.
Family Kogiidae:						
Pygmy sperm whale	Kogia breviceps	n/a	-	N.A.	N.A.	Rare.
Dwarf sperm whale	Kogia sima	n/a	-	N.A.	N.A.	Rare.
Family Ziphiidae (beaked whales):						
Arnoux's beaked whale	Berardius arnuxii	n/a	-	599,300 [9]	N.A.	Uncommon.
Cuvier's beaked whale	Ziphius cavirostris	n/a	-	599,300 [9]	N.A.	Uncommon.
Southern bottlenose whale	Hyperoodon planifrons	n/a	-	599,300 [9]	N.A.	Uncommon.
Shepherd's beaked whale	Tasmacetus sheperdi	n/a	-	N.A.	N.A.	Uncommon.
Blainville's beaked whale	Mesoplodon densirostris	n/a	-	N.A.	N.A.	Rare.
Gray's beaked whale	Mesoplodon grayi	n/a	-	599,300 [9]	N.A.	Uncommon.
Hector's beaked whale	Mesoplodon hectori	n/a	-	N.A.	N.A.	Rare.
True's beaked whale	Mesoplodon mirus	n/a	-	N.A.	N.A.	Rare.
Strap-toothed beaked whale	Mesoplodon layardii	n/a	-	599,300 [9]	N.A.	Uncommon.
Andrews' beaked whale	Mesoplodon bowdoini	n/a	-	N.A.	N.A.	Rare.
Spade-toothed beaked whale	Mesoplodon traversii	n/a	-	N.A.	N.A.	Rare.
Family Delphinidae:						
Risso's dolphin	Grampus griseus	n/a	-	18,250 [10]	N.A.	Uncommon.

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA EXPECTED TO BE AFFECTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock [1]	ESA/ MMPA status; strategic (Y/N) [2]	Abundance	PBR	Relative occurrence in project area
Rough-toothed dolphin	Steno bredanensis	n/a	-	N.A	N.A.	Rare.
Common bottlenose dolphin	Tursiops truncatus	n/a	-	77,532 [10]	N.A.	Uncommon.
Pantropical spotted dolphin	Stenella attenuata	n/a	-	3,333 [10]	N.A.	Rare.
Atlantic spotted dolphin	Stenella frontalis	n/a	-	44,715 [10]	N.A.	Rare.
Spinner dolphin	Stenella longirostris	n/a	-	N.A	N.A.	Uncommon.
Clymene dolphin	Stenella clymene	n/a	-	N.A	N.A.	Rare.
Striped dolphin	Stenella coeruleoalba	n/a	-	54,807 [10]	N.A.	Uncommon.
Short-beaked common dolphin	Delphinus delphis	n/a	-	70,184 [10]	N.A.	Uncommon.
Fraser's dolphin	Lagenodelphis hosei	n/a	-	N.A	N.A.	Rare.
Dusky dolphin	Lagenorhynchus obscurus	n/a	-	7,252 [11]	N.A.	Uncommon.
Hourglass dolphin	Lagenorhynchus cruciger	n/a	-	150,000 [5]	N.A.	Common.
Peale's dolphin	Lagenorhynchus australis	n/a	-	20,000 [12]	N.A.	Common.
Southern right whale dolphin	Lissodelphis peronii	n/a	-	N.A	N.A.	Uncommon.
Commerson's dolphin	Cephalorhynchus commersonii	n/a	-	21,000 [13]	N.A.	Common.
Killer whale	Orcinus orca	n/a	-	25,000 [14]	N.A.	Uncommon.
Short-finned pilot whale	Globicephala macrorhynchus	n/a	-	200,000 [5]	N.A.	Rare.
Long-finned pilot whale	Globicephala melas	n/a	-	200,000 [5]	N.A.	Common.
False killer whale	Pseudorca crassidens	n/a	-	N.A	N.A.	Rare.
Family Phocoenidae (porpoises):						
Spectacled porpoise	Phocoena dioptrica	n/a	-	N.A	N.A.	Uncommon.
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Antarctic fur seal	Arctocephalus gazella	n/a	-	4.5–6.2 million [15]	N.A.	Rare.
South American fur seal	Arctocephalus australis	n/a	-	99,000 [16]	N.A.	Common.
Subantarctic fur seal	Arctocephalus tropicalis	n/a	-	400,000 [17]	N.A.	Uncommon.
South American sea lion	Otaria flavescens	n/a	-	445,000 [16]	N.A.	Common.
Family Phocidae (earless seals):						
Crabeater seal	Lobodon carcinophaga	n/a	-	5–10 million [18]	N.A.	Rare.
Leopard seal	Hydrurga leptonyx	n/a	-	222,000–440,000 [19]	N.A.	Rare.
Southern elephant seal	Mirounga leonina	n/a	-	750,000 [20]	N.A.	Uncommon.

N.A. = data not available.
[1] The populations of marine mammals considered in this document do not occur within the U.S. EEZ and are therefore not assigned to stocks.
[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.
[3] Southern Hemisphere (IWC 2019).
[4] Southwest Atlantic (IWC 2019).
[5] Antarctic (Boyd 2002).
[6] Dwarf and Antarctic minke whales combined.
[7] There are 14 distinct population segments (DPSs) of humpback whales recognized under the ESA; the Brazil DPS is not listed (NOAA 2017).
[8] Estimate for the Antarctic, south of 60° S (Whitehead 2002).
[9] All beaked whales south of the Antarctic Convergence; mostly southern bottlenose whales (Kasamatsu and Joyce 1995).
[10] Estimate for the western North Atlantic (Hayes *et al.,* 2018).
[11] Estimate for Patagonian coast (Dans *et al.,* 1997).
[12] Estimate for Southern Patagonian waters, Argentina (Dellabianca *et al.,* 2016).
[13] Total world population (Dawson 2018).
[14] Minimum estimate for Southern Ocean (Branch and Butterworth 2001).
[15] South Georgia population (Dawson 2018).
[16] Total population (Cárdenas-Alayza *et al.,* 2016a).
[17] Global population (Hofmeyr and Bester 2018).
[18] Global population (Bengston and Stewart 2018).
[19] Global population (Rogers 2018).
[20] Total world population (Hindell *et al.,* 2016).

All species that could potentially occur in the proposed survey areas are included in Table 2. As described below, all 49 species temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

Though other marine mammal species are known to occur in the Southwest Atlantic Ocean, the temporal and/or spatial occurrence of several of these species is such that take of these species is not expected to occur, and they are therefore not discussed further beyond the explanation provided here. An additional 11 species of marine mammals are known to occur in the Southwest Atlantic Ocean; however, they are unlikely to occur within the proposed project area because they are coastally-distributed (*e.g.,* Franciscana, *Pontoporia blainvillei;* Guiana dolphin, *Sotalia guianensis;* Chilean dolphin, *Cephalorhynchus eutropia;* Burmeister's porpoise, *Phocoena spinipinnis*); or their distributional range is farther south (Ross seal, *Ommatophoca rossii;* Weddell seal, *Leptonychotes weddellii*) or north (Bryde's whale, *Balaenoptera edeni;* Gervais' beaked whale, *Mesoplodon europaeus;* melon-headed whale, *Peponocephala electra;* pygmy killer whale, *Feresa attenuata;* long-beaked common dolphin, *Delphinus capensis*) of the proposed project area. None of these 11 species are discussed further here.

We have reviewed SIO's species descriptions, including life history information, distribution, regional distribution, diving behavior, and acoustics and hearing, for accuracy and completeness. We refer the reader to Section 4 of SIO's IHA application for

a complete description of the species, and offer a brief introduction to the species here, as well as information regarding population trends and threats, and describe information regarding local occurrence.

Mysticetes

Southern Right Whale

The southern right whale is circumpolar throughout the Southern Hemisphere between 20° S and 55° S (Jefferson et al. 2015), although it may occur further north where cold-water currents extend northwards (Best 2007). It migrates between summer foraging areas at high latitudes and winter breeding/calving areas in low latitudes (Jefferson et al. 2015). In the South Atlantic, known or historic breeding areas are located in the shallow coastal waters of South America, including Argentina and Brazil, as well as the Falkland Islands, Tristan de Cunha, Namibia, and South Africa (IWC 2001). Rowntree et al. (2013) reported that during 2009, primary calving grounds included an estimated 3,373 southern right whales off Argentina.

In the western South Atlantic Ocean, Península Valdés, Argentina, is the main breeding and calving area (Zerbini et al. 2018). It is located just over 200 km from the northwestern portion of the proposed project area. Right whales occurring in breeding and nursing grounds off southern Brazil and Península Valdés, Argentina, may comprise two separate subpopulations that exploit different habitats. Feeding also occurs at these grounds, with breeding success likely influenced by climate-induced variations in food (*i.e.,* krill) availability, such as reduced krill abundance due to global warming (Vighi et al. 2014; Seyboth et al. 2016). Areas with potential foraging importance include the outer shelf of southern South America (including the northwest portion of the proposed project area), the South Atlantic Basin, Scotia Sea, and Weddell Sea (Zerbini et al. 2016, 2018).

Pygmy Right Whale

The distribution of the pygmy right whale is circumpolar in the Southern Hemisphere between 30° S and 55° S in oceanic and coastal environments (Kemper 2018; Jefferson et al. 2015). The pygmy right whale appears to be non-migratory, although there may be some movement inshore in spring and summer (Kemper 2002; Jefferson et al. 2015), possibly related to food availability (Kemper 2018). Foraging areas are not known, but it seems likely that pygmy right whales may feed at productive areas in higher latitudes, such as near the Subtropical Convergence (Best 2007). There may be hotspots of occurrence where mesozooplankton, such as Nyctiphanes australis and Calanus tonsus, are plentiful (Kemper et al. 2013).

The project area is considered to be in the secondary distributional range for this species (Kemper 2018). In the South Atlantic, pygmy right whale records exist for southern Africa, Argentina, the Falkland Islands, and pelagic waters (Baker 1985). One stranding event of a single pygmy right whale occurred in the Falkland Islands during 1950 (Augé et al. 2018). There are no OBIS records of pygmy right whales within or near the project area, but one record exists west of South Georgia and the South Sandwich Islands (53.6° S, 40.6° W) (OBIS 2019).

Blue Whale

The blue whale has a cosmopolitan distribution, but tends to be mostly pelagic, only occurring nearshore to feed and possibly breed (Jefferson et al. 2015). It is most often found in cool, productive waters where upwelling occurs (Reilly and Thayer 1990). The distribution of the species, at least during times of the year when feeding is a major activity, occurs in areas that provide large seasonal concentrations of euphausiids (Yochem and Leatherwood 1985). Seamounts and other deep ocean structures may be important habitat for blue whales (Lesage et al. 2016). Generally, blue whales are seasonal migrants between high latitudes in summer, where they feed, and low latitudes in winter, where they mate and give birth (Lockyer and Brown 1981).

Brach et al. (2007) reported several catches near the proposed project area, particularly near the Falkland Islands, prior to 1974; however, most catches occurred in the waters of the Southern Ocean during January–March (Branch et al. 2007). There are two records in the OBIS database of blue whale sightings in the South Atlantic, including one off the Argentinian coast in 1993 and one northeast of Survey Area 3 in 1913 (42.15° S, 55.25° W) (OBIS 2019). Blue whale songs and ~500 sightings have been reported near South Georgia (Southeast of proposed survey area) (Sirovic et al. 2016; OBIS 2019). Blue whales were also acoustically detected south of the Falkland Islands during a recent Antarctic Circumnavigation Expedition (Bell 2017). A rare sighting of a mother and calf was made off Brazil in July 2014 (Rocha et al. 2019). One blue whale stranding event was reported in southern Brazil during the 2000s (Prado et al. 2016). Three standings events of individual blue whales occurred in the Falkland Islands during 1940–1962 (Augé et al. 2018).

Fin Whale

The fin whale is widely distributed in all the world's oceans (Gambell 1985), although it is most abundant in temperate and cold waters (Aguilar and García-Vernet 2018). Nonetheless, its overall range and distribution is not well known (Jefferson et al. 2015). Fin whales most commonly occur offshore, but can also be found in coastal areas (Jefferson et al. 2015). Most populations migrate seasonally between temperate waters where mating and calving occur in winter, and polar waters where feeding occurs in the summer; they are known to use the shelf edge as a migration route (Evans 1987). The northern and southern fin whale populations likely do not interact owing to their alternate seasonal migration; the resulting genetic isolation has led to the recognition of two subspecies, *B. physalus quoyi* and *B. p. physalus* in the Southern and Northern hemispheres, respectively (Anguilar and García-Vernet 2018).

In the Southern Hemisphere, fin whales are typically distributed south of 50° S in the austral summer, migrating northward to breed in the winter (Gambell 1985). According to Edwards et al. (2015), the greatest number of sightings near the Falkland Islands (including the proposed project area) have been reported during December and January; however, sightings have also been made in the area from June through November. There were 27 sightings of 57 fin whales made during surveys in Falkland Islands waters during February 1998 to January 2001, including two sightings within the project area and at least three sightings immediately west of the project area (White et al. 2002). Sightings predominantly occurred during November–January in water depths >200 m, but some sightings were also made during September (White et al. 2002). Otherwise, there are four records west/south of the Falkland Islands, three off southeastern Brazil, and ~500 near South Georgia (OBIS 2019).

Sei Whale

The sei whale occurs in all ocean basins (Horwood 2018), predominantly inhabiting deep waters throughout their range (Acevedo et al. 2017a). It undertakes seasonal migrations to feed in sub-polar latitudes during summer, returning to lower latitudes during winter to calve (Horwood 2018). Recent observation records indicate that the sei whale may utilize the Vitória-Trindade

Chain off Brazil as calving grounds (Heissler et al. 2016). In the Southern Hemisphere, sei whales typically concentrate between the Subtropical and Antarctic convergences during the summer (Horwood 2018) between 40° S and 50° S, with larger, older whales typically travelling into the northern Antarctic zone while smaller, younger individuals remain in the lower latitudes (Acevedo et al. 2017a).

There were 31 sightings of 45 sei whales during surveys in Falkland Islands waters from February 1998 to January 2001, with one sighting within and one immediately west of the project area; most sightings occurred during March and November and none occurred from August–October (White et al. 2002). Twenty sightings of sei whales were made in the coastal waters of Argentina and in the Falkland Islands from 2004–2008, with the majority of sightings during August–September (Iñíguez et al. 2010). Sixty-five sightings of over 200 sei whales were made in the Magellan Strait and adjacent waters during November–May, during 2004–2015; the majority of sightings occurred during December and January (Acevedo et al. 2017a). Aerial and photographic surveys indicated a minimum of 87 sei whales present in Berkeley Sound, Falkland Islands, during February–May 2017, mostly occurring singly or in pairs and otherwise in groups of up to seven whales (Weir 2017).

There are no sei whale records within the proposed project area in the OBIS database; however, there are 32 records for the Southwest Atlantic, including eight sightings north of the project area during 2001–2014, ten west of Survey Area 2 during 2009–2013, nine near the southern tip of South America during 2012 and 2014, and five between the Falkland Islands and South Georgia during 2000–2001 (OBIS 2019). Nine sightings of 25 individuals were made in the Beagle Channel off the southeastern tip of South America during January 2015 and February 2016 (Reyes et al. 2016).

Common Minke Whale

The common minke whale has a cosmopolitan distribution ranging from the tropics and subtropics to the ice edge in both hemispheres (Jefferson et al. 2015). A smaller form (unnamed subspecies) of the common minke whale, known as the dwarf minke whale, occurs in the Southern Hemisphere, where its distribution overlaps with that of the Antarctic minke whale (B. bonaerensis) during summer (Perrin et al. 2018). The dwarf minke whale is generally found in shallower coastal waters and over the shelf in regions where it overlaps with B. bonaerensis (Perrin et al. 2018). The range of the dwarf minke whale is thought to extend as far south as 65° S (Jefferson et al. 2015) and as far north as 2° S in the Atlantic off South America, where it can be found nearly year-round (Perrin et al. 2018).

The waters of the proposed project area are considered to be within the primary range of the common (dwarf) minke whale (Jefferson et al. 2015). Sixty sightings of 68 minke whales were made during surveys in Falkland Islands waters from February 1998 to January 2001, including five sightings within the project area and ~20 sightings in the immediate vicinity; sightings occurred year-round (except during August), with most sightings during September–January (White et al. 2002).

Antarctic Minke Whale

The Antarctic minke whale has a circumpolar distribution in coastal and offshore areas of the Southern Hemisphere from ~7° S to the ice edge (Jefferson et al. 2015). It is found between 60° S and the ice edge during the austral summer; in the austral winter, it is mainly found at mid-latitude breeding grounds, including off western South Africa and northeastern Brazil, where it is primarily oceanic, occurring beyond the shelf break (Perrin et al. 2018). Antarctic minke whale densities are highest near pack ice edges, although they are also found amongst pack ice (Williams et al. 2014), where they feed almost entirely on krill (Tamura and Konishi 2009).

A sighting of two Antarctic minke whales was made off Brazil during an August–September 2010 survey from Vitória, at ~20° S, 40° W, to Trindade and Martim Vaz islands; the whales were seen in association with a group of rough-toothed dolphins near 19.1° S, 35.1° W on 21 August (Wedekin et al. 2014). There are no OBIS records of Antarctic minke whales within the project area, but two records exist for nearshore waters of Argentina west of Survey Area 2, and there are two records off southern South America (OBIS 2019). At least five strandings have been reported for southern Brazil, including two during the 1990s and three in the 2000s (Prado et al. 2016). One stranding of a single whale occurred in the Falkland Islands during May 2016 (Augé et al. 2018).

Humpback Whale

Humpback whales are found worldwide in all ocean basins. In winter, most humpback whales occur in the subtropical and tropical waters of the Northern and Southern Hemispheres (Muto et al., 2015). These wintering grounds are used for mating, giving birth, and nursing new calves. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS recently evaluated the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The Brazil DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the survey area.

In the Southern Hemisphere, humpback whales migrate annually from summer foraging areas in the Antarctic to breeding grounds in tropical seas (Clapham 2018). Whales migrating southward from Brazil have been shown to traverse offshore, pelagic waters within a narrow migration corridor to the east of the proposed project area (Zerbini et al. 2006, 2011) en route to feeding areas along the Scotia Sea, including the waters around Shag Rocks, South Georgia and the South Sandwich Islands (Stevick et al. 2006; Zerbini et al. 2006, 2011; Engel et al. 2008; Engel and Martin 2009).

The waters of the proposed project area are considered part of the humpback's secondary range (Jefferson et al. 2015). Four humpback sightings totaling five individuals were made during surveys in Falkland Islands waters, between February 1999 and March 2000 (White et al. 2002). For the South Atlantic, the OBIS database shows numerous sightings along the coast of South America, including one record within Survey Area 2 during February 2000, one record near the Argentinian coast during January 2008, and six historical records north of the project area (OBIS 2019).

Odontocetes

Sperm Whale

The sperm whale is widely distributed, occurring from the edge of the polar pack ice to the Equator in both hemispheres, with the sexes occupying different distributions (Whitehead 2018). In general, it is distributed over large temperate and tropical areas that have high secondary productivity and steep underwater topography, such as volcanic islands (Jaquet and Whitehead 1996). Its distribution and relative

abundance can vary in response to prey availability, most notably squid (Jaquet and Gendron 2002). Females generally inhabit waters >1000 m deep at latitudes <40° where sea surface temperatures are <15 °C; adult males move to higher latitudes as they grow older and larger in size, returning to warm-water breeding grounds according to an unknown schedule (Whitehead 2018).

There were 21 sightings of 28 sperm whales during surveys in Falkland Islands waters from February 1998 to January 2001, with at least eight sightings within the proposed project area and one immediately west of the project area; sightings occurred year-round in water >200 m deep (White et al. 2002). Surveys conducted between January 2002 and May 2004 by observers on board longliners during hauling operations along the 1000-m isobath east and northeast of the Falkland Islands (including within the proposed project area) indicated that although sperm whales were present throughout the fishing areas, they were concentrated near the steepest depth gradients in north/east/southeast Burdwood Bank and northeast of the Falkland Islands (Yates and Brickle 2007). Yates and Brickle (2007) sighted sperm whales throughout the year, and observed a higher abundance south of 53° S during November–March and north of 50° S during May–September. Sperm whales were detected acoustically in Falkland Island waters during all seasons during monitoring from July 2012 to July 2013 (Premier Oil 2018).

In the OBIS database, there is one record of sperm whales within Survey Area 1, 84 records within Survey Area 2, and two within Survey Area 3 (OBIS 2019). An additional 89 records are near the project area, and 10 records are near the Falkland Islands (OBIS 2019). Sperm whales were sighted and/or acoustically detected off southern South America during the 2014–2017 Argentine Southern Ocean Research Partnership cruise (Melcon et al. 2017). Sixteen strandings totaling 39 sperm whales occurred in the Falkland Islands from 1957–2011 (Augé et al. 2018). There are ~30 stranding reports for southern Brazil from 1983–2014 (Prado et al. 2016; Vianna et al. 2016).

Pygmy and Dwarf Sperm Whales

Dwarf and pygmy sperm whales are distributed throughout tropical and temperate waters of the Atlantic, Pacific and Indian oceans, but their precise distributions are unknown because much of what we know of the species comes from strandings (McAlpine 2018). They are difficult to sight at sea, because of their dive behavior and perhaps because of their avoidance reactions to ships and behavior changes in relation to survey aircraft (Würsig et al. 1998). The two species are often difficult to distinguish from one another when sighted (McAlpine 2018). It has been suggested that the pygmy sperm whale is more temperate and the dwarf sperm whale more tropical, based at least partially on live sightings at sea from a large database from the eastern tropical Pacific (Wade and Gerrodette 1993; McAlpine 2018). This idea is also supported by the distribution of strandings in South American waters (Muñoz-Hincapié et al. 1998; Moura et al. 2016).

The proposed project area is located along the southern edge of the presumed distributional range of Kogia spp. There are no records of Kogia spp. in proposed project area (OBIS 2019). The only records in the OBIS database for the South Atlantic are for Africa; 57 records of *K. breviceps* and 22 records of *K. sima* (OBIS 2019). Both species have been reported off southern Brazil (*e.g.,* de Oliveira Santos et al. 2010; Costa-Silva et al. 2016). Approximately 60 dwarf sperm whale strandings have been reported in Brazil between 1965 and 2014 (Moura et al. 2016; Prado et al. 2016). Approximately 50 pygmy sperm whale strandings occurred in Brazil during the same time period (Moura et al. 2016; Prado et al. 2016; Vianna et al. 2016).

Arnoux's Beaked Whale

Arnoux's beaked whale is distributed in deep, cold, temperate, and subpolar waters of the Southern Hemisphere, occurring between 24° S and Antarctica (Thewissen 2018). Most records exist for southeastern South America, Falkland Islands, Antarctic Peninsula, South Africa, New Zealand, and southern Australia (MacLeod et al. 2006; Jefferson et al. 2015). There are no OBIS records for the Southwest Atlantic (OBIS 2019). At least three stranding events have been reported in southern Brazil since the 2000s (Prado et al. 2016). Stranding records also exist for the coast of Tierra del Fuego, Argentina (Riccialdelli et al. 2017).

Cuvier's Beaked Whale

Cuvier's beaked whale is probably the most widespread and common of the beaked whales, although it is not found in high-latitude polar waters (Heyning 1989; Baird 2018a). It is rarely observed at sea and is known mostly from strandings; it strands more commonly than any other beaked whale (Heyning 1989). Cuvier's beaked whale is found in deep water in the open-ocean and over and near the continental slope (Gannier and Epinat 2008; Baird 2018a).

In the South Atlantic, there are stranding records for Brazil, Uruguay, Argentina, Falkland Islands, and South Africa (MacLeod et al. 2006; Otley et al. 2012; Fisch and Port 2013; Bortolotto et al. 2016; Riccialdelli et al. 2017). Sighting records exist for nearshore Brazil, South Africa, and the central South Atlantic and Southern Ocean (Findlay et al. 1992; MacLeod et al. 2006; Prado et al. 2016). There are no OBIS records within or near the proposed project area; the nearest sighting record occurred off southeastern Brazil during 2001 (27.82° S, 45.2° W) (OBIS 2019).

Southern Bottlenose Whale

The southern bottlenose whale is found throughout the Southern Hemisphere from 30° S to the ice edge, with most sightings reported between ~57° S and 70° S (Jefferson et al. 2015; Moors-Murphy 2018). It is apparently migratory, occurring in Antarctic waters during summer (Jefferson et al. 2015). Several sighting and stranding records exist for southeastern South America, Falkland Islands, South Georgia Island, southeastern Brazil, and Argentina, and numerous sightings have been reported for the Southern Ocean (MacLeod et al. 2006; de Oliveira Santos and e Figueiredo 2016; Riccialdelli et al. 2017). The Falkland Islands/Tierra del Fuego area is considered a beaked whale key area (MacLeod and Mitchell 2006). Southern bottlenose whales were regularly seen there (18 sightings of 34 individuals) during September–February 1998–2001, including three sightings within the proposed project area (White et al. 2002). There are three records in the OBIS database of sightings in the Southwest Atlantic, one off eastern Brazil during November 2000 and two east of Survey Area 2 during November 2001 (45.75° S and 53.18° W) (OBIS 2019).

Shepherd's Beaked Whale

Based on known records, it is likely that Shepherd's beaked whale has a circumpolar distribution in the cold temperate waters of the Southern Hemisphere, between 33–50° S (Mead 2018). It is primarily known from strandings, most of which have been recorded in New Zealand and the Tristan da Cunha archipelago (Pitman et al. 2006; Mead 2018). Additional records in the South Atlantic include a sighting in the Scotia Sea and several strandings in Argentina (Grandi et al. 2005; MacLeod et al. 2006; Pitman et al. 2006; Riccialdelli et al. 2017; Mead

2018). Based on the known distributional range of Shepherd's beaked whale (MacLeod et al. 2006; Jefferson et al. 2015), the project area is within its possible range. There are no records for the Southwest Atlantic in the OBIS database (OBIS 2019).

Mesoplodont Beaked Whales (Including Blainville's, Gray's, Hector's, True's, Strapped-Toothed, Andrew's, and Spade-Toothed Beaked Whales)

Mesoplodont beaked whales are distributed throughout deep waters along the continental slopes of the Southwest Atlantic and the open ocean. Blainville's beaked whale is primarily found in tropical and warn temperate waters of all oceans (Pittman 2018), and the proposed project area is located at the southernmost extend of this species' distributional range (Jefferson et al. 2015). Gray's beaked whale, Hector's beaked whale, and Andrew's beaked whale are all thought to have a circumpolar distribution in temperate waters of the Southern Hemisphere (Pitman 2018). True's beaked whale has a disjunct, antitropical distribution (Jefferson et al. 2015) and in the Southern Hemisphere, is known to occur in South Africa, South America, and Australia (Findlay et al. 1992; MacLeod and Mitchell 2006; MacLeod et al. 2006). The strap-toothed beaked whale is thought to have a circumpolar distribution in temperate and subantarctic waters of the Southern Hemisphere, mostly between 32° and 63° S (MacLeod et al. 2006; Jefferson et al. 2015). It may undertake limited migration to warmer waters during the austral winter (Pitman 2018). The spade-toothed beaked whale is considered relatively rare and is known from only four records, three from New Zealand and one from Chile (Thompson et al. 2012), but based on latitude, the species could occur in the proposed project area.

Relatively few records exist of Mesoplodont beaked whale observations in the proposed survey area, with much of the evidence for Mesoplodont presence based on stranding records. Between February 1998 and January 2001, there were 7 sightings of 15 unidentified beaked whales during surveys in the Falkland Islands, and one of these whales was likely a Gray's beaked whale (White et al. 2002).

Risso's Dolphin

Risso's dolphin is distributed worldwide in mid-temperate and tropical oceans (Kruse et al. 1999), although it shows a preference for mid-temperate waters of the shelf and slope between 30° and 45° S (Jefferson et al. 2014). Although it occurs from coastal to deep water (~200–1000 m depth), it shows a strong preference for mid-temperate waters of upper continental slopes and steep shelf-edge areas (Hartman 2018). The variations in Risso's dolphin distribution and seasonal movement patterns near Argentina may be influenced by that of its primary prey, squid (Riccialdelli et al. 2011).

Sightings of Risso's dolphin have been reported on the Patagonian Shelf, Magellan Strait, and elsewhere around southern South America (Riccialdelli et al. 2011; Otley 2012; Jefferson et al. 2014). It has also been sighted during austral spring and fall surveys near southeastern Brazil from 2009 and 2014, in association with common bottlenose dolphins (Di Tullio et al. 2016). Retana and Lewis (2017) reported 11 records west of the project area. Although there are no records within the proposed project area in the OBIS database, 12 records exist along the southeastern Argentinian coast (OBIS 2019). Several dozen stranding events have been reported in coastal waters of southern Argentina (Riccialdelli et al. 2011; Otley 2012). Few stranding records also exist for northern/northeastern Brazil (Toledo et al. 2015; Sánchez-Sarmiento et al. 2018).

Rough-Toothed Dolphin

The rough-toothed dolphin is distributed worldwide in tropical and subtropical waters (Jefferson et al. 2015). It is generally seen in deep, oceanic water, although it is known to occur in coastal waters of Brazil (Jefferson et al. 2015; Cardoso et al. 2019). The proposed project area is located to the south of its primary distribution range (Jefferson et al. 2015); nonetheless, the rough-toothed dolphin could be encountered. Rough-toothed dolphins have been sighted in surveys off the coast of (Brazil Wedekin et al. 2014, de Oliveira Santos et al. 2017) and were also acoustically detected off southeastern Brazil during passive acoustic monitoring surveys in February 2016 (Bittencourt et al. 2018). There are no records of rough-toothed dolphin within the project area in the OBIS database; the nearest records occur of central-eastern Brazil (OBIS 2019). There have been ~40 reported strandings in southern Brazil from 1983–2014 (Baptista et al. 2016; Prado et al. 2016; Vianna et al. 2016).

Common Bottlenose Dolphin

The bottlenose dolphin occurs in tropical, subtropical, and temperate waters throughout the world (Wells and Scott 2018). In the South Atlantic, it occurs as far south Tierra del Fuego (Goodall et al. 2011; Vermeulen et al. 2017; Wells and Scott 2018). Although no sightings have been reported in OBIS (2019) for the proposed project area or the Falkland Islands, several stranding records exist (Otley 2012; Augé et al. 2018). In the OBIS database, there are 100 records within 700 km of the project area, including one nearshore southern Argentina and one near South Georgia (OBIS 2019).

Pantropical Spotted Dolphin

The pantropical spotted dolphin is distributed worldwide in tropical and some subtropical waters, between ~40° N and 40° S (Jefferson et al. 2015). It is one of the most abundant cetaceans and is found in coastal, shelf, slope, and deep waters (Perrin 2018a). Based on distribution maps (*e.g.,* Moreno et al. 2005; Jefferson et al. 2015), the proposed project area is located just south of its regular range; nonetheless, it is possible that pantropical spotted dolphins could be encountered. For the South Atlantic, there is one record for Brazil, observed during 2013 (OBIS 2019) and one reported stranding event in southern Brazil during the 1990s (Prado et al. 2016).

Atlantic Spotted Dolphin

The Atlantic spotted dolphin is distributed in tropical and warm temperate waters of the North Atlantic from Brazil to New England and to the coast of Africa (Jefferson et al. 2015). Based on distribution maps (*e.g.,* Moreno et al. 2005; Jefferson et al. 2015), the proposed project area is located just south of its regular range; nonetheless, it is possible that Atlantic spotted dolphins could be encountered. Moreno et al. (2005) summarized records for Brazil. For the South Atlantic, there is one record for Brazil in the OBIS database (OBIS 2019).

Spinner Dolphin

The spinner dolphin is pantropical in distribution, with a range nearly identical to that of the pantropical spotted dolphin, including oceanic tropical and sub-tropical waters between 40° N and 40° S (Jefferson et al. 2015). Spinner dolphins are extremely gregarious, and usually form large schools in the open sea and small ones in coastal waters (Perrin and Gilpatrick 1994).

Although its primary distributional range appears to be to the north of the proposed project area in the South Atlantic (Moreno et al. 2005; Jefferson et al. 2015), one sighting record has been reported east of Survey Area 2 and another north of the Falkland Islands

(OBIS 2019). Sightings off Brazil have also been reported (Moreno et al. 2005; OBIS 2019).

Clymene Dolphin

The clymene dolphin only occurs in tropical and subtropical waters of the Atlantic Ocean (Jefferson et al. 2015). It inhabits areas where water depths are 700–4500 m or deeper (Fertl et al. 2003). In the western Atlantic, it occurs from New Jersey to Florida, the Caribbean Sea, the Gulf of Mexico and south to Venezuela and Brazil (Würsig et al. 2000; Fertl et al. 2003).

Although currently available information indicates that the proposed project area likely does not overlap with its distributional range (Moreno et al. 2005; Jefferson et al. 2015), it is possible that clymene dolphins could be encountered. There are no OBIS records for the South Atlantic (OBIS 2019). Two stranding events of clymene dolphins were recorded in the Santa Catarina Coast of southern Brazil from 1983–2014 (Vianna et al. 2016).

Striped Dolphin

The striped dolphin has a cosmopolitan distribution in tropical to warm temperate waters from ~50° N to 40° S (Perrin et al. 1994; Jefferson et al. 2015). It occurs primarily in pelagic waters, but has been observed approaching shore where there is deep water close to the coast (Jefferson et al. 2015). In the South Atlantic, it is known to occur along the coast of South America, from Brazil to Argentina, and along the west coast of Africa (Jefferson et al. 2015).

The proposed project survey area is immediately south of its distributional range (Moreno et al. 2005; Jefferson et al. 2015). Sightings have been reported off the northern coast of Argentina (Moreno et al. 2005), with 10 records offshore Argentina north of the project area; the nearest record was located at 42.3° S, 62° W (OBIS 2019).

Short-Beaked Common Dolphin

The short-beaked common dolphin is found in tropical and warm temperate oceans around the world (Jefferson et al. 2015), ranging from ~60° N to ~50° S (Jefferson et al. 2015). It is the most abundant dolphin species in offshore areas of warm-temperate regions in the Atlantic and Pacific (Perrin 2018c).

Short-beaked common dolphins were observed on the outer-continental shelf off southeastern Brazil during spring and fall surveys during 2009–2014 (Di Tullio et al. 2016), and de Oliveira Santos et al. (2017) reported one sighting within the Parque Estadual Marinho da Laje de Santos MPA off Brazil's southeastern coast during boat-based cetacean surveys from 2013–2015. For the Southwest Atlantic, there are seven OBIS records for eastern South America, west and north of the proposed project area nearshore and offshore Argentina (OBIS 2019). There are at least 23 reported stranding events for short-beaked common dolphin in southern Brazil from 1983–2014 (Prado et al. 2016; Vianna et al. 2016). Strandings and incidental catches in fishing nets have been reported in Argentina (de Castro et al. 2016; Durante et al. 2016).

Fraser's Dolphin

Fraser's dolphin is a tropical oceanic species generally distributed between 30° N and 30° S that generally inhabits deeper, offshore water (Dolar 2018). The proposed project area is located south of the presumed distribution range (Jefferson et al. 2015), and strandings in more temperate waters, such as in Uruguay, are likely extralimital (Dolar 2018). However, there is one record in the OBIS database off central-eastern Argentina, west of the proposed project area (42.9° S, 65° W). Strandings and incidental captures in fishing nets have also been reported in Argentina (So et al. 2009; Durante et al. 2016).

Dusky Dolphin

The dusky dolphin occurs throughout the Southern Hemisphere, primarily over continental shelves and slopes and sometimes over deep water close to continents or islands (Van Waerebeek and Würsig 2018). Along the east coast of South America, it is present from ~36° S to Southern Patagonia and the Falkland Islands (Otley 2012; Van Waerebeek and Würsig 2018). It is the most common small cetacean near southeastern Argentina (Schiavini et al. 1999) and is incidentally captured in mid-water trawl fisheries in the region (Dans et al. 1997).

Dusky dolphins have been sighted during aerial and boat-based surveys from the southeastern Argentinian coast to the edge of the EEZ; there are also a few records for the proposed project area (Crespo et al. 1997). During the past decade, the presence of dusky dolphin has increased in the Beagle Channel, southern Argentina, suggesting at least a seasonally-resident population during austral summer and fall (Dellabianca et al. 2018). There are seven records ranging from counts of one to 30 dusky dolphins within Survey Area 2 in the OBIS database, and an additional ~80 records within the Southwest Atlantic beyond the proposed project area, including five records west of Survey Area 1 (OBIS 2019).

Hourglass Dolphin

The hourglass dolphin occurs in all parts of the Southern Ocean, with most sightings between ~45° S and 60° S (Cipriano 2018a). However, some sightings have been made as far north as 33° S (Jefferson et al. 2015). Although it is pelagic, it is also sighted near banks and islands (Cipriano 2018a). There were 177 sightings of 886 hourglass dolphins made during surveys in Falkland Islands waters from February 1998 to January 2001, including within the proposed project area; sightings predominantly occurred from September–February in water deeper than 200 m (White et al. 2002). There are two records in the OBIS database near the Falkland Islands, 12 records east and southeast of the southern tip of Argentina, and 17 records between Falkland Islands and South Georgia (OBIS 2019).

Peale's Dolphin

Peale's dolphin is endemic to southern South America and ranges from 38–59° S (Cipriano 2018b). It is known to breed in the Falkland Islands (White et al. 2002). Peale's dolphin was the most frequent and numerous cetacean recorded during surveys in Falkland Island waters from February 1998 to January 2001, with 864 sightings totaling 2617 individuals (White et al. 2002). There were 134 schools (465 individuals) observed during eight scientific cruises in southern Patagonian waters during November–April between 2009 and 2015, including sightings within and/or near the project area (Dellabianca et al. 2016). In the OBIS database, there are two sightings within Survey Area 2 and ~130 records near the project area (OBIS 2019). There are also reports of strandings historically from Southern Brazil to the Falkland Islands (Prado et al. 2016, Augé et al. 2018)

Southern Right Whale Dolphin

The southern right whale dolphin is distributed between the Subtropical and Antarctic convergences in the Southern Hemisphere, generally between ~30° S and 65° S (Jefferson et al. 2015; Lipsky and Brownell 2018). It is sighted most often in cool, offshore waters, although it is sometimes seen near shore where coastal waters are deep (Jefferson et al. 2015).

One sighting of 120 southern right whale dolphins was made in Survey Area 2 during September 1998; an additional two sightings of six and 20 individuals occurred southeast of the proposed project area during February and September 1999, respectively (White et al. 2002). Two strandings of

three southern right whale dolphins occurred in the Falkland Islands during February and September between 1945 and 2004 (Augé et al. 2018).

Commerson's Dolphin

Commerson's dolphin principally occurs near Argentina and the Falkland Islands, Strait of Magellan, and the Kerguelen Islands in the Indian Ocean (Dawson 2018). In the Falkland Islands, Commerson's dolphin are distributed mainly coastally and are also known to breed there (White et al. 2002).

Although these dolphins typically prefer water depths <100 m, there are two records within Survey Area 2 and over 500 records in the Southwest Atlantic in the OBIS database, with sightings particularly prevalent nearshore and offshore southeastern Argentina and the Falkland Islands (OBIS 2019). Commerson's dolphins have been observed year-round, except during May, with peak occurrence during April (White et al. 2002) in waters near the Falkland Islands, and in other surveys around Argentina.

Killer Whale

Killer whales have been observed in all oceans and seas of the world (Leatherwood and Dahlheim 1978). Based on sightings by whaling vessels between 1960 and 1979, killer whales are distributed throughout the South Atlantic (Budylenko 1981; Mikhalev et al. 1981). Although reported from tropical and offshore waters (Heyning and Dahlheim 1988), killer whales prefer the colder waters of both hemispheres, with greatest abundances found within 800 km of major continents (Mitchell 1975).

There are 48 records of killer whales for the Southwest Atlantic near the project area in the OBIS database, including one record of three individuals within Survey Area 2, three records totaling ten whales east of Survey Area 2, and one record of six whales northeast of Survey Area 3 (OBIS 2019). In addition to these sightings, there are numerous recorded observations from surveys in the area.

Short-Finned and Long-Finned Pilot Whale

The short-finned pilot whale is found in tropical and warm temperate waters, and the long-finned pilot whale is distributed antitropically in cold temperate waters (Olson 2018). The ranges of the two species show little overlap (Olson 2018). Short-finned pilot whale distribution does not generally range south of 40° S (Jefferson et al. 2008). Long-finned pilot whales are one of the most regular sighted species in the Falkland Islands (White et al. 2002).

There are eight records of long-finned pilot whales in Survey Area 2 and one record in Survey Area 3 in the OBIS database, in addition to ~100 records in the Southwest Atlantic beyond the project area; there is a single record of short-finned pilot whales off northeastern Brazil (OBIS 2019).

False Killer Whale

The false killer whale is found worldwide in tropical and temperate waters, generally between 50° N and 50° S (Odell and McClune 1999). It is widely distributed, but not abundant anywhere (Carwardine 1995). The proposed project area is within the primary range of the false killer whale in the Southwest Atlantic Ocean (Baird 2018b). Within this portion of its range, false killer whales are known to prey on fishes caught in the Uruguayan pelagic longline fishery (Passadore et al. 2015). Although there are no OBIS records of false killer whales within the project area, there are two records northeast of there, one record also exists west of South Georgia, and 18 records are located offshore northeastern Brazil (OBIS 2019).

Spectacled Porpoise

The spectacled porpoise is distributed in cool temperate, subantarctic, and Antarctic waters of the Southern Hemisphere (Goodall and Brownell 2018). In the Southwest Atlantic, it occurs from southern Brazil to Tierra del Fuego, Falkland Islands, and South Georgia, and its range extends southwards into the Drake Passage (Jefferson et al. 2015).

In the OBIS database, one record exists for the South Atlantic, west of Survey Area 2 at 47.5° S, 62.7° W during 2009 (OBIS 2019) and the species is generally observed in group sizes of one to five individuals (Goodall and Brownell 2018). Strandings of spectacled porpoises have been recorded around the region including the Falkland Islands, southern Brazil, and strand most frequently on the beaches of Tierra del Fuego where it is the second-most frequently stranding cetacean (Costa and Rojas 2017; Augé et al. 2018; Goodall and Brownell 2018).

Pinnipeds

Antarctic Fur Seal

The Antarctic fur seal is the only fur seal that lives south of the Antarctic Convergence (Acevedo et al. 2011). It has a circumpolar distribution around Antarctica and ranges as far north as the Falkland Islands and Argentina during the non-breeding season (Forcada and Staniland 2018).

Female Antarctic fur seals can disperse greater than 1,000 km onto the continental shelf of Patagonia once pups are weaned (Boyd et al. 2002), with tagged animals showing focused foraging activity in waters of the South American continental shelf, including waters of the proposed project area. There are thousands of records of Antarctic fur seals in the OBIS database (OBIS 2019), including 108 records for the proposed project area for May through October.

South American Fur Seal

The South American fur seal occurs along the Atlantic coast of South America from southern Brazil to the southernmost tip of Patagonia, extending out to include the Falkland Islands (Cárdenas-Alayza 2018a). There are no records of South American fur seals within the proposed offshore project area in the OBIS database (OBIS 2019). The closest record is ~270 km to the west and tagged individuals have undertaking foraging trips that bring them in waters near the project area (Baylis et al. 2018b), but with a tendency to be in waters less than 400 m deep.

Subantarctic Fur Seal

Subantarctic fur seals occur between 10° W and 170° E north of the Antarctic Polar Front in the Southern Ocean (Hofmeyr and Bester 2018). Breeding occurs on several islands, with Gough Island in the central South Atlantic accounting for about two thirds of pup production (Hofmeyr and Bester 2018), but adults take long foraging journeys away from these colonies. Subantarctic fur seals found in Brazil were most often seen there during the austral winter from July through October (de Moura and Siciliano 2007); most were males. There are no records of subantarctic fur seals within the proposed offshore project area in the OBIS database (OBIS 2019).

South American Sea Lion

The South American sea lion is widely distributed along the South American coastline from Peru in the Pacific to southern Brazil in the Atlantic (Cárdenas-Alayza 2018b). On the Atlantic coast, it occurs from Brazil to Tierra del Fuego, including the Falkland Islands (Cárdenas-Alayza 2018b). The northernmost rookery is located on the coast of Uruguay; South American sea lions are also known to breed on the Falkland Islands (Thompson et al. 2005).

There are 2,352 records for coastal and shelf waters of South America in the OBIS database; most records are for waters off Argentina (OBIS 2019). There are 80 records in the northwestern portion of the proposed project area and satellite tagged males have been recorded near Survey Area 2, but the animals tend to be found in waters 200 m deep or less.

Crabeater Seal

Crabeater seals have a circumpolar distribution off Antarctica and generally spend the entire year in the advancing and retreating pack ice; occasionally they are seen in the far southern areas of South America though this is uncommon (Bengtson and Stewart 2018). Vagrants are occasionally found as far north as Brazil (de Oliveira et al. 2006). There are no records of crabeater seals within the proposed offshore project area in the OBIS database (OBIS 2019). However, the species could possibly be present and Crabeater seals found on the coast of Brazil were most often observed during the austral summer and fall, but also in winter months (de Oliveira et al. 2006).

Leopard Seal

The leopard seal has a circumpolar distribution around the Antarctic continent where it is solitary and widely dispersed (Rogers 2018). Most leopard seals remain within the pack ice; however, members of this species regularly visit southern continents during the winter (Rogers 2018). On the Atlantic coast of South America, leopard seals have been reported in small groups on the Falkland Islands and as lone individuals in Brazil, Uruguay, Tierra del Fuego, Patagonia, and northern Argentina (summarized in Rodríguez et al. 2003). There are no records of leopard seals within the proposed offshore survey area in the OBIS database (OBIS 2019).

Southern Elephant Seal

The southern elephant seal has a near circumpolar distribution in the Southern Hemisphere (Jefferson et al. 2015), with breeding sites located on islands throughout the subantarctic (Hindell 2018). In the South Atlantic, southern elephant seals breed at Patagonia, South Georgia, and other islands of the Scotia Arc, Falkland Islands, Bouvet Island, and Tristan da Cunha archipelago (Bester and Ryan 2007). Península Valdés, Argentina is the sole continental South American large breeding colony, where tens of thousands of southern elephant seals congregate (Lewis et al. 2006).

Southern elephant seals are known to occur throughout the proposed project area (White et al. 2002; Campagna et al. 2008). All sightings north of 50° S were made during January – May, and all records south of 50° S were made during June, August, and November; most sightings were made near the 200-m isobath (White et al. 2002). For the South Atlantic, there are ~3,000 OBIS records for the nearshore and offshore waters of eastern South America (OBIS 2019); most of the records (2943) are for waters off Argentina and the Falkland Islands, including within and near the proposed project area, with the most records in survey Area 2.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales).	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales).	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz..
Phocid pinnipeds (PW) (underwater) (true seals).	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals).	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall et al. 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Forty-nine marine mammal species (42 cetacean and 7 pinniped (4 otariid and 3 phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, 8 are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 28 are classified as mid-frequency cetaceans (*i.e.,* most delphinid and ziphiid species and the sperm whale), and 6 are classified as high-frequency cetaceans (*i.e.,* Kogia spp., hourglass dolphin, Peale's dolphin, Commerson's dolphin, spectacled porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this

document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa) while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy contained within a pulse and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk-pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;
- *Biological:* Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and
- *Anthropogenic:* Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from a given activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Airgun arrays produce pulsed signals with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.,* omnidirectional), but airgun arrays do possess some directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

As described above, a Kongsberg EM 300 MBES and a Knudsen Chirp 3260 SBP would be operated continuously during the proposed surveys, but not during transit to and from the survey areas. Additionally a 12-kHz pinger would be used during coring, when seismic airguns, are not in operation (more information on this pinger is available in NSF–USGS (2011). Each ping emitted by the MBES consists of eight (in water >1,000 m deep) or four (<1,000 m) successive fan-shaped transmissions, each ensonifying a sector that extends 1° fore–aft. Given the movement and speed of the vessel, the intermittent and narrow downward-directed nature of the sounds emitted by the MBES would result in no more than one or two brief ping exposures of any individual marine mammal, if any exposure were to occur.

Due to the lower source levels of the Knudsen Chirp 3260 SBP relative to the *Thompson's* airgun array (maximum SL of 222 dB re 1 μPa · m for the SBP, versus a minimum of 230.9 dB re 1 μPa · m for the 2 airgun array (LGL, 2019)), sounds from the SBP are expected to be effectively subsumed by sounds from the airgun array. Thus, any marine mammal potentially exposed to sounds from the SBP would already have been exposed to sounds from the airgun array, which are expected to propagate further in the water.

The use of pingers is also highly unlikely to affect marine mammals given their intermittent nature, short-term and transitory use from a moving vessel, relatively low source levels, and brief signal durations (NSF–USGS, 2011). As such, we conclude that the likelihood of marine mammal take resulting from exposure to sound from the MBES or SBP (beyond that which is already quantified as a result of exposure to the airguns) is discountable. Additionally the characteristics of sound generated by pingers means that take of marine mammals resulting from exposure to these pingers is discountable. Therefore we do not consider noise from the MBES, SBP, or pingers further in this analysis.

Acoustic Effects

Here, we discuss the effects of active acoustic sources on marine mammals.

Potential Effects of Underwater Sound—Please refer to the information given previously (''Description of Active Acoustic Sources'') regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to the use of airgun arrays.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions

(*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dBs above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as airgun pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

For mid-frequency cetaceans in particular, potential protective mechanisms may help limit onset of TTS or prevent onset of PTS. Such mechanisms include dampening of hearing, auditory adaptation, or behavioral amelioration (*e.g.,* Nachtigall and Supin, 2013; Miller *et al.,* 2012; Finneran *et al.,* 2015; Popov *et al.,* 2016).

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Finneran *et al.* (2015) measured hearing thresholds in three captive bottlenose dolphins before and after exposure to ten pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors note that the failure to induce more significant auditory effects likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). In general, harbor porpoises have a lower TTS onset than other measured cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes.

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More information is needed on the relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016a).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source,

context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that seismic surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007, 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Cerchio *et al.* (2014) used passive acoustic monitoring to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units

were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each ten minute sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale breeding activity was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during a seismic airgun survey. During the first 72 h of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the study area. This displacement persisted for a time period well beyond the 10-day duration of seismic airgun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 μPa^2-s caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the acoustic source vessel (estimated received level 143 dB pk-pk). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute SEL_{cum} of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). These studies demonstrate that even low levels of noise received far from the source can induce changes in vocalization and/or behavior for mysticetes.

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Humpback whales showed avoidance behavior in the presence of an active seismic array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in^3 or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during a seismic survey monitored whale movements and respirations pre-, during and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering

natural variation, none of the response variables were significantly associated with seismic survey or vessel sounds.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data on this. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in exceptional situations, reverberation occurs for much or all of the interval between pulses (*e.g.,* Simard *et al.* 2005; Clark and Gagnon 2006), which could mask calls. Situations with prolonged strong reverberation are infrequent. However, it is common for reverberation to cause some lesser degree of elevation of the

background level between airgun pulses (*e.g.,* Gedamke 2011; Guerra *et al.* 2011, 2016; Klinck *et al.* 2012; Guan *et al.* 2015), and this weaker reverberation presumably reduces the detection range of calls and other natural sounds to some degree. Guerra *et al.* (2016) reported that ambient noise levels between seismic pulses were elevated as a result of reverberation at ranges of 50 km from the seismic source. Based on measurements in deep water of the Southern Ocean, Gedamke (2011) estimated that the slight elevation of background levels during intervals between pulses reduced blue and fin whale communication space by as much as 36–51 percent when a seismic survey was operating 450–2,800 km away. Based on preliminary modeling, Wittekind *et al.* (2016) reported that airgun sounds could reduce the communication range of blue and fin whales 2000 km from the seismic source. Nieukirk *et al.* (2012) and Blackwell *et al.* (2013) noted the potential for masking effects from seismic surveys on large whales.

Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls usually can be heard between the pulses (*e.g.,* Nieukirk *et al.* 2012; Thode *et al.* 2012; Bröker *et al.* 2013; Sciacca *et al.* 2016). As noted above, Cerchio *et al.* (2014) suggested that the breeding display of humpback whales off Angola could be disrupted by seismic sounds, as singing activity declined with increasing received levels. In addition, some cetaceans are known to change their calling rates, shift their peak frequencies, or otherwise modify their vocal behavior in response to airgun sounds (*e.g.,* Di Iorio and Clark 2010; Castellote *et al.* 2012; Blackwell *et al.* 2013, 2015). The hearing systems of baleen whales are undoubtedly more sensitive to low-frequency sounds than are the ears of the small odontocetes that have been studied directly (*e.g.,* MacGillivray *et al.* 2014). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses.

Ship Noise

Vessel noise from the *Thompson* could affect marine animals in the proposed survey areas. Houghton *et al.* (2015) proposed that vessel speed is the most important predictor of received noise levels, and Putland *et al.* (2017) also reported reduced sound levels with decreased vessel speed. Sounds produced by large vessels generally dominate ambient noise at frequencies from 20 to 300 Hz (Richardson *et al.* 1995). However, some energy is also produced at higher frequencies (Hermannsen *et al.* 2014); low levels of high-frequency sound from vessels has been shown to elicit responses in harbor porpoise (Dyndo *et al.* 2015). Increased levels of ship noise have been shown to affect foraging by porpoise (Teilmann *et al.* 2015; Wisniewska *et al.* 2018); Wisniewska *et al.* (2018) suggest that a decrease in foraging success could have long-term fitness consequences.

Ship noise, through masking, can reduce the effective communication distance of a marine mammal if the frequency of the sound source is close to that used by the animal, and if the sound is present for a significant fraction of time (*e.g.,* Richardson *et al.* 1995; Clark *et al.* 2009; Jensen *et al.* 2009; Gervaise *et al.* 2012; Hatch *et al.* 2012; Rice *et al.* 2014; Dunlop 2015; Erbe *et al.* 2015; Jones *et al.* 2017; Putland *et al.* 2017). In addition to the frequency and duration of the masking sound, the strength, temporal pattern, and location of the introduced sound also play a role in the extent of the masking (Branstetter *et al.* 2013, 2016; Finneran and Branstetter 2013; Sills *et al.* 2017). Branstetter *et al.* (2013) reported that time-domain metrics are also important in describing and predicting masking. In order to compensate for increased ambient noise, some cetaceans are known to increase the source levels of their calls in the presence of elevated noise levels from shipping, shift their peak frequencies, or otherwise change their vocal behavior (*e.g.,* Parks *et al.* 2011, 2012, 2016a,b; Castellote *et al.* 2012; Melcón *et al.* 2012; Azzara *et al.* 2013; Tyack and Janik 2013; Luís *et al.* 2014; Sairanen 2014; Papale *et al.* 2015; Bittencourt *et al.* 2016; Dahlheim and Castellote 2016; Gospić and Picciulin 2016; Gridley *et al.* 2016; Heiler *et al.* 2016; Martins *et al.* 2016; O'Brien *et al.* 2016; Tenessen and Parks 2016). Harp seals did not increase their call frequencies in environments with increased low-frequency sounds (Terhune and Bosker 2016). Holt *et al.* (2015) reported that changes in vocal modifications can have increased energetic costs for individual marine mammals. A negative correlation between the presence of some cetacean species and the number of vessels in an area has been demonstrated by several studies (*e.g.,* Campana *et al.* 2015; Culloch *et al.* 2016).

Baleen whales are thought to be more sensitive to sound at these low frequencies than are toothed whales (*e.g.,* MacGillivray *et al.* 2014), possibly causing localized avoidance of the proposed survey area during seismic operations. Reactions of gray and humpback whales to vessels have been studied, and there is limited information available about the reactions of right whales and rorquals (fin, blue, and minke whales). Reactions of humpback whales to boats are variable, ranging from approach to avoidance (Payne 1978; Salden 1993). Baker *et al.* (1982, 1983) and Baker and Herman (1989) found humpbacks often move away when vessels are within several kilometers. Humpbacks seem less likely to react overtly when actively feeding than when resting or engaged in other activities (Krieger and Wing 1984, 1986). Increased levels of ship noise have been shown to affect foraging by humpback whales (Blair *et al.* 2016). Fin whale sightings in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015). Minke whales and gray seals have shown slight displacement in response to construction-related vessel traffic (Anderwald *et al.* 2013). Many odontocetes show considerable tolerance of vessel traffic, although they sometimes react at long distances if confined by ice or shallow water, if previously harassed by vessels, or have had little or no recent exposure to ships (Richardson *et al.* 1995). Dolphins of many species tolerate and sometimes approach vessels (*e.g.,* Anderwald *et al.* 2013). Some dolphin species approach moving vessels to ride the bow or stern waves (Williams *et al.* 1992). Pirotta *et al.* (2015) noted that the physical presence of vessels, not just ship noise, disturbed the foraging activity of bottlenose dolphins. Sightings of striped dolphin, Risso's dolphin, sperm whale, and Cuvier's beaked whale in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015).

There are few data on the behavioral reactions of beaked whales to vessel noise, though they seem to avoid approaching vessels (*e.g.,* Würsig *et al.* 1998) or dive for an extended period when approached by a vessel (*e.g.,* Kasuya 1986). Based on a single observation, Aguilar Soto *et al.* (2006) suggest foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels.

In summary, project vessel sounds would not be at levels expected to cause anything more than possible localized and temporary behavioral changes in marine mammals, and would not be expected to result in significant negative

effects on individuals or at the population level. In addition, in all oceans of the world, large vessel traffic is currently so prevalent that it is commonly considered a usual source of ambient sound (NSF–USGS 2011).

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

The *Thompson* travels at a speed of either 5 (9.3 km/hour) or 8 kn (14.8 km/hour) while towing seismic survey gear (LGL 2019). At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). No such incidents were reported for geophysical survey vessels during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95 percent CI = $0–5.5 \times 10^{-6}$; NMFS, 2013b). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of the vessel striking a marine mammal is low, we require a robust ship strike avoidance protocol (see *Proposed Mitigation*), which we believe eliminates any foreseeable risk of ship strike. We anticipate that vessel collisions involving a seismic data acquisition vessel towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the required mitigation measures, the relatively slow speed of the vessel towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), and the presence of marine mammal observers, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

Stranding—When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that (A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea,

2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Use of military tactical sonar has been implicated in a majority of investigated stranding events. Most known stranding events have involved beaked whales, though a small number have involved deep-diving delphinids or sperm whales (*e.g.,* Mazzariol *et al.,* 2010; Southall *et al.,* 2013). In general, long duration (~1 second) and high-intensity sounds (≤235 dB SPL) have been implicated in stranding events (Hildebrand, 2004). With regard to beaked whales, mid-frequency sound is typically implicated (when causation can be determined) (Hildebrand, 2004). Although seismic airguns create predominantly low-frequency energy, the signal does include a mid-frequency component. We have considered the potential for the proposed surveys to result in marine mammal stranding and have concluded that, based on the best available information, stranding is not expected to occur.

Effects to Prey—Marine mammal prey varies by species, season, and location and, for some, is not well documented. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pulsed sound on fish, although several are based on studies in support of construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from survey activities at the project area would be temporary avoidance of the area. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Information on seismic airgun impacts to zooplankton, which represent an important prey type for mysticetes, is limited. However, McCauley *et al.* (2017) reported that experimental exposure to a pulse from a 150 inch^3 airgun decreased zooplankton abundance when compared with controls, as measured by sonar and net tows, and caused a two- to threefold increase in dead adult and larval zooplankton. Although no adult krill were present, the study found that all larval krill were killed after air gun passage. Impacts were observed out to the maximum 1.2 km range sampled.

In general, impacts to marine mammal prey are expected to be limited due to the relatively small temporal and spatial overlap between the proposed survey and any areas used by marine mammal prey species. The proposed use of airguns as part of an active seismic array survey would occur over a relatively short time period (~28 days) and would occur over a very small area relative to the area available as marine mammal habitat in the Southwest Atlantic Ocean. We believe any impacts to marine mammals due to adverse effects to their prey would be insignificant due to the limited spatial and temporal impact of the proposed survey. However, adverse impacts may occur to a few species of fish and to zooplankton.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they would also likely be of short duration and transient in any given area due to the nature of these surveys. As described previously, exploratory surveys such as this one cover a large area but would be transient rather than focused in a given location over time and therefore would not be considered chronic in any given location.

In summary, activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat or populations of fish species or on the quality of acoustic habitat. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, as use of the acoustic sources (*i.e.,* seismic airgun) has the potential to result in disruption of behavioral patterns for individual marine mammals. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* marine mammal exclusion zones) discussed in detail below in Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be

authorized. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates, and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

SIO's proposed activity includes the use of impulsive seismic sources, and therefore the 160 dB re 1 μPa (rms) is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). SIO's proposed activity includes the use of impulsive seismic sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The proposed survey would entail the use of a 2-airgun array with a total discharge of 90 in^3 at a two depth of 2–4 m. Lamont-Doherty Earth Observatory (L–DEO) model results are used to determine the 160 dB$_{rms}$ radius for the 2-airgun array in deep water (>1,000 m) down to a maximum water depth of 2,000 m. Received sound levels were predicted by L–DEO's model (Diebold *et al.,* 2010) as a function of distance from the airguns, for the two 45 in^3 airguns. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogenous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from a 36-airgun array at a tow depth of 6 m have been reported in deep water (~1,600 m), intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010).

For deep and intermediate water cases, the field measurements cannot be used readily to derive the Level A and

Level B harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–550 m, which may not intersect all the SPL isopleths at their widest point from the sea surface down to the maximum relevant water depth (~2,000 m) for marine mammals. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data at the deep sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate water depths, comparisons at short ranges between sound levels for direct arrivals recorded by the calibration hydrophone and model results for the same array tow depth are in good agreement (see Figures 12 and 14 in Appendix H of NSF–USGS 2011). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent. Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

The proposed surveys would acquire data with two 45-in^3 guns at a tow depth of 2–4 m. For deep water (>1000 m), we use the deep-water radii obtained from L–DEO model results down to a maximum water depth of 2000 m for the airgun array with 2-m and 8-m airgun separation. The radii for intermediate water depths (100–1000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (see Figure 16 in Appendix H of NSF–USGS 2011). The shallow-water radii are obtained by scaling the empirically derived measurements from the Gulf of Mexico calibration survey to account for the differences in source volume and tow depth between the calibration survey (6000 in^3; 6-m tow depth) and the proposed survey (90 in^3; 4-m tow depth); whereas the shallow water in the Gulf of Mexico may not exactly replicate the shallow water environment at the proposed survey sites, it has been shown to serve as a good and very conservative proxy (Crone *et al.,* 2014). A simple scaling factor is calculated from the ratios of the isopleths determined by the deep-water L–DEO model, which are essentially a measure of the energy radiated by the source array.

L–DEO's modeling methodology is described in greater detail in SIO's IHA application. The estimated distances to the Level B harassment isopleths for the two proposed airgun configurations in each water depth category are shown in Table 5.

TABLE 5—PREDICTED RADIAL DISTANCES FROM R/V *Thompson* SEISMIC SOURCE TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Airgun configuration	Water depth (m)	Predicted distances (m) to 160 dB received south level
Two 45 in^3 guns, 2-m separation	>1,000	[a] 539
	100–1,000	[b] 809
	<100	[c] 1,295
Two 45 in^3 guns, 8-m separation	>1,000	[a] 578
	100–1,000	[b] 867
	<100	[c] 1,400

[a] Distance based on L–DEO model results.
[b] Distance based on L–DEO model results with a 1.5 × correction factor between deep and intermediate water depths.
[c] Distance based on empirically derived measurements in the Gulf of Mexico with scaling applied to account for differences in tow depth.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the NUCLEUS software program and the NMFS User Spreadsheet, described below. The updated acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS 2016a). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The SEL_{cum} for the 2–GI airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The

pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the interactions of the two airguns that occur near the source center and is calculated as a point source (single airgun), the modified farfield signature is a more appropriate measure of the sound source level for large arrays. For this smaller array, the modified farfield changes will be correspondingly smaller as well, but we use this method for consistency across all array sizes.

SIO used the same acoustic modeling as Level B harassment with a small grid step in both the inline and depth directions to estimate the SEL_{cum} and peak SPL. The propagation modeling takes into account all airgun interactions at short distances from the source including interactions between subarrays using the NUCLEUS software to estimate the notional signature and the MATLAB software to calculate the pressure signal at each mesh point of a grid. For a more complete explanation of this modeling approach, please see ''Appendix A: Determination of Mitigation Zones'' in SIO's IHA application.

TABLE 6—MODELED SOURCE LEVELS (dB) FOR R/V *Thompson* 90 IN^3 AIRGUN ARRAYS

Functional hearing group	8-kt survey with 8-m airgun separation: Peak SPL_{flat}	8-kt survey with 8-m airgun separation: SEL_{cum}	5-kt survey with 2-m airgun separation: Peak SPL_{flat}	5-kt survey with 2-m airgun separation: SEL_{cum}
Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	228.8	207	232.8	206.7
Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	N/A [1]	206.7	229.8	206.9
High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	233	207.6	232.9	207.2
Phocid Pinnipeds (Underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	230	206.7	232.8	206.9
Otariid Pinnipeds (Underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)	N/A [1]	203	225.6	207.4

[1] N/A indicates source level not applicable or not available.

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the *Thompson's* airgun array (modeled in 1 Hz bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (*i.e.,* to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities and shot intervals provided in SIO's IHA application, potential radial distances to auditory injury zones were calculated for SEL_{cum} thresholds, for both array configurations.

Inputs to the User Spreadsheet in the form of estimated SLs are shown in Table 6. User Spreadsheets used by SIO to estimate distances to Level A harassment isopleths for the two potential airgun array configurations are shown in Tables A–4 and A–5 in Appendix A of SIO's IHA application. Outputs from the User Spreadsheet in the form of estimated distances to Level A harassment isopleths are shown in Table 7. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL_{cum} or Peak SPL_{flat}) is exceeded (*i.e.,* metric resulting in the largest isopleth).

TABLE 7—MODELED RADIAL DISTANCES TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Functional hearing group (Level A harassment thresholds)	8-kt survey with 8-m airgun separation: Peak SPL_{flat}	8-kt survey with 8-m airgun separation: SEL_{cum}	5-kt survey with 2-m airgun separation: Peak SPL_{flat}	5-kt survey with 2-m airgun separation: SEL_{cum}
Low frequency cetaceans ($L_{pk,fla}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	3.08	2.4	4.89	6.5
Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	0	0	0.98	0
High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	34.84	0	34.62	0
Phocid Pinnipeds (Underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	4.02	0	5.51	0.1
Otariid Pinnipeds (Underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)	0	0	0.48	0

Note that because of some of the assumptions included in the methods used, isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as the proposed seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

For the proposed survey area in the southwest Atlantic Ocean, SIO determined that the preferred source of density data for marine mammal species that might be encountered in the project area north of the Falklands was AECOM/NSF (2014). For certain species not included in the AECOM database, data from the NOAA Southwest Fisheries Science Center (SWFSC) Letter of Authorization (LOA) (2013, in AECOM/NSF 2014) was used. Better data on hourglass dolphins, southern bottlenose whales, and southern elephant seals were found in White *et al.,* (2002). When density estimates were not available in the above named sources, densities were estimated using sightings and effort during aerial- and vessel-based surveys conducted in and adjacent to the proposed project area. The three other major sources of animal abundance included White *et al.* (2002), DeTullio *et al.* (2016) and Garaffo *et al.* (2011). Data sources and density calculations are described in detail in Appendix B of SIO's IHA application. For some species, the densities derived from past surveys may not be representative of the densities that would be encountered during the proposed seismic surveys. However, the approach used is based on the best available data. Estimated densities used to inform take estimates are presented in Table 8.

TABLE 8—MARINE MAMMAL DENSITIES IN THE PROPOSED SURVEY AREA

Species	Estimated density (#/km²) [a]
LF Cetaceans	
Southern right whale	0.00080
Pygmy right whale	N.A.
Blue whale	0.00005
Fin whale	0.01820
Sei whale	0.00636
Common (dwarf) minke whale	0.07790
Antarctic minke whale	0.07790
Humpback whale	0.00066
MF Cetaceans	
Sperm whale	0.00207
Arnoux's beaked whale	0.01138
Cuvier's beaked whale	0.00055
Southern bottlenose whale	0.00791
Shepherd's beaked whale	0.00627
Blainville's beaked whale	0.00005
Gray's beaked whale	0.00189
Hector's beaked whale	0.00021
True's beaked whale	0.00005
Strap-toothed beaked whale	0.00058
Andrew's beaked whale	0.00016
Spade-toothed beaked whale	0.00005
Risso's dolphin	0.00436
Routh-toothed dolphin	0.00595
Common bottlenose dolphin	0.05091
Pantropical spotted dolphin	0.00377
Atlantic spotted dolphin	0.22517
Spinner dolphin	0.01498
Clymene dolphin	0.01162
Striped dolphin	0.00719
Short-beaked common dolphin	0.71717
Fraser's dolphin	N.A.
Dusky dolphin	[b] 0.12867
Southern right whale dolphin	0.00616
Killer whale	0.01538
Short-finned pilot whale	0.00209
Long-finned pilot whale	0.21456
False killer whale	N.A.
HF Cetaceans	
Pygmy sperm whale	N.A.
Dwarf sperm whale	N.A.
Hourglass dolphin	0.14871
Peale's dolphin	0.03014
Commerson's dolphin	[b] 0.06763
Spectacled porpoise	[b] 0.00150
Otariids	
Antarctic fur seal	0.00017
South American fur seal	0.01642
Subantarctic fur seal	0.00034
South American sea lion	0.00249
Phocids	
Crabeater seal	0.00649
Leopard seal	0.00162
Southern elephant seal	0.00155

N.A. indicates density estimate is not available.

[a] See Appendix B in SIO's IHA application for density sources.

[b] Density provided is for shallow water (<100 m depth). A correction factor for densities in deeper water was applied (see Appendix B in the IHA application).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A harassment or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A harassment and Level B harassment thresholds. The area estimated to be ensonified in a single day of the survey is then calculated (Table 9), based on the areas predicted to be ensonified around the array and the estimated trackline distance traveled per day. This number is then multiplied by the number of survey days. The product is then multiplied by 1.25 to account for the additional 25 percent contingency. This results in an estimate of the total area (km²) expected to be ensonified to the Level A and Level B harassment thresholds for each survey type (Table 9).

TABLE 9—AREAS (km²) TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS

Survey type	Criteria	Relevant isopleth (m)	Daily ensonified area (km²)	Total survey days	25 percent increase	Total ensonified area (km²)
	Level B Harassment (160 dB)					
5-kt survey	Shallow water	539	18.8	16	1.25	376
	Intermediate water	809	147.32	16	1.25	2946.4
	Deep water	1295	133.44	16	1.25	2668.8
	Level A Harassment					
	LF cetacean	6.5	2.89	16	1.25	57.8

TABLE 9—AREAS (km²) TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS—Continued

Survey type	Criteria	Relevant isopleth (m)	Daily ensonified area (km²)	Total survey days	25 percent increase	Total ensonified area (km²)
	MF cetacean	1	0.44	16	1.25	8.8
	HF cetacean	34.6	15.37	16	1.25	307.4
	Phocids	5.5	2.44	16	1.25	48.8
	Otariids	0.5	0.22	16	1.25	4.4
	Level B Harassment (160 dB)					
8-kt survey	Shallow water	578	25.64	12	1.25	384.6
	Intermediate water	867	284.93	12	1.25	4273.95
	Deep water	1400	220.58	12	1.25	3308.7
	Level A Harassment					
	LF cetacean	3.1	2.22	12	1.25	33.3
	MF cetacean	0	0	12	1.25	0
	HF cetacean	34.8	24.93	12	1.25	373.95
	Phocids	4	2.86	12	1.25	42.9
	Otariids	0	0	12	1.25	0

The total ensonified areas (km²) for each criteria presented in Table 9 were summed to determine the total ensonified area for all survey activities (Table 10).

TABLE 10—TOTAL ENSONIFIED AREAS (KM²) FOR ALL SURVEYS

Criteria	Total ensonified area (km²) for all surveys
160 dB Level B (all depths)	13,958.45
160 dB Level B (shallow water)	760.60

TABLE 10—TOTAL ENSONIFIED AREAS (KM²) FOR ALL SURVEYS—Continued

Criteria	Total ensonified area (km²) for all surveys
160 dB Level B (intermediate water)	7,220.35
160 dB Level B (deep water)	5,977.50
LF cetacean Level A	91.10
MF cetacean Level A	8.80
HF cetacean Level A	681.35
Phocids Level A	91.70
Otariids Level A	4.40

The marine mammals predicted to occur within these respective areas, based on estimated densities (Table 8), are assumed to be incidentally taken. While some takes by Level A harassment have been estimated, based on the nature of the activity and in consideration of the proposed mitigation measures (see Proposed Mitigation section below), Level A take is not expected to occur and has not been proposed to be authorized. Estimated exposures for the proposed survey are shown in Table 11.

TABLE 11—CALCULATED AND PROPOSED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK EXPOSED

Species	Calculated level B	Calculated level A	Proposed level B	Proposed level A	Total take	Percent of population
LF Cetaceans:						
Southern right whale	11	0	11	0	11	0.3
Pygmy right whale	.....	.....	[a] 2	0	2	.....
Blue whale	1	0	[a] 3	0	3	<0.1
Fin whale	252	2	254	0	254	1.7
Sei whale	88	1	89	0	89	0.9
Common (dwarf) minke whale	1080	7	1087	0	1087	0.2
Antarctic minke whale	1080	7	1087	0	1087	0.2
Humpback whale	9	0	9	0	9	<0.1
MF Cetaceans:						
Sperm whale	29	0	29	0	29	0.2
Arnoux's beaked whale	159	0	159	0	159	<0.1
Cuvier's beaked whale	8	0	8	0	8	<0.1
Southern bottlenose whale	110	0	110	0	110	<0.1
Shepherd's beaked whale	88	0	88	0	88	.....
Blainville's beaked whale	1	0	[a] 1	0	1	.....
Gray's beaked whale	26	0	26	0	26	<0.1
Hector's beaked whale	3	0	3	0	3	.....
True's beaked whale	1	0	[a] 2	0	2	.....
Strap-toothed beaked whale	8	0	8	0	8	<0.1
Andrew's beaked whale	2	0	[a] 2	0	2	.....
Spade-toothed beaked whale	1	0	.....	0	2	.....
Risso's dolphin	61	0	61	0	61	0.3
Rough-toothed dolphin	83	0	83	0	83	.....
Common bottlenose dolphin	711	0	711	0	711	0.9
Pantropical spotted dolphin	53	0	53	0	53	1.6

TABLE 11—CALCULATED AND PROPOSED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK EXPOSED—Continued

Species	Calculated level B	Calculated level A	Proposed level B	Proposed level A	Total take	Percent of population
Atlantic spotted dolphin	3143	0	3143	0	3143	7.0
Spinner dolphin	209	0	209	0	209	.....
Clymene dolphin	162	0	162	0	162	.....
Striped dolphin	100	0	100	0	100	0.2
Short-beaked common dolphin	10,004	6	10010	0	10010	14.3
Fraser's dolphin	.....	.....	[a] 283	0	283	.....
Dusky dolphin	1034	1	1035	0	1035	14.3
Southern right whale dolphin	86	0	86	0	86	.....
Killer whale	215	0	215	0	215	0.9
Short-finned pilot whale	29	0	[a] 41	0	41	<0.1
Long-finned pilot whale	2993	2	2995	0	2995	1.5
False killer whale	.....	.....	[a] 5	0	5	.....
HF Cetaceans:						
Pygmy sperm whale	.....	.....	[b] 2	0	2	.....
Dwarf sperm whale	.....	.....	[b] 2	0	2	.....
Hourglass dolphin	1975	101	2076	0	2076	1.4
Peale's dolphin	400	21	421	0	421	2.1
Commerson's dolphin	94	46	140	0	140	0.7
Spectacled porpoise	2	1	3	0	3	.....
Otariids:						
Antarctic fur seal	2	0	2	0	2	<0.1
South American fur seal	229	0	229	0	229	0.2
Subantarctic fur seal	5	0	5	0	5	<0.1
South American sea lion	35	0	35	0	35	<0.1
Phocids:						
Crabeater seal	90	1	91	0	91	<0.1
Leopard seal	23	0	23	0	23	<0.1
Southern elephant seal	22	0	22	0	22	<0.1

[a] Proposed take increased to mean group size from Bradford (2017) if available. Mean group sizes for pygmy right whale and false killer whale from Jefferson *et al.* (2015) and Mobley *et al.* (2000), respectively.
[b] Proposed take increased to maximum group size from Barlow (2016).

It should be noted that the proposed take numbers shown in Table 9 are expected to be conservative for several reasons. First, in the calculations of estimated take, 25 percent has been added in the form of operational survey days to account for the possibility of additional seismic operations associated with airgun testing and repeat coverage of any areas where initial data quality is sub-standard, and in recognition of the uncertainties in the density estimates used to estimate take as described above. Additionally, marine mammals would be expected to move away from a loud sound source that represents an aversive stimulus, such as an airgun array, potentially reducing the likelihood of takes by Level A harassment. However, the extent to which marine mammals would move away from the sound source is difficult to quantify and is, therefore, not accounted for in the take estimates.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

SIO has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of proposed mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli

associated with the activities, SIO has proposed to implement mitigation measures for marine mammals. Mitigation measures that would be adopted during the proposed surveys include (1) Vessel-based visual mitigation monitoring; (2) Establishment of a marine mammal exclusion zone (EZ) and buffer zone; (3) shutdown procedures; (4) ramp-up procedures; and (4) vessel strike avoidance measures.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual PSOs) to scan the ocean surface visually for the presence of marine mammals. PSO observations would take place during all daytime airgun operations and nighttime start ups (if applicable) of the airguns. If airguns are operating throughout the night, observations would begin 30 minutes prior to sunrise. If airguns are operating after sunset, observations would continue until 30 minutes following sunset. Following a shutdown for any reason, observations would occur for at least 30 minutes prior to the planned start of airgun operations. Observations would also occur for 30 minutes after airgun operations cease for any reason. Observations would also be made during daytime periods when the *Thompson* is underway without seismic operations, such as during transits, to allow for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Airgun operations would be suspended when marine mammals are observed within, or about to enter, the designated EZ (as described below).

During seismic operations, three visual PSOs would be based aboard the *Thompson.* PSOs would be appointed by SIO with NMFS approval. One dedicated PSO would monitor the EZ during all daytime seismic operations. PSO(s) would be on duty in shifts of duration no longer than 4 hours. Other vessel crew would also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew would be given additional instruction in detecting marine mammals and implementing mitigation requirements.

The *Thompson* is a suitable platform from which PSOs would watch for marine mammals. Standard equipment for marine mammal observers would be 7 x 50 reticule binoculars and optical range finders. At night, night-vision equipment would be available. The observers would be in communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shutdown.

The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval. At least one PSO must have a minimum of 90 days at-sea experience working as PSOs during a seismic survey. One ''experienced'' visual PSO will be designated as the lead for the entire protected species observation team. The lead will serve as primary point of contact for the vessel operator.

Exclusion Zone and Buffer Zone

An EZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs would establish a minimum EZ with a 100 m radius for the airgun array. The 100-m EZ would be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within, enters, or appears on a course to enter this zone, the acoustic source would be shut down (see Shutdown Procedures below).

The 100-m radial distance of the standard EZ is precautionary in the sense that it would be expected to contain sound exceeding injury criteria for all marine mammal hearing groups (Table 7) while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. In this case, the 100-m radial distance would also be expected to contain sound that would exceed the Level A harassment threshold based on sound exposure level (SEL_{cum}) criteria for all marine mammal hearing groups (Table 7). In the 2011 Programmatic Environmental Impact Statement for marine scientific research funded by the National Science Foundation or the U.S. Geological Survey (NSF–USGS 2011), Alternative B (the Preferred Alternative) conservatively applied a 100-m EZ for all low-energy acoustic sources in water depths >100 m, with low-energy acoustic sources defined as any towed acoustic source with a single or a pair of clustered airguns with individual volumes of ≤250 in^3. Thus the 100-m EZ proposed for this survey is consistent with the PEIS.

Our intent in prescribing a standard EZ distance is to (1) encompass zones within which auditory injury could occur on the basis of instantaneous exposure; (2) provide additional protection from the potential for more severe behavioral reactions (*e.g.,* panic, antipredator response) for marine mammals at relatively close range to the acoustic source; (3) provide consistency for PSOs, who need to monitor and implement the EZ; and (4) define a distance within which detection probabilities are reasonably high for most species under typical conditions.

PSOs will also establish and monitor a 200-m buffer zone. During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the EZ) will be communicated to the operator to prepare for potential shutdown of the acoustic source. The buffer zone is discussed further under *Ramp Up Procedures* below.

An extended EZ of 500 m would be enforced for all beaked whales, *Kogia* species, and Southern right whales. SIO would also enforce a 500-m EZ for aggregations of six or more large whales (*i.e.,* sperm whale or any baleen whale) that does not appear to be traveling (*e.g.,* feeding, socializing, etc.) or a large whale with a calf (calf defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult).

Shutdown Procedures

If a marine mammal is detected outside the EZ but is likely to enter the EZ, the airguns would be shut down before the animal is within the EZ. Likewise, if a marine mammal is already within the EZ when first detected, the airguns would be shut down immediately.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the 100-m EZ. The animal would be considered to have cleared the 100-m EZ if the following conditions have been met:

- It is visually observed to have departed the 100-m EZ;
- it has not been seen within the 100-m EZ for 15 min in the case of small odontocetes and pinnipeds; or
- it has not been seen within the 100-m EZ for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, and beaked whales.

This shutdown requirement would be in place for all marine mammals, with the exception of small delphinoids under certain circumstances. As defined here, the small delphinoid group is

intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement would apply solely to specific genera of small dolphins—*Delphinus, Lagenodelphis, Lagenorhynchus, Lissodelphis, Stenella, Steno,* and *Tursiops*—and would only apply if the animals were traveling, including approaching the vessel. If, for example, an animal or group of animals is stationary for some reason (*e.g.,* feeding) and the source vessel approaches the animals, the shutdown requirement applies. An animal with sufficient incentive to remain in an area rather than avoid an otherwise aversive stimulus could either incur auditory injury or disruption of important behavior. If there is uncertainty regarding identification (*i.e.,* whether the observed animal(s) belongs to the group described above) or whether the animals are traveling, the shutdown would be implemented.

We include this small delphinoid exception because shutdown requirements for small delphinoids under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small delphinoids are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small delphinoids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012). The potential for increased shutdowns resulting from such a measure would require the *Thompson* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinoids) are no more likely to incur auditory injury than are small delphinoids, they are much less likely to approach vessels. Therefore, retaining a power-down/shutdown requirement for large delphinoids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinoids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

Shutdown of the acoustic source would also be required upon observation of a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes are met, observed approaching or within the Level A or Level B harassment zones.

Ramp-Up Procedures

Ramp-up of an acoustic source is intended to provide a gradual increase in sound levels following a shutdown, enabling animals to move away from the source if the signal is sufficiently aversive prior to its reaching full intensity. Ramp-up would be required after the array is shut down for any reason for longer than 15 minutes. Ramp-up would begin with the activation of one 45 in^3 airgun, with the second 45 in^3 airgun activated after 5 minutes.

Two PSOs would be required to monitor during ramp-up. During ramp up, the PSOs would monitor the EZ, and if marine mammals were observed within the EZ or buffer zone, a shutdown would be implemented as though the full array were operational. If airguns have been shut down due to PSO detection of a marine mammal within or approaching the 100 m EZ, ramp-up would not be initiated until all marine mammals have cleared the EZ, during the day or night. Criteria for clearing the EZ would be as described above.

Thirty minutes of pre-clearance observation are required prior to ramp-up for any shutdown of longer than 30 minutes (*i.e.,* if the array were shut down during transit from one line to another). This 30-minute pre-clearance period may occur during any vessel activity (*i.e.,* transit). If a marine mammal were observed within or approaching the 100 m EZ during this pre-clearance period, ramp-up would not be initiated until all marine mammals cleared the EZ. Criteria for clearing the EZ would be as described above. If the airgun array has been shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for a period of less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of any marine mammal have occurred within the EZ or buffer zone. Ramp-up would be planned to occur during periods of good visibility when possible. However, ramp-up would be allowed at night and during poor visibility if the 100 m EZ and 200 m buffer zone have been monitored by visual PSOs for 30 minutes prior to ramp-up.

The operator would be required to notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. The operator must provide information to PSOs documenting that appropriate procedures were followed. Following deactivation of the array for reasons other than mitigation, the operator would be required to communicate the near-term operational plan to the lead PSO with justification for any planned nighttime ramp-up.

Vessel Strike Avoidance Measures

Vessel strike avoidance measures are intended to minimize the potential for collisions with marine mammals. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

The proposed measures include the following: Vessel operator and crew would maintain a vigilant watch for all marine mammals and slow down or stop the vessel or alter course to avoid striking any marine mammal. A visual observer aboard the vessel would monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone would be either third-party observers or crew members, but crew members responsible for these duties would be provided sufficient training to distinguish marine mammals from other phenomena. Vessel strike avoidance measures would be followed during surveys and while in transit.

The vessel would maintain a minimum separation distance of 100 m from large whales (*i.e.,* baleen whales and sperm whales). If a large whale is within 100 m of the vessel, the vessel would reduce speed and shift the engine to neutral, and would not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established. If the vessel is stationary, the vessel would not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m. The vessel would maintain a minimum separation distance of 50 m from all other marine mammals (with the exception of delphinids of the genera *Delphinus, Lagenodelphis, Lagenorhynchus, Lissodelphis, Stenella, Steno,* and *Tursiops* that approach the vessel, as described above). If an animal is encountered during transit, the vessel would attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course. Vessel speeds would be reduced to 10 kt or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near the vessel.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

SIO submitted a marine mammal monitoring and reporting plan in their IHA application. Monitoring that is designed specifically to facilitate mitigation measures, such as monitoring of the EZ to inform potential shutdowns of the airgun array, are described above and are not repeated here. SIO's monitoring and reporting plan includes the following measures:

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations and nighttime start-ups (if applicable) of the airguns. During seismic operations, three visual PSOs would be based aboard the *Thompson.* PSOs would be appointed by SIO with NMFS approval. The PSOs must have successfully completed relevant training, including completion of all required coursework and passing a written and/or oral examination developed for the training program, and must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate training, including (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

During the majority of seismic operations, one PSO would monitor for marine mammals around the seismic vessel. PSOs would be on duty in shifts of duration no longer than 4 hours. Other crew would also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). During daytime, PSOs would scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7×50 Fujinon) and with the naked eye. At night, PSOs would be equipped with night-vision equipment.

PSOs would record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data would be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They would also provide information needed to order a shutdown of the airguns when a marine mammal is within or near the EZ. When a sighting is made, the following information about the sighting would be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc.), and behavioral pace; and

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

All observations and shutdowns would be recorded in a standardized format. Data would be entered into an electronic database. The accuracy of the data entry would be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures would allow initial summaries of data to be prepared during and shortly after the field program and would facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving. The time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare would also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Results from the vessel-based observations would provide:

(1) The basis for real-time mitigation (*e.g.,* airgun shutdown);

(2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS;

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted;

(4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and

(5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A draft report would be submitted to NMFS within 90 days after the end of the survey. The report would describe the operations that were conducted and sightings of marine mammals near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring and would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those that were not detected in consideration of both the characteristics and behaviors of the species of marine mammals that affect detectability, as well as the environmental factors that affect detectability.

The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 2, given that NMFS expects the anticipated effects of the proposed seismic survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of SIO's proposed seismic survey, even in the absence of proposed mitigation. Thus the proposed authorization does not authorize any mortality. As discussed in the *Potential Effects* section, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

No takes by Level A harassment are proposed to be authorized. The 100-m exclusion zone encompasses the Level A harassment isopleths for all marine mammal hearing groups, and is expected to prevent animals from being exposed to sound levels that would cause PTS. Also, as described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the *Thompson's* approach due to the vessel's relatively low speed when conducting seismic surveys. We expect that any instances of take would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

Potential impacts to marine mammal habitat were discussed previously in this document (see *Potential Effects of the Specified Activity on Marine Mammals and their Habitat*). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.,* 1995). Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. In addition, there are no feeding, mating or calving areas known to be biologically important to marine mammals within the proposed project area.

As described above, marine mammals in the survey area are not assigned to NMFS stocks. For purposes of the small numbers analysis we rely on the best

available information on the abundance estimates for the species of marine mammals that could be taken. The activity is expected to impact a very small percentage of all marine mammal populations that would be affected by SIO's proposed survey (less than 15 percent each for all marine mammal populations where abundance estimates exist). Additionally, the acoustic ''footprint'' of the proposed survey would be very small relative to the ranges of all marine mammals that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the proposed survey area. The seismic array would be active 24 hours per day throughout the duration of the proposed survey. However, the very brief overall duration of the proposed survey (28 days) would further limit potential impacts that may occur as a result of the proposed activity.

The proposed mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the proposed mitigation will be effective in preventing at least some extent of potential PTS in marine mammals that may otherwise occur in the absence of the proposed mitigation.

Of the marine mammal species under our jurisdiction that are likely to occur in the project area, the following species are listed as endangered under the ESA: Fin, sei, blue, sperm, and southern right whales. We are proposing to authorize very small numbers of takes for these species (Table 11), relative to their population sizes (again, for species where population abundance estimates exist), therefore we do not expect population-level impacts to any of these species. The other marine mammal species that may be taken by harassment during SIO's seismic survey are not listed as threatened or endangered under the ESA. There is no designated critical habitat for any ESA-listed marine mammals within the project area; of the non-listed marine mammals for which we propose to authorize take, none are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

NMFS concludes that exposures to marine mammal species due to SIO's proposed seismic survey would result in only short-term (temporary and short in duration) effects to individuals exposed, or some small degree of PTS to a very small number of individuals of four species. Marine mammals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- The anticipated impacts of the proposed activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel. The relatively short duration of the proposed survey (28 days) would further limit the potential impacts of any temporary behavioral changes that would occur;
- The number of instances of PTS that may occur are expected to be very small in number (Table 11). Instances of PTS that are incurred in marine mammals would be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity;
- The proposed project area does not contain areas of significance for feeding, mating or calving;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the proposed survey would be temporary and spatially limited; and
- The proposed mitigation measures, including visual and acoustic monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The numbers of marine mammals that we authorize to be taken would be considered small relative to the relevant populations (less than 15 percent for all species) for the species for which abundance estimates are available. No known current worldwide or regional population estimates are available for 16 species under NMFS jurisdiction that could be incidentally taken as a result of the proposed survey: The pygmy right whale, pygmy sperm whale, dwarf sperm whale, Shepherd's beaked whale, Blainville's beaked whale, Hector's beaked whale, True's beaked whale, Andrew's beaked whale, spade-toothed beaked whale, rough-toothed dolphin, spinner dolphin, Clymene dolphin, Fraser's dolphin, southern right whale dolphin, false killer whale, and spectacled porpoise.

NMFS has reviewed the geographic distributions and habitat preferences of these species in determining whether the numbers of takes authorized herein are likely to represent small numbers. Pygmy right whales have a circumglobal distribution and occur throughout coastal and oceanic waters in the Southern Hemisphere (between 30 to 55° S) (Jefferson *et al.,* 2008). Pygmy and dwarf sperm whales occur in deep waters on the outer continental shelf and slope in tropical to temperate waters of the Atlantic, Indian, and Pacific Oceans. Based on stranding records and the known habitat preferences of beaked whales in general, Shepherd's beaked whales are assumed to have a circumpolar distribution in deep, cold temperate waters of the Southern Ocean (Pitman *et al.,* 2006). Blainville's beaked whale is the most widely distributed beaked *Mesoplodon* species with sightings and stranding records throughout the North and South Atlantic Ocean (MacLeod *et al.,* 2006).

Hector's beaked whales are found in cold temperate waters throughout the southern hemisphere between 35° S and 55° S (Zerbini and Secchi 2001). True's beaked whales occur in the Southern hemisphere from the western Atlantic Ocean to the Indian Ocean to the waters of southern Australia and possibly New Zealand (Jefferson *et al.,* 2008). Andrew's beaked whales have a circumpolar distribution north of the Antarctic Convergence to 32° S (MacLeod *et al.,* 2006). Stranding records of spade-toothed beaked whales suggest a Southern hemisphere distribution in temperate waters between 33° and 44° S in the South Pacific, with potential occurrence in the southern Atlantic Ocean (MacLeod *et al.,* 2006). Rough-toothed dolphins occur in tropical and warm temperate seas around the world, preferring deep offshore waters (Lodi 1992). Spinner dolphins are found in tropical, subtropical, and, less frequently, warm temperate waters throughout the world (Secchi and Siciliano 1995). The Clymene dolphin is found in tropical and warm temperate waters of both the North and South Atlantic Oceans (Fertl *et al.,* 2003). Fraser's dolphins are distributed in tropical oceanic waters worldwide, between 30° N and 30° S (Moreno *et al.,* 2003). Southern right whale dolphins have a circumpolar distribution and generally occur in deep temperate to sub-Antarctic waters in the Southern hemisphere (between 30 to 65° S) (Jefferson *et al.,*2008). Short-finned pilot whales are found in warm temperate to tropical waters throughout the world, generally in deep offshore areas (Olson and Reilly, 2002). Spectacled porpoises occur in oceanic cool temperate to Antarctic waters and are circumpolar in high latitude Southern hemisphere distribution (Natalie *et al.,* 2018).

Based on the broad spatial distributions and habitat preferences of these species relative to the areas where SIO's proposed survey will occur, NMFS preliminarily concludes that the proposed take of these species likely represent small numbers relative to the affected species' overall population sizes, though we are unable to quantify the take numbers as a percentage of population.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of fin, sei, blue, sperm, and southern right whales which are listed under the ESA. The Permit and Conservation Division has requested initiation of Section 7 consultation with the Interagency Cooperation Division for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to SIO for conducting a marine geophysical survey in the southwest Atlantic Ocean in September-October 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed survey. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA;
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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Part III

National Labor Relations Board

29 CFR Part 103

Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships; Proposed Rule

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142–AA16

Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships

AGENCY: National Labor Relations Board

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: As part of its ongoing efforts to more effectively administer the National Labor Relations Act (the Act or the NLRA) and to further the purposes of the Act, the National Labor Relations Board (the Board) proposes to amend its rules and regulations governing the filing and processing of petitions for a Board-conducted representation election while unfair labor practice charges are pending or following an employer's voluntary recognition of a union as the majority-supported collective-bargaining representative of the employer's employees. The Board also proposes an amendment redefining the evidence required to prove that an employer and labor organization in the construction industry have established a voluntary majority-supported collective-bargaining relationship. The Board believes, subject to comments, that the proposed amendments will better protect employees' statutory right of free choice on questions concerning representation by removing unnecessary barriers to the fair and expeditious resolution of such questions through the preferred means of a Board-conducted secret ballot election.

DATES: Comments regarding this proposed rule must be received by the Board on or before October 11, 2019. Comments replying to comments submitted during the initial comment period must be received by the Board on or before October 25, 2019. Reply comments should be limited to replying to comments previously filed by other parties. No late comments will be accepted.

ADDRESSES:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov.*

Delivery—Comments should be sent by mail or hand delivery to: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001. Because of security precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. The Board encourages electronic filing. It is not necessary to send comments if they have been filed electronically with *regulations.gov*. If you send comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273–1940 (this is not a toll-free number). Individuals with hearing impairments may call 1–866–315–6572 (TTY/TDD).

Only comments submitted through *http://www.regulations.gov,* hand delivered, or mailed will be accepted; ex parte communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours (8:30 a.m. to 5 p.m. EST) at the above address.

The Board will post, as soon as practicable, all comments received on *http://www.regulations.gov* without making any changes to the comments, including any personal information provided. The website *http://www.regulations.gov* is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information will become viewable by the public via the *http://www.regulations.gov* website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The National Labor Relations Board is proposing three amendments to its current rules and regulations governing the filing and processing of petitions relating to a labor organization's exclusive representation of employees for purposes of collective bargaining with their employer. The first amendment would modify the Board's election blocking charge policy—not currently set forth in the rules and regulations—by establishing a vote and impound procedure for processing representation petitions when a party has requested blocking the election based on a pending unfair labor practice charge. The second amendment would modify the current recognition bar policy—also not currently set forth in the rules and regulations—by reestablishing a notice requirement and 45-day open period for filing an election petition following an employer's voluntary recognition of a labor organization as employees' majority-supported exclusive collective-bargaining representative under Section 9(a) of the Act. The third amendment would overrule current Board law—also not currently set forth in the rules and regulations—holding that contract language, standing alone, can establish the existence of a Section 9(a) majority-based bargaining relationship for parties in the construction industry, rather than a relationship under Section 8(f), the second proviso of which prohibits any election bar. To prove the establishment of a Section 9(a) relationship in the construction industry and the existence of a contract bar to an election, the proposed amendment would require extrinsic evidence, in the form of employee signatures on union authorization cards or a petition, that recognition was based on a contemporaneous showing of majority employee support.

The Board believes, subject to comments, that the current blocking charge policy, the immediate imposition of a voluntary recognition election bar, and the establishment of a Section 9(a) relationship in the construction industry based solely on contract recognition language constitute an overbroad and inappropriate limitation on the ability of employees to exercise their fundamental statutory right to the timely resolution of questions concerning representation through the preferred means of a Board-conducted secret ballot election.

I. Background

Section 9(c) of the Act provides that the Board ''shall direct an election by secret ballot'' if the Board finds that a question of representation exists. The Supreme Court has repeatedly recognized that Congress granted the Board wide discretion under the Act to ensure that employees are freely and fairly able to choose whether to have a bargaining representative. E.g., *NLRB* v. *Wyman-Gordon Co.,* 394 U.S. 759, 767

(1969). The Court has noted that ''[t]he control of the election proceedings, and the determination of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone.'' *NLRB* v. *Waterman S.S. Corp.,* 309 U.S. 206, 226 (1940). In *NLRB* v. *A.J. Tower Co.,* the Court stated that ''the Board must act so as to give effect to the principle of majority rule set forth in [Section] 9(a), a rule that 'is sanctioned by our governmental practices, by business procedure, and by the whole philosophy of democratic institutions.' '' 329 U.S. 324, 331 (1946) (quoting S. Rep. No. 74–573, at 13). The Court continued, ''It is within this democratic framework that the Board must adopt policies and promulgate rules and regulations in order that employees' votes may be recorded accurately, efficiently and speedily.'' Id.

Representation case procedures are set forth in the statute, in Board regulations, and in Board caselaw. In addition, the Board's General Counsel has prepared a non-binding Casehandling Manual describing representation case procedures in detail.[1] The Act itself contains only one express limitation on the timing of otherwise valid election petitions. Section 9(c)(3) provides that ''[n]o election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.'' The Board instituted through adjudication a parallel limitation precluding, with limited exceptions, an electoral challenge to a union's representative status for one year from the date of a certification based on an employee majority vote for exclusive representation in a valid Board election. The Supreme Court approved this certification year election bar in *Brooks* v. *NLRB,* 348 U.S. 96 (1954).

The proposed rulemaking does not implicate either the statutory election year bar or the certification year bar. As fully described below, however, the Board has also created through adjudication several additional discretionary bars to the timely processing of a validly supported election petition,[2] three of which—the blocking charge policy, the voluntary recognition election bar policy, and the contract bar—are the subject of this proposed rulemaking proceeding.[3]

A. Blocking Charge Policy

The blocking charge policy dates from shortly after the Act went into effect. See *United States Coal & Coke Co.,* 3 NLRB 398 (1937). A product of adjudication,[4] the policy permits a party—almost invariably a union and most often in response to an RD petition—to block an election indefinitely by filing unfair labor practice charges that allegedly create doubt as to the validity of the election petition or as to the ability of employees to make a free and fair choice concerning representation while the charges remain unresolved. This policy can preclude holding the petitioned-for election for months, or even years, if at all. See, *e.g., Cablevision Systems Corp.,* 367 NLRB No. 59 (2018) (blocking charge followed by Regional Director's misapplication of settlement bar doctrine delayed processing until December 19, 2018, of valid RD petition filed on October 16, 2014; employee petitioner thereafter withdrew petition).

Statistical studies indicate that the blocking charge delay in *Cablevision* is not an anomaly. It is instead representative of a systemic problem in blocking charge cases, which have been identified as the likely cause of what has been characterized as ''the long tail'' of delay in the Board's processing of representation cases.[5] In a study conducted by Professor Samuel Estreicher of petitions processed to elections in 2008, statistics provided to him by the Board indicated that the filing of blocking charges substantially increased the median processing time to an election.[6] Specifically, the study showed that ''in 284 of the 2,024 petitions that proceeded to election in 2008, allegations of employer violations triggered the filing of a 'blocking charge' by a labor organization, delaying the holding of the election, The median for this subset was 139 days compared to thirty-eight days overall [for unblocked cases].'' Id. at 370.

The adverse impact on employee RD petitions resulting from the Board's blocking charge policy, and the potential for abuse and manipulation of that policy by incumbent unions seeking to avoid a challenge to their representative status, have drawn criticism from courts of appeals on several occasions. See *Pacemaker Corp* v. *NLRB,* 260 F.2d 880, 882 (7th Cir. 1958) (''The practice adopted by the Board is subject to abuse as is shown in the instant case. After due notice both parties proceeded with the representation hearing. Possibly for some reasons of strategy near the close of the hearing, the [u]nion asked for an adjournment. Thereafter it filed a second amended charge of unfair labor practice. By such strategy the [u]nion was able to and did stall and postpone indefinitely the representation hearing.''); *NLRB* v. *Minute Maid Corp.,*

[1] NLRB Casehandling Manual (Part Two) Representation Proceedings.

[2] In Board terminology, representation election petitions filed by labor organizations are classified as RC petitions and those filed by employers are RM petitions; decertification petitions filed by an individual employee are classified as RD petitions.

[3] Other discretionary election bar policies established through adjudication, all of which preclude electoral challenges to an incumbent union bargaining representative for some period of time, include the contract bar, *General Cable Corp.,* 139 NLRB 1123, 1125 (1962) (precluding election for up to first 3 years of contract term); the affirmative remedial bargaining order bar, *Lee Lumber & Building Material Corp.,* 334 NLRB 399, 402 (2001) (precluding election for at least six months and up to one year from the first bargaining session following Board finding of unlawful refusal to bargain and issuance of bargaining-order remedy), enfd. 310 F.3d 209 (D.C. Cir. 2002); the successor bar, *UGL–UNICCO Service Co.,* 357 NLRB 801 (2011) (precluding election for at least six months and up to one year from the first post-succession bargaining session); and the settlement bar, *Poole Foundry & Machine Co.,* 95 NLRB 34, 36 (1950) (precluding election for a reasonable period of time following settlement of certain unfair labor practice charges), enfd. 192 F.2d 740 (4th Cir. 1951), cert. denied 342 U.S. 954 (1952). The proposed rule modifying current law with respect to proof of majority-based recognition in the construction industry necessarily involves the issue of when a contract bar will apply. Otherwise, this proposed rulemaking is not intended to address other election bar policies. The Board may choose to address one or more of these policies in future proceedings.

[4] Except for certain evidentiary requirements, discussed below, that are set forth in Section 103.20 of the Board's Rules and Regulations, the current blocking charge policy is not codified. A detailed description of the policy appears in the non-binding NLRB Casehandling Manual (Part Two) Representation, Sections 11730 to 11734. In brief, the policy affords regional directors administrative discretion to hold election petitions in abeyance or to dismiss them based on the request of a charging party alleging either unfair labor practice conduct that ''only interferes with employee free choice'' (a Type I charge) or conduct that ''not only interferes with employee free choice but also is inherently inconsistent with the petition itself'' (a Type II charge). Section 11730.1.

[5] See John-Paul Ferguson, *The Eyes of the Needles: A Sequential Model of Union Organizing Drives, 1999–2004,* 62 Indus. & Lab. Rel. Rev. 3, 10 fn. 9 (Oct. 2008). The Ferguson study of Board representation case statistics for this 5-year period indicated that elections in 95% of cases were held within 75 days of the filing of a petition. ''The tail, however, is quite long; the maximum delay before election recorded in the data is 1,705 days.'' Id.

[6] Samuel Estreicher, *Improving the Administration of the National Labor Relations Act Without Statutory Change,* 5 FIU L. Rev. 361, 369–370 (2010). The Estreicher study focused only on those cases actually processed to an election in 2008. An earlier review of Board representation case statistics from 1977 indicated that, as in the recent *Cablevision* case, more than half of the RD petitions filed with the Board never resulted in an election. William Krupman and Gregory Rasin, *Decertification: Removing the Shroud,* 30 Lab. L.J. 231, 231 (1979). The authors suggested two explanations for this result: ''First, many unions faced with the prospect of losing a decertification election choose to withdraw rather than risk defeat. Second, many petitions are 'blocked' from further processing as a result of unfair labor practice charges filed by the union.'' Id. at 231–232.

283 F.2d 705, 710 (5th Cir. 1960) (''Nor is the Board relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold otherwise would put the union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented.''); *NLRB* v. *Midtown Service Co.,* 425 F.2d 665, 672 (2d Cir. 1970) (''[If] the charges were filed by the union, adherence to the [blocking charge] policy in the present case would permit the union, as the beneficiary of the [e]mployer's misconduct, merely by filing charges to achieve an indefinite stalemate designed to perpetuate the union in power. If, on the other hand, the charges were filed by others claiming improper conduct on the part of the [e]mployer, we believe that the risk of another election (which might be required if the union prevailed but the charges against the Employer were later upheld) is preferable to a three-year delay.''); *Templeton* v. *Dixie Color Printing Co.,* 444 F.2d 1064, 1069 (5th Cir. 1971) (''The short of the matter is that the Board has refused to take any notice of the petition filed by appellees and by interposing an arbitrary blocking charge practice, applicable generally to employers, has held it in abeyance for over 3 years. As a consequence, the appellees have been deprived during all this time of their statutory right to a representative 'of their own choosing' to bargain collectively for them, 29 U.S.C. 157, despite the fact that the employees have not been charged with any wrongdoing. Such practice and result are intolerable under the Act and cannot be countenanced.''); *NLRB* v. *Hart Beverage Co.,* 445 F.2d 415, 420 (8th Cir. 1971) (''[I]t appears clearly inferable to us that one of the purposes of the [u]nion in filing the unfair practices charge was to abort [r]espondent's petition for an election, if indeed, that was not its only purpose.'').

The potential for delay is the same when employees, instead of filing an RD petition, have expressed to their employer a desire to decertify an incumbent union representative. In that circumstance, the blocking charge policy can prevent the employer from being able to seek a timely Board-conducted election to resolve the question concerning representation raised by evidence of good-faith uncertainty as to the union's continuing majority support. Thus, the supposed ''safe harbor'' of filing an RM election petition that the Board majority referenced in *Levitz Furniture Co. of the Pacific,* 333 NLRB 717, 726 (2001), as an alternative to the option of withdrawing recognition (which the employer selects at its peril) is often illusory. As Judge Henderson stated in her concurring opinion in *Scomas of Sausalito, LLC* v. *NLRB,* it is no ''cure-all'' for an employer with a good-faith doubt about a union's majority status to simply seek an election because ''[a] union can and often does file a ULP charge—a 'blocking charge'—'to forestall or delay the election.' '' 849 F.3d 1147, 1159 (D.C. Cir. 2017) (quoting from Member Hurtgen's concurring opinion in *Levitz,* 333 NLRB at 732).

Concerns have also been raised about the Agency's regional directors not applying the blocking charge policy consistently, thereby creating uncertainty and confusion about when, if ever, parties can expect an election to occur. See Zev J. Eigen & Sandro Garofalo, *Less Is More: A Case for Structural Reform of the National Labor Relations Board*, 98 Minn. L. Rev. 1879, 1896–1897 (2014) (''Regional directors have wide discretion in allowing elections to be blocked, and this sometimes results in the delay of an election for months and in some cases for years—especially when the union resorts to the tactic of filing consecutive unmeritorious charges over a long period of time. This is contrary to the central policy of the Act, which is to allow employees to freely choose their bargaining representative, or to choose not to be represented at all.'').

In 2014, the Board engaged in a broad notice-and-comment rulemaking review of the then-current rules governing the representation election process. In the Notice of Proposed Rulemaking (NPRM) issued on February 6, 2014, a Board majority proposed numerous specific changes to that process. 79 FR 7318. The overarching purpose of these proposed changes was ''to better insure 'that employees' votes may be recorded accurately, efficiently and speedily' and to further 'the Act's policy of expeditiously resolving questions concerning representation.' '' [7] Many, if not most, of the proposed changes focused on shortening the time between the filing of a union's RC petition for initial certification as an exclusive bargaining representative and the date of an election. With relatively few variations, the final Election Rule published on December 15, 2014, adopted 25 changes proposed in the NPRM. 79 FR 74308 (2014). The final Election Rule went into effect on April 14, 2015.

The 2014 NPRM included a ''Request for Comment Regarding Blocking Charges'' that did not propose a change in the current blocking charge policy but invited public comment on whether any of nine possible changes should be made as part of a final rule or through means other than amendment of the Board's rules.[8] Extensive commentary was received both in favor of retaining the existing policy and of revising or abandoning the policy. The final Election Rule, however, made only minimal revisions in this respect. The majority incorporated, in new Section 103.20, provisions requiring that a party requesting the blocking of an election based on an unfair labor practice charge make a simultaneous offer of proof, provide a witness list, and promptly make those witnesses available. These revisions were viewed as facilitating the General Counsel's existing practice of conducting expedited investigations in blocking charge cases. The majority declined to make any other changes in the existing policy, expressing the view that the policy was critical to protecting employees' exercise of free choice,[9] and that ''[i]t advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference.'' [10]

Dissenting Board Members Miscimarra and Johnson criticized the majority's failure to make more significant revisions in the blocking charge policy, contrasting the majority's concern with impact on employee free choice of election delays in initial representation RC elections with a perceived willingness to accept prolonged delay in blocking charge cases that predominantly involve RD or RM petitions challenging an incumbent union's continuing representative status. In the dissenters' opinion, it was incumbent on the Board to undertake more substantial reform of a policy that was responsible for a major part of the ''long tail'' of cases where an election was delayed for more than 100 days beyond the average petition processing time.[11]

[7] 79 FR 7323, quoting from *NLRB* v. *A.J. Tower Co.,* 329 U.S. at 331, and *Northeastern University,* 261 NLRB 1001, 1002 (1982).

[8] 79 FR 7334–7335.

[9] 79 FR at 74418–74420, 74428–74429.

[10] 79 FR 74429.

[11] See discussion at 79 FR 74455–74456. The dissenters advocated ''a 3-year trial period in which petitions will be routinely processed and elections conducted in Type I blocking charge cases, with the votes thereafter impounded, even in cases where a regional director finds that there is probable cause to believe an unfair labor practice was committed that would require the processing of the petition to be held in abeyance under current policy.'' 79 FR 74456.

A 2015 review of the Election Rule by Professor Jeffrey M. Hirsch excepted the majority's treatment of the blocking charge policy from a generally favorable analysis of the rule revisions. Noting the persistent problems with delay and abuse, Professor Hirsch observed that ''[t]he Board's new rules indirectly affected the blocking charge policy by requiring parties to file an offer of proof to support a request for a stay, but that requirement is unlikely to change much, if anything. Instead, the Board should have explored new rules such as lowering the presumption that favors staying elections in most circumstances or setting a cap on the length of stays, either of which might have satisfied the blocking charge policy's main purpose while reducing abuse.'' [12]

Statistics provided by the General Counsel for years postdating the 2015 implementation of the Final Rule confirm Professor Hirsch's observation that the rule did not change much.[13] Those statistics do indicate a drop in the number of blocked cases that have been processed to an election for Fiscal Years (FY) 2016, 2017, and 2018, possibly indicating that the new evidentiary requirements have facilitated quick elimination of obviously baseless blocking charges. On the other hand, the statistics indicate the same or greater disparity between blocked and unblocked cases in petition-to-election processing time, when compared to the 2008 statistics analyzed in the Estreicher study.[14] Even more concerning is the information that on December 31, 2018, there were 118 blocked petitions pending; those cases had been pending for an average of 893 days; and the oldest case had been pending for 4,491 days, *i.e.,* more than 12 years.[15] See Majority Appendix B.

On December 12, 2017, the Board issued a Request for Information that generally invited the public to respond with information about whether the 2014 Election Rule should be retained without change, retained with modifications, or rescinded. 82 FR 58783. Relatively few responders addressed the change made with respect to requirements of proof in support of a blocking charge request. A number of responders, however, used this occasion to ask the Board to rescind or substantially modify the blocking charge policy. The reasons articulated for rescinding the policy are essentially the same as those offered in response to the 2014 NPRM. Among commenters that proposed revision of the blocking charge policy rather than complete rescission, the Board's General Counsel has proposed that the Board adopt a vote-and-impound procedure whereby an election would be held regardless of whether a blocking charge and blocking request are pending. If the merits of the charge have not been resolved prior to the election, the ballots would be impounded.

B. The Voluntary Recognition Bar

Longstanding precedent holds that a ''Board election is not the only method by which an employer may satisfy itself as to the union's majority status [under Section 9(a) of the Act].'' *United Mine Workers* v. *Arkansas Flooring Co.,* 351 U.S. 62, 72 fn. 8 (1956). Voluntary recognition agreements based on a union's showing of majority support are undisputedly lawful. *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575, 595–600 (1969). However, it was not until *Keller Plastics Eastern, Inc.,* 157 NLRB 583 (1966), that the Board addressed the issue of whether a Section 9(a) bargaining relationship established by voluntary recognition can be disrupted by the recognized union's subsequent loss of majority status. Although the union in *Keller Plastics* had lost majority support by the time the parties executed a contract little more than 3 weeks after voluntary recognition, the Board rejected the General Counsel's claim that the employer was violating the Act by continuing to recognize a nonmajority union as the employees' representative. The Board reasoned that ''like situations involving certifications, Board orders, and settlement agreements, the parties must be afforded a reasonable time to bargain and to execute the contracts resulting from such bargaining. Such negotiations can succeed, however, and the policies of the Act can thereby be effectuated, only if the parties can normally rely on the continuing representative status of the lawfully recognized union for a reasonable period of time.'' Id. at 586. Soon thereafter, the Board extended this recognition bar policy to representation cases and held that an employer's voluntary recognition of a union would immediately bar the filing of an election petition for a reasonable amount of time following recognition. *Sound Contractors,* 162 NLRB 364 (1966).

From 1966 until 2007, the Board tailored the duration of the immediate recognition bar to the circumstances of each case, stating that what constitutes a reasonable period of time ''does not depend upon either the passage of time or the number of calendar days on which the parties met. Rather, the issue turns on what transpired during those meetings and what was accomplished therein.'' *Brennan's Cadillac, Inc.,* 231 NLRB 225, 226 (1977). In some cases, a few months of bargaining were deemed enough to give the recognized union a fair chance to succeed, whereas in other cases substantially more time was deemed warranted. Compare *Brennan's Cadillac* (employer entitled to withdraw recognition after 4 months) with *MGM Grand Hotel,* 329 NLRB 464, 466 (1999) (more than 11 months was reasonable considering the large size of the unit, the complexity of the bargaining structure and issues, the parties' frequent meetings and diligent efforts, and the substantial progress made).

In *Dana Corp.,* 351 NLRB 434 (2007), a Board majority reviewed the development of the immediate recognition bar policy and concluded ''that the current recognition bar policy should be modified to provide greater protection for employees' statutory right of free choice and to give proper effect to the court- and Board-recognized statutory preference for resolving questions concerning representation through a Board secret-ballot election.'' Id. at 437.[16]

Drawing on the General Counsel's suggestion in his amicus brief of a modified voluntary recognition election bar, the *Dana* majority held that ''[t]here will be no bar to an election following a grant of voluntary recognition unless (a) affected unit employees receive adequate notice of the recognition and of their opportunity to file a Board election petition within 45 days, and (b) 45 days pass from the date of notice without the filing of a validly-supported petition. These rules apply notwithstanding the execution of a collective-bargaining agreement

[12] Jeffrey M. Hirsch, *NLRB Elections: Ambush or Anticlimax?,* 64 Emory L.J. 1647, 1664 (2015).

[13] See Majority Appendix B, available at *https://www.nlrb.gov.*

[14] See Majority Appendix A, available at *https://www.nlrb.gov.* The median number of days from petition to election from 2016 through 2018 was 23 days in unblocked cases. The median number of days from petition to election in the same period for blocked cases ranged from 122 to 145 days.

[15] We note that our dissenting colleague takes a different view of the breadth of the current blocking charge policy's impact, based on her preliminary review of statistics provided to us and her by the General Counsel. However, she acknowledges that in FY 2016 and FY 2017, about 20 percent of decertification petitions filed were blocked. She views this number as either inconsequentially slight or justifiable on policy grounds. That is her opinion. We welcome the opinions of others, including their statistical analyses, in comments responsive to the NPRM.

[16] The 2007 *Dana* decision followed a decision granting review, consolidating two cases, and inviting briefing by the parties and amici on the voluntary recognition bar issue. *Dana Corp.,* 341 NLRB 1283 (2004). In response, the Board received 24 amicus briefs, including one from the Board's General Counsel, in addition to briefs on review and reply briefs from the parties. *Dana Corp.,* 351 NLRB at 434 fn. 2.

following voluntary recognition. In other words, if the notice and window-period requirements have not been met, any postrecognition contract will not bar an election.'' [17]

The *Dana* majority emphasized ''the greater reliability of Board elections'' as a principal reason for the announced modification, In this respect, while a majority card showing has been recognized as a reliable basis for the establishment of a Section 9(a) bargaining relationship, authorization cards are ''admittedly inferior to the election process.'' [18] Several reasons were offered in support of this conclusion. ''First, unlike votes cast in privacy by secret Board election ballots, card signings are public actions, susceptible to group pressure exerted at the moment of choice.'' [19] This is in contrast to a secret ballot vote cast in the ''laboratory conditions'' of a Board election, held ''under the watchful eye of a neutral Board agent and observers from the parties,'' [20] and free from immediate observation, persuasion, or coercion by opposing parties or their supporters. ''Second, union card-solicitation campaigns have been accompanied by misinformation or a lack of information about employees' representational options.'' [21] Particularly in circumstances where voluntary recognition is preceded by an employer entering into a neutrality agreement with the union, including an agreement to provide union access for organizational purposes, employees may not understand they even have an electoral option or an alternative to representation by the organizing union. ''Third, like a political election, a Board election presents a clear picture of employee voter preference at a single moment. On the other hand, card signings take place over a protracted period of time.'' [22] A statistical study cited in several briefs and by the *Dana* majority indicated a significant disparity between union card showings of support obtained over a period of time and ensuing Board election results.[23] Lastly, the Board election process provides for a post-election review of impermissible electioneering and other objectionable conduct that may result in Board invalidation of the election results and the conduct of a second election. ''There are no guarantees of comparable safeguards in the voluntary recognition process.'' [24]

In *Lamons Gasket Company,* 357 NLRB 739 (2011),[25] a new Board majority overruled *Dana Corp.* and reinstated the immediate voluntary recognition election bar. The majority emphasized the validity of voluntary recognition as a basis for establishing a Section 9(a) majority-based recognition. Further, citing Board statistical evidence that employees had decertified the voluntarily recognized union in only 1.2 percent of the total cases in which a *Dana* notice was requested,[26] the majority concluded that the *Dana* modifications to the voluntary recognition bar were unnecessary and that the *Dana* majority's concerns about the reliability of voluntary recognition as an accurate indicator of employee choice were unfounded. The *Lamons Gasket* majority criticized the *Dana* notice procedure as compromising Board neutrality by ''suggest[ing] to employees that the Board considers their choice to be represented suspect and signal[ing] to employees that their choice should be reconsidered.'' Id. at 744. The majority opinion also defended the voluntary recognition bar as consistent with other election bars that are based on a policy of assuring that '' 'a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.' '' Id. (quoting *Franks Bros. Co.* v. *NLRB,* 321 U.S. 702, 705 (1944)). The majority viewed the *Dana* 45-day open period as contrary to this policy by creating a period of post-recognition uncertainty during which an employer has little incentive to bargain, even though technically required to do so. Id. at 747. Finally, having determined to return to the immediate recognition bar policy, the *Lamons Gasket* majority applied its holding retroactively and, based on the Board's decision in *Lee Lumber & Building Material Corp.,* 334 NLRB at 399, the majority defined the reasonable period of time during which a voluntary recognition would bar an election as no less than six months after the date of the parties' first bargaining session and no more than one year after that date. Id. at 748.

Member Hayes dissented in *Lamons Gasket,*[27] arguing that *Dana* was correctly decided for the policy reasons stated there, most importantly the statutory preference for a secret ballot Board election to resolve questions of representation under Section 9 of the Act. He noted that the *Lamons Gasket* majority's efforts to secure empirical evidence of *Dana*'s shortcomings by inviting briefs from the parties and amici ''yielded a goose egg.'' [28] Consequently, the only meaningful empirical evidence came from the Board's own election statistics. In this regard, he disagreed with the majority's view that the minimal number of elections held and votes cast against the recognized union proved the *Dana* modifications were unnecessary. In his view, the statistics showed that in one of every four elections held, an employee majority voted against representation by the incumbent recognized union. While that 25-percent rejection rate was below the recent annual rejection rate for all decertification elections, it was nevertheless substantial and supported retention of a notice requirement and brief open period.[29]

At least since *Lamons Gasket,* the imposition of the immediate recognition bar, followed by the execution of a collective-bargaining agreement, can preclude the possibility of conducting a Board election contesting the initial non-electoral recognition of a union as a majority-supported exclusive bargaining representative for as many as four years. The 2014 Election Rule did not include substantive discussion of the reimposition of the immediate voluntary recognition election bar in *Lamons Gasket.* A few respondents to the 2017 Request for Information contended that the Board should eliminate this and other discretionary election bars, or in the alternative,

[17] 351 NLRB at 441. The recognition bar modifications did not affect the obligation of an employer to bargain with the recognized union during the post-recognition open period, even if a decertification or rival petition was filed. Id. at 442.

[18] *NLRB* v. *Gissel Packing Co.,* 395 U.S. at 603.

[19] *Dana Corp.,* 351 NLRB at 438.

[20] Id. at 439.

[21] Id.

[22] Id.

[23] Id., citing McCulloch, *A Tale of Two Cities: Or Law in Action,* Proceedings of ABA Section of Labor Relations Law 14, 17 (1962).

[24] Id.

[25] Similar to the *Dana* proceeding, the 2011 *Lamons Gasket* decision followed a decision granting review, consolidating two cases, and inviting briefing by the parties and amici on the voluntary recognition bar issue. *Rite Aid Store #6473,* 355 NLRB 763 (2010). In response, the Board received 17 amicus briefs, in addition to briefs on review and reply briefs from the parties. *Lamons Gasket,* 357 NLRB at 740 fn.1.

[26] ''As of May 13, 2011, the Board had received 1,333 requests for *Dana* notices. In those cases, 102 election petitions were subsequently filed and 62 elections were held. In 17 of those elections, the employees voted against continued representation by the voluntarily recognized union, including 2 instances in which a petitioning union was selected over the recognized union and 1 instance in which the petition was withdrawn after objections were filed. Thus, employees decertified the voluntarily recognized union under the *Dana* procedures in only 1.2 percent of the total cases in which *Dana* notices were requested.'' Id. at 742.

[27] Id. at 748–754.

[28] Id. at 750 (''Only five respondents sought to overturn *Dana,* and only two of them supported their arguments for doing so with the barest of anecdotal evidence.'') (footnotes omitted).

[29] Id. at 751.

should reinstate the *Dana* notice and open period requirements.

C. Proof of Majority-Based Recognition Under Section 9(a) in the Construction Industry

In 1959, Congress enacted Section 8(f) of the Act to address unique characteristics of employment and bargaining practices in the construction industry. Section 8(f) permits an employer and labor organization in the construction industry to establish a collective-bargaining relationship in the absence of majority support, an exception to the majority-based requirements for establishing a collective-bargaining relationship under Section 9(a). While the impetus for this exception to majoritarian principles stemmed primarily from the fact that construction industry employers often executed pre-hire agreements with a labor organization in order to assure a reliable, cost-certain source of labor referred from a union hiring hall for a specific job, the exception applies as well to voluntary recognition and collective-bargaining agreements executed by a construction industry employer that has employees. However, the second proviso to Section 8(f) states that any agreement that is lawful only because of that section's nonmajority exception cannot bar a petition for a Board election. Accordingly, there cannot be a contract bar or voluntary recognition bar to an election among employees covered by an 8(f) agreement.

Board precedent has varied with respect to the test of whether a bargaining relationship and a collective-bargaining agreement in the construction industry are governed by Section 9(a) majoritarian principles or by Section 8(f) and its exception to those principles. In 1971, the Board adopted a ''conversion doctrine,'' under which a bargaining relationship initially established under Section 8(f) could convert into a 9(a) relationship by means other than a Board election or majority-based voluntary recognition. See *R. J. Smith Construction Co.,* 191 NLRB 693 (1971), enf. denied sub nom. *Operating Engineers Local 150* v. *NLRB,* 480 F.2d 1186 (D.C. Cir. 1973); *Ruttmann Construction Co.,* 191 NLRB 701 (1971). As subsequently described in *John Deklewa & Sons,* 282 NLRB 1375, 1378 (1987), enfd. sub nom. *Iron Workers Local 3* v. *NLRB,* 843 F.2d 770 (3rd Cir. 1988), *R.J. Smith* and *Ruttmann* viewed a Section 8(f) agreement as '' 'a preliminary step that contemplates further action for the development of a full bargaining relationship' '' (quoting from *Ruttmann,* 191 NLRB at 702). This preliminary 8(f) relationship/agreement could convert to a 9(a) relationship/agreement, within a few days or years later, if the union could show that it had achieved majority support among bargaining-unit employees during a contract term. ''The achievement of majority support required no notice, no simultaneous union claim of majority, and no assent by the employer to complete the conversion process.'' Id. Proof of majority support sufficient to trigger conversion included ''the presence of an enforced union-security clause, actual union membership of a majority of unit employees, as well as referrals from an exclusive hiring hall.'' Id. The duration and scope of the post-conversion contract's applicability under Section 9(a) would vary, depending upon the scope of the appropriate unit (single or multiemployer) and the employer's hiring practices (project-by-project or permanent and stable workforce). Id. at 1379.

The *Deklewa* Board made fundamental changes in the law governing construction industry bargaining relationships and set forth new principles that are relevant to this rulemaking. First, it repudiated the conversion doctrine as inconsistent with statutory policy and Congressional intent expressed through the second proviso to Section 8(f) ''that an 8(f) agreement may not act as a bar to, inter alia, decertification or rival union petitions.'' Id. at 1382. Contrary to this intent, the ''extraordinary'' conversion of an original 8(f) agreement into a 9(a) agreement raised ''an absolute bar to employees' efforts to reject or to change their collective-bargaining representative,'' depriving them of the ''meaningful and readily available escape hatch'' assured by the second proviso. Id. Second, the Board held that 8(f) contracts and relationships are enforceable through Section 8(a)(5) and Section 8(b)(3) of the Act, but only for as long as the contract remains in effect. Upon expiration of the contract, ''either party may repudiate the relationship.'' Id. at 1386. Further, inasmuch as Section 8(f) permits an election at any time during the contract term, ''[a] vote to reject the signatory union will void the 8(f) agreement and will terminate the 8(f) relationship. In that event, the Board will prohibit the parties from reestablishing the 8(f) relationship covering unit employees for a 1-year period.'' Id. Third, the Board presumed that collective-bargaining agreements in the construction industry are governed by Section 8(f), so that ''a party asserting the existence of a 9(a) relationship bears the burden of proving it.'' Id. at 1385 fn. 41. Finally, stating that ''nothing in this opinion is meant to suggest that unions have less favored status with respect to construction industry employers than they possess with respect to those outside the construction industry,'' the Board affirmed that a construction industry union could achieve 9(a) status through ''voluntary recognition accorded . . . by the employer of a stable workforce where that recognition is based on a clear showing of majority support among the union employees, *e.g.,* a valid card majority.'' Id at 1387 fn. 53.

Deklewa's presumption of 8(f) status for construction industry relationships did not preclude the possibility that a relationship undisputedly begun under Section 8(f) could become a 9(a) relationship upon the execution of a subsequent agreement. In cases applying *Deklewa,* however, the Board repeatedly stated the requirement, both for initial and subsequent agreements, that in order to prove a 9(a) relationship, a union would have to show '' 'its express demand for, and an employer's voluntary grant of, recognition to the union as bargaining representative based on a contemporaneous showing of union support among a majority of employees in an appropriate unit.' '' *Brannan Sand & Gravel Co.,* 289 NLRB 977, 979–980 (1988) (quoting *American Thoro-Clean, Ltd.,* 283 NLRB 1107, 1108–1109 (1987)). Further, in *J & R Tile,* 291 NLRB 1034, 1036 (1988), the Board held that, to establish voluntary recognition, there must be ''positive evidence that a union unequivocally demanded recognition as the employees' 9(a) representative and that the employer unequivocally accepted it as such.'' [30]

In *Staunton Fuel & Material, Inc.,* 335 NLRB 717, 719–720 (2001), the Board for the first time held that a construction industry union could prove 9(a) recognition on the basis of contract language alone without any other ''positive evidence'' of a contemporaneous showing of majority support. Relying on two recent decisions by the United States Court of

[30] *Golden West Electric,* 307 NLRB 1494, 1495 (1992) (citing *J & R Tile,* supra). In an Advice Memorandum issued after *J & R Tile,* the General Counsel noted record evidence that the employer in that case ''clearly knew that a majority of his employees belonged to the union, since he had previously been an employee and a member of the union. However, the Board found that in the absence of positive evidence indicating that the union sought, and the employer thereafter granted, recognition as the 9(a) representative, the employer's knowledge of the union's majority status was insufficient to take the relationship out of Section 8(f).'' *In re Frank W. Schaefer, Inc.,* Case 9–CA–25539, 1989 WL 241614.

Appeals for the Tenth Circuit,[31] the Board held that language in a contract was independently sufficient to prove a 9(a) relationship ''where the language unequivocally indicates that (1) the union requested recognition as the majority or 9(a) representative of the unit employees; (2) the employer recognized the union as the majority or 9(a) bargaining representative; and (3) the employer's recognition was based on the union's having shown, or having offered to show, evidence of its majority support.'' Id. at 720. The Board found that this contract-based approach ''properly balances Section 9(a)'s emphasis on employee choice with Section 8(f)'s recognition of the practical realities of the construction industry.'' Id. at 719. Additionally, the Board stated that under the *Staunton Fuel* test, ''[c]onstruction unions and employers will be able to establish 9(a) bargaining relationships easily and unmistakably where they seek to do so.''

On review of a subsequent Board case applying *Staunton Fuel,* the United States Court of Appeals for the District of Columbia Circuit sharply disagreed with the Board's analysis.[32] Relying heavily on the majoritarian principles emphasized by the Supreme Court in *Int'l Ladies' Garment Workers' Union* v. *NLRB,* 366 U.S. 731 (1961), the D.C. Circuit stated that ''[t]he proposition that contract language standing alone can establish the existence of a section 9(a) relationship runs roughshod over the principles established in *Garment Workers,* for it completely fails to account for employee rights under sections 7 and 8(f). An agreement between an employer and union is void and unenforceable, *Garment Workers* holds, if it purports to recognize a union that actually lacks majority support as the employees' exclusive representative. While section 8(f) creates a limited exception to this rule for pre-hire agreements in the construction industry, the statute explicitly preserves employee rights to petition for decertification or for a change in bargaining representative under such contracts. 29 U.S.C. 158(f). The Board's ruling that contract language alone can establish the existence of a section 9(a) relationship—and thus trigger the three-year 'contract bar' against election petitions by employees and other parties—creates an opportunity for construction companies and unions to circumvent both section 8(f) protections and *Garment Workers'* holding by colluding at the expense of employees and rival unions. By focusing exclusively on employer and union intent, the Board has neglected its fundamental obligation to protect employee section 7 rights, opening the door to even more egregious violations than the good faith mistake at issue in *Garment Workers.*'' 330 F.3d at 536–537.

Notwithstanding the court's criticism in *Nova Plumbing,* and that of a dissenting Board member subsequently agreeing with the court,[33] the Board has adhered to *Staunton Fuel's* holding that certain contract language, standing alone, can establish an 9(a) relationship in the construction industry. The D.C. Circuit has adhered as well to the contrary view. In *Colorado Fire Sprinkler, Inc.* v. *NLRB,* 891 F.3d 1031 (2018), the court granted review and vacated a Board order premised on the finding that a bargaining relationship founded under Section 8(f) became a 9(a) relationship solely as a consequence of recognition language in a successor bargaining agreement executed by the parties. The court reemphasized its position in *Nova Plumbing* that the *Staunton Fuel* test could not be squared either with *Garment Workers'* majoritarian principles or with the employee free choice principles represented by Section 8(f)'s second proviso. It also focused more sharply on the centrality of employee free choice in determining when a Section 9(a) relationship has been established. The court observed that ''[t]he *raison d'être* of the National Labor Relations Act's protections for union representation is to vindicate the *employees'* right to engage in collective activity and to empower *employees* to freely choose their own labor representatives.''[34] Further, the court emphasized that ''[t]he unusual Section 8(f) exception is meant not to cede all employee choice to the employer or union, but to provide employees in the inconstant and fluid construction and building industries some opportunity for collective representation. . . . [I]t is not meant to force the employees' choices any further than the statutory scheme allows.''[35] Accordingly, ''[b]ecause the statutory objective is to ensure that only unions chosen by a majority of employees enjoy Section 9(a)'s enhanced protections, the Board must faithfully police the presumption of Section 8(f) status and the strict burden of proof to overcome it. Specifically, the Board must demand clear evidence that the employees—not the union and not the employer—have independently chosen to transition away from a Section 8(f) pre-hire arrangement by affirmatively choosing a union as their Section 9(a) representative.''[36] Pursuant to that strict evidentiary standard, the court found that it would not do for the Board to rely under *Staunton Fuel* solely on contract language ''indicating that the employer's recognition was based on the union's having shown, or having offered to show, an evidentiary basis of its majority support.''[37] Such reliance ''would reduce the requirement of affirmative employee support to a word game controlled entirely by the union and employer. Which is precisely what the law forbids.''[38]

II. Statutory Authority and Desirability of Rulemaking

Section 6 of the Act provides that ''[t]he Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by subchapter II of chapter 5 of Title 5 [the Administrative Procedure Act], such rules and regulations as may be necessary to carry out the provisions of this Act.'' The Board interprets Section 6 as authorizing the proposed rules and invites comments on this issue. Although the Board historically has made most substantive policy determinations through case adjudication, the Board has, with Supreme Court approval, engaged in substantive rulemaking. *American Hospital Assn.* v. *NLRB,* 499 U.S. 606 (1991) (upholding Board's rulemaking on appropriate bargaining units in the healthcare industry); see also *NLRB* v. *Bell Aerospace Co.,* 416 U.S. 267, 294 (1974) (''[T]he choice between rulemaking and adjudication lies in the first instance within the Board's discretion.'').

The Board finds that informal notice-and-comment rulemaking with respect to the election bar policies at issue here is desirable for three important reasons.

First, rulemaking presents the opportunity to solicit broad public comment on, and to address in a single proceeding, three related election bar issues that would not likely arise in the adjudication of a single case. By engaging in rulemaking after receiving public comment on the issues

[31] *NLRB* v. *Triple C Maintenance, Inc.,* 219 F.3d 1147 (10th Cir. 2000), and *NLRB* v. *Oklahoma Installation Co.,* 219 F.3d 1160 (10th Cir. 2000).

[32] *Nova Plumbing, Inc.* v. *NLRB,* 330 F.3d 531 (D.C. Cir. 2003), granting review and denying enforcement of *Nova Plumbing, Inc.,* 336 NLRB 633 (2001).

[33] *King's Fire Protection, Inc.,* 362 NLRB 1056, 1058–1063 (2015) (Member Miscimarra, dissenting).

[34] Id. at 1038 (emphasis in original).

[35] Id. at 1039.

[36] Id.

[37] *Staunton Fuel,* 335 NLRB at 717.

[38] *Colorado Fire Sprinkler, Inc.* v. *NLRB,* 891 F.3d at 1040.

presented, the Board will be better able to make an informed judgment as to the impact the current bar policies have had on employee free choice.

Second, rulemaking does not depend on the participation and argument by parties in a specific case, and it cannot be mooted by developments in a pending case. For example, in *Loshaw Thermal Technology, LLC,* Case 05–CA–158650, the Board recently sought public input on the issue of what proof should be required to establish a majority-supported Section 9(a) bargaining relationship in the construction industry by issuing a notice and invitation to file briefs. 2018 WL 4357198 (September 11, 2018). The Charging Party Union in that case thereafter filed a request to withdraw its charge. The Board granted the request by unpublished order issued on December 14, 2018, 2018 WL 6616458, thus precluding the possibility of addressing the issue presented through adjudication until such unforeseen time as it might be raised in a new case.

Third, by establishing the new election bar standards in the Board's Rules & Regulations, employers, unions, and employees will be able to plan their affairs free of the uncertainty that the legal regime may change on a moment's notice (and possibly retroactively) through the adjudication process. *NLRB* v. *Wyman-Gordon Co.,* 394 U.S. 759, 777 (1969) (''The rule-making procedure performs important functions. It gives notice to an entire segment of society of those controls or regimentation that is forthcoming.'') (Douglas, J., dissenting).

III. The Proposed Rule Amendments

Substitution of a Vote and Impound Procedure for Current Blocking Charge Policy

The Board is inclined to believe, subject to comments, that the current blocking charge policy impedes, rather than protects, employee free choice. In a significant number of cases, the policy denies employees the right to have their votes, in a Board-conducted election on questions concerning representation, ''recorded accurately, efficiently, and speedily.'' [39] In particular, statistical evidence over several decades of Board elections undisputedly shows that the blocking charge policy causes substantial delays in the conduct of elections in which employees seek the opportunity to freely express their choice with respect to whether they wish to continue being represented by their incumbent union.

As the United States Court of Appeals for the D.C. Circuit has stated, ''a decertification bar, whatever its duration, also prevents employees from exercising their right to dislodge the union however their sentiments about it may change. Decertification bars thus touch at the very heart of employees' rights under the National Labor Relations Act.'' [40] Although the court made this observation when criticizing the Board's rote issuance of a remedial affirmative bargaining order for an employer's unlawful withdrawal of recognition from an incumbent union, it applies with equal force to the effect of a rote application of the current blocking charge policy on RD petitions, as well as RM petitions and rival union RC petitions seeking an electoral referendum on an incumbent union's continuing majority support.

The breadth of the current blocking charge policy and the significant length of delay in processing these otherwise valid election petitions raise several serious concerns. First, employees who support those petitions are just as adversely affected by delay as employees who support a union's initial petition to become an exclusive bargaining representative. Delay robs the petition effort of momentum and, if an election is delayed for months or years—as is often the case when elections are blocked—many of the employees ultimately voting on the issue of representation may not even be the same as those in the workforce when the petition was filed. Second, the blocking charge policy rests on a presumption that an *unlitigated and unproven* allegation of any of a broad range of unfair labor practices justifies indefinite delay because of a discretionary administrative determination of the *potential* impact of the *alleged* misconduct on employees' ability to cast a free and uncoerced vote on the question of representation. This presumption goes well beyond the presumption underlying the Board's affirmative remedial bargaining order policy of barring an election for a reasonable period of time until the lingering effects of certain *proven* and more narrowly defined unfair labor practices can be abated.[41] Third, as the dissenters to the Election Rule observed, the current policy of holding petitions in abeyance for certain pre-petition Type I blocking charges ''represents an anomalous situation in which some conduct that would not be found to interfere with employee free choice if alleged in objections, because it occurs outside the critical election period, would nevertheless be the basis for substantially delaying holding any election at all.'' [42]

For the foregoing reasons, and in light of the various criticisms voiced by courts, academicians, commenters to the 2014 NPRM, dissenters to the 2014 Final Rule, and responders to the 2017 Request for Information, the Board believes, subject to comments, that the current blocking charge policy should not be maintained. Although the 2014 Election Rule addition of Section 103.20 made some effort to address concerns about unmeritorious charges needlessly delaying Board-conducted elections, the Board is inclined, subject to comments, to institute more substantial measures to protect employee free choice and ensure that employees are able to realize their right to have their votes ''recorded accurately, efficiently, and speedily.'' [43]

Having preliminarily reviewed numerous suggestions for revision or elimination of this policy, the Board proposes to adopt the vote and impound procedure suggested by the General Counsel in response to the 2017 Request for Information. Under this new policy, as set forth in an amended Section 103.20 of the Rules, regional directors will continue to process a representation petition and will conduct an election even when an unfair labor practice charge and blocking request have been filed. If the charge has not been resolved prior to the election, the ballots will remain impounded until the Board makes a final determination regarding the charge. As further explained by the General Counsel: ''Adoption of a vote-and-impound protocol while the region investigates a charge would allow for balloting when

[39] *NLRB* v. *A.J. Tower Co.,* 329 U.S. at 331.

[40] *Caterair International* v. *NLRB,* 22 F.3d 1114, 1122 (1994).

[41] Even that remedial presumption of taint is not without its critics. See *Lee Lumber & Bldg. Material Corp.* v. *NLRB,* 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) (''To presume that employees are such fools and sheep that they have lost all power of free choice based on the acts of their employer, bespeaks the same sort of elitist Big Brotherism that underlies the imposition of the invalid bargaining order in this case.'').

[42] 79 FR 74456, citing *Ideal Electric Mfg. Co.,* 134 NLRB 1275 (1961) (to be found objectionable, alleged conduct must occur during critical period between petition and election dates).

[43] *NLRB* v. *A.J. Tower Co.,* 329 U.S. at 331. As indicated in fn. 4 above, the Board disagrees with observations by both the majority and dissent in their respective discussions of the 2014 Election Rule that the blocking charge policy was incorporated into or embedded in that rule. Sec. 103.20 incorporates only certain evidentiary procedures to be applied to blocking charges. Although the majority clearly endorsed the current blocking charge policy, determination of whether and when a blocking charge policy should apply is not addressed in the 2014 Election Rule. It remains a product of adjudication outside the Board's Rules, details of which are summarized in the General Counsel's nonbinding Casehandling Manual.

the parties' respective arguments are fresh in the mind of unit employees. Balloting would occur with the understanding that allegations have been proffered, regardless of whether probable cause has been found; thus, neither the charging party nor the charged party would be in control of the narrative underlying the election campaign. Should the director find that the ULP charge is without merit, the count and resulting tally of ballots could occur immediately, rather than after a further delay while the petition is unblocked, an election is either negotiated or directed, the mechanics of the pre-election period dispensed with, and balloting take place. Moreover, any burden in conducting elections created where the ballots may never be counted is more than offset by the benefit of preserving employees' free choice. Indeed, the preservation of employee free choice through a vote and impound procedure far outweighs any other concerns.'' [44]

The Board believes, subject to comment, that the proposed vote-and-impound rule best satisfies the goal of protecting employee free choice in cases where, under existing policy, the election would be blocked by assuring that petitions will be processed to an election in the same timely manner as in unblocked petition cases. The concern for protection of that choice from coercion by unfair labor practices will still be met by holding the counting of ballots and certification of results until a final determination has been made as to the merits of the unfair labor practice allegations and the effects on the election of any violations found to have been committed.

Modification To Current Immediate Voluntary Recognition Bar

The Board proposes, subject to comments, to overrule *Lamons Gasket,* to reinstate the *Dana* notice and open period procedures following voluntary recognition under Section 9(a), and to incorporate those procedures in the Rules as a new Section 103.21(a). This modification to the current immediate voluntary recognition bar is not intended to and should not have the effect of discouraging parties from entering into collective-bargaining relationships and agreements through the undisputedly valid procedure of voluntary recognition based on a contemporaneous showing of majority support. However, the Board believes, subject to comments, that the justifications expressed in the *Dana* Board majority and *Lamons Gasket* dissenting opinions for the limited post-recognition notice and open period requirements are more persuasive than those expressed by the *Lamons Gasket* Board majority in support of an immediate voluntary recognition bar.

It is undisputed that ''secret elections are generally the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support.'' *NLRB* v. *Gissel Packing Co.,* 395 U.S. at 602. Although voluntary recognition is a valid method of obtaining recognition, authorization cards used in a card-check recognition process are ''admittedly inferior to the election process.'' Id. at 603. The Board believes that the *Lamons Gasket* majority failed to accept this distinction or the several reasons, summarized above, articulated by the *Dana* majority supporting it. Further, the Board believes that the *Lamons Gasket* majority failed to address at all the cumulative effect of an immediate recognition bar and a subsequent contract bar that would apply if parties execute a collective-bargaining agreement during the six-month to one-year reasonable bargaining period following the first bargaining session following voluntary recognition. In this circumstance, employees denied an initial opportunity to vote in a secret-ballot Board election on the question of representation could be denied that opportunity for as many as four years.[45]

The Board also believes, in agreement with the *Lamons Gasket* dissent, that the Board election statistics cited by the *Lamons Gasket* majority with respect to the limited number of elections held under *Dana* procedures support, rather than detract from, the need for a notice and brief open period following voluntary recognition. ''In sum, here is what we really know from the *Dana* experience: (1) *Dana* has served the intended purpose of assuring employee free choice in those cases where the choice made in the preferred Board electoral process contradicted the showing on which voluntary recognition was granted; (2) in those cases where the recognized union's majority status was affirmed in a *Dana* election, the union gained the additional benefits of 9(a) certification, including a 1-year bar to further electoral challenge; (3) there is no substantial evidence that *Dana* has had any discernible impact on the number of union voluntary recognition campaigns, or on the success rate of such campaigns; and (4) there is no substantial evidence that *Dana* has had any discernible impact on the negotiation of bargaining agreements during the open period or on the rate at which agreements are reached after voluntary recognition.'' [46]

In conclusion, the Board believes, subject to comments, that it is necessary and appropriate to modify the current voluntary recognition bar doctrine by reestablishing through rulemaking a post-recognition period in which employees and rival unions are permitted to file an election petition before the imposition of an election bar. This modification does not diminish the role that voluntary recognition plays in the creation of bargaining relationships but ensures that employee free choice has not been impaired by a process that is less reliable than Board elections.

Modified Requirements for Proof of Section 9(a) Relationships in the Construction Industry

The Board proposes, subject to comments, to overrule *Staunton Fuel,* to adopt the D.C. Circuit's position that contract language alone cannot create a 9(a) bargaining relationship in the construction industry, and to incorporate the requirement of extrinsic proof of contemporaneous majority support in a new Section 103.21(b) of the Board's Rules. The Board believes that several reasons support this change. First, as emphasized by the D.C. Circuit opinion in *Colorado Fire Sprinkler,* the *Staunton Fuel* test literally permits an employer and union to ''paper over'' the *Deklewa* presumption that collective-bargaining relationships in the construction industry are governed by Section 8(f), under the second proviso to which a Board election cannot be barred at any time. Second, the *Staunton Fuel* test goes one step beyond the problems described above with respect to the current voluntary recognition election bar. At least under the recognition bar policy as applied outside the construction industry, there is undisputed proof of employee majority support, through union authorization cards or a pro-union petition, when the union and employer enter into a bargaining relationship. Under *Staunton Fuel,* an initial bargaining relationship

[44] General Counsel's April 18, 2018 response to the Board's Request for Information regarding the 2014 Election Rule, p. 2, available for viewing on the Board's public website at *https://www.nlrb.gov/reports-guidance/public-notices/request-information/submissions.*

[45] Indeed, because the reasonable period for bargaining runs from the date of the first bargaining session following voluntary recognition, and because parties often need time following voluntary recognition to formulate their positions before they meet and bargain, the combination of immediate voluntary recognition bar followed by contract bar could deny employees a vote on the question of representation for more than four years.

[46] *Lamons Gasket,* 357 NLRB at 751.

under Section 8(f) may become a Section 9(a) relationship at any time after the hiring of employees if the employer and union execute a contract with the prescribed Section 9(a) recognition language. Thus, without any extrinsic proof that a majority of those employees ever supported the recognized union, the current contract bar policy will prevent them, or a rival union, from filing a Board election petition to challenge the union's representative status for up to three years of the contract's duration. Third, the 8(f) to 9(a) ''conversion'' permitted under *Staunton Fuel* is similar to the flawed ''conversion doctrine'' that *Deklewa* repudiated. Finally, and most importantly, the Board believes, subject to comments, that the repeated criticisms voiced by the D.C. Circuit raise a legitimate concern that the current *Staunton Fuel* test conflicts with statutory majoritarian principles and represents an impermissible restriction on employee free choice, particularly in light of the protections intended by the second proviso of Section 8(f).

The Board believes, subject to comments, that the proposed rule requiring positive evidence, apart from contract language, that a union unequivocally demanded recognition as the Section 9(a) exclusive bargaining representative of employees in an appropriate bargaining unit, and that the employer unequivocally accepted it as such, based on a contemporaneous showing of support from a majority of employees in an appropriate unit, will restore the protections of employee free choice in the construction industry that Congress intended, that *Deklewa* sought to secure, and that the D.C. Circuit insists must be restored.

IV. Response to the Dissent

Here, in a nutshell, is our colleague's dissent: She likes the present state of law on the issues raised, particularly because it accords with the views of a prior Board majority that had no hesitation about overruling numerous Board precedents on their own initiative on issues where the results were not to their liking.[47] She has chastised the current Board on innumerable occasions for failing to seek public input prior to overruling precedent, yet she claims we have no right to seek that input on the three issues for which we here seek broad comment. She contends, quite incorrectly, that the well-established standard for determining whether rulemaking is reasoned or arbitrary should be applied at the beginning of the process, prior to the issuance of an NPRM, rather than in judicial review of the end result of the process, after issuance of a Final Rule based on results from the notice-and-comment process. Moreover, she treats each proposal we make in the NPRM as sui generis, lacking any basis in the prior academic, judicial, or internal Board criticisms that we have cited, which she either ignores or summarily rejects.

We need go no further in discussing the details of the dissent, other than to note that we already have her predetermined opinion about the proposals, regardless of what comments or further analysis may ensue.

V. Dissenting View of Member Lauren McFerran

The majority today presents a wide-ranging proposal to radically remake three longstanding Board policies via rulemaking: (1) The blocking charge doctrine, which protects employee free choice by permitting the Board to delay a union-representation election in the face of unfair labor practice allegations; (2) the voluntary recognition bar doctrine, which encourages collective bargaining and promotes industrial stability by allowing a union—after being voluntarily recognized by an employer—to represent employees for a certain period without being subject to challenge; and (3) the *Staunton Fuel* doctrine, which both preserves and encourages collective-bargaining relationships by permitting a union in the construction industry to establish its majority status by pointing to certain language in its collective-bargaining agreement with the employer. Each of the majority's proposed changes would make it harder for employees to get, or to keep, union representation. It is common knowledge that the Board's limited resources are severely taxed by undertaking a rulemaking process, instead of deciding cases already waiting for Board action.[48] And while rulemaking can potentially be a useful tool in appropriate circumstances,[49] the Board should not undertake this arduous process without proper justification. Finally, of course, the rules it adopts should actually further the goals of the National Labor Relations Act, not undermine them.

The impetus for the majority's project is difficult to discern. Certainly, today's proposal—though purporting to address representation case procedures—is not responsive to the Board's 2014 Election Rule, which included only modest revisions to the Board's blocking charge policy and did not implicate the other two issues raised here. Tellingly, only a very small number of responses to the Board's 2017 Request for Information regarding election regulations even touched on the subjects of this Notice. Nor are there rulemaking petitions pending on any of these issues. Indeed, it appears that this initiative—which pieces together three seemingly unconnected proposals—exists primarily as a vehicle for the majority to alter precedents that have not presented themselves for the Board's attention in the normal course of adjudication (or at least not as quickly as the majority would like).[50]

More questionable than the proposal's origin, however, is the majority's thin justification for revisiting the law. Quite simply, the majority cannot change the law in these three areas just because it wants to. As the Supreme Court has long recognized, ''A 'settled course of [agency] behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress.' '' *Motor Vehicle Manufacturers Association of the United States, Inc.* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 41–42 (1983) (quoting *Atchison,*

[47] In addition to *Lamons Gasket,* supra, see *United States Postal Service,* 364 NLRB No. 116 (2016); *E.I. Du Pont de Nemours,* 364 NLRB No. 113 (2016); *Total Security Management Illinois 1, LLC,* 364 NLRB No. 106 (2016); *Trustees of Columbia University,* 364 NLRB No. 90 (2016): *Miller & Anderson, Inc.,* 364 NLRB No. 39 (2016); *Graymont PA, Inc.,* 364 NLRB No. 37 (2016); *Loomis Armored US, Inc.,* 364 NLRB No. 23 (2016); *Guardsmark, LLC,* 363 NLRB No. 103 (2016); *Lincoln Lutheran of Racine,* 362 NLRB 1655 (2015); *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery,* 362 NLRB 1599 (2015); *Piedmont Gardens,* 362 NLRB 1135 (2015); *Babcock & Wilcox Construction Co., Inc.,* 361 NLRB 1127 (2014); *Purple Communications, Inc.,* 361 NLRB 1050 (2014); *Pressroom Cleaners,* 361 NLRB 643 (2014); *FedEx Home Delivery,* 361 NLRB 610 (2014); and *UGL–UNICCO Service Co.,* 357 NLRB 801 (2011). The 2014 Election Rule also overruled precedent previously established in case adjudication.

[48] See, *e.g.,* Jeffrey M. Hirsch, *Defending the NLRB: Improving the Agency's Success in the Federal Courts of Appeals,* 5 FIU L. Rev. 437, 457 (2010) (explaining that rulemaking at the Board would consume significant resources, especially ''given that the NLRB is banned from hiring economic analysts'').

[49] For example, in my dissent in *The Boeing Company,* 365 NLRB No. 154, slip op. at 43 (2017) (dissenting opinion), I suggested that the Board should have considered formulating model rules rather than using adjudication to making sweeping categorical determinations about the lawfulness of rules not presented in the case at hand.

[50] Notably, in *Loshaw Thermal Technology, LLC,* 05–CA–158650, the Board requested public briefing on one of the issues presented here—namely, whether Section 9(a) bargaining relationships in the construction industry may be established by contract language alone. That request for briefing was suspended and ultimately rescinded after the charging party union withdrew the underlying unfair labor practice charge. The Board has not been presented with another case addressing the issue.

T. & S. F. Ry. Co. v. *Wichita Bd. of Trade,* 412 U.S. 800, 807 (1973). It follows, therefore, that when an agency seeks to change its policy—particularly long-settled policy—the agency must provide a ''reasoned explanation'' for why it is changing the policy and ''must show that there are good reasons for the new policy.'' *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 514–515 (2009). Such an explanation must address the agency's reasons for '' 'disregarding facts and circumstances . . . that underlay . . . the prior policy.' ''[51]

The majority's proposal, at least at this stage of the proceedings, fails to meet even minimal standards of reasoned decisionmaking. The proposal relies on faulty premises, fails to ask critical questions, and fails to analyze the relevant data and agency experience.

First, the majority proposes to eliminate the Board's blocking charge policy—an 80-year old doctrine under which the Board may decline to process election petitions over party objections when there are pending unfair labor practice charges that would potentially taint the election environment. In its place, the majority would implement a vote-and-impound procedure that would require regional directors to process all election petitions and hold elections no matter how serious the pending unfair labor practice charges and no matter how powerful the indicia of their merit. The admitted result of the new policy would be to require regional directors to run—and employees, unions, and employers to participate in—elections conducted under coercive conditions that interfere with employee free choice.

Unfortunately, it does not appear that the majority has done any of the rigorous analytical work that should be involved in pursuing such a dramatic change in Board law. My colleagues have not asked critical questions about blocked petitions, and they have failed to analyze relevant, available data about how the blocking charge policy works in practice and the effect of the proposed vote-and-impound procedure if adopted. The result is an unjustified policy change that would unacceptably undermine employee free choice and the policies of the Act.

Second, the majority proposes to radically alter the Board's voluntary recognition bar doctrine, which currently provides that an employer's voluntary recognition of a union insulates the union from an election challenge for a reasonable period of time, to permit collective bargaining. Instead, the majority would reinstate the Board's discredited and short-lived *Dana* approach, establishing a 45-day ''window period'' after voluntary recognition during which employees may file a decertification petition supported by a 30-percent showing of interest. Here, the majority again seeks to upend a well-established Board doctrine—supported by over 50 years of caselaw—without presenting any new policy justifications, legal grounds, or evidentiary support on the side of its position. In its place, the majority would implement an approach that the Board had previously repudiated in a carefully-considered, evidence-based decision. The result of the majority's proposal is contrary to the policies of the Act—discouraging the establishment of stable collective bargaining relationships by creating unnecessary procedural hurdles undermining a union that has already lawfully secured recognition.[52]

Finally, the majority proposes to discard the 18-year-old *Staunton Fuel* doctrine and instead adopt a rule providing that, in the construction industry, neither voluntary recognition of the union by the employer nor a collective-bargaining agreement between the parties will bar election petitions filed under Section 9(c) or 9(e) of the Act ''absent positive evidence'' (as detailed in the rule) that the collective-bargaining relationship was established under the majority-support requirement of Section 9(a) of the Act. As I will explain, the majority's proposal—which runs counter to well-established Board law in unfair labor practice cases—purports to solve a non-existent problem, while failing adequately to acknowledge the actual problem that *Staunton Fuel* was intended to address.

Almost everything about today's initiative—from the lack of justification for rulemaking, to the near-random grouping of unrelated topics, to the poorly conceptualized proposals—seems arbitrary. Moreover, all of the majority's proposals, if implemented, would run contrary to the stated goals of the Act, which is intended to ''encourag[e] the practice and procedure of collective bargaining'' and to ''protect[ ] the exercise by workers of . . . designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment'' (in the words of Section 1). For all of these reasons, I dissent from the majority's decision to issue the notice of proposed rulemaking (NPRM).

A. Blocking Charge Policy

It is a foundational principle of United States labor law that when a petition is filed with the Board seeking an election to enable employees to decide whether they wish to be represented by a union, the Board's paramount role in overseeing the process is to protect employee free choice. By definition, a critical part of protecting employee free choice is ensuring that employees are able to vote in an atmosphere free of coercion, so that the results of the election accurately reflect the employees' true desires concerning representation.

There is general agreement that, under ordinary circumstances, the Board should conduct elections expeditiously. However, as anyone remotely familiar with the history of the National Labor Relations Act is aware, Board volumes are filled with cases describing unlawful conduct that interferes with the ability of employees to make a free choice about union representation in an election. Accordingly, for more than 80 years, the Board has maintained a ''blocking charge policy'' whereby the Board may (at least temporarily) decline to process election petitions over party objections when there are pending unfair labor practice charges alleging conduct that would interfere with employee free choice until the merits of those charges are resolved.

In cases where the charges prove meritorious and there has been conduct that would interfere with employee free choice in an election, the blocking charge policy protects employee free choice by delaying the election until those unfair labor practices have been remedied and employees can register a free and untrammeled choice for or against union representation. At the same time, the blocking charge policy also respects the rights of employees in the subset of cases where the charges are subsequently found to lack merit, because the policy provides for regional directors to resume processing those petitions to elections.

Today, the majority abruptly proposes to jettison the blocking charge policy adhered to by Boards of differing perspectives for more than 8 decades. The majority proposes to replace the

[51] *Encino Motorcars, LLC* v. *Navarro,*—U.S.—,136 S. Ct. 2117 at 2126 (2016), quoting *FCC,* 556 U.S. at 515–516.

[52] This is not the first time the current majority has made changes—or signaled its intent to make changes—the primary effect of which is to make it easier to oust lawfully-recognized unions. See, *e.g., Silvan Industries,* 367 NLRB No. 28 (2018) (undermining the Board's contract bar doctrine); see also *Bay at North Ridge Health and Rehabilitation Center, LLC,* 18–RD–208565 (Feb. 14, 2018) and *Apple Bus Co.,* 19–RD–203378 (Dec. 14, 2017) (noting current majority members' disagreement with the successor bar doctrine).

blocking charge policy with a vote-and-impound procedure that will require regional directors to process *all* petitions to elections—no matter how serious the pending unfair labor practice charges, and even if a regional director and an administrative law judge have determined those charges to have merit—unless there has been a ''final determination by the Board'' itself. In other words, as my colleagues implicitly concede, the proposed vote-and-impound procedure will require regional directors to run—and employees, unions, and employers to participate in—elections conducted under coercive conditions that interfere with employee free choice. This would be a shocking abdication of the Board's statutory duties.

As currently drafted and justified, the majority's proposal to replace the blocking charge policy with a vote-and-impound procedure reflects a failure to engage in the sort of reasoned decision-making demanded of the Board and other administrative agencies. My colleagues have not laid even the basic foundation for a rulemaking supported by substantial evidence. They have assumed the existence of a problem and rushed to a solution without doing any of the rigorous analytical work that should be involved in the rulemaking process. They have not asked critical questions about blocked petitions, and they have failed to analyze relevant, available data about how the blocking charge policy has worked in practice and how the proposed vote-and-impound procedure would work if adopted.

Not surprisingly, from this flawed process a flawed proposal has emerged. The Board's experience and data shows that the predictable outcome of the majority's proposal would be to require regional directors to run, and employees, unions, and employers to participate in, an unacceptably high proportion of elections conducted under coercive conditions, undermining employee rights and the policies of the Act, while imposing unnecessary costs on the parties and the Board.

1.

Section 7 of the Act grants employees ''the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection[.]'' 29 U.S.C. 157. The most commonly travelled route for employees to union representation is through the Board's election processes. Indeed, it has been said—and the majority repeats today—that a secret-ballot election is the Board's preferred route, because a secret-ballot election conducted under the Board's safeguards is normally the most reliable means of determining whether employees truly desire union representation.

Section 7 also grants employees the right to refrain from union activity, and previously represented employees may become unrepresented in a variety of ways. For example, when presented with evidence that an incumbent union no longer has majority backing, an employer sometimes may withdraw recognition from the union and refuse to bargain. See *Allentown Mack Sales & Service, Inc.* v. *NLRB,* 522 U.S. 359, 361 (1998). However, a secret-ballot election conducted under the Board's safeguards is also the ''preferred'' means of determining whether employees truly desire to rid themselves of their incumbent representative. See, *e.g., Scomas of Sausalito, LLC* v. *NLRB,* 849 F.3d 1147, 1152 (D.C. Cir. 2017) (quoting *Levitz Furniture Co. of the Pacific,* 333 NLRB 717, 723, 725–727 (2001) (''*Levitz*'')).[53]

Because the Act calls for freedom of choice by employees as to whether to obtain, or retain, union representation, the Board has long recognized that ''[i]n election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.'' *General Shoe Corp.,* 77 NLRB 124, 126–127 (1948) (a Board conducted election ''can serve its true purpose only if the surrounding conditions enable employees to resister a free and untrammeled choice for or against a bargaining representative.''). Indeed, as the Supreme Court has recognized, it is the ''*duty* of the Board . . . to establish 'the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees.' '' *NLRB* v. *Savair Mfg. Co.,* 414 U.S. 270, 276 (1973) (emphasis added) (citation omitted).

Since the earliest days of the Act, the Board has had a policy—commonly referred to as the blocking charge policy—of generally declining to process a petition to an election over party objections when unfair labor practice charges allege conduct that, if proven, would interfere with employee free choice in an election.[54] The rationale for the blocking charge policy is straightforward: It is ''premised solely on the [Board's] intention to protect the free choice of employees in the election process.'' NLRB Casehandling Manual (Part Two), Representation Proceedings Section 11730 (2017). ''The Board's policy of holding the petition in abeyance in the face of pending unfair labor practices is designed to preserve the laboratory conditions that the Board requires for all elections and to ensure that a free and fair election can be held in an atmosphere free of any type of coercive behavior.'' *Mark Burnett Productions,* 349 NLRB 706, 706 (2007). Indeed, the ability of regional directors to hold petitions in abeyance when unfair labor practice charges allege conduct that would interfere with employee free choice is one of the safeguards that renders Board-conducted elections the preferred means of determining whether employees wish to obtain, or retain, union representation.

It is important to understand that, contrary to the majority's suggestion, the mere filing of an unfair labor practice charge does not automatically cause a petition to be held in abeyance under the blocking charge policy. Casehandling Manual Sections 11730, 11731.[55] Indeed, a regional director may

[53] The Act permits employees to petition for an election to decertify an incumbent collective-bargaining representative. 29 U.S.C. 159(c)(1)(A)(ii). And employers who doubt the majority support of incumbent unions may themselves petition for elections at an appropriate time as well. See *Levitz,* 333 NLRB at 720–721 & n.24.

[54] See *United States Coal & Coke Co.,* 3 NLRB 398, 399 (1937). *See generally, The Developing Labor Law* 561–63 (John E. Higgins, Jr., ed., 5th edition 2006); 3d NLRB Ann. Rep. 143 (1938) (''The Board has often provided that an election be held at such time as the Board would thereafter direct in cases where the employer has been found to have engaged in unfair labor practices and the Board has felt that the election should be delayed until there has been sufficient compliance with the Board's order to dissipate the effects of the unfair labor practices and to permit an election uninfluenced by the employer's conduct. Similarly, where charges have been filed alleging that the employer has engaged in unfair labor practices, the Board has frequently postponed the election indefinitely pending the investigation and determination of the charges.''); 13th NLRB Ann. Rep. 34 & fn. 90 (1948) (''Unremedied unfair labor practices constituting coercion of employees are generally regarded by the Board as grounds for vacating an election[.] For this reason, the Board ordinarily declines to conduct an election if unfair labor practice charges are pending or if unfair labor practices previously found by the Board have not yet been remedied[.]'').

[55] See *Veritas Health Services, Inc.* v. *NLRB,* 895 F.3d 69, 88 (D.C. Cir. 2018) (noting that pending unfair labor practice charges do not necessarily preclude processing a representation petition). For example, the Board has long declined to hold a petition in abeyance if the pending unfair labor practice charge does not allege conduct that would interfere with employee free choice in an election. See, *e.g., Holt Bros,* 146 NLRB 383, 384 (1964) (rejecting party's request that its charge block an election because even if the charge in question were meritorious, it would not interfere with employee free choice in the election).

not block an election if a party has not first submitted an offer of proof describing evidence that, if proven, would interfere with employee free choice in an election. Section 103.20 of the Board's Rules and Regulations provides that if the regional director determines that the party's offer of proof ''does not describe evidence that, if proven, would interfere with employee free choice in an election [. . .], the regional director shall continue to process the petition and conduct the election[.]'' In addition, the Board can decline to block an immediate election despite a party's request that it do so when the surrounding circumstances suggest that the party is using the filing of charges as a tactic to delay an election without cause. See *Columbia Pictures Corp.,* 81 NLRB 1313, 1314–1315 fn. 9 (1949).[56]

Blocking charges fall into two broad categories. The first, called Type I charges, encompasses charges that allege conduct that merely interferes with employee free choice. Casehandling Manual at Section 11730.1. Examples of Type I charges include allegations of employer threats to retaliate against employees if they vote in favor of union representation or promises of benefits if employees vote against union representation. Under the policy, when (1) a party to the representation case requests that its unfair labor practice charge block processing the petition, (2) the charge alleges conduct that, if proven, would interfere with employee free choice in an election were one to be conducted *and* is accompanied by a sufficient offer of proof, and (3) the charging party promptly makes it witnesses available, the charge should be investigated and either dismissed, withdrawn, or remedied before the petition is processed to an election (unless, of course, an exception is applicable). Id. at Sections 11730; 11730.2; 11733.1.

If upon completion of the investigation of the charge, the regional director determines that the charge lacks merit and should be dismissed absent withdrawal, the regional director resumes processing the petition and conducts an election where appropriate. Id. at Section 11732. If the regional director determines that the Type I charge has merit, the director refrains from conducting an election until the charged party has taken all the remedial action required by the settlement agreement, administrative law judge's decision, Board order, or court judgment. Id. at Sections 11730.2; 11734.

The second broad category of blocking charges, called Type II charges, encompasses charges that allege conduct that not only interferes with employee free choice, but that also is inherently inconsistent with the petition itself. Id. at Section 11730.1. Such charges may block a related petition during the investigation of the charges, because a determination of the merit of the charges may also result in the dismissal of the petition. Id. at Section 11730.3. Examples of Type II charges include allegations that an employer's representative was directly involved in the initiation of a decertification petition, or allegations of an employer's refusal to bargain, for which the remedy is an affirmative bargaining order. Ibid.

If the regional director determines that the Type II charge has merit, then the director may dismiss the petition, subject to a request for reinstatement by the petitioner after final disposition of the unfair labor practice case. A petition is subject to reinstatement if the allegations in the unfair labor practice case, which caused the petition to be dismissed, are ultimately found to be without merit. See id. at Section 11733.2.[57]

Although the Board's application of the blocking charge policy in a particular case has occasionally been set aside, no court has invalidated the policy itself despite its long vintage. To the contrary, the courts have recognized that the salutary reasons for the blocking charge policy ''do not long elude comprehension,'' and that the policy has ''long-since [been] legitimized by experience.'' *Bishop* v. *NLRB,* 502 F.2d 1024, 1028, 1032 (5th Cir. 1974).[58]

As the Fifth Circuit explained in *Bishop,* 502 F.2d at 1028–1029:

> It would be particularly anomalous, and disruptive of industrial peace, to allow the employer's (unfair labor practices) to dissipate the union's strength, and then to require a new election which 'would not be likely to demonstrate the employees' true, undistorted desires,' since employee disaffection with the union in such cases is in all likelihood prompted by (the situation resulting from the unfair labor practices).
>
> If the employer has in fact committed unfair labor practices and has thereby succeeded in undermining union sentiment, it would surely controvert the spirit of the Act to allow the employer to profit by his own wrongdoing. In the absence of the 'blocking charge' rule, many of the NLRB's sanctions against employers who are guilty of misconduct would lose all meaning. Nothing would be more pitiful than a bargaining order where there is no longer a union with which to bargain.
>
> Nor is the situation necessarily different where the decertification petition is submitted by employees instead of the employer or a rival union. Where a majority of the employees in a unit genuinely desire to rid themselves of the certified union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.
>
> If the employees' dissatisfaction with the certified union should continue even after the union has had an opportunity to operate free from the employer's unfair labor practices, the employees may at that later date submit another decertification petition.

2.

Today, however, the majority seeks to jettison this 80-year old policy. The majority proposes that the Board no longer block any petition because of pending unfair labor practice charges. No matter how serious the charge (even if it alleges conduct that if proven would require the petition's dismissal); no matter how powerful the indicia of the charge's merit (even if a regional director has issued a complaint or a judge has issued a remedial order); no matter how persistent the employer's coercive actions (even in the face of repeated unfair labor practices over multiple campaigns), the Board will always process petitions to elections

[56] The Board has also directed an immediate election, despite pending charges, in order to hold the election within 12 months of the beginning of an economic strike so as not to disenfranchise economic strikers, *American Metal Products Co.,* 139 NLRB 601, 604–605 (1962), or in order to prevent harm caused to the economy by a strike resulting from an unresolved question of representation, *New York Shipping Association,* 107 NLRB 364, 375–376 (1953). The Casehandling Manual sets forth other circumstances when regional directors may decline to block petitions. Casehandling Manual Section 11731.

[57] For either Type I or II charges, parties have the right to request Board review of regional director determinations to hold petitions in abeyance or to dismiss the petitions altogether. See 29 CFR 102.71(b); Casehandling Manual Sections 11730.7, 11733.2(b).

[58] Accord *Blanco* v. *NLRB,* 641 F.Supp. 415, 417–418, 419 (D.D.C. 1986) (rejecting claim that Section 9 imposes on the Board a mandatory duty to proceed to an election whenever a petition is filed notwithstanding the pendency of unfair labor practice charges alleging conduct that would interfere with employee free choice in an election, and holding that the use of the blocking charge rule was ''in accord with the Board's policy to preserve the 'laboratory conditions' necessary to permit employees to cast their ballots freely and without restraint or coercion.''). See also *Remington Lodging & Hospitality, LLC* v. *Ahearn,* 749 F.Supp.2d 951, 960–961 (D. Alaska 2010) (''where a petition to decertify the union is related to the ULP charges, the 'blocking charge rule' prioritizes the agency's consideration of the ULP charges to ensure that any decertification proceedings are handled in an uncoerced environment.''). Cf. *NLRB* v. *Gissel Packing Co., Inc.,* 395 U.S. 575, 591–592, 594, 597, 600–602, 610–611 (1969) (Board properly withholds an election when employer has committed serious unfair labor practices disruptive of the election process).

and impound the ballots pending Board resolution of the charges.[59]

One searches the majority's NPRM in vain for any reasoned explanation for this sea change. The majority certainly points to nothing that has changed in the representation case arena that would justify jettisoning the policy. Congress has not amended the Act in such a way that calls the blocking charge policy into question. No court has invalidated the policy. And significantly, the Agency's career regional directors—the nonpolitical officials who are charged with administering the policy in the first instance, and whose opinions were explicitly sought and received by the Board—have publicly endorsed the policy.[60]

The majority's policy concerns about the blocking charge policy do not provide persuasive reasons to abandon a longstanding doctrine that protects core statutory interests.

First, the majority repeatedly emphasizes the obvious: That the blocking charge policy causes delays in conducting elections. From this, the majority argues that the blocking charge policy impedes employee free choice. However, the majority's conclusion does not necessarily follow from its premise. To the contrary, as one Board after another has recognized for more than 8 decades, the blocking charge policy protects employee free choice notwithstanding the delay that the policy necessarily entails. Thus, ''it is immaterial that elections may be delayed or prevented by blocking charges, because when charges have merit, elections *should* be [delayed or] prevented.'' *Levitz,* 333 NLRB at 728 n.57. Indeed, as the Board noted when it codified the decades old blocking charge policy, ''Unfair labor practice charges that warrant blocking an election involve conduct that is inconsistent with a free and fair election: It advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference.'' 79 FR 74429. Put simply, if the circumstances surrounding an election interfere with employee free choice, then, contrary to the majority, it most certainly is *not* ''efficient'' to permit employees to cast ballots ''speedily'' because the ballots cast in such an election cannot be deemed to ''accurately'' reflect employees' true, undistorted desires. The majority plainly errs in suggesting that elections conducted under coercive circumstances actually resolve the question of representation.

Second, the majority complains that there is a potential for incumbent unions to abuse the blocking charge policy by deliberately filing nonmeritorious unfair labor practice charges in the hopes of delaying the decertification elections that may result in their ouster. But the majority makes no effort to determine how often decertification petitions are blocked by meritorious charges, as compared to nonmeritorious charges, or how much delay is attributable to nonmeritorious charges (which still may well have been filed in good faith, and not for purposes of obstruction).[61]

Recent blocking charge data undercuts the majority's unsupported concern.[62] My preliminary review of the relevant data for Fiscal Years 2016 and 2017 indicates that the overwhelming majority of decertification petitions are never blocked.[63] Approximately 80

[59] The majority's proposal is thus is even more radical than the position unsuccessfully advocated in 2014 by dissenting Members Miscimarra and Johnson, who proposed a vote-and-impound procedure merely for cases involving Type I blocking charges. 79 FR 74308, 74456 (Dec. 15, 2014). The majority never explains whether it considered this alternative, and, if so, why it was rejected.

[60] See April 13, 2018 Regional Director Committee's Response and Comments to the Board's Request for Information on the Representation-Case Procedures p.1 (reporting that directors ''do not see a need to change'' blocking charge Section 103.20).

[61] Nor does the majority explain why it is proposing to jettison the blocking charge policy in the context of initial organizing campaigns to select union representation (involving ''RC'' petitions), based merely on alleged abuse in the context of decertification campaigns to remove incumbent unions (involving ''RD'' petitions).

[62] Compared to the countless examples of cases where employers engage in coercive behavior—such as instigating decertification petitions, committing unfair labor practices that inevitably cause disaffection from incumbent unions, and engaging in unfair labor practices after a decertification petition is filed—in an effort to oust incumbent unions, or engage in coercive behavior to sway employee votes in the context of initial organizing campaigns, *see* Board Volumes 1–368, the majority cites only a few isolated cases arising during the 80-plus year history of the blocking charge policy to support its claim that unions abuse the policy. And the cited cases hardly constitute persuasive authority for jettisoning the blocking charge policy. Two of the cited cases—*Templeton* v. *Dixie Color Printing Co., Inc.,* 444 F.2d 1064 (5th Cir. 1971) and *NLRB* v. *Minute Maid Corp.,* 283 F.2d 705 (5th Cir. 1960)—arose in the Fifth Circuit, which in fact has subsequently and repeatedly *approved of* the blocking charge policy, recognizing that that the policy has been ''legitimized by experience.'' See *Bishop* v. *NLRB,* 502 F.2d at 1028–1029 (and cases cited therein); *Associated Builders and Contractors of Texas, Inc.* v. *NLRB,* 826 F.3d 215, 228 fn. 9 (5th Cir. 2016). ''[T]ime and again'' the Fifth Circuit has taken pains to note that cases such as *Templeton* do not constitute a broad indictment of the blocking charge policy, but merely reflect the ''most unusual'' circumstances presented there. See *Bishop* v. *NLRB,* 502 F.2d at 1030–1031.

Similarly, in *NLRB* v. *Midtown Service Co., Inc.,* the court wholeheartedly endorsed the notion that the Act requires the Board ''to insure . . . employees a free and unfettered choice of bargaining representatives.'' 425 F.2d 665, 672 (2d Cir. 1970). While the court criticized the Board for declining to conduct a rerun election before the employer's unfair labor practices were remedied, that was only because of the highly unusual circumstances presented there, where the employer's unlawful acts were actually designed to support the incumbent union against the decertification petition. See id. at 667, 669, 672 (''If ever there were special circumstances warranting the holding of [a rerun] election, they existed here'' because the union was the ''*beneficiary* of the Employer's misconduct,'' and thus the union was using the charges to achieve an indefinite stalemate ''designed to perpetuate [itself] in power.''). Although the Court also opined, ibid, that a rerun election should not have been blocked even if the charges had been filed by the decertification petitioner, the blocking charge policy as it exists today would not have blocked the election in such circumstances, because, as shown, a petition is not blocked unless, among other things, the charging party requests that its charge block the petition.

Meanwhile, the Seventh Circuit's conclusion that the union abused the blocking charge policy in *Pacemaker Corp.* v. *NLRB,* is mystifying. 260 F.2d 880, 882 (7th Cir 1958). The court appeared to blame the union first of all for seeking an adjournment of the representation case hearing so that it could file an amended unfair labor practice charge. But the facts as found by the court bely any such conclusion; the discharge that was a subject of the amended unfair labor practice charge in question occurred after the adjournment, not before. Thus, the union could not have filed that amended charge before the hearing. 260 F.2d at 882. Moreover, the court ultimately agreed with the Board that the union's amended charge—alleging that the employer had discharged a union supporter—had merit. Id. at 882–883. The court also appeared to blame the union for seeking to delay the representation proceeding by filing a *post*-petition amended unfair labor practice charge, because the union had chosen to file a petition despite its other *pre*-petition unfair labor practice charges. But such criticism was also unwarranted. Thus, the court ignored that, as the employer itself argued to the administrative law judge, while the union would not waive the amended unfair labor practice charge, the union was *not* requesting a delay based on the post-petition amended unfair labor practice allegations. See *Pacemaker Corp.,* 120 NLRB 987, 995 (1958). In any event, by filing a petition despite *pre*-petition misconduct, a union certainly cannot be deemed to have waived its right to request that the petition be held in abeyance if the employer commits additional unfair labor practices *post*-petition that would interfere with employee free choice.

And *NLRB* v. *Hart Beverage Co.,* was not even a blocking charge case, but instead arose at a time in the distant past when an employer had no right to decline a union's demand for recognition (and no right to demand that the union seeking 9(a) status win an election), unless the employer had a good faith doubt of the union's majority status. 445 F.2d 415, 417–418 (8th Cir. 1971). It was in that context that the union business agent made the statement that the court relied on in concluding that the union was not even interested in obtaining a free and fair election, and therefore had filed the charges to abort the employer's petitioned-for election and obtain a bargaining order. See id. at 417, 420.

[63] See Dissent Appendix, available at *https://www.nlrb.gov* (The Dissent Appendix includes my attempt to assemble and analyze a reliable list of the FY 2016- and FY 2017-filed RD, RC, and employer-filed RM petitions that were blocked pursuant to the blocking charge policy, independent of the data relied upon by my colleagues or provided to the public in the past. It also includes charts from the agency's website

Continued

percent of the decertification petitions filed in FY 2016 and FY 2017 were not impacted by the blocking charge policy because only about 20 percent (131 out of 641) of the decertification petitions filed in FY 2016 and FY 2017 were blocked as a result of the policy. See Dissent Appendix. Even in the minority of instances when decertification petitions are blocked, most of these petitions are blocked by meritorious charges. Approximately 66% (86 out of 131) of the decertification petitions that were blocked in FY 2016 and FY 2017 were blocked by meritorious charges. See Dissent Appendix, Section 1.[64]

The majority also fails to show that its proposed vote-and-impound procedure will be less likely to precipitate the (seemingly uncommon) filing of frivolous charges. To be sure, under the majority's proposal, a union cannot postpone an election by filing an unfair labor practice charge. But a union can still delay its potential ouster under the majority's proposed vote-and-impound procedure by filing a charge. Under the majority's proposal, the regional director will not be able to open and count the ballots cast in the impounded election until the unfair labor practice case is decided and the charge(s) found to be lacking in merit. Presumably, a union hellbent on postponing its ouster will still have reason to file unfair labor practice charges to cause the ballots cast in the decertification election to be impounded, thereby delaying the tally of ballots and the certification of results under the proposed vote-and-impound procedure.

Third, the majority finds fault with the blocking charge policy because it permits a mere discretionary ''administrative determination'' as to the merits of unfair labor practice charges to delay employees' ability to vote whether they wish to obtain, or retain, union representation. But the majority ignores that regional directors and the General Counsel make all sorts of administrative determinations that impact the ability of employees to obtain an election. For example, employees, unions, and employers are denied an election if the regional director makes an administrative determination that the petitioner lacks an adequate showing of interest. See 79 FR 74391, 74421 (the adequacy of the showing of interest is a matter for administrative determination and is non-litigable). Regional directors may also deny employer and union requests for second elections based on an administrative determination that no misconduct occurred or that any misconduct that occurred did not interfere with employee free choice. See 79 FR 74412, 74416 (parties have no entitlement to a post-election hearing on election objections or determinative challenges, and regional directors have discretion to dispose of such matters administratively).[65] Indeed, the majority's disrespect for regional director administrative determinations in this context is in considerable tension with Congress' authorizing (in Section 3(b)) regional directors to administratively decide when elections should be conducted in the first place and when the results of elections should be certified. See also 79 FR 74332–74334 (observing that Congress expressed confidence in the regional directors' abilities when it enacted Section 3(b)).[66]

Fourth, the majority laments that employees who support decertification petitions are adversely affected by blocking charges because delay robs the petition effort of momentum and thus threatens employee free choice. While I wish the majority shared the same concern about the potential impacts of delay on the momentum of a union organizing drive,[67] the majority's objection misapprehends the core statutory concerns underlying the blocking charge policy. If a party has committed unfair labor practices that interfere with employee free choice, then elections in those contexts will not accurately reflect the employees' unimpeded desires and therefore should not be conducted. Indeed, the momentum that the majority seeks to preserve may be entirely illegitimate, as in cases where the employer unlawfully initiates the decertification petition, or the momentum may be infected by unlawful conduct, as in cases where after a decertification petition is filed, the employer promises to reward employees who vote against continued representation, or threatens adverse consequences for employees who continue to support the incumbent union.

Finally, the majority claims that the blocking charge policy creates ''an anomalous situation'' whereby conduct that (under *Ideal Electric,* 134 NLRB 1275 (1961)) cannot be found to interfere with employee free choice if alleged in election objections (because it occurred pre-petition), nevertheless can be the basis for delaying or denying an election. But the supposed anomaly is more apparent than real. Contrary to the majority, *Ideal Electric* does not preclude the Board from considering pre-petition misconduct as a basis for setting aside an election. As the Board has explained, ''*Ideal Electric* notwithstanding, the Board will consider prepetition conduct that is sufficiently serious to have affected the results of the election.'' *Harborside*

showing the numbers of petitions filed during those two fiscal years.).

[64] In determining whether a petition was blocked by a meritorious charge, I applied the Office of the General Counsel's long-standing merit definition contained in OM 02–102 available at *https://www.nlrb.gov/news-publications/nlrb-memoranda/operations-management-memos.* Accordingly, a petition was deemed blocked by a meritorious charge if the petition was blocked by a charge that resulted in a complaint, a pre-complaint Board settlement, a pre-complaint adjusted withdrawal, or a pre-complaint adjusted dismissal. Id. at p.4. I note in this regard that the new Chairman and new General Counsel used the same merit definition in their Strategic Plan for FY 2019–FY 2022. See, *e.g.,* Strategic Plan p. 5 attached to GC Memorandum 19–02, available at *https://www.nlrb.gov/news-publications/nlrb-memoranda/general-counsel-memos.*

Notably, the merit rate for all unfair labor practice charges in FYs 2016 and 2017 merely ranged from 37.1% to 38.6%. See NLRB Performance and Accountability Report FY 2016 and 2017, available at *https://www.nlrb.gov/reports-guidance/reports/performance-and-accountability.*

[65] The courts have also rejected claims that administrative settlements of *Gissel* complaints are insufficient to demonstrate 9(a) status. See, *e.g., Allied Mechanical Services, Inc.* v. *NLRB,* 668 F.3d 758, 761, 771, 773 (D.C. Cir. 2012) (''It is . . . unlikely—and even illogical—to suppose that the Board's General Counsel would have asserted that a majority of Allied's unit employees had designated the Union as their representative through authorization cards, and that a *Gissel* bargaining order was necessary to remedy the Company's unfair labor practices, without first investigating the Union's claim of majority status and satisfying itself that a *Gissel* bargaining order was appropriate.'').

[66] And despite criticizing the blocking charge policy for permitting a mere administrative determination to delay or deprive employees of the ability to go to the polls to resolve their representational status, the majority has left unchanged Board law permitting an employer to withdraw recognition from an incumbent union based merely on the General Counsel's administrative determination that a majority of the unit no longer desire union representation. And that administrative determination—unlike the administrative determination to hold a petition in abeyance under the blocking charge policy—is not even reviewable by the Board, because the General Counsel has unreviewable discretion to decline to issue a complaint challenging an employer's unilateral withdrawal of recognition from an incumbent union. See *NLRB* v. *United Food & Commercial Workers Union, Local 23, AFL–CIO,* 484 U.S 112, 118–119 (1987) (a charging party may appeal a regional director's dismissal of an unfair labor practice charge to the General Counsel, but not to the Board); *Williams* v. *NLRB,* 105 F.3d 787, 790–791 n.3 (2d Cir. 1996) (''General Counsel's prosecutorial decisions are not subject to review by the Board,'' and courts may not pass judgment on the merits of a matter never put in issue or passed upon by the Board) (citation omitted). Indeed, if any issue cries out for rulemaking based on the majority's professed neutral preference for speedy secret ballot elections to determine representational rights, it is current law that permits employers to withdraw recognition—without an election—from unions that previously won Board-conducted elections.

[67] See *Volkswagen Group of America Chattanooga Operations, LLC,* 367 NLRB No.138, slip op. at 3–4, 6–7 (2019).

Healthcare, Inc., 343 NLRB 906, 912 fn. 21 (2004). Accord *Madison Square Garden, CT. LLC,* 350 NLRB 117, 122 (2017). Further, as the Majority implicitly concedes, under its own proposed vote-and-impound procedure, it is equally the case that ballots will ''never be counted'' in some cases based on serious *pre*-petition misconduct, namely Type II misconduct, such as where the employer instigates the petition. Moreover, contrary to the majority's suggestion, under the blocking charge policy, regional directors have discretion to reject blocking requests and proceed straight to an election when they conclude that, under the circumstances, employees will be able to exercise free choice notwithstanding a pending unfair labor practice charge (because, for example, the charge merely alleges minor and isolated pre-petition unfair labor conduct).[68]

3.

The majority proposes to replace the blocking charge policy with a vote-and-impound procedure that will require regional directors to process *all* petitions to elections, no matter how serious the pending unfair labor practice charges and no matter how powerful the indicia of their merit, unless there has been a ''final determination'' by the Board itself that unfair labor practices have been committed. As my colleagues implicitly concede, the proposed vote-and-impound procedure will undoubtedly require regional directors to run—and employees, unions, and employers to participate in—elections conducted under coercive conditions. Because my colleagues pledge that the ballots cast in impounded elections will ''never be counted,'' in cases where the elections were conducted under coercive conditions, it cannot be denied that under the majority's proposed vote-and-impound procedure, regional directors will be required to run—and employees, unions, and employers will be required to participate in—many elections that will not resolve the question of representation.

The majority nevertheless summarily concludes that the costs of conducting tainted elections in which the impounded ballots will never be counted is ''more than offset by the benefit of preserving employees' free choice'' in those cases where the blocking charges are ultimately found to lack merit. But asserting this does not make it so. That's not how reasoned decisionmaking works. The majority has proceeded from faulty premises, failed to ask critical questions, failed to analyze the relevant data, and failed to reasonably consider the financial and statutory costs of conducting elections under coercive conditions. See, *e.g., Motor Vehicle Manufacturers Assn of the United States, Inc.* v. *State Farm Mutual Automotive Insurance Co.,* 463 U.S. 29, 43 (1983) (agency acts arbitrarily if it fails to examine the relevant data or failed to consider an important aspect of the problem). Without significant additional effort (or a total revamping) before the rule is finalized, the majority's proposal seems unlikely to survive even minimal judicial scrutiny.

a.

As an initial matter, the majority operates from the fundamentally flawed premise that switching to a vote-and-impound procedure is necessary to preserve employee free choice because the blocking charge policy deprives employees of free choice in those cases where petitions are blocked by nonmeritorious charges. The majority ignores that the blocking charge policy already preserves employee free choice in *all* representation cases in which petitions are blocked because of concurrent unfair labor practice charges. Because, as shown, the blocking charge policy provides for the regional director to resume processing the representation petition to an election if the charge is ultimately determined to lack merit, the unit employees in those cases *will* be afforded the opportunity to vote whether they wish to be represented, and thus employee free choice is preserved. However, unlike the majority's proposed vote-and-impound procedure, the blocking charge policy protects employee free choice in cases involving meritorious charges, by delaying elections until the unfair labor practices are remedied, thus shielding employees from having to vote under coercive conditions. In short, it is the 80-year old blocking charge policy, not the majority's proposed vote-and-impound procedure, that best protects employee free choice in the election process.[69]

The majority likewise relies on a series of faulty premises in touting the other supposed advantages of its proposed vote-and-impound procedure. Indeed, the other supposed benefits of the majority's proposed vote-and-impound procedure are either illusory or greatly overstated. The majority claims that a vote-and-impound procedure will allow the balloting to occur when the parties' respective arguments are ''fresh in the mind[s] of unit employees.'' But this argument ignores that under the long-established blocking charge policy, balloting also occurs when the parties' respective arguments are ''fresh in the minds'' of unit employees, because parties have an

[68] See Casehandling Manual Section 11731.2 Exception 2: Free Choice Possible Notwithstanding Charge (''There may be situations where, in the presence of a request to block (Secs. 11731.1(a)), the regional director is of the opinion that the employees could under the circumstances, exercise their free choice in an election and that the R case should proceed notwithstanding the existence of a concurrent Type I or Type II unfair labor practice case. In such circumstances, the regional director should deny the request to block.'').

[69] The majority is also simply wrong in suggesting that the blocking charge policy can prevent employees from ever obtaining an election if they continue to desire an election after the merits of the charge are determined. As shown, if the petition is held in abeyance, the regional director resumes processing the petition once the charge is ultimately found to lack merit or the unfair labor practice conduct is remedied. Casehandling Manual Sections 11732, 11733.1, 11734. If, on the other hand, the petition is dismissed because of a Type II charge, it is subject to reinstatement if the charge is found nonmeritorious. Id. at Section 11733.2. And, as the courts have recognized, even if the petition is dismissed because of a meritorious Type II blocking charge, employees may, if they so choose, file a new petition after the unfair labor practice conduct that caused the petition to be dismissed is remedied. See *Bishop* v. *NLRB,* 502 F.2d 1024, 1028–1029 (5th Cir. 1974) (''If the employees' dissatisfaction with the certified union should continue even after the union has had an opportunity to operate free from the employer's unfair labor practices, the employees may at that later date submit another decertification petition''); *Albertson's Inc.* v. *NLRB,* 161 F.3d 1231, 1239 (10th Cir. 1998) (''any harm to employees seeking decertification resulting from the blocking of the petition is slight in that employees are free to file a new petition so long as it is circulated and signed in an environment free of unfair labor practices.''). Even if the petitioner withdraws his or her petition, another employee is free to file a new petition. To be sure, as the majority notes, a blocked decertification petition may never proceed to an election if the incumbent union disclaims interest in representing the unit. However, there plainly is no need to hold a decertification election to afford employees the opportunity to oust the incumbent union if that union has voluntarily withdrawn from the scene. Accordingly, it cannot fairly be concluded that employee free choice is impeded in such cases either.

The majority also cries wolf in suggesting that the blocking charge policy renders illusory the possibility of employer-filed (''RM'') election petitions. Once again, if an RM petition is blocked, the regional director resumes processing it once the unfair labor practice charges are remedied or the charges are determined to lack merit. Moreover, my preliminary analysis of the relevant data indicates that the overwhelming majority of RM petitions are never blocked, and that even in the minority of instances when RM petitions are blocked, most of these petitions are blocked by meritorious charges. Indeed, my review of the relevant data indicates that approximately 82 percent of the RM petitions filed during FY 2016 and FY 2017 were not blocked, leaving only about 18 percent (18 out of 99) of the RM petitions filed during FY 2016 and FY 2017 as blocked under the policy. See Dissent Appendix, available at *https://www.nlrb.gov.* And most pointedly, nearly 89 percent (16 out of 18) of the RM petitions blocked during FY 2016 and FY 2017 were blocked by meritorious charges. See Dissent Appendix, Sec. 1.

opportunity to campaign after the director resumes processing a petition (once either the unfair labor practice conduct has been remedied or the director determines that the charge lacks merit). Put simply, all the majority's proposed vote-and-impound procedure ensures is that balloting will occur when the unremedied *coercive conduct* is fresh in the minds of unit employees, which plainly undermines the Act's policy of protecting employee free choice in the election process and contravenes the Board's duty to conduct fair elections.[70]

The majority also mistakenly argues that its proposed vote-and-impound procedure will reduce significant delays in representation cases resulting from the blocking charge policy by enabling the count and resulting tally of ballots to occur ''almost immediately,'' in those cases in which the unfair labor practice charges lack merit. The majority insists that this is so because elections will not have to be scheduled in those cases where the charges lacks merit (because the elections will have already been run).

However, the majority greatly overestimates the time savings. By definition, the majority's proposed vote-and-impound procedure will not result in any time savings whatsoever in those cases where the charges have merit, because, as the majority admits, the ballots cast in those cases will ''never be counted.'' In other words, in cases where the blocking charges are ultimately determined to be meritorious, elections *will* have to be (re)scheduled because the impounded elections will have to be rerun. And, as will be shown below, my preliminary analysis of the relevant data indicates that those are the *majority* of cases, for a majority of the petitions that are blocked are blocked by *meritorious* unfair labor practice charges. Moreover, the majority greatly overstates the time savings in the subset of cases where petitions are blocked by charges that are ultimately found to be nonmeritorious. Put simply, under the majority's proposed vote-and-impound procedure, the regional director will not be able to open and count the impounded ballots, and therefore will not be able to certify the results of the election, until after the unfair labor practice case is decided. And it takes the same amount of time to investigate and decide an unfair labor practice charge whether the charge is investigated before the election or the charge is investigated after the election. Thus, the majority ignores the reality that under its proposed vote-and-impound procedure, the outcome of the representation case will still have to await the outcome of the unfair labor practice case, precisely the same result that obtains under the long-established blocking charge policy. While the majority cites a study of blocking charges causing a 100-day delay in holding elections,[71] virtually all that

[70] The majority also mistakenly argues that neither party will be able to control the preelection narrative under its proposed vote-and-impound procedure, whereas the blocking charge policy enables the party filing the unfair labor practice charge to control the narrative that the Board has blocked the petition because it has found ''probable cause'' that a party has committed unfair labor practices. The majority is wrong on both counts. Thus, under the blocking charge policy, neither the Board nor the regional director notifies unit employees that the petition is being held in abeyance because there is ''probable cause'' to believe that a party has committed unfair labor practices.

The Board, of course, has no contact at all with the unit employees. And when before an election is scheduled, a regional director decides to hold a case in abeyance because of blocking charges, the regional director communicates his or her decision only to the parties and does not even request that the employer post the abeyance letter for unit employees to read. In any event, the regional director's letter typically makes no reference to the sufficiency of the evidence in support of the charge. See, *e.g.,* October 27, 2016 abeyance letter in *Graymont Western Lime, Inc.* Case 18–RD–186636 (''This is to notify you that the petition in the above-captioned case will be held in abeyance pending the investigation of the unfair labor practice charges in Case 18–CA–186811.'') Even when a regional director issues an order postponing or cancelling a scheduled election because of a blocking charge, and requests that the employer post the order so that employees will know that the election will not be held as scheduled, the regional director's order often merely states that the election is being postponed or cancelled because of a pending unfair labor practice charge, with no reference to the merits of the charge. See, *e.g.,* February 10, 2017 order postponing election in *Xanterra Parks & Resorts, Inc,* Case 08–RD–191774 (''This is to advise that the election scheduled for Friday, February 17, 2017 is indefinitely postponed pending the investigation of the unfair labor practice charge in Case No. 08–CA–192771, filed by United Food and Commercial Workers Union Local 880. Further processing of the petition is hereby blocked. The Employer should immediately remove all election notices and post a copy of this letter so that employees are advised that no election will be held.'').

To be sure, under the blocking charge policy, a party is free to exercise its First Amendment rights and tell unit employees that the regional director has blocked action on the petition because a party stands accused of committing unfair labor practices that would interfere with employee free choice in an election. (And the charged party is free to exercise its First Amendment rights and tell the unit employees that it is innocent of any wrongdoing and that the charging party is responsible for the delaying the employees' opportunity to vote.)

But under the majority's proposed vote-and-impound procedure, parties will similarly be free to exercise their First Amendment rights and inform unit employees in advance of the election that the regional director will impound the ballots cast in the election—rather than immediately open and count the ballots following the election—because a party stands accused of committing unfair labor practices that would interfere with employee free choice. (And the charged party will be free to exercise its First Amendment rights and inform unit employees that it is innocent of any wrongdoing and that the charging party is responsible for the delay in opening and counting the ballots). Unless the majority plans on muzzling parties' free speech rights, parties will continue to be as free to present their own narratives to the unit employees under the Majority's proposed vote-and-impound procedure as they are under the blocking charge policy.

[71] See Samuel Estreicher, *Improving the Administration of the National Labor Relations Act Without Statutory Change,* 5 FIU L.Rev. 361, 369–370 (2010). The Majority contends that ''not much'' has changed during FY 2016 through FY 2018 in the sense that a similar delay continues to exist: ''The median number of days from petition to election from 2016 through 2018 was 23 days in unblocked cases. The median number of days from petition to election in the same period for blocked cases ranged from 122 to 145 days.''

While the majority contends that the median number of days from petition to election in blocked cases is no more than 145 days for FY 2016 through 2018, it also states that on December 31, 2018, there were 118 blocked petitions that had been pending an average of 893 days, with the oldest cases having been pending for 4,491 days, *i.e.* more than 12 years. See Majority Appendices A and B, available at *https://www.nlrb.gov.* Although I would agree with my colleagues that such delay is regrettable, there are reasons to doubt the reliability of their limited data. To begin, the list of pending cases on December 31, 2018, and associated days blocked assembled by my colleagues appears to inappropriately aggregate multiple blocking periods for the same case, even when those periods run concurrently. This has the rather bizarre effect of listing a case such as *Piedmont Gardens, Grand Lake Gardens,* 32–RC–087995, as having been blocked for more than 12 years—an impossibly high estimate considering that the case was less than 7 years old as of December 31, 2018 (with a petition-filing date of August 24, 2012). See Majority Appendix B Tab 4. My colleagues not only err by artificially inflating the length of time periods that their cited cases were blocked, they also err by artificially inflating the number of ''blocked petitions pending'' by including in their list cases such as *VT Hackney, Inc.,* 06–RC–198567, and *National Hot Rod Association (NHRA),* 22–RC–186622, neither of which were blocked due to the blocking charge policy.

But even if I were to assume the accuracy of the majority's figures, those 118 cases would represent less than half of one percent (0.37%) of the 31,410 total RC, RD, and RM petitions filed during the 12-year period they cite. See Dissent Appendix, Sec. 4, available at *https://www.nlrb.gov.* Indeed, the blocking charge policy causes no delays whatsoever in the overwhelming majority of cases because the overwhelming majority of petitions are never blocked. For example, less than 5 percent (217 out of 4,623) of the RC, RD, and RM petitions filed during Fiscal Years 2016 and 2017 were blocked as a result of the blocking charge policy. See id. Moreover, it stands to reason that the oldest cases are the fully litigated cases resulting in Board remedial orders that go all the way to the Circuit Courts, rather than the cases involving nonmeritorious charges that can be weeded out at the regional level. Indeed, the oldest cases referenced by the majority—*Pine Brook Care Center,* 22–RC–012742, and *Pavillion at Forrestal,* 22–RC–012743 (see Majority Appendix B Tab 4)—each involved employers found by the Board and the D.C. Circuit to have bargained in bad faith and made unlawful unilateral changes in lieu of bargaining with their incumbent unions (with one employer's intransigence prompting the initiation of contempt proceedings that further delayed the representation case). Given the employers' unlawful acts and litigiousness in the face of Board and Court Orders, it would appear that even if the majority's

time is due to the time it takes to resolve the unfair labor practice issues, which, as shown, will still have to be resolved before the ballots can be counted and the results certified under the majority's vote-and-impound procedure.[72]

b.

Just as the majority fails to engage in a reasoned analysis of the supposed benefits of its proposed vote-and-impound procedure, so too does the majority fail to engage in a reasoned analysis of the costs of its proposed vote-and-impound procedure. As a result, it has failed to justify its current conclusion that the cost of conducting coercive elections in which the impounded ballots will never be counted is more than offset by the benefit of letting employees vote sooner in those cases where the blocking charges are subsequently determined to lack merit.

The majority's first mistake here is that it fails to ask a critical question—namely, what percentage of blocked petitions are blocked by meritorious charges. After all, if every blocked petition were blocked by a meritorious charge, my colleagues would have to concede that there would be no reason to change the policy. There would no point in holding elections and impounding ballots if the Board knew in advance that those ballots would never be opened because parties had committed unfair labor practices interfering with employee free choice or that were inherently inconsistent with the petition itself. To be sure, there is no way to be certain whether a particular charge is meritorious when it is filed, though, as the majority implicitly concedes, the Board's simultaneous offer-of-proof requirement does provide a tool for regional directors to weed out plainly nonmeritorious blocking charges. But it would be reasonable to expect that before proposing to jettison the blocking charge policy in favor of a vote-and-impound procedure, rational Board Members would analyze the relevant data to determine the percentage of petitions that are blocked by meritorious charges. Yet, the majority inexplicably fails to analyze the data.

If the majority wanted to proceed in a rational manner, it could have determined the percentage of petitions blocked by meritorious charges. The data necessary to reach that determination is available using the Agency's electronic case tracking system (''NxGen''), into which regional employees enter notations as a case is processed and upload relevant documents. For example, NxGen entries reflect not only when a petition is filed or when an election is held, but also if a party requests that its charge block an election, and if the petition is dismissed, withdrawn, or blocked for any reason.[73] Similarly, NxGen entries reflect when an unfair labor practice charge is filed, and whether the charge is settled, results in a complaint, or is withdrawn or dismissed. NxGen also contains codes reflecting the representation and unfair labor practice case closing reasons and links to relevant documents. The majority plainly could have run queries to determine which petitions were filed during a given fiscal year, whether any of those petitions were blocked, and if so, which unfair labor practice charges blocked them. And then the majority could have verified whether those petitions were blocked by meritorious charges by examining the underlying NxGen case files.

Instead, all the majority purports to have done is tally the number of petitions blocked during FY 2016 through FY 2018 that eventually went to an election, and compare the longer median number of days from petition to election in blocked versus unblocked cases. But that only proves the obvious—that the blocking charge policy results in some petitions being blocked with attendant election delays. The majority's paltry statistics tell us nothing about whether the petitions at issue deserved to be blocked, nor do they indicate whether, if the majority's proposed vote-and-impound procedure had been in place, the ballots cast in those cases would ever have been counted.

Moreover, by purporting to tally only petitions that proceeded to election during those fiscal years, the majority plainly undercounted the number of petitions blocked by the blocking charge policy. See Majority Appendices A and B.[74] Thus, the majority failed to consider blocked petitions that never proceeded to an election. Examining such petitions is an obviously relevant line of inquiry. For if a decertification petition that is blocked never proceeds to an election—either because the director dismisses the petition due to

proposed vote-and-impound procedure been in effect during the last 12 years, the ballots in those cases would have never been counted.

[72] It is notable that the majority has seemingly failed to consider other actions outside the context of this rulemaking that might address unnecessary delays in the processing of blocking charges. For example, the current General Counsel has terminated the practice of requiring regional directors to adhere to the Impact Analysis system for prioritizing the processing of unfair labor practice charges (See GC Memorandum 19–02 p. 3), which had placed blocking charges in Category III, the category of charges to be afforded highest priority, because those charges involve allegations ''most central to achievement of the Agency's mission.'' See Casehandling Manual Sections 11740, 11740.1. If anything, I would think that in its role of supervising delegated authority under Section 3(b), the Board Majority would want to look into this change and take steps to ensure that blocking charges are afforded the highest priority in terms of case processing.

The majority's failure to consider such an obvious alternative to address delay evidences the arbitrary nature of the Majority's approach. The majority also should have analyzed the impact the mandatory-offer-of-proof and prompt-furnishing-of-witness requirements have had on the time it takes for regional directors to determine that a blocking charge lacks merit and the impact those requirements have had on the merit rates of blocking charges. See *Associated Builders and Contractors of Texas, Inc.* v. *NLRB,* 826 F.3d 215, 228 (5th Cir. 2016) (citing amended Section 103.20's offer of proof requirement, and concluding that the Board ''considered the delays caused by blocking charges, and modified current policy in accordance with those considerations.''). Yet it appears that the majority has short circuited the process by prematurely deciding that more robust measures are necessary to deal with the problem of delay caused by nonmeritorious blocking charges.

[73] A petition may be deemed blocked in NxGen for a variety of reasons having nothing to do with the blocking charge policy.

[74] Ironically, the limited data relied upon by the majority simultaneously overcounts by some two dozen the number of petitions in FYs 2016 and 2017 allegedly blocked by the blocking charge policy. For example, the majority incorrectly counts petitions for which there were no associated charges. See, *e.g.,* the nine separate petitions associated with *Yale University,* 1–RC–183014 et al. The majority also mistakenly counts petitions that were held up because of internal union constitutional provisions governing raiding situations. See, *e.g., Carullo Construction,* 29–RC–196404; *NBC Sports Network,* 18–RC–196593. See also NLRB Casehandling Manual Sections 11017, 11018.1, 11019 (noting that Board procedures accommodate established programs for handling representational disputes (raiding) between and among affiliates of the AFL–CIO). In other instances, the majority errs by counting certain petitions as being blocked by the blocking charge policy when the petitioner affirmatively indicated that it wished to proceed to the election (see, *e.g., VT Hackney,* 06–RC–198567) or where the regional director rejected a request to delay the election and the charging party then withdrew its request to block (see, *e.g., Dignity Health,* 32–RC–179906). Further, the majority's faulty tally of allegedly blocked petitions incorrectly includes petitions that proceeded to an immediate election but later became the subject of overlapping objections/determinative challenges and unfair labor practice charges, and for which the charging party did not make a request to block the petition. See, *e.g., Fred Emich,* 27–RC–195781; *Awesome Transportation,* 29–RC–175858. See 29 C.F.R § 103.20; GC Memorandum 15–06 p.35 (''[U]nder the final rule, the regional office will no longer block a representation case unless the party filing the unfair labor practice charge requests that the petition be blocked. . . .''). Indeed, it makes no sense to fault the blocking charge policy for the delay in resolving such post-election matters given that regional directors would also have been unable to immediately certify those election results until the objections or determinative challenges were resolved even if the Board had never adopted the blocking charge policy 80 years ago. (While similar flaws are likely present in the majority's FY 2018 cases as well, I did not have sufficient time prior to the publication of this NPRM to review the relevant data for FY 2018.)

meritorious Type II blocking charges or because the petitioner decides to withdraw the petition after the unfair labor practice conduct has been remedied—that strikes me as a statutory success, not a failure. After all, the Board should not conduct elections if the employer unlawfully instigated the petition or if the petitioner has a change of heart after the unfair labor practice conduct has been remedied and no longer wishes to proceed to an election.[75] By failing to ask critical questions and to analyze the relevant data, the Majority has acted arbitrarily and capriciously. See *Motor Vehicle Manufacturers Association of the United States, Inc.* v. *State Farm Mutual Automotive Insurance Co.,* 463 U.S. 29, 43 (1983) (agency acts arbitrarily if it fails to examine the relevant data or failed to consider an important aspect of the problem).

The majority's failure to consider the relevant data leads it to underestimate the unnecessary financial costs its proposal will impose on the parties and the Board. Assuming that the number of representation cases resulting in ballot impoundment under the proposed vote-and-impound procedure is comparable to the number of representation cases that were blocked during FY 2016 and FY 2017, and assuming that the merit factor for the concurrent unfair labor practice charges filed under the Majority's vote-and-impound procedure remains comparable to the merit factor for blocking charges filed in FY 2016 and FY 2017, then my preliminary analysis of the relevant data indicates that, under the majority's proposal, the ballots will never be counted in approximately 67 percent of the RD, RM, and RC elections in which ballots are impounded, because the elections will have been conducted under coercive conditions.[76] In other words, under the majority's proposal, regional directors will be forced to conduct, and the parties forced to participate in, dozens of unnecessary elections that will not resolve the question of representation. It therefore cannot be denied that the majority's proposed vote-and-impound procedure will impose unnecessary financial costs on the parties and the Board. Yet, my colleagues do not even acknowledge these costs in any serious way, let alone attempt to quantify them in either the NPRM's substantive preamble or its Initial Regulatory Flexibility Analysis.

Worse still, the majority likewise gives no serious consideration to the damage its proposed vote-and-impound procedure will inflict on employee rights and the policies of the Act. By requiring the Board to conduct elections under coercive circumstances, the majority's proposal plainly contravenes the Board's heavy responsibility to conduct free and fair elections and undermines the Act's policy of protecting employee free choice in the election process. Indeed, by forcing employees to go to elections that will not count, the majority's vote-and-impound proposal additionally threatens to create a sense among the employees that attempting to exercise their Section 7 rights is futile. Moreover, by requiring the Board to conduct elections that will have to be rerun, the majority's proposed vote-and-impound procedure inevitably disrupts industrial peace.

The relevant data also demonstrates that in most cases, the proposed vote-and-impound procedure will not put the parties in the position that most closely approximates the position they would have been in had no party committed unfair labor practices interfering with employee free choice. Had no party committed unfair labor practices, employees would not be forced to vote in an atmosphere of coercion. But employees inevitably will be forced to vote in an atmosphere of coercion under the proposed vote-and-impound procedure because the majority's proposal requires regional directors to conduct elections in all cases where there are concurrent unfair labor practice charges, save those where the Board itself has already issued a decision and remedial order. Although under the majority's vote-and-impound procedure, ballots will never be tallied in cases where the concurrent unfair labor practice charges are ultimately found to be meritorious, each employee will still know how he or she voted in the impounded election. Accordingly, when a new election is conducted after the unfair labor practice is remedied, the union will have to convince each employee who voted against it under coercive conditions to switch his or her vote, something the union normally would not have had to do under the blocking charge policy because the regional director would not have held an election until the unfair labor practice was remedied. And, as the Board previously concluded (79 FR 74418–74419), there is a substantial risk that the tainted election will compound the effects of the unfair labor practices, because employees who voted against union representation under the influence of the employer's coercion are unlikely to change their votes in the rerun election. See *NLRB* v. *Savair Mfg. Co.,* 414 U.S. 270, 277–78 (1973.) Thus, it is the blocking charge policy—rather than the majority's vote-and-impound proposal—that puts the parties and employees in a position that more closely approximates what would have happened had no party committed unfair labor practices and best protects employee free choice.

The majority's proposed vote-and-impound procedure also creates perverse incentives for employers to commit unfair labor practices. The Board's vast experience conducting elections and deciding unfair labor practice and objections cases confirms that it remains part of the playbook for some employers to commit unfair labor practices to interfere with their employees' ability to freely choose whether they wish to be represented. By requiring the Board to conduct elections in all cases where Type I or Type II unfair labor practice charges are filed even over the objections of the charging party union, the majority's proposal creates a perverse incentive for unscrupulous employers to commit unfair labor practices because the predictable results will be: (1) To force unions to expend resources in connection with elections that will not count; and (2) to create a sense among employees that seeking to exercise their Section 7 rights is futile.[77] And under the majority's proposal, unscrupulous employers can add insult to injury by telling their employees that the union is to blame for preventing the regional office from counting the ballots the employees took the time and trouble to cast. This possibility may well induce unions to forego the Board's electoral machinery in favor of recognitional picketing and other forms of economic pressure, thereby exacerbating industrial strife.

The proposed regulatory text implementing the majority's proposed

[75] And, as shown, there also is no need to conduct a decertification election if the incumbent union disclaims interest in representing the unit.

[76] Thus, my analysis indicates that out of the 217 RC, RD, and RM petitions that were blocked in Fiscal Years 2016 and 2017, 146 (or 2 out of every 3) of them, were blocked by meritorious charges. See Dissent Appendix, Sec. 1.

[77] Indeed, it seems impossible to square the majority's proposal—of requiring elections in all cases no matter the severity of the employer's unfair labor practices—with the Supreme Court's approval in *Gissel* of the Board's practice of *withholding* an election and issuing a bargaining order when the employer has committed serious unfair labor practice conduct disruptive of the election machinery and where the Board concludes that ''the possibility of erasing the effects of [the employer's] past [unfair labor] practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through [union authorization] cards would, on balance, be better protected by a bargaining order . . . .'' *Gissel,* 395 U.S. at 591–592, 610–611, 614.

vote-and-impound procedure further impairs employee free choice and contravenes the Board's responsibility to conduct free and fair elections. Thus, the majority's proposed regulatory text set forth in the final sentence of proposed section 103.20 indicates both that an election will be conducted and that the ballots will *not* be impounded if a case settles prior to the conclusion of the election. Incredibly, this means that an election will be held and the ballots will be counted *if* the parties sign a settlement agreement before the conclusion of the election, even if the employer has not fully remedied the unfair labor practice conduct as provided for in the agreement. Previously, the Board—including members of today's majority—would not have considered the ballots cast in such an election to reflect employees' unimpeded desires, given that ballots were cast before the alleged unfair labor conduct was fully remedied. See *Cablevision Systems Corp.,* 367 NLRB No. 59, slip op. at 1, 3 (2018) (citing with approval *Truserv Corp.,* 349 NLRB 227, 227 (2007) (''we hold that . . . the decertification petition can be processed and an election can be held *after the completion of the remedial period* associated with the settlement of the unfair labor practice charge.'')) (emphasis added).[78]

At the same time, the majority's proposed vote-and-impound procedure likewise will dramatically increase the number of employers who face uncertainty about whether they may unilaterally change their employees' working conditions. Under *Mike O'Connor Chevrolet,* an employer acts at its peril in making changes in terms and conditions of employment during the period between an election and the certification of the results. 209 NLRB 701, 703 (1974), enf. denied on other grounds, 512 F.2d 684 (8th Cir. 1975). Thus, if the union is ultimately certified as the employees' representative following the election, the employer will have to rescind any unilateral changes it made during that period and make employees whole for losses resulting from any such changes.

By definition, the majority's proposed vote-and-impound procedure will increase the number of cases where employers face that uncertainty. Under the majority's proposal, if the regional director or the Board ultimately determines in a given case that the impounded ballots should be opened and counted—because the unfair labor practice charge was ultimately determined to be lacking in merit—and the union turns out to win the election, then the employer will need to rescind, and make employees whole for any losses resulting from, any unilateral changes it made between the date of the election and the certification. And, as shown, that certification will have to await the outcome of the unfair labor practice case. The majority certainly offers no explanation for subjecting employers to that risk of uncertainty in cases where labor organizations would have preferred that no election be held.

4.

Two years ago, in considering the proposed Request for Information that purportedly forms part of the impetus for this rulemaking, I explained in my dissent the majority's faulty process in approaching possible changes to its existing rules. Unfortunately, these same criticisms are equally applicable to the majority's faulty approach in issuing today's blocking charge NPRM:

> The Supreme Court has made clear that, when an agency is considering modifying or rescinding a valid existing rule, it must treat the governing rule as the status quo and must provide ''good reasons'' to justify a departure from it. See *Federal Communications Commission* v. *Fox Television,* 556 U.S. 502, 515 (2009). Obviously, determining whether there are ''good reasons'' for departing from an existing policy requires an agency to have a reasonable understanding of the policy and how it is functioning. Only with such an understanding can the agency recognize whether there is a good basis for taking a new approach and explain why. *Id.* at 515–516. Indeed, even when an agency is only beginning to explore possible revisions to an existing rule, the principles of reasoned decision-making demand a deliberative approach, informed by the agency's own experience administering the existing rule. * * * [T]he majority's reticence to focus this inquiry on the agency's own data—the most straightforward source of information about how the Rule is working—is puzzling. The majority's failure to take this basic step suggests that they would rather not let objective facts get in the way of an effort to find some basis to justify reopening the Rule.

82 FR 58789.

Indeed, now more than a year-and-a-half later, the Board is issuing an NPRM proposing to jettison the decades old blocking charge policy that was codified in that rule, and it *still* has not analyzed the relevant data.

Moreover, the majority offers no reasoned explanation for jettisoning the blocking charge policy that plainly advances the Act's policy of protecting employee free choice in elections, and has been adhered to consistently for 80 years. Worse still, the majority's proposed vote-and-impound procedure inevitably will undermine employee rights and the policies of the Act, while imposing unnecessary costs on the parties and the Board, by requiring regional directors to run, and employees, unions, and employers to participate in, elections conducted under coercive conditions that interfere with the ability of employees to freely cast their ballots for or against representation.

B. The Voluntary Recognition Bar

The majority today also continues its effort to upend extant Board precedent[79]—here in the form of a proposed rule targeting the Board's voluntary recognition bar doctrine. Consistent with nearly 50 years of caselaw, the Board currently bars an election petition for a reasonable period of time after the voluntary recognition of a representative designated by a majority of employees. *Lamons Gasket Company,* 357 NLRB 739 (2011). Now the majority signals its intent to revive the *Dana* framework, which would establish a 45-day ''window period'' after voluntary recognition during which employees may file a decertification petition supported by a 30-percent showing of interest.[80] The majority would also require that, in order to start the 45-day window period after voluntary recognition, employers must post an official Board notice informing employees of their right to seek an election within the 45-day period to oust the lawfully-recognized union.[81] As I will explain, there is simply no good reason for the majority to revisit this issue, much less to resurrect an approach that, in the Board's own assessment, was ''flawed,

[78] For all these reasons, the majority's contention—that its proposed vote-and-impound procedure meets ''[t]he concern for protection of [employee free] choice from coercion by unfair labor practices''—is simply untenable.

[79] See *Johnson Controls,* 368 NLRB No. 20 (2019) (Member McFerran, dissenting); *UPMC,* 368 NLRB No. 2, slip op. at 15 & fn. 56 (2019) (Member McFerran, dissenting); *SuperShuttle DFW, Inc.,* 367 NLRB No. 75, slip op. at 15 & fn. 2 (2019) (Member McFerran, dissenting); *Alstate Maintenance, LLC,* 367 NLRB No. 68, slip op. at 12 & fn. 18 (2019) (Member McFerran, dissenting); *E.I. Du Pont de Nemours, Louisville Works,* 367 NLRB No. 12, slip op. at 3–4 (2018) (Member McFerran, dissenting); *Boeing Co.,* 366 NLRB No. 128, slip op. at 9–10 (2018) (Members Pearce and McFerran, dissenting); *Raytheon Network Centric Systems,* 365 NLRB No. 161, slip op. at 22 (2017) (Members Pearce and McFerran, dissenting); *PCC Structurals, Inc.,* supra, slip op. at 14, 16 (Members Pearce and McFerran, dissenting); *Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co.,* 365 NLRB No. 156, slip op. at 36, 38 (2017) (Members Pearce and McFerran, dissenting), vacated 366 NLRB No. 26 (2018); *Boeing Co.,* 365 NLRB No. 154, slip op. at 30–31 (2017) (Member McFerran, dissenting); *UPMC,* 365 NLRB No. 153, slip op. at 17–19 (2017) (Member McFerran, dissenting).

[80] See *Dana Corp.,* 351 NLRB 434, 441 (2007).

[81] Id.

factually, legally, and as a matter of policy.'' [82]

1.

As the Board has previously established, federal labor law ''not only permits, but expressly recognizes two paths employees may travel to obtain representation for the purpose of collective bargaining with their employer''—a Board election or voluntary recognition.[83] As the Supreme Court has held, a ''Board election is not the only method by which an employer may satisfy itself as to the union's majority status.'' *United Mine Workers* v. *Arkansas Oak Flooring Co.,* 351 U.S. 62, 72 fn. 8 (1956). And as the Board recognized in *Dana,* ''Voluntary recognition itself predates the National Labor Relations Act and is undisputedly lawful under it.'' 351 NLRB at 436.

Indeed, Congress was well aware of the practice of voluntary recognition when it adopted the Act in 1935.[84] In Section 9(c)(1)(A)(i) of the Act, Congress provided that employees could file a petition for an election, alleging that a substantial number of employees wish to be represented and ''that their employer declines to recognize their representative.'' This language makes clear that Congress recognized the practice of voluntary recognition and strongly suggests that Congress believed Board supervised elections were necessary only where an employer had declined to recognize its employees chosen representative.[85] In addition, Section 8(a)(5) of the Act requires that an employer bargain collectively ''with the chosen representatives of his employees,'' but does not specify that such representatives must be chosen in a Board-supervised election.[86] Accordingly, voluntary recognition ''has been woven into the very fabric of the Act since its inception and has . . . been understood to be a legitimate means of giving effect to the uncoerced choice of a majority of employees.'' [87]

To give substance to this policy, the Board held that, when an employer voluntarily recognizes a union in good faith based on a demonstrated showing of majority support, the parties are permitted a reasonable time to bargain without challenge to the union's majority status. *Keller Plastics,* 157 NLRB 583, 586 (1966). This doctrine—known as the recognition bar—remained the Board's approach for decades. But in *Dana Corp.,* 351 NLRB 434 (2007), the Board introduced a 45-day ''window period'' after voluntary recognition during which employees could file a decertification petition supported by a 30-percent showing of interest. This is the approach that the majority seeks to reinstitute in today's proposal.

2.

In *Lamons,* which overruled *Dana,* the Board—with the benefit of briefing from the litigants and various amici curiae [88]—produced a carefully-considered decision that explicated the statutory and doctrinal bases for voluntary recognition and the recognition bar, and evaluated the empirical evidence from the 4 years during which *Dana* was in effect.

To begin, the *Lamons* Board traced the roots of voluntary recognition to the era predating the Act, and explained, via a detailed survey of the legislative debates that informed both the initial passage of the Act in 1935 and the enactment of the Taft-Hartley amendments in 1947, how that practice was codified in the text of the statute.[89] Drawing from this history, the Board concluded that *Dana* improperly characterized voluntary recognition as a ''suspect and underground process.'' [90]

Having revisited the statutory basis for voluntary recognition, the Board next assessed whether the *Dana* majority's guiding assertion—that ''there is good reason to question whether card signings . . . accurately reflect employees' true choice concerning union representation'' [91]—was borne out by the actual experience under *Dana.* Significantly, the Board found that—based on its review of the 1,333 instances where *Dana* notices were requested—employees had decertified the voluntarily-recognized union in only 1.2 percent of those cases.[92] Accordingly, the Board reasoned that ''contrary to the *Dana* majority's assumption, the proof of majority support that underlay the voluntary recognition during the past 4 years was a highly reliable measure of employee sentiment.'' [93] As such, the ''data demonstrate[d] that the empirical assumption underlying [*Dana*] was erroneous.'' [94]

Finally, the *Lamons* decision explained—with reference to decades of affirmative Board and court precedent—how the traditional voluntary recognition bar, like the analogous bars in other contexts, serves the Board's statutory interest in ensuring that ''a newly created bargaining relationship . . . be given a chance to succeed before being subject to challenge.'' [95] The *Dana* procedures, in contrast, imposed obstacles to bargaining. Specifically, the Board observed that by creating uncertainty over the union's status and delaying the start of serious negotiations, the *Dana* decision undermined the parties' nascent relationships and rendered successful collective bargaining less likely.[96] For all of these reasons, the *Lamons* Board overruled *Dana* and returned to the previously-settled rule that an employer's voluntary recognition of a union bars an election petition for a reasonable period of time.[97]

3.

Since 2011, the Board's comprehensive, evidence-based decision in *Lamons* has facilitated a stable and predictable post-recognition course for parties. Nonetheless, the majority today proposes to overrule that approach—and to resurrect the discredited *Dana* framework—without any suggestion as to why *Lamons* suddenly requires reassessment. The majority presents no new policy justifications, legal grounds, or evidentiary support on the side of its position. There have been no intervening adverse judicial decisions, nor is there any reason to doubt the legal soundness of *Lamons,* which reinstated the Board's longstanding, court-approved doctrine. The best the majority can muster, it seems, is to state that ''the justifications expressed in the *Dana* Board majority and *Lamons Gasket* dissenting opinions . . . are more persuasive than those expressed by the *Lamons Gasket* Board majority.'' In other words, the majority resolves to overrule precedent simply because it can. But as the Board has previously acknowledged, a change in the

[82] *Lamons,* 357 NLRB at 739.

[83] Id. at 740.

[84] 357 NLRB at 741 fn. 7 (citing legislative history acknowledging the practice of voluntary recognition).

[85] Id. at 741.

[86] Id.

[87] 357 NLRB at 742.

[88] In soliciting amicus briefs, the *Lamons* Board unscored the importance of ''review[ing] the briefs and consider[ing] the actual experience of employees, unions, and employers under *Dana Corp.,* before arriving at any conclusions.'' 355 NLRB 763, 763 (2010). In reaching its final decision, the Board reviewed and considered briefs from various significant stakeholders, including employer advocacy groups and unions. 357 NLRB at 740 fn. 1.

[89] 357 NLRB at 740–742.

[90] Id.

[91] 351 NLRB at 439.

[92] 357 NLRB at 742.

[93] Id.

[94] Id. at 743.

[95] Id. at 744.

[96] Id. at 747.

[97] Id. at 748. The *Lamons Board* for the first time defined a reasonable period of time in this context to be no less than 6 months after the parties' first bargaining session and no more than 1 year. Id.

composition of the Board is not a reason for revisiting precedent.[98]

In another pending NPRM—one that also targets a doctrine with deep roots in Board and judicial precedent—this same majority espoused its purported preference for ''predictability and consistency . . . . thereby promoting labor-management stability.'' [99] But today's notice—with its disregard for precedent and its destabilizing effect on voluntary recognition agreements—seems expressly designed to have the opposite effect. The majority shows no deference toward settled law, nor does the majority articulate any cognizable basis for departing from it. The Supreme Court has held that an agency has a duty ''to explain its departure from prior norms.'' *Atchison, T. & S. F. Ry. Co.* v. *Wichita Bd. of Trade,* 412 U.S. 800 (1973). The majority, however, makes no effort to do so. It instead proposes a reflexive reversion to an earlier policy—one that was disavowed on a legal and empirical basis—relying solely on quotations from the *Dana* majority and then-Member Hayes' dissent in *Lamons.* Surely this does not provide a basis for the ''reasoned decisionmaking'' that is required of the Board.[100]

Affecting a major policy change absent any compelling justification to do so would, on its own, be sufficient to invite judicial scrutiny. But the majority goes a step further: It seeks to enshrine that change as a permanent part of the Board's rules. The majority's reasoning in this regard is again uncertain. Significantly, no person has filed a petition for rulemaking on the recognition bar—the Board's traditional prompt for initiating the rulemaking process. Nor does this proposal bear any clear relationship to the other proposed rules that the majority presents here. And although this issue has been raised by parties to Board proceedings,[101] the majority has decided to address it via rulemaking rather than adjudication—most likely because rulemaking ensures a result that will be more difficult to undo.

Concededly, the rulemaking process does permit for the submission of public input, which can serve an important role in evaluating the effectiveness of the Board's actions.[102] But the policy arguments supporting the *Dana* approach have already been assessed—and rejected—by the *Lamons* Board after solicitation of public input. Because the *Dana* procedures have not been in effect for 8 years, it is difficult to see what kind of new evidence might be available that would undercut the Board's conclusion in *Lamons*—that ''the proof of majority support that underlay voluntary recognition [i]s a highly reliable measure of employee sentiment.'' [103] At most, what the majority will provide with their general request for comments is an opportunity for friendly parties to rehash the arguments of the *Dana* majority in support of this majority's suggested result.

In fact, the majority's proposal is best viewed not as a response to a legal obstacle or changed real-world circumstances, but as the latest in a series of actions that will make it easier to unseat incumbent unions—all under the guise of protecting employee free choice. In this way, it is rightly viewed as a counterpart to the Board's recent decision in *Johnson Controls,*[104] in which the same majority overruled longstanding precedent to permit an employer to unilaterally withdraw recognition from an incumbent union, at the expiration of a collective-bargaining agreement, in the face of objective evidence that the union has not lost majority support of the employees it represents. Under the majority's approach there, the incumbent union can regain its representative status—but only if it petitions for and wins an unnecessary Board election.

Today's proposal will also facilitate the ouster of incumbent unions. And although the majority's target here is different—voluntarily-recognized unions—its apparent objective is the same: To require unions to overcome an additional procedural hurdle or lose their lawful, extant representative status. Once again, the majority touts its ostensible interest in ''ensur[ing] that employee free choice has not been impaired.'' But in practice—as seen in conjunction with *Johnson Controls*—it creates another new mechanism for deposing a union that has already lawfully secured recognition.

4.

In characterizing its proposed codification of the *Dana* approach as ''necessary and appropriate,'' the majority attempts to frame *Lamons Gasket* as a departure from precedent that must immediately be righted. In truth, *Dana* itself was the aberration. Its application marked an ill-advised 4-year departure from what had been the Board's sensible and unchallenged approach for 41 years. The majority now seeks to turn this temporary mistake—one that was properly recognized and corrected—into a permanent blight on the Board's voluntary recognition jurisprudence. It does so without any cognizable legal or evidentiary justification for reviving this approach. While I will certainly consider with an open mind all comments submitted, it is difficult for me to see how—in light of statutory history, Board precedent, and available empirical evidence—the majority will be able to justify finalizing this proposal at the end of this process.

C. Modified Requirements for Proof of Section 9(a) Relationships in the Construction Industry

Finally, the majority proposes to adopt a rule providing that, in the construction industry, neither voluntary recognition of the union by the employer nor a collective-bargaining agreement between the parties will bar election petitions filed under Section 9(c) or 9(e) of the Act ''absent positive evidence'' (as detailed in the rule) that the collective-bargaining relationship was established under the majority-support requirement of Section 9(a) of the Act. The proposed rule states that ''[c]ontract language, standing alone, will not be sufficient to prove the showing of majority support.'' This approach, as the majority acknowledges, runs counter to well-established Board law in unfair labor practice cases.

Beginning with its 2001 decision in *Staunton Fuel & Material, Inc.,*[105] an unfair labor practice case involving the duty to bargain under Section 8(a)(5) of the Act, the Board has held that when a construction-industry employer has agreed to a collective-bargaining agreement that, by its terms, demonstrates that the parties' bargaining relationship is governed by Section 9(a) of the Act, the employer may not treat the relationship as governed by Section 8(f) of the Act—and thus may not unilaterally withdraw recognition from the union when the agreement expires. In 18 years, the Board has never had occasion to apply the *Staunton Fuel*

[98] See *Brown & Root Power & Mfg., Inc.,* 2014 WL 4302554 (Aug. 29, 2014); *UFCW, Local No. 1996 (Visiting Nurse Health System, Inc.),* 338 NLRB 1074 (2003) (full Board) (citing cases).

[99] Notice of Proposed Rulemaking—The Standard for Determining Joint-Employer Status, September 14, 2018.

[100] See, *e.g., Allentown Mack Sales & Service, Inc.* v. *NLRB,* 522 U.S. 359, 374 (1998); *Fred Meyer Stores, Inc.* v. *NLRB,* 865 F.3d 630, 638 (D.C. Cir. 2017).

[101] See, *e.g., L&L Fabrication,* 16–RD–232491 (Unpublished Order, April 22, 2019); *Embassy Suites by Hilton,* Seattle Downtown Pioneer Square, 19–RD–223236 (Unpublished Order, January 15, 2019).

[102] Request for Information—Representation-Case Procedures, December 14, 2017 (Member McFerran, dissenting) (''Of course, administrative agencies ought to evaluate the effectiveness of their actions . . . . and public input can serve an important role in conducting such evaluations.'').

[103] 357 NLRB at 742.

[104] 368 NLRB No. 20 (2019).

[105] 335 NLRB 717 (2001).

principle in a *representation case* to bar an election petition, whether filed by an employee, a rival union, or an employer. Today, the majority attacks *Staunton Fuel,* but does not propose a rule that would apply in unfair labor practice cases.[106] As I will explain, the majority's proposal purports to solve a non-existent problem, while failing adequately to acknowledge the actual problem that *Staunton Fuel* was intended to address. But even to the extent that the majority believes it has identified flaws with the *Staunton Fuel* principle—which the United States Court of Appeals for the District of Columbia Circuit has rejected—the better way to address those flaws is through adjudication. Almost everything about the proposed rule, then, seems arbitrary.

To begin, the majority's unprecedented choice to pursue rulemaking in this area is a dubious way to proceed. My colleagues acknowledge that ''the number of cases that involve a question of whether a relationship is governed by Section 8(f) or 9(a) is very small relative to the total number of construction industry employers and unions.'' These admittedly few cases involve highly individual circumstances that are more appropriate for case-by-case adjudication than for rulemaking, which also consumes far more of the Board's resources. Here, moreover, the majority has chosen to combine rulemaking on a narrow issue with rulemaking on two far more broadly-applicable issues; thus, the relatively few employees, unions, and employers interested in the *Staunton Fuel* issue will unfairly be required to wade through a large rulemaking record devoted overwhelmingly to *other* issues. For these reasons, the Board would be far better advised to continue doing what it has always done: Address this issue as it arises in the context of a contested case with the benefit of a full evidentiary record and briefing by interested parties. To the extent that the majority believes that Board action on this issue is compelled by the District of Columbia Circuit's rejection of *Staunton Fuel,* the Board is, of course, free to adhere to current law and seek Supreme Court review in an appropriate case to resolve the existing Circuit split on this issue.[107]

The majority's attack on *Staunton Fuel* is misplaced in any case. The majority asserts at length that this rulemaking is necessary to ''restore the protections of employee free choice in the construction industry.'' But no case involving *Staunton Fuel* that has reached the Board has ever arisen from the only situation addressed by the proposed rule: The filing of an election petition by employees or a rival union. Rather, the cases have uniformly involved an *employer's* attempt to escape a bargaining obligation by unilaterally withdrawing recognition from the incumbent union and refusing to bargain, resulting in an unfair labor practice proceeding that has nothing to do with an election petition.[108] Notwithstanding its emphatic concern about employee free choice, the majority cites *no* cases in which any employee has been blocked from pursuing a change in representation by the application of *Staunton Fuel.*

The majority also mischaracterizes *Staunton Fuel* and the Board's aim in that decision. *Staunton Fuel* must be understood in the context of the principles established by the Board in an earlier, seminal decision involving collective-bargaining relationships in the construction industry. In *John Deklewa & Sons,*[109] the Board struck a proper balance between protecting employee free choice and accommodating the needs of the construction industry. Under *Deklewa,* construction industry bargaining relationships are presumed to be governed by Section 8(f)—which does not require a union to have majority support—and a party asserting the existence of a Section 9(a) relationship bears the burden of proving it.[110] However, as the *Deklewa* Board noted, unions in the construction industry should not be treated less favorably than unions in other industries where voluntary recognition is permissible; thus, a Section 8(f) relationship can become a Section 9(a) relationship through an employer's voluntary recognition of the union based on a clear showing of majority support.[111] Following *Deklewa,* the Board determined that a union can establish a Section 9(a) relationship by showing its express demand for (and an employer's voluntary grant of) recognition to the union as bargaining representative, based on a contemporaneous showing of union support among a majority of employees in an appropriate bargaining unit.[112]

There is no dispute, then, that establishing a bargaining relationship under Section 9(a) requires a proffered showing of majority support for the union. *Staunton Fuel* addressed a different problem: How the Board should determine whether that requirement had been met at some point in the past—in some cases many years before a dispute over the union's status has arisen—when a construction-industry employer attempts to escape a longstanding bargaining relationship unilaterally.[113] In that retrospective setting, evidence confirming that the union had majority support when the relationship was established may no longer be easily available—witnesses and documents disappear over time. As it did in *Deklewa*—and adopting a standard previously prescribed by the Tenth Circuit[114]—the Board in *Staunton Fuel* carefully balanced the relevant interests and found that, in such cases, negotiated contract language alone could confirm that majority support had been properly

[106] The proposed rule does not permit a construction-industry employer to withdraw recognition where *Staunton Fuel* would prohibit it. Nor does it provide that a construction-industry employer violates Section 8(a)(2) when it recognizes a union as the majority representative (as reflected in the collective-bargaining agreement), but cannot prove by ''positive evidence'' that the union had majority support. Presumably, the majority's failure to address unfair labor practice issues is related to its decision to combine rulemaking on the *Staunton Fuel* issue with two other rulemakings, neither of which directly involves unfair labor practice issues.

[107] See *Colorado Fire Sprinkler, Inc.* v. *NLRB,* 891 F.3d 1031 (D.C. Cir. 2018) (criticizing *Staunton Fuel*); *NLRB* v. *Triple C Maintenance, Inc.,* 219 F.3d 1147 (10th Cir. 2000) (applying the test adopted in *Staunton Fuel*); *NLRB* v. *Oklahoma Installation Co.,* 219 F.3d 1160 (10th Cir. 2000) (same); *Sheet Metal Workers Local 19* v. *Herre Bros., Inc.,* 201 F.3d 231 (3d Cir. 1999) (applying the test adopted in *Staunton Fuel*). See also *Heartland Plymouth Court MI, LC* v. *NLRB,* 838 F.3d 16, 21–22 (D.C. Cir. 2016) (where federal appellate courts are in conflict on an issue of federal law, agency should seek Supreme Court review to resolve dispute).

[108] I am aware of only one Board case involving an employee-filed decertification petition in connection with a dispute over whether the parties' bargaining relationship was governed by Sec. 8(f) or Sec. 9(a). In that case the Board ordered an election, even though the parties were found to have a 9(a) relationship. See *H.Y. Floors and Gameline Painting,* 331 NLRB 304 (2000) (employee filed petition within the statute of limitations period for unfair labor practices).

[109] 282 NLRB 1375, 1385 fn. 40 (1987), enfd. sub nom. *Iron Workers Local 3* v. *NLRB,* 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988).

[110] 282 NLRB at 1385 fn. 41.

[111] Id. at 1387 fn. 53.

[112] *Golden West Electric,* 307 NLRB 1494, 1495 (1992).

[113] The majority cites *International Ladies' Garment Workers' Union* v. *NLRB,* 366 U.S. 731 (1961), which established that an employer violates the Act by recognizing a union that in fact lacks majority support, as authority precluding the Board's approach in *Staunton.* However, the Board has already explained why that case is distinguishable from the situation addressed by *Staunton Fuel:* ''[a]n employer's failure to review a union's proffered showing of majority support when the parties executed their contract does not indicate that the union in fact lacked such support.'' *King's Fire Protection, Inc.,* 362 NLRB 1056 fn.2 (2015).

[114] *NLRB* v. *Triple C Maintenance, Inc.,* supra, 219 F.3d 1147; *NLRB* v. *Oklahoma Installation Co.,* supra, 219 F.3d 1160. See also *Sheet Metal Workers Local 19* v. *Herre Bros., Inc.,* supra, 201 F.3d 231.

established.[115] The Board also carefully specified what that language would have to convey: (1) That the union requested recognition as majority representative; (2) that the employer recognized the union as majority representative; and (3) that the employer's recognition was based on the union's having shown, or having offered to show, an evidentiary basis of its majority support.[116] At the same time, *Staunton Fuel* did not alter the Board's longstanding practice of considering all available relevant evidence when evaluating the nature of parties' bargaining relationship, where the contract language alone was not conclusive.[117] Nor did *Staunton Fuel* impair the right of employees or rival unions to oppose a ''collusive'' Section 9(a) agreement between their construction employer and a union—the chief professed concern of the majority—by filing unfair labor practice charges against both parties with the Board.[118] In short, by establishing that collective-bargaining relationships in the construction-industry are presumed to be governed by Section 8(f), but that the burden on unions to prove a Section 9(a) relationship is no higher in construction that outside that industry, *Staunton Fuel* is not only consistent with *Deklewa* principles—it furthers them.

The majority's proposed rule does not acknowledge the problem that *Staunton* addressed and, contrary to *Deklewa,* it would unjustifiably treat construction unions less favorably than unions in other industries. For all of the reasons offered here, I am not persuaded either that rulemaking is appropriate or that the majority's proposed rule furthers statutory purposes.

D. Conclusion

I cannot support the majority's decision to issue the proposed rule. To be sure, I will carefully consider with an open mind both the public comments that the Board receives and the views of my colleagues. But based on today's Notice, it is clear that—before finalizing any rule—the majority must fundamentally reassess its approach and its proposals if it wishes to engage in reasoned decisionmaking as required by the Administrative Procedure Act. Unfortunately, I fear that the shortcomings of the proposed rule—which fails to consider crucial empirical evidence, misconstrues Board doctrine, and pursues goals that are contrary to the Act—will inevitably result in a final rule that is arbitrary and legally deficient. Most importantly, I cannot support the majority's decision today to embark on a course that seems intended only to weaken the Act's core protections. For all these reasons, I dissent.

VI. Regulatory Procedures

The Regulatory Flexibility Act

A. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601, *et seq.,* ensures that agencies ''review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA].''[119] It requires agencies promulgating proposed rules to prepare an Initial Regulatory Flexibility Analysis (''IRFA'') and to develop alternatives wherever possible, when drafting regulations that will have a significant impact on a substantial number of small entities.[120] However, an agency is not required to prepare an IRFA for a proposed rule if the agency head certifies that, if promulgated, the rule will not have a significant economic impact on a substantial number of small entities.[121] The RFA does not define either ''significant economic impact'' or ''substantial number of small entities.''[122] Additionally, ''[i]n the absence of statutory specificity, what is 'significant' will vary depending on the economics of the industry or sector to be regulated. The agency is in the best position to gauge the small entity impacts of its regulations.''[123]

As discussed below, the Board is uncertain as to whether its proposed rule will have a significant economic impact on a substantial number of small entities. The Board assumes for purposes of this analysis that a substantial number of small employers and small entity labor unions will be impacted by this rule because at a minimum, they will need to review and understand the effect of the substantive changes to the blocking charge policy, voluntary recognition bar doctrine, and modified requirements for proof of majority-based voluntary recognition under Section 9(a) in the construction industry. Additionally, there may be compliance costs that are unknown to the Board.

For these reasons, the Board has elected to prepare an IRFA to provide the public the fullest opportunity to comment on the proposed rule.[124] An IRFA describes why an action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities.[125] An IRFA also

[115] Moreover, contrary to the Majority's claim, *Staunton Fuel* was not the first time the Board found a Sec. 9(a) relationship based solely on contract language. See, *e.g., Decorative Floors,* 315 NLRB 188, 189 (1994); *MFP Fire Protection,* 318 NLRB 840, (1995), enfd. 101 F.3d 1341 (10th Cir. 1996).

[116] *Staunton Fuel,* supra, 325 NLRB at 719–720. In *J & R Tile,* 291 NLRB 1034 (1988), cited by the majority and which preceded *Staunton Fuel,* the Board found the parties' relationship to be governed by Sec. 8(f) because the collective-bargaining agreement merely required unit employees to be members of the union—which was consistent with either a Sec. 8(f) or a Sec. 9(a) relationship—and there was no indication in the contract or in any other form that the union had sought and been granted Sec. 9(a) recognition. The relationship in *J & R Tile,* in short, would have been found Sec. 8(f) under *Staunton Fuel.*

[117] See *Staunton Fuel,* supra at 720. n.15 (Board would continue to consider extrinsic evidence of the parties' intent where the contract's language is not independently dispositive). See also *J.T. Thorpe and Son,* 356 NLRB 822, 824–825 (2011).

[118] In emphasizing the risk of collusion between employers and unions to the detriment of employee choice, my colleagues incorrectly suggest that voluntary recognition outside the construction industry requires ''undisputed proof of employee support, through union authorization cards or a pro-union petition[.]'' That claim is refuted by the Board's decisions. See *Alpha Associates,* 344 NLRB 782, 782–783 (2005) (''whether or not the recognized union had proffered evidence demonstrating its majority status at the time of recognition is irrelevant.''); *Broadmoor Lumber Co.,* 227 NLRB 1123, 1135 (1977) (finding, in non-construction context, that ''no formalism is required to find voluntary recognition,'' and that ''resolution of whether voluntary recognition has been granted turns on whether, as a factual matter, there has been an assertion of recognition by an employer,'' and thus concluding that ''oral and written statements,'' or even ''an employer's conduct can be a valid basis for finding voluntary recognition''), enfd. 578 F.2d 238 (9th Cir. 1978).

[119] E.O. 13272, Sec. 1, 67 FR 53461 (''Proper Consideration of Small Entities in Agency Rulemaking'').

[120] Under the RFA, the term ''small entity'' has the same meaning as ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6).

[121] 5 U.S.C. 605(b).

[122] 5 U.S.C. 601.

[123] Small Business Administration Office of Advocacy, ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act'' (''SBA Guide'') at 18, *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

[124] After a review of the comments, the Board may elect to certify that the rule will not have a significant economic impact on a substantial number of small entities in the publication of the final rule. 5 U.S.C. 605(b).

[125] 5 U.S.C. 603(b).

presents an opportunity for the public to provide comments that will shed light on potential compliance costs that are unknown to the Board or on any other part of the IRFA.

Detailed descriptions of this proposed rule, its purpose, objectives, and the legal basis are contained earlier in the **SUMMARY** and **SUPPLEMENTAL INFORMATION** sections. In brief, the proposed rule includes three provisions that aim to better protect the statutory rights of employees to express their views regarding representation. First, the proposed rule modifies the current blocking charge policy and implements a vote and impound procedure to process representation petitions where a party files or has filed an unfair labor practice charge. Next, the proposed rule modifies the voluntary recognition bar doctrine by providing employees and rival unions with a 45-day window period in which to file an election petition after an employer voluntarily recognizes a union based on demonstrated majority support. Lastly, the proposed rule modifying requirements for proof of majority-based voluntary recognition under Section 9(a) in the construction industry eliminates the possibility of establishing Section 9(a) status based solely on contract language drafted by the employer and/or union.

B. Description and Estimate of Number of Small Entities to Which the Rule Applies

To evaluate the impact of the proposed rule, the Board first identified the universe of small entities that could be impacted by changes to the blocking charge and voluntary recognition bar doctrines, as well as by elimination of the 8(f) to 9(a) conversion through contract language alone.

1. Blocking Charge and Voluntary Recognition Bar Changes

The blocking charge and voluntary recognition bar changes will apply to all entities covered by the National Labor Relations Act (''NLRA'' or ''the Act''). According to the United States Census Bureau, there were 5,954,684 businesses with employees in 2016.[126] Of those, 5,934,985 were small businesses with fewer than 500 employees.[127] Although the proposed rule would only apply to employers who meet the Board's jurisdictional requirements, the Board does not have the means to calculate the number of small businesses within the Board's jurisdiction.[128] Accordingly, the Board assumes for purposes of this analysis that the great majority of the 5,934,985 small businesses could be impacted by the proposed rule.

These two changes will also will impact all labor unions, as organizations representing or seeking to represent employees. Labor unions, as defined by the NLRA, are entities ''in which employees participate and which exist for the purpose . . . of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.'' [129] The Small Business Administration's (''SBA'') ''small business'' standard for ''Labor Unions and Similar Labor Organizations'' is $7.5 million in annual receipts.[130] In 2012, there were 13,740 labor unions in the U.S.[131] Of these unions, 11,245 had receipts of less than $1,000,000; 2,022 labor unions had receipts between $1,000,000 and $4,999,999; and 141 had receipts between $5,000,000 and $7,499,999. In aggregate, 13,408 labor unions (97.6% of total) are small businesses according to SBA standards.

The proposed blocking charge policy change will only be applied as a matter of law under certain circumstances in a Board proceeding, namely, when a party to a representation proceeding files an unfair labor practice charge alleging conduct that could result in setting aside the election or dismissal of the petition. Therefore, the frequency with which the issue arises is indicative of the number of small entities most directly impacted by the proposed rule. For example, in Fiscal Year 2018, 1,408 petitions were filed and proceeded to an election, of which 44 petitions were subject to a blocking charge. Thus, the current blocking charge policy directly impacted 3.125% of petitions filed in Fiscal Year 2018, which is only a de minimis amount of all small entities under the Board's jurisdiction.

Similarly, the number of small entities expected to be most directly impacted by the modified voluntary recognition bar doctrine is also low. When the modified voluntary recognition bar was previously in effect, the Board tracked the number of requests for *Dana* notices, which were used to inform employees that a voluntary recognition had taken place and of their right to file a petition for an election. These are similar to the notices that would be required under this proposed rule. From September 29, 2007, to May 13, 2011, the Board received 1,333 requests for *Dana* notices, which is an average of 372 requests per year.[132] Assuming each request was made by a distinct employer and involved at least one distinct labor organization, at least 744 entities of various sizes were impacted each year that the modified voluntary recognition bar was in effect.[133]

2. Elimination of Contract Language Basis for Proving 9(a) Recognition in the Construction Industry

The Board believes that the proposed elimination of the contract-language basis for proving majority-supported voluntary recognition is only relevant to construction-industry small employers and labor unions because Section 8(f) of the Act applies solely to such entities

[126] *See* U.S. Department of Commerce, Bureau of Census, 2016 Statistics of U.S. Businesses (''SUSB'') Annual Data Tables by Establishment Industry, *https://www.census.gov/data/tables/2016/econ/susb/2016-susb-annual.html* (from downloaded Excel Table titled ''U.S., 6-digit NAICS'').

[127] *Id.* The Census Bureau does not specifically define ''small business'' but does break down its data into firms with fewer than 500 employees and those with 500 or more employees. Consequently, the 500-employee threshold is commonly used to describe the universe of small employers. For defining small businesses among specific industries, the standards are defined by the North American Industry Classification System (NAICS).

[128] Pursuant to 29 U.S.C. 152(6) and (7), the Board has statutory jurisdiction over private sector employers whose activity in interstate commerce exceeds a minimal level. *NLRB* v. *Fainblatt,* 306 U.S. 601, 606–07 (1939). To this end, the Board has adopted monetary standards for the assertion of jurisdiction that are based on the volume and character of the business of the employer. In general, the Board asserts jurisdiction over employers in the retail business industry if they have a gross annual volume of business of $500,000 or more. *Carolina Supplies & Cement Co.,* 122 NLRB 88 (1959). But shopping center and office building retailers have a lower threshold of $100,000 per year. *Carol Management Corp.,* 133 NLRB 1126 (1961). The Board asserts jurisdiction over non-retailers generally where the value of goods and services purchased from entities in other states is at least $50,000. *Siemons Mailing Service,* 122 NLRB 81 (1959).

The following employers are excluded from the NLRB's jurisdiction by statute:

—Federal, state and local governments, including public schools, libraries, and parks, Federal Reserve banks, and wholly-owned government corporations. 29 U.S.C. 152(2).

—employers that employ only agricultural laborers, those engaged in farming operations that cultivate or harvest agricultural commodities or prepare commodities for delivery. 29 U.S.C. 153(3).

—employers subject to the Railway Labor Act, such as interstate railroads and airlines. 29 U.S.C. 152(2).

[129] 29 U.S.C. 152(5).

[130] *See* 13 CFR 121.201.

[131] The Census Bureau only provides data about receipts in years ending in 2 or 7. The 2017 data has not been published, so the 2012 data is the most recent available information regarding receipts. *See* U.S. Department of Commerce, Bureau of Census, 2012 SUSB Annual Data Tables by Establishment Industry, *https://www2.census.gov/programs-surveys/susb/tables/2012/us_6digitnaics_r_2012.xlsx* (Classification #813930—Labor Unions and Similar Labor Organizations).

[132] *Lamons Gasket Co.,* 357 NLRB at 742.

[133] *Dana Corp.,* 351 NLRB 434 (establishing a 45-day ''window period'' after voluntary recognition during which employees could file an election petition supported by a 30-percent showing of interest seeking decertification or representation by an alternative union).

engaged in the building and construction industries. These construction-industry employers are classified under the NAICS Sector 23 Construction.[134] Of the 640,951 employers included in those NAICS definitions, 633,135 are small employers that fall under the SBA ''small business'' standard for classifications in the NAICS Construction sector.[135] The Board has identified 3,929 small labor unions primarily operating in the building and construction trades that fall under the SBA ''small business'' standard for the NAICS classification ''Labor Unions and Similar Labor Organizations'' of annual receipts of less than $7.5 million.[136]

It is unknown how many of those small construction-industry employers elect to enter into a 9(a) bargaining relationship with a small labor union based on language in a collective-bargaining agreement. However, once again, the number of cases that involve a question of whether a relationship is governed by Section 8(f) or 9(a) is very small relative to the total number of construction industry employers and unions. For example, only one case was filed in Fiscal Year 2017 where the Board ultimately had to determine whether a collective-bargaining agreement was governed by Section 8(f) or 9(a).[137] In Fiscal Year 2016, no cases required the Board to determine whether a collective-bargaining agreement was governed by 8(f) or 9(a). One case was filed in Fiscal Year 2015 that came before the Board with the 8(f) or 9(a) collective-bargaining agreement issue.[138]

The historic filing data thus suggests that construction industry employers and labor unions will only be most directly impacted in a small number of instances relative to the number of those types of small entities identified above.

C. Recordkeeping, Reporting, and Other Compliance Costs

The RFA requires agencies to consider the direct burden that compliance with a new regulation will likely impose on small entities.[139] Thus, the RFA requires the Board to determine the amount of ''reporting, recordkeeping and other compliance requirements'' imposed on small entities.[140]

The Board concludes that the proposed rule imposes no capital costs for equipment needed to meet the regulatory requirements; no lost sales and profits resulting from the proposed rule; no changes in market competition as a result of the proposed rule and its impact on small entities or specific submarkets of small entities; and no costs of hiring employees dedicated to compliance with regulatory requirements.[141]

Small entities may incur some costs from reviewing the rule in order to understand the substantive changes. To become generally familiar with the new vote and impound procedure and the modified voluntary recognition bar, the Board estimates that a human resources specialist at a small employer or labor union may take at most ninety minutes to read the rule. It is also possible that a small employer or labor union may wish to consult with an attorney, which the Board estimates will require one hour. Using the Bureau of Labor Statistics' estimated wage and benefit costs, the Board has assessed these labor costs to be $147.12.[142] The costs associated with the portion of the rule that eliminates the contract-language basis for establishing voluntary recognition under Section 9(a) are limited to small employers and unions in the construction industry. To become generally familiar with that change, in addition to the first two changes, the Board estimates that a human resources specialist at a small employer or union in the construction industry may take at most two hours to read the entire rule. Consultation with an attorney may take an additional fifteen minutes, or seventy-five minutes to consult with an attorney regarding the entire rule. Thus, the Board has assessed labor costs for small employers and unions in the construction industry to be $189.48.

Establishment of Vote and Impound Procedure

Although the Board does not foresee any additional compliance costs related to eliminating the blocking charge policy, this policy change would cause some elections to occur sooner, and in some cases would lead to elections that previously would not have occurred

[134] These NAICS construction-industry classifications include the following codes: 236115: New Single-Family Housing Construction; 236116: New Multifamily Housing Construction; 236117: New Housing For-Sale Builders; 236118: Residential Remodelers; 236210: Industrial Building Construction; 236220: Commercial and Institutional Building Construction; 237110: Water and Sewer Line and Related Structures Construction; 237120: Oil and Gas Pipeline and Related Structures Construction; 237130: Power and Communication Line and Related Structures Construction; 237210: Land Subdivision; 237310: Highway, Street, and Bridge Construction; 237990: Other Heavy and Civil Engineering Construction; 238110: Poured Concrete Foundation and Structure Contractors; 238120: Structural Steel and Precast Concrete Contractors; 238130: Framing Contractors; 238140: Masonry Contractors; 238150: Glass and Glazing Contractors; 238160: Roofing Contractors; 238170: Siding Contractors; 238190: Other Foundation, Structure, and Building Exterior Contractors; 238210: Electrical Contractors and Other Wiring Installation Contractors; 238220: Plumbing, Heating, and Air-Conditioning Contractors; 238290: Other Building Equipment Contractors; 238310: Drywall and Insulation Contractors; 238320: Painting and Wall Covering Contractors; 238330: Flooring Contractors; 238340: Tile and Terrazzo Contractors; 238350: Finish Carpentry Contractors; 238390: Other Building Finishing Contractors; 238910: Site Preparation Contractors; 238990: All Other Specialty Trade Contractors. *See* U.S. Department of Commerce, Bureau of Census, 2012 SUSB Annual Data Tables by Establishment Industry, NAICS classification #561320, *https://www2.census.gov/programs-surveys/susb/tables/2012/us_6digitnaics_r_2012.xlsx.*

[135] NAICS codes 236115–237130 and 237310–237990 have a small business threshold of $36.5 million in annual receipts; NAICS code 237210 has a threshold of $27.5 million in annual receipts; and NAICS codes 238110–238990 have a threshold of $15 million in annual receipts. *See* 13 CFR 121.201.

[136] The Department of Labor's Office of Labor-Management Standards (OLMS) provides a searchable database of union annual financial reports. However, OLMS does not identify unions by industry, *e.g.,* construction. Accordingly, the Board does not have the means to determine a precise number of unions primarily operating in the building and construction industries. The Board nonetheless has identified the following unions as primarily operating in these industries: The International Union of Bricklayers and Allied Craftworkers; Building and Construction Trades Department; International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers; Operative Plasterers' and Cement Masons' International Association; Laborers' International Union; The United Brotherhood of Carpenters and Joiners of America; International Union of Operating Engineers; International Union of Journeymen and Allied Trades; International Association of Sheet Metal, Air, Rail, and Transportation Workers; International Union of Painters and Allied Trades; International Brotherhood of Electrical Workers; United Association of Journeymen Plumbers; United Union of Roofers, Waterproofers and Allied Workers; United Building Trades; International Association of Heat and Frost Insulators and Allied Workers; and International Association of Tool Craftsmen. See U.S. Department of Labor, Office of Labor-Management Standards, Online Public Disclosure Room, Download Yearly Data for 2012, *https://olms.dol-esa.gov/olpdr/GetYearlyFileServlet?report=8H58.* Input from the public is welcome as to any labor organization not listed that primarily operates in the building and construction industries.

[137] *See AFP Specialties, Inc.,* Case 07–RD–187706 (unpublished Order dated May 18, 2017).

[138] *See Loshaw Thermal Technology, Inc.,* Case 05–CA–158650.

[139] *See Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (''[I]t is clear that Congress envisioned that the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities.'').

[140] *See* 5 U.S.C. 603(b)(4), 604(a)(4).

[141] SBA Guide at 37.

[142] For wage figures, see May 2017 National Occupancy Employment and Wage Estimates, found at *https://www.bls.gov/oes/current/oes_nat.htm.* The Board has been administratively informed that BLS estimates that fringe benefits are approximately equal to 40 percent of hourly wages. Thus, to calculate total average hourly earnings, BLS multiplies average hourly wages by 1.4. In May 2017, average hourly wages for a Human Resources Specialist (BLS #13–1071) were $31.84. The same figure for a lawyer (BLS #23–1011) was $57.33. Accordingly, the Board multiplied each of those wage figures by 1.4 and added them to arrive at its estimate.

under the prior policy. Arguably, the time compression of holding an election under the Board's normal election timeline may create additional costs for small businesses that do not have in-house legal departments or ready access to outside labor attorneys or consultants, and that consequently need to pay overtime costs to obtain such assistance.[143] Conversely, because the Board's current blocking charge policy appears susceptible to manipulation and abuse,[144] the elimination of the blocking charge policy may result in fewer unfair labor practice charges filed with the intent to forestall employees from exercising their right to vote. This would create fewer costs for small employers by eliminating the need to hire a labor attorney to defend against such charges. It could also create additional costs for small labor unions that have to prepare for an election that may have otherwise been postponed or that may subsequently be set aside. The Board is not aware of a basis for estimating any such costs and welcomes any comment or data on this topic.[145]

The Board believes that any costs from participating in quicker elections or elections that would have not otherwise occurred are limited to very few employers, comparing the limited number of Board proceedings where an unfair labor practice charge has been filed contemporaneously with an election petition with the high number of employers that are subject to the Board's jurisdiction.

Modification of Voluntary Recognition Bar

In a case in which an employer voluntarily recognizes a union, the Board estimates that the employer will spend an estimated 1 hour and 45 minutes to comply with the rule. This includes 30 minutes for the employer or union to notify the local regional office of the Board in writing of the grant of voluntary recognition by submitting a copy of the recognition agreement, 60 minutes to open the notice sent from the Board, insert certain information specific to the parties to the voluntary recognition, and post the notice physically and electronically, depending on where and how the employer customarily posts notices to employees, and 15 minutes to complete the certification of posting form to be returned to the Region at the close of the notice posting period. The Board assumes that these activities will be performed by a human resources specialist for a total cost of about $78.[146]

The Board's modified voluntary recognition bar will cause elections to be held in cases in which the election petition would have previously been dismissed, increasing costs for both employers and unions. Should a commenter provide data demonstrating the cost of having an election after an employer has granted voluntary recognition, the Board will consider that information.

Elimination of Contract-Language Basis for Proving Voluntary Recognition Under Section 9(a) in the Construction Industry

Under current Board law a construction-industry employer and union can write into their collective-bargaining agreement that the union showed or offered to show evidence of majority support and, in combination with certain other contractual language, have the bargaining relationship be governed under Section 9(a). As described above, the proposed rule eliminates the contract-language basis for establishing a 9(a) bargaining relationship but continues to allow two other methods to establish a 9(a) bargaining relationship: A Board-certified election and voluntary recognition based on demonstrated majority support. In cases where an election petition is filed, both the construction industry employer and labor union would incur the cost of participating in an election. In cases where a construction-industry employer voluntarily recognizes a union based on demonstrated majority support, the union may incur additional costs related to the retention of the evidence of majority support, *e.g.,* signed union authorization cards, for a longer period of time if it can no longer rely on contractual language.

D. Overall Economic Impacts

The Board does not find the estimated, quantifiable cost of reviewing and understanding the rule—$189.48 for small employers and unions in the construction industry and $147.12 for all other small employers and unions—to be significant within the meaning of the RFA. The estimated $78 cost of complying with the modified voluntary recognition procedures, which will only apply to the small number of employers that choose to have their voluntary recognition of a union be a bar to a future election petition, is also not significant within the meaning of the RFA.

In making this finding, one important indicator is the cost of compliance in relation to the revenue of the entity or the percentage of profits affected.[147] Other criteria to be considered are the following:

—Whether the rule will cause long-term insolvency, *i.e.,* regulatory costs that may reduce the ability of the firm to make future capital investment, thereby severely harming its competitive ability, particularly against larger firms;

—Whether the cost of the proposed regulation will (a) eliminate more than 10 percent of the businesses' profits; (b) exceed one percent of the gross revenues of the entities in a particular sector, or (c) exceed five percent of the labor costs of the entities in the sector.[148]

The minimal cost to read and understand the rule will not generate any such significant economic impacts.

Since the only quantifiable impacts that the Board has identified are the $169.41 that may be incurred in reviewing and understanding the rule and the $78 for certain employers to comply with the modified voluntary recognition bar, the Board does not believe there will be a significant economic impact on a substantial number of small entities associated with this proposed rule. The Board welcomes input from the public regarding additional costs of compliance not identified by the Board or costs of compliance the Board identified but lacks the means to accurately estimate.

E. Duplicate, Overlapping, or Conflicting Federal Rules

Agencies are required to include in an IRFA ''all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.'' [149] The Board has not identified any such federal rules, but welcomes comments that suggest any potential conflicts not noted in this section.

F. Alternatives Considered

Pursuant to 5 U.S.C. 603(c), agencies are directed to look at ''any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the

[143] Representation-Case Procedures, 79 FR 74307, 74463 (Dec. 15, 2014).

[144] See cases cited in the supplemental information section above.

[145] The RFA explains that in providing initial and final regulatory flexibility analyses, ''an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.'' 5 U.S.C. 607 (emphasis added).

[146] See note 68 for wage figures.

[147] See SBA Guide at 18.

[148] Id. at 19.

[149] 5 U.S.C. 603(b)(5).

proposed rule on small entities.'' Specifically, agencies must consider establishing different compliance or reporting requirements or timetables for small entities, simplifying compliance and reporting for small entities, using performance rather than design standards, and exempting small entities from any part of the rule.[150]

First, the Board considered taking no action. Inaction would leave in place the current blocking charge policy and immediate voluntary recognition bar and allow for continued establishment of Section 9(a) bargaining relationships in the construction industry based on contract language alone. However, for the reasons stated in Sections I through III above, the Board finds it desirable to revisit these policies and to do so through the rulemaking process. Consequently, the Board rejects maintaining the status quo.

Second, the Board considered creating exemptions for certain small entities. This was rejected as impractical, considering that exemptions for small entities would substantially undermine the purposes of the proposed rule because such a large percentage of employers and unions would be exempt under the SBA definitions. Specifically, to exempt small entities from the decision to eliminate the blocking charge policy would leave most small entities without the benefits of the superior vote-and-impound procedure. To exempt small entities from the modified voluntary recognition bar or to alter the notice posting timelines would be contrary to the purpose of the rule: Providing employees prompt notice of the employer's voluntary recognition of a union and of employees' right to petition to decertify that union or to support a different union. Similarly, to exempt small construction-industry entities from the elimination of the contract-language basis for establishing a Section 9(a) relationship would not serve the purpose of that change because the vast majority of employers in the construction industry are considered to be ''small employers.'' Further, it seems unlikely that drawing this distinction would be a permissible interpretation of the relevant statutory provisions. Also, if a large construction-industry employer entered into a bargaining relationship with a small labor union, both entities would be exempted, further undermining the policy behind this provision.

Moreover, given the very small quantifiable cost of compliance, it is possible that the burden on a small business of determining whether it fell within a particular exempt category might exceed the burden of compliance. Congress gave the Board very broad jurisdiction, with no suggestion that it wanted to limit coverage of any part of the Act to only larger employers. As the Supreme Court has noted, ''[t]he [NLRA] is federal legislation, administered by a national agency, intended to solve a national problem on a national scale.'' [151] As such, this alternative is contrary to the objectives of this rulemaking and of the NLRA.

Because no alternatives considered will accomplish the objectives of this proposed rule while minimizing costs on small businesses, the Board believes that proceeding with this rulemaking is the best regulatory course of action. The Board welcomes public comment on any facet of this IRFA, including alternatives that it has failed to consider.

Paperwork Reduction Act

The NLRB is an agency within the meaning of the Paperwork Reduction Act (''PRA''). 44 U.S.C. 3502(1) and (5). The PRA creates rules for agencies for the ''collection of information,'' 44 U.S.C. 3507, which is defined as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format,'' 44 U.S.C. 3502(3)(A). Collections of information that occur ''during the conduct of an administrative action or investigation involving an agency against specific individuals or entities'' are exempt from the PRA. 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4(a)(2).

As a preliminary matter, the new vote and impound procedure does not require any collection of information, so the PRA does not apply.

The two remaining changes contained in this proposed rule are exempt from the PRA because any potential collection of information would take place in the context of a representation or unfair labor practice proceeding, both of which are administrative actions within the meaning of the PRA. As the Board noted in its 2014 rulemaking, the Senate Report on the PRA makes it clear that the exemption in ''Section 3518(c)(1)(B) is not limited to agency proceedings of a prosecutorial nature but also include[s] any agency proceeding involving specific adversary parties.'' Representation-Case Procedures, 79 FR 74306, 74468 (Dec. 15, 2014) (quoting S. Rep. No. 96–930, at 56 (1980)). *See also* 5 CFR 1320.4(c) (OMB regulation interpreting the PRA, providing that exemption applies ''after a case file or equivalent is opened with respect to a particular party.''). Every representation and unfair labor practice proceeding involves specific adversary parties, and the outcome is binding on and thereby alters the legal rights of those parties. See 79 FR 74469.

Specifically, the proposed modified voluntary recognition bar change triggers a three-step proceeding specific to an employer and union: (1) An employer or a union gives the Board notice of a voluntary recognition of a union, (2) the Board provides the employer with an individualized notice to be posted for a 45-day period, and (3) the employer certifies to the Board that the notice posting occurred. The proceeding closes once the Board receives the completed certification form. Because this proceeding is an administrative action involving specific adversary parties, it falls within the PRA exemption.

The voluntary recognition will only bar a decertification petition if the employer opts to post the notice and no decertification petition is filed within the 45-day period described above. If either of those conditions is not met, a decertification petition filed by an employee or a representation petition filed by a rival labor organization could potentially trigger an election proceeding that would also fall within the PRA exemption.

The proposed elimination of establishing a Section 9(a) relationship in the construction industry based solely on contract language will require unions that wish to achieve Section 9(a) status to collect and retain proof of majority support, to the extent that the union's majority status may be challenged in a potential unfair labor practice or representation proceeding. Both kinds of proceedings fall within the PRA exemption described above.[152]

Accordingly, the proposed rules do not contain information collection requirements that require approval of the Office of Management and Budget under the PRA.

[150] 5 U.S.C. 603(c).

[151] *NLRB* v. *Nat. Gas Util. Dist. of Hawkins Cty.,* 402 U.S. 600, 603–04 (1971) (quotation omitted).

[152] As acknowledged in the Initial Regulatory Flexibility Analysis above, all three of the proposed changes may lead to elections that would not have been held under the prior policies. Nonetheless, particular collections of information required during the course of an election proceeding are not attributable to the instant proposed rule; instead, such requirements flow from prior rules, including the 2014 election rule. And in any event, even if such collections of information were attributable to this proposed rule, an election is a representation proceeding and therefore exempt from the PRA.

Text of the Proposed Rule

For the reasons discussed in the preamble, the Board proposes to amend 29 CFR part 103 as follows:

PART 103—OTHER RULES

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

Authority: 29 U.S.C. 156, in accordance with the procedure set forth in 5 U.S.C. 553.

■ 2. Revise § 103.20 to read as follows:

§ 103.20 Election procedures and blocking charges; filing of blocking charges; simultaneous filing of offer of proof; prompt furnishing of witnesses; vote and impound procedure.

Whenever any party to a representation proceeding files an unfair labor practice charge together with a request that it block the election process, or whenever any party to a representation proceeding requests that its previously filed unfair labor practice charge block the election process, the party shall simultaneously file, but not serve on any other party, a written offer of proof in support of the charge. The offer of proof shall provide the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block the election process shall also promptly make available to the regional director the witnesses identified in its offer of proof. The regional director shall continue to process the petition and conduct the election. If the charge has not been withdrawn, dismissed, or settled prior to the conclusion of the election, the ballots shall be impounded until there is a final determination regarding the charge and its effect, if any, on the election petition or fairness of the election.

■ 3. Add § 103.21 to subpart B to read as follows:

§ 103.21 Processing of petitions filed after voluntary recognition under Section 9(a); proof of Section 9(a) bargaining relationship between employer and labor organization in the construction industry.

(a) An employer's voluntary recognition of a labor organization as exclusive bargaining representative of an appropriate unit of the employer's employees under Section 9(a) of the Act, and any collective-bargaining agreement executed by the parties on or after the date of voluntary recognition, will not bar the processing of an election petition unless:

(1) The employer and labor organization notify the Regional office that recognition has been granted;

(2) The employer posts a notice of recognition (provided by the Regional Office) informing employees that recognition has been granted and that they have a right, during a 45-day ''window period,'' to file a decertification or rival-union petition; and

(3) 45 days from the posting date pass without a properly supported petition being filed.

(b) A voluntary recognition or collective-bargaining agreement between an employer primarily engaged in the building and construction industry and a labor organization will not bar any election petition filed pursuant to Section 9(c) or 9(e) of the Act absent positive evidence that the union unequivocally demanded recognition as the Section 9(a) exclusive bargaining representative of employees in an appropriate bargaining unit, and that the employer unequivocally accepted it as such, based on a contemporaneous showing of support from a majority of employees in an appropriate unit. Contract language, standing alone, will not be sufficient to prove the showing of majority support.

Dated: August 6, 2019.

Roxanne Rothschild,

Executive Secretary.

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